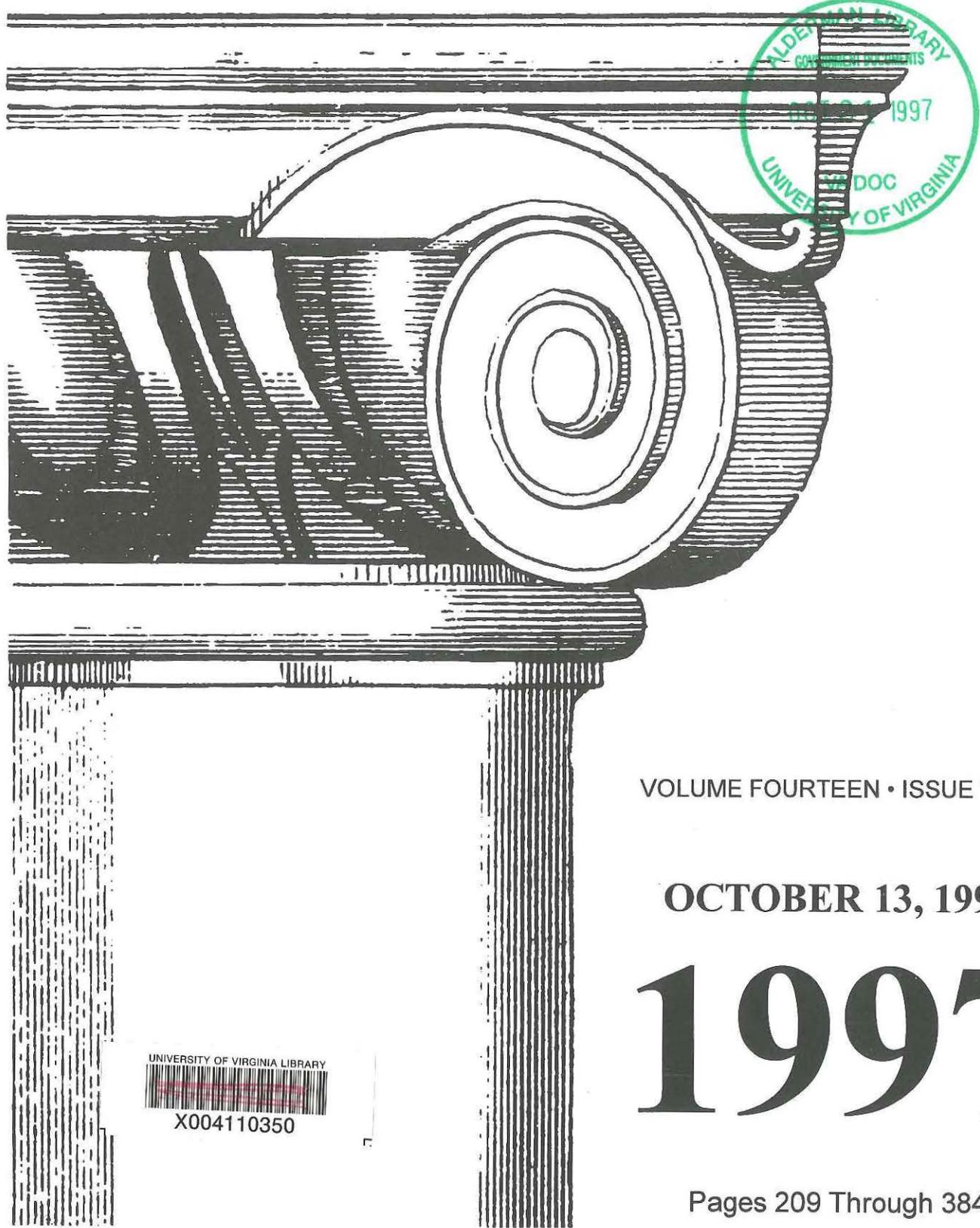


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# THE VIRGINIA REGISTER

OF REGULATIONS



VOLUME FOURTEEN • ISSUE TWO

OCTOBER 13, 1997

# 1997

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# THE VIRGINIA REGISTER INFORMATION PAGE

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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) file the Notice of Intended Regulatory Action with the Registrar within 60 days of the effective date of the emergency regulation; and (ii) file the proposed regulation with the Registrar within 180 days of the effective date of the emergency regulation. If the agency chooses not to adopt the regulations, the emergency status ends when the prescribed time limit expires.

## STATEMENT

The foregoing constitutes a generalized statement of the procedures to be followed. For specific statutory language, it is suggested that Article 2 (§ 9-6.14:7.1 et seq.) of Chapter 1.1:1 of the Code of Virginia be examined carefully.

## CITATION TO THE VIRGINIA REGISTER

The *Virginia Register* is cited by volume, issue, page number, and date. 12:8 VA.R. 1096-1106 January 8, 1996, refers to Volume 12, Issue 8, pages 1096 through 1106 of the *Virginia Register* issued on January 8, 1996.

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

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## PUBLICATION DEADLINE AND SCHEDULES

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This schedule is available on the *Register's* Internet home page (<http://legis.state.va.us/codecomm/regindex.htm>).

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### October 1997 through September 1998

<u>Material Submitted By Noon Wednesday</u>	<u>Volume 14</u>	<u>Will Be Published On</u>
September 24, 1997		October 13, 1997
October 8, 1997		October 27, 1997
October 22, 1997		November 10, 1997
November 5, 1997		November 24, 1997
November 18, 1997 (Tuesday)		December 8, 1997
December 3, 1997		December 22, 1997
<b>INDEX 1 - Volume 14</b>		<b>January 1998</b>
December 16, 1997 (Tuesday)		January 5, 1998
December 31, 1997		January 19, 1998
January 14, 1998		February 2, 1998
January 28, 1998		February 16, 1998
February 11, 1998		March 2, 1998
February 25, 1998		March 16, 1998
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April 22, 1998		May 11, 1998
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## Symbol Key

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

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## TITLE 4. CONSERVATION AND NATURAL RESOURCES

### MARINE RESOURCES COMMISSION

#### † Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Marine Resources Commission intends to consider promulgating regulations entitled: **4 VAC 20-345-10 et seq. General Wetlands Permit for Emergency Situations.** The purpose of the proposed action is to develop an expedited process for the issuance of general wetlands permits to be used by applicants during emergency situations in which a determination has been made that there is a threat to public or private property or to the health and safety of the public. The agency intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: §§ 28.2-103 and 28.2-1307 of the Code of Virginia.

Public comments may be submitted until November 13, 1997.

**Contact:** Robert W. Grabb, Chief, Habitat Management, P.O. Box 756, Newport News, VA 23607-0756, telephone (757) 247-2252, FAX (757) 247-8062 or (757) 247-2292/TDD ☎

VA.R. Doc. No. R98-35; Filed September 24, 1997, 9:15 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 Marine Resources Commission intends to consider promulgating regulations entitled: **4 VAC 20-395-10 et seq. General Permit for Emergency Situations and Water Quality Improvement Projects.** The purpose of the proposed action is to develop an expedited process for the issuance of general permits for projects involving state-owned submerged lands. The general permit will cover projects designed to improve water quality such as bioengineered streambank projects and livestock crossings and address activities required during emergencies in which a determination has been made that there is a threat to public or private property or to the health and safety of the public. The agency intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: §§ 28.2-103 and 28.2-1207 of the Code of Virginia.

Public comments may be submitted until November 13, 1997.

**Contact:** Robert W. Grabb, Chief, Habitat Management, P.O. Box 756, Newport News, VA 23607-0756, telephone (757) 247-2252, FAX (757) 247-8062 or (757) 247-2292/TDD ☎

VA.R. Doc. No. R98-37; Filed September 24, 1997, 9:15 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 repealing regulations entitled: **4 VAC 25-30-10 et seq. Minerals Other Than Coal Surface Mining Regulations.** The regulation is being repealed because the revisions needed are extensive. It will be replaced by new regulations being promulgated as the Mineral Mining Reclamation Regulations. The agency intends to hold a public hearing on the proposed repeal after publication.

Statutory Authority: §§ 45.1-161.3 and 45.1-180.3 of the Code of Virginia.

Public comments may be submitted until November 12, 1997.

**Contact:** Conrad T. Spangler, Division Director, Department of Mines, Minerals and Energy, Division of Mineral Mining, P.O. Box 3727, Charlottesville, VA 22903, telephone (804) 961-5000, FAX (804) 979-8544 or toll-free 1-800-828-1120 (VA Relay Center)

VA.R. Doc. No. R98-57; Filed September 18, 1997, 1:52 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 Department of Mines, Minerals and Energy intends to consider promulgating regulations entitled: **4 VAC 25-31-10 et seq. Mineral Mining Reclamation Regulations.** The purpose of the proposed regulation is to ensure development of mineral resources minimizes the effect of mining on the environment. It is being promulgated to replace the Minerals Other Than Coal Surface Mining Regulations. Amendments to the regulation are needed to address changes in technology, eliminate duplicative or nonessential requirements, clarify and strengthen current requirements and establish new ones for areas for which there have been none. The agency intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: §§ 45.1-3 and 45.1-180.3 of the Code of Virginia.

Public comments may be submitted until November 12, 1997.

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## Notices of Intended Regulatory Action

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**Contact:** Conrad T. Spangler, Division Director, Department of Mines, Minerals and Energy, Division of Mineral Mining, P.O. Box 3727, Charlottesville, VA 22903, telephone (804) 961-5000, FAX (804) 979-8544 or toll-free 1-800-828-1120 (VA Relay Center)

VA.R. Doc. No. R98-28; Filed September 18, 1997, 1:52 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 Department of Mines, Minerals and Energy intends to consider amending regulations entitled: **4 VAC 25-60-10 et seq. Rules and Regulations Governing Installation and Use of Automated Temporary Roof Support Systems.** The purpose of the regulation is to protect miners from unsupported roof falls before permanent roof supports are installed in a newly mined area of an underground coal mine. Amendments to the regulation make the requirements consistent with current safety standards for automated temporary roof support systems and consistent with the rules of the Mine Safety and Health Administration. The agency intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: §§ 45.1-161.3, 45.1-161.106 and 45.1-161.114 of the Code of Virginia.

Public comments may be submitted until November 12, 1997.

**Contact:** Frank A. Linkous, Mine Division Chief, Department of Mines, Minerals and Energy, Division of Mines, U.S. Route 23 South, P.O. Drawer 900, Big Stone Gap, VA 24219, telephone (540) 523-8224, FAX (540) 523-8239 or toll-free 1-800-828-1120 (VA Relay Center).

VA.R. Doc. No. R98-23; Filed September 18, 1997, 1:52 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 Department of Mines, Minerals and Energy intends to consider amending regulations entitled: **4 VAC 25-70-10. Rules and Regulations Governing Disruption of Communication in Mines.** The purpose of the regulation is to ensure there is a system of communication between those mining coal underground and mine personnel on the surface so miners can get help in case of an emergency. Amendments to the regulation are needed to address important hazards not addressed by the Mine Safety and Health Administration (MSHA) and to avoid conflicts with MSHA regulations in federal law, and to eliminate duplicative information. The agency intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: §§ 45.1-161.3, 45.1-161.106 and 45.1-161.191 of the Code of Virginia.

Public comments may be submitted until November 12, 1997.

**Contact:** Frank A. Linkous, Mine Division Chief, Department of Mines, Minerals and Energy, Division of Mines, U.S. Route

23 South, P.O. Drawer 900, Big Stone Gap, VA 24219, telephone (540) 523-8224, FAX (540) 523-8239 or toll-free 1-800-828-1120 (VA Relay Center).

VA.R. Doc. No. R98-28; Filed September 18, 1997, 1:52 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 Department of Mines, Minerals and Energy intends to consider repealing regulations entitled: **4 VAC 25-80-10. Rules and Regulations Governing Advanced First-Aid.** The regulation sets forth requirements for first aid training and the number of persons with first aid training needed on the mine site. However, the regulation is no longer needed as stand-alone requirements because they are incorporated into the Certification Requirements for Coal Miners promulgated by the Board of Coal Mining Examiners. The agency intends to hold a public hearing on the proposed repeal after publication.

Statutory Authority: §§ 45.1-161.3, 45.1-161.101 and 45.1-161.106 of the Code of Virginia.

Public comments may be submitted until November 12, 1997.

**Contact:** Frank A. Linkous, Mine Division Chief, Department of Mines, Minerals and Energy, Division of Mines, U.S. Route 23 South, P.O. Drawer 900, Big Stone Gap, VA 24219, telephone (540) 523-8224, FAX (540) 523-8239 or toll-free 1-800-828-1120 (VA Relay Center).

VA.R. Doc. No. R98-24; Filed September 18, 1997, 1:52 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 Department of Mines, Minerals and Energy intends to consider amending regulations entitled: **4 VAC 25-90-10 et seq. Rules and Regulations Governing the Use of Diesel Powered Equipment in Underground Coal Mines.** The purpose of the regulation is to provide for the safe maintenance and use of diesel equipment in underground coal mines. Amendments to the regulation are needed to address important hazards not addressed by the Mine Safety and Health Administration (MSHA) and to avoid conflicts with MSHA regulations in federal law, to address changes in technology, and to eliminate duplicative information. The agency intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: §§ 45.1-161.3, 45.1-161-106 and 45.1-161.206 of the Code of Virginia.

Public comments may be submitted until November 12, 1997.

**Contact:** Frank A. Linkous, Mine Division Chief, Department of Mines, Minerals and Energy, Division of Mines, U.S. Route 23 South, P.O. Drawer 900, Big Stone Gap, VA 24219, telephone (540) 523-8224, FAX (540) 523-8239 or toll-free 1-800-828-1120 (VA Relay Center)

VA.R. Doc. No. R98-30; Filed September 18, 1997, 1:52 p.m.

# Notices of Intended Regulatory Action

## † Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Mines, Minerals and Energy intends to consider amending regulations entitled: **4 VAC 25-110-10 et seq. Rules and Regulations Governing Blasting in Surface Mining Operations.** The purpose of the regulation is to ensure that blasting performed in conjunction with coal mining is performed safely and efficiently. It serves to protect miners, persons living close to mines, and property from fly rock and other hazards associated with blasting. Amendments to the regulation are needed to address important hazards not addressed by the Mine Safety and Health Administration (MSHA) and to avoid conflict with MSHA regulations in federal law, to address changes in technology, and to eliminate duplicative information. The agency intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: §§ 45.1-161.3, 45.1-161.254 and 45.1-161.286 of the Code of Virginia.

Public comments may be submitted until November 12, 1997.

**Contact:** Frank A. Linkous, Mine Division Chief, Department of Mines, Minerals and Energy, Division of Mines, U.S. Route 23 South, P.O. Drawer 900, Big Stone Gap, VA 24219, telephone (540) 523-8224, FAX (540) 523-8239 or toll-free 1-800-828-1120 (VA Relay Center)

VA.R. Doc. No. R98-25; Filed September 18, 1997, 1:52 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 Department of Mines, Minerals and Energy intends to consider amending regulations entitled: **4 VAC 25-120-10 et seq. Rules and Regulations Governing Installation and Use of Cabs and Canopies.** The purpose of the regulation is to protect persons operating self-propelled mobile equipment at the face of coal mines from roof falls. Amendments to the regulation are needed to address important hazards not addressed by the Mine Safety and Health Administration (MSHA) and to avoid conflict with MSHA regulations in federal law, and to adopt standards for loads and capacities. The agency intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: §§ 45.1-161.3 and 45.1-161.106 of the Code of Virginia.

Public comments may be submitted until November 12, 1997.

**Contact:** Frank A. Linkous, Mine Division Chief, Department of Mines, Minerals and Energy, Division of Mines, U.S. Route 23 South, P.O. Drawer 900, Big Stone Gap, VA 24219, telephone (540) 523-8224, FAX (540) 523-8239 or toll-free 1-800-828-1120 (VA Relay Center)

VA.R. Doc. No. R98-29; Filed September 18, 1997, 1:52 p.m.

## Board of Coal Mining Examiners

### † Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board for Coal Mining Examiners intends to consider repealing regulations entitled: **4 VAC 25-50-10 et seq. Rules and Regulations Governing the Certification of Diesel Engine Mechanics in Underground Coal Mines.** The regulation which sets forth requirements for obtaining a certificate to perform maintenance on diesel engines is being repealed because it is now included in the Board of Coal Mining Examiners Certification Requirements, 4 VAC 25-20-10 et seq. The agency intends to hold a public hearing on the proposed repeal after publication.

Statutory Authority: §§ 45.1-161.28, 45.1-161.29, 45.1-161.34, and 45.1-161.35 of the Code of Virginia.

Public comments may be submitted until November 12, 1997.

**Contact:** Frank A. Linkous, Mine Division Chief, Department of Mines, Minerals and Energy, Division of Mines, U.S. Route 23 South, P.O. Drawer 900, Big Stone Gap, VA 24219, telephone (540) 523-8224, FAX (540) 523-8239 or toll-free 1-800-828-1120 (VA Relay Center).

VA.R. Doc. No. R98-27; Filed September 18, 1997, 1:52 p.m.

## TITLE 9. ENVIRONMENT

### 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 5-40-10 et seq. Regulations for the Control and Abatement of Air Pollution: Existing Stationary Sources (Rev. L97).** The purpose of the proposed action is to amend the regulation in order to clearly identify which sources are subject to the regulation as 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, 629 East Main Street, Richmond, Virginia, at 10 a.m. on Monday, October 20, 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

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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. Tuesday, October 21, 1997, to the Director, Office of 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 regulation amendments are 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 initial 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 4-13, was first 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 all kraft pulp mill recovery furnace units, smelt dissolving tank units, lime kiln units and slaker tank units.

Guidance for the control of TRS was published in an EPA guideline document in 1979. The rule was amended to address the control of TRS, which is emitted by each kraft pulp mill recovery furnace, digester system, multiple-effect evaporative system, lime kiln, condensate stripper system, and smelt dissolving tank.

The agency performed a review to determine if the regulation is written so as to permit only one reasonable interpretation. This review revealed that some confusion exists over

whether the regulation applies to semi-chemical paper mills or if this type of source is actually controlled by another regulation.

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

1. Amend the regulation to adequately identify the regulated entity to which the provisions of the regulation apply. This option is being selected in order to improve understanding of the regulation.
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. 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.

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 is mandated by federal law or regulation. A succinct statement of the source (including legal citation) and scope of the mandate may be found below.

Section 110(a) of the Clean Air Act (CAA) mandates that each state adopt and submit to the 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 CAA, 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.

Section 111(d) requires that each state submit a plan which will (i) establish standards of performance for any existing source for any air pollutant: (a) for which criteria have not been issued or which is not included on a list published under section 110 (or emitted from a source category which is

# Notices of Intended Regulatory Action

regulated under section 112 or 112(b)), but (b) to which a standard of performance under this section would apply if such existing source were a new source and (ii) provides for the implementation and enforcement of such standards of performance. The state may take into consideration the remaining useful life of the existing source to which standards apply.

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.

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.

40 CFR Part 60 subpart B provides the criteria for adoption and submittal of state plans for designated facilities. The issues include: (i) publication of guideline documents, emissions guidelines, and final compliance times; (ii) adoption and submittal of state plans including public hearings; (iii) emission standards and compliance schedules; (iv) emission inventories and source surveillance, reports; (v) actions by the EPA Administrator; (vi) plan revisions by the state; and (vii) plan revisions by the administrator.

The EPA issued a guideline entitled Kraft Pulping: Control of TRS emissions from Existing Mills, EPA 450/2-78-003b (March, 1979). This guideline provides information related to: the health-and-welfare-related effects of the TRS compounds; paper industry characteristics; process description; emissions characteristics, guidelines and control techniques; and cost analysis information.

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

Public comments may be submitted until 4:30 p.m. Tuesday, October 21, 1997, to the Director, Office of Program Development, Department of Environmental Quality, P.O. Box 10009, Richmond, Virginia 23240.

**Contact:** Mary E. Major, Environmental Program Manager, Office of Air Program Development, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4423, FAX (804) 698-4510, toll free 1-800-592-5482, or (804) 698-4021/TDD ☎

VA.R. Doc. No. R97-739; Filed August 25, 1997, 11:38 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 5-80-10 et seq. Regulations for the Control and Abatement**

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## Notices of Intended Regulatory Action

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**of Air Pollution: Permits for Stationary Sources (Rev. K97).** The purpose of the proposed action is to bring the regulations into compliance with federal guidance concerning the implementation of Title V of the federal Clean Air Act (42 USC §§ 7661-7661f) and of federal regulations concerning state operating permit programs (40 CFR Part 70).

**Public Meeting:** A public meeting will be held by the department in the Training Room, First Floor, Department of Environmental Quality, 629 E. Main St., Richmond, Virginia, at 9 a.m. on Thursday, November 13, 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., Friday, November 14, 1997, providing 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 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 regulation amendments are essential for the efficient and economical performance of an important governmental function. The reasoning for this conclusion is set forth below.

On July 10, 1995, and March 5, 1996, the U.S. Environmental Protection Agency (EPA) issued "White Papers" designed to simplify and reduce the costs of preparing Title V permit applications. The guidance was developed to respond to the concerns of industry and permitting authorities that preparation of initial permit applications was proving more costly and burdensome than necessary to achieve the goals of the Title V permit program. The streamlining improvements set forth in the White Papers include allowing industry to substitute emissions descriptions for emissions estimates for emissions not regulated at the source, to substitute checklists rather than emissions descriptions for insignificant activities, to exclude certain trivial and short-term activities from permit applications, to provide group treatment for activities subject to certain generally applicable requirements, to certify compliance status without requiring reconsideration of previous applicability decisions, to use the Part 70 permit process to identify environmentally significant terms of new source review permits, and to submit tons per year estimates only where meaningful to do so, among other items. Because most sources are now in the process of preparing their initial applications, and many concerns have

been raised by those sources about permit content, the intended scope of the program, the respective responsibilities of sources, and other issues, an immediate need exists for all states to implement the guidance outlined in the White Papers.

**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 considered because it meets the stated purpose of the regulatory action: to bring the regulations into compliance with federal guidance concerning the implementation of Title V of the federal Clean Air Act (42 USC §§ 7661-7661f) and of federal regulations concerning state operating permit programs (40 CFR Part 70).

2. Make alternative regulatory changes to those required by the provisions of the law and associated regulations and policies. This option is not being considered because it will not bring the regulations into compliance with federal guidance concerning the implementation of Title V of the federal Clean Air Act (42 USC §§ 7661-7661f) and of federal regulations concerning state operating permit programs (40 CFR Part 70). Furthermore, alternative regulatory changes might impose requirements that could exceed or be inconsistent with federal statutory and regulatory mandates.

3. Take no action to amend the regulations. This option is not being considered because it will not bring the regulations into compliance with federal guidance concerning the implementation of Title V of the federal Clean Air Act (42 USC §§ 7661-7661f) and of federal regulations concerning state operating permit programs (40 CFR Part 70). Furthermore, not taking any action might lead to federal sanctions.

**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 is mandated by federal law or regulation. A succinct statement of the source (including legal citation) and scope of the mandate may be found below.

Title V of the Clean Air Act requires the states to develop operating permit programs to cover all stationary sources defined as major by the Act. Permits issued under these programs must set out standards and conditions that cover all the applicable requirements of the Act for each emission unit at each individual stationary source. The federal regulations required to be developed under Title V, 40 CFR Part 70 (57 FR 32250, July 21, 1992), specify the minimum elements that must be included in state operating permit programs.

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CAA, § 502(a), and 40 CFR 70.3(a) require that the following sources be covered under the provisions of any Title V program:

1. Affected sources as defined under the acid deposition provisions of Title IV of the Act.
2. Major sources, defined as follows:
  - a. Any source of air pollutants with the potential to emit 100 tons per year (tpy) or more of any pollutant;
  - b. In ozone nonattainment areas designated as serious, any source emitting 50 tpy or more of VOCs or NO<sub>x</sub> (in Virginia, the Northern Virginia area is designated serious); for severe or extreme nonattainment areas, sources emitting 25 and 10 tpy or more of VOCs or NO<sub>x</sub>, respectively; and
  - c. Any source with the potential to emit 10 tpy of any hazardous air pollutant or 25 tpy of any combination of hazardous air pollutants regulated under Section 112 of the Act.
3. Any other source, including an area source, subject to a hazardous air pollutant standard under § 112 of the Act.
4. Any source subject to new source performance standards under § 111 of the Act.
5. Any source required to have a preconstruction review permit pursuant to the requirements of the prevention of significant deterioration program under Title I, Part C of the Act or the nonattainment area new source review program under Title I, Part D of the Act.
6. Any other stationary source in a category that EPA designates in whole or in part by regulation, after notice and comment.

CAA, § 502(b), and 40 CFR 70.4(b) and other provisions of 40 CFR Part 70, as noted, set out the minimum elements that must be included in each program, as follows:

1. Requirements for permit applications, including standard application forms, compliance plans and criteria for determining the completeness of applications. (40 CFR 70.5)
2. Monitoring and reporting requirements. (40 CFR 70.6(a)(3))
3. A permit fee system. (40 CFR 70.9)
4. Provisions for adequate personnel and funding to administer the program.
5. Authority to issue permits and assure that each permitted source complies with applicable requirements under the Act. (40 CFR 70.7(a)(1))
6. Authority to issue permits for a fixed term, not to exceed five years. (40 CFR 70.6(a)(2))

7. Authority to assure that permits incorporate emission limitations in an applicable implementation plan. (40 CFR 70.6(a)(1))

8. Authority to terminate, modify, or revoke and reissue permits for cause and a requirement to reopen permits in certain circumstances. (40 CFR 70.7)

9. Authority to enforce permits, permit fees, and the requirement to obtain a permit, including civil penalty authority in a maximum amount of not less than \$10,000 per day, and appropriate criminal penalties. (40 CFR 70.11)

10. Authority to assure that no permit will be issued if EPA objects to its issuance in a timely fashion. (40 CFR 70.8(c) and (e))

11. Procedures for (i) expeditiously determining when applications are complete, (ii) processing applications, (iii) public notice, including offering an opportunity for public comment, and a hearing on applications, (iv) expeditious review of permit actions, and (v) state court review of the final permit action. (40 CFR 70.5 (a)(2) and 70.7 (h))

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

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

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

CAA, § 503(b), and 40 CFR 70.5(c)(8) and (9) require that applicants shall submit with the permit application a compliance plan describing how the source will comply with all applicable requirements of the Act. The compliance plan must include a schedule of compliance and a schedule under which the permittee will submit progress reports to the permitting authority no less frequently than every six months. The permittee must also certify that the facility is in compliance with any applicable requirements of the permit no less frequently than annually. The permittee must also promptly report any deviations from permit requirements to the permitting authority.

CAA, § 503(d), and 40 CFR 70.7(b) specify that a source's failure to have an operating permit shall not be a violation of the Act if the source owner submitted a timely and complete application for a permit and if he submitted other information required or requested to process the application in a timely fashion.

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CAA, § 503(e), and 40 CFR 70.4(b)(3)(viii) require that a copy of each permit application, compliance plan (including the schedule of compliance), emissions or compliance monitoring report, certification, and each permit issued under this title, shall be available to the public. Any information that is required of an applicant to submit and which is entitled to protection from disclosure under § 114 (c) of the Act can be submitted separately.

CAA, § 504, and 40 CFR 70.6(a)-(c) specify what is to be included in each operating permit issued under this program. These provisions require each permit to include enforceable emission limitations and standards, a schedule of compliance, a requirement that the permittee submit to the permitting authority, no less often than every six months, the results of any required monitoring and such other conditions as are necessary to assure compliance with applicable requirements, including the requirements of any state implementation plan.

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

CAA, § 504(c), and 40 CFR 70.6(a)(3) require that each permit issued under the program shall set forth inspection, entry, monitoring, compliance certification, and reporting requirements to assure compliance with the permit terms and conditions. Such monitoring and reporting requirements shall conform to applicable regulations issued under § 504(b) and to any other requirements specified in federal regulation. Any report required to be submitted by a permit issued to a corporation shall be signed by a responsible corporate official who shall certify its accuracy.

CAA, § 504(d), and 40 CFR 70.6(d) allow the state permitting authority to issue a general permit covering numerous similar sources after notice and opportunity for public hearing. Any general permit shall comply with all program requirements. Any source governed by a general permit regulation must still file an application under this program.

CAA, § 504(e), and 40 CFR 70.6(e) allow the state permitting authority to issue a single permit authorizing emissions from similar operations at multiple temporary locations. No such permit shall be issued unless it includes conditions that will ensure compliance with all the requirements of the Act at all authorized locations, including, but not limited to, ambient standards and compliance with any applicable increment or visibility requirements under the Act. Any such permit shall in addition require the owner or operator to notify the permitting authority in advance of each change in location.

CAA, § 504(f), and 40 CFR 70.6(f) provide a permit shield for permittees. This section specifies that compliance with a permit issued in accordance with Title V shall be deemed in compliance with CAA, § 502, or with the program. And unless otherwise provided by the EPA administrator and by

rule, the permit may also provide that compliance with the permit shall be deemed compliance with other applicable provisions of the Act that relate to the permittee, if:

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

CAA, § 503(c), and 40 CFR 70.5(a)(1) specify that all sources required to be permitted under a Title V program are required to submit an application within 12 months after the date EPA approves the state's program. The state permitting authority may specify an earlier date for submitting applications. The state permitting authority must establish a phased schedule for acting on permit applications submitted within the first full year after program approval, and must act on at least one-third of the permits each year over a period not to exceed three years after approval of the program. After acting on the initial application, the permitting authority must issue or deny a complete application within 18 months after receiving that application.

CAA, § 505(a), and 40 CFR 70.8(a) require the state permitting authority to send EPA a copy of each permit application and each permit proposed to be issued. For each permit application or proposed permit sent to EPA, CAA, § 505(a), and 40 CFR 70.8(b) also require the permitting authority to notify all states whose air quality may be affected and that are contiguous to the state in which the emission originates, or that are within 50 miles of the source. This notice must provide an opportunity for these affected states to submit written recommendations respecting the issuance of the permit and its terms and conditions. CAA, § 505(b), and 40 CFR 70.8(c) provide for EPA objections to any permit which contains provisions that are not in compliance with the requirements of the Act or with the applicable State Implementation Plan. This section also provides that any person may petition the EPA administrator within 60 days after the expiration of the 45-day review period if no objections were submitted by the EPA administrator. Furthermore, the state permitting authority may not issue the permit if the EPA administrator objects to its issuance unless the permit is revised to meet the objection. If the state permitting authority fails to revise and resubmit the permit, EPA must issue or deny the permit in accordance with the requirements of Title V. Under § 505(d) and 40 CFR 70.8(a)(2), the permit program submitted by the state may not have to meet these requirements for sources other than major sources covered by the program. CAA, § 505(e), and 40 CFR 70.7(g) allow the EPA administrator to terminate, modify, or revoke and reissue an operating permit issued under a state's program if he finds that cause exists for such action.

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Affected sources as defined under the acid rain provisions of Title IV of the Act are one of the primary source categories required to be covered under the provisions of any Title V program.

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

1. Annual emissions of sulfur dioxide in excess of the number of allowances to emit sulfur dioxide that is held for the source. An allowance is the authorization to emit one ton of sulfur dioxide during or after a specified calendar year.
2. Exceedances of applicable emissions rates.
3. The use of any allowance prior to the year for which it was allocated.
4. Contravention of any other provision of the permit.

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

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

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

CAA, § 408(e), covers new sources or emissions units, those that commence commercial operation on or after November 15, 1990. New sources must submit a permit application and compliance plan to the permitting authority no later than 24 months before the later of (i) January 1, 2000, or (ii) the date on which the source commences operation. The permitting

authority must issue a permit to a new source if the requirements of Titles IV and V are satisfied.

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

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

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

The federal regulations required to be developed under § 408 of Title IV, 40 CFR Part 72 (58 FR 3591, January 11, 1993) and EPA guidance on Part 72, stipulate specific requirements for affected sources that are different from the requirements of 40 CFR Part 70. The differences include, but are not limited to, the following:

1. Only a designated representative or alternative designated representative of the source owner is authorized to make permit applications and other submissions under the Title IV requirements and must file a certificate of representation with EPA before they can assume these responsibilities. 40 CFR 72, Subpart B.
2. The state permitting authority must allow EPA to intervene in any appeal of an acid rain permit. 40 CFR Part 72, § 72.72(5)(iv).
3. The period by which the acid rain portion of an operating permit can be appealed administratively is 90 days. Judicial appeal of an acid rain portion of a permit cannot occur after 90 days. 40 CFR Part 72, § 72.72(5)(ii).
4. An application is binding and enforceable as a permit until the permit is issued. 40 CFR Part 72, § 72.72(b)(1)(i)(B).

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

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

7. In general, permits are issued using Part 70 procedures. However, there are some exceptions. For instance, within 10 days of determining whether an acid rain application is complete, the permitting authority must notify EPA of that determination. The permitting authority must also notify EPA of any state or judicial appeal within 30 days of the filing of the appeal. 40 CFR Part 72, §§ 72.72(b)(1)(i)(C) and 72.72(b)(5)(iii).

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

Public comments may be submitted until 4:30 p.m., Friday, November 14, 1997, to the Director, Office of 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 ☎

VA.R. Doc. No. R98-44; Filed September 24, 1997, 11:12 a.m.

### STATE WATER CONTROL BOARD

#### Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia and this board's Public Participation Guidelines that the State Water Control Board intends to consider the repeal of 18 water quality management plans as follows: 9 VAC 25-420-10 et seq. James River 3(c) Wastewater Management Plan - Peninsula Area; 9 VAC 25-430-10 et seq. Roanoke River Basin Water Quality Management Plan; 9 VAC 25-440-10 et seq. Upper Roanoke River Subarea Water Quality Management Plan; 9 VAC 25-450-10 et seq. Upper James River Basin Water Quality Management Plan; 9 VAC 25-452-10 et seq. Upper James-Jackson River Subarea Water Quality Management Plan; 9 VAC 25-460-10 et seq. Metropolitan/Regional Water Quality Management Plan for Northern Neck Planning District No. 17; 9 VAC 25-470-10 et seq. York River Basin Water Quality Management Plan; 9 VAC 25-480-10 et seq. Tennessee and Big Sandy River Basins Water Quality Management Plan; 9 VAC 25-490-10 et seq. Rappahannock Area Development Commission (RADCO) 208 Areawide Waste Treatment Management Plan and Potomac-Shenandoah River Basin 303(e) Water Quality Management Plan; 9 VAC 25-500-10 et seq. State Water Quality Management Plan for the

Fifth Planning District; 9 VAC 25-510-10 et seq. Water Quality Management Plan for the Southwest Virginia 208 Planning Area; 9 VAC 25-520-10 et seq. Water Quality Management Plan for the First Tennessee-Virginia Development District; 9 VAC 25-530-10 et seq. Water Quality Management Plan for the Hampton Roads Planning Area (Planning Districts 20 and 21); 9 VAC 25-540-10 et seq. Water Quality Management Plan for the New River Basin; 9 VAC 25-550-10 et seq. Small Coastal River Basins and Chesapeake Bay Virginia Eastern Shore Portion Water Quality Management Plan; 9 VAC 25-560-10 et seq. Potomac-Shenandoah River Basin Water Quality Management Plan; 9 VAC 25-570-10 et seq. Richmond-Crater Interim Water Quality Management Plan; 9 VAC 25-572-10 et seq. The Metropolitan/Regional Water Quality Management Plans for:

- I. Accomack-Northampton Planning District
- II. Central Shenandoah Planning District
- III. Central Virginia Planning District
- IV. Cumberland Plateau Planning District
- V. Lenowisco Planning District
- VI. Lord Fairfax Planning District
- VII. Mount Rogers Planning District
- VIII. New River Valley Planning District
- IX. Piedmont Planning District
- X. Rappahannock-Rapidan Planning District
- XI. Richmond Planning District
- XII. Southside Planning District
- XIII. Thomas Jefferson Planning District
- XIV. West Piedmont Planning District

The purpose of the proposed action is to repeal the existing 18 water quality management plans to eliminate duplicative regulatory efforts and simplify the processing of wastewater discharge permits. The resulting nonregulatory plans will continue to guide water quality management efforts by the Department of Environmental Quality until replaced by updated plans.

Basis and Statutory Authority: Section 62.1-44.15 (13) of the Code of Virginia authorizes the board to establish policies and programs for effective areawide and basinwide water quality control and management. The code also authorizes the board to develop pollution abatement and water quality control plans.

Water quality management plans are required by § 303(e) of the federal Clean Water Act (CWA) as implemented by 40 CFR 130. Federal law does not require that water quality management plans be adopted as regulation. However, when the plans were first developed in the 1980's, the state Attorney General's office made a determination that the plans be adopted as regulations because they were required to contain total maximum daily loads (TMDL) and waste load

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## Notices of Intended Regulatory Action

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allocation which were eventually incorporated into the Virginia Pollutant Discharge Elimination System (VPDES) permit. For this reason, each water quality management plan was adopted in its entirety as a regulation.

**Need:** Repeal of the existing water quality management plans will simplify the processing of the VPDES permits resulting in more efficient utilization of the resources of the Department of the Environmental Quality (DEQ).

The CWA requires that VPDES permits be consistent with the applicable water quality management plans. The plans, however, also allow for revisions in permit requirements as a result of availability of more data and more sophisticated methods of analyses. Application of newer methods coupled with more data usually result in permit limitations that are different from those listed in the plans. Consequently, the plans would require amendment in order for the permit to be legal. Deregulation of the plans will allow the revisions to be accomplished through the simpler procedure of permit amendment.

Amendment of the water quality management plans is governed by the Virginia Administrative Process Act (APA) and the Public Participation Guidelines of DEQ, which on average, takes between 14 to 18 months to complete. In contrast, permit revisions only take three to six months on average to complete.

**Subject and Intent:** The proposed regulatory action is to repeal the 18 water quality management plans listed in this notice. The State Water Control Board developed these plans during the 1970's and 1980's in compliance with §§ 208 and 303(e) of the federal Clean Water Act. The plans identified water quality problems, considered alternative solutions and recommended pollution control measures needed to attain or maintain water quality standards. The control measures are implemented through the issuance of Virginia Pollutant Discharge Elimination System permits for point source discharges and through voluntary best management practices for nonpoint sources of pollution.

The 208 plans were referred to as areawide waste treatment plans and were developed mainly for urbanized areas. The 303(e) plans were generally basinwide plans; however, some of the bigger river basins required more than one plan because of their size and diversity.

Although the CWA requires states to develop water quality management plans, there is no requirement that the plans be regulatory. At the time the plans were developed, the Virginia Attorney General's office was of the opinion that the plans were regulatory because they contain requirements that were incorporated in VPDES permits.

**Estimated Impact:** The repeal of water quality management Plans as regulations will have positive impact on VPDES permit holders because it will simplify the processing of the VPDES permits and allows the DEQ staff to issue permits in a more timely manner.

The majority of the existing regulatory plans have become obsolete because plan recommendations have already been

implemented yet they continue to be carried on the books of the Virginia Registrar of Regulations. Plan repeal will clear the Registrar's books of unnecessary regulations.

Repeal of the water quality management plans will have an indirect positive impact on the citizens of Virginia in that water quality will still be maintained but with less expenditure of government resources. There are no costs associated with the repeal of the plan other than those normally incurred in the public participation process.

**Alternatives:** The waste load allocation and the total maximum daily loads are considered to be the regulatory components of the existing plans. The preferred alternative to meet the need is to repeal all existing water quality management plans and streamline and update the resulting nonregulatory plans. The regulatory components will be implemented through the existing VPDES permit process.

Another alternative to repealing the water quality management plans is to do nothing and amend the plans as needed whenever permit issuance or reissuance requires changes to the plans. The third alternative is to update each individual plan and maintain them as regulations.

**Comments:** The Department of Environmental Quality seeks written comments from interested persons on the proposed regulatory action and on the costs and benefits of the stated alternatives. Comments should be directed to Mrs. Erlinda Patron, Office of Water Quality Assessment and Planning, Department of Environmental Quality, P. O. Box 10009, Richmond, Virginia 23240-0009, and must be received by 4 p.m. on October 31, 1997.

The Department of Environmental Quality intends to hold two public meetings to receive views and comments and to answer questions of the public. The first meeting will be held on Wednesday, October 29, 1997, in the Conference Room of the DEQ Piedmont Regional Office, 4949-A Cox Road, Glen Allen, Virginia, 23060, at 7:30 p.m. An Advisory Committee meeting will also be held prior to the general public meeting in the same room at 5 p.m. A second public meeting will be held on Thursday, October 30, 1997, at the Roanoke County Board of Supervisors' Room, 5204 Bernard Drive, Roanoke, Virginia 24018, at 2 p.m.

**Accessibility to Persons with Disabilities:** The meeting is being held at a public facility believed to be accessible to persons with disabilities. Any person with questions on the accessibility of the facilities should contact Mrs. Patron at the address above or by telephone at (804) 698-4047. Persons needing interpreter services for the deaf must notify Mrs. Patron no later than October 15, 1997.

**Advisory Committee/Group:** An ad hoc advisory group has been formed to provide input to the department regarding the format and content of the nonregulatory plans that will replace the current plans. The advisory group is composed of representatives from state, federal and local agencies, environmental groups, manufacturing and industrial facilities, and the public.

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## Notices of Intended Regulatory Action

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Intent to Hold a Public Hearing: The board intends to hold a public hearing on the proposed plan repeal after it is published in the *Register of Regulations*.

Statutory Authority: § 62.1-44.15 (13) of the Code of Virginia.

Public comments may be submitted until October 31, 1997.

**Contact:** Erlinda L. Patron, Environmental Engineer Consultant, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240-0009, telephone (804) 698-4047 or (804) 698-4136.

VA.R. Doc. No. R98-15; Filed September 10, 1997, 8:34 a.m.

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### TITLE 11. GAMING

#### VIRGINIA RACING COMMISSION

##### † Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Virginia Racing Commission intends to consider amending regulations entitled: **11 VAC 10-180-10 et seq. Medication**. The purpose of the proposed action is to promulgate a medication regulation to provide for proper conduct of horse racing in the Commonwealth that places Virginia in accord with procedures in major racing states on the eastern seaboard. This begins the process to replace the emergency regulation with a permanent regulation thereby protecting the safety, health and welfare of participants and racehorses. The agency intends to hold a public hearing on the proposed regulation after publication.

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

Public comments may be submitted until November 12, 1997.

**Contact:** William H. Anderson, Policy Analyst, Virginia Racing Commission, 10700 Horsemen's Road, New Kent, VA 23124, telephone (804) 966-4200 or FAX (804) 966-8906.

VA.R. Doc. No. R98-36; Filed September 23, 1997, 12:27 p.m.

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### TITLE 12. HEALTH

#### DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

##### Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Medical Assistance Services intends to consider amending regulations entitled: **12 VAC 30-50-10 et seq. Amount, Duration, and Scope of**

**Medical and Remedial Care and Services**. The purpose of the proposed action is to incorporate into the state plan the agency's policies for the coverage of outpatient hospital observation beds and breast reconstruction/prosthetics. 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 October 29, 1997, to Bonnie Winn, R.N., Division of Program Operations, Department of Medical Assistance Services, 600 East Broad Street, 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 or (804) 371-4981.

VA.R. Doc. No. R8-18; Filed September 10, 1997, 11:45 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 30-50-10 et seq. Amount, Duration and Scope of Medical and Remedial Care and Services; 12 VAC 30-70-10 et seq. Methods and Standards for Establishing Payment Rates; Inpatient Hospital Care**. The purpose of the proposed action is to provide for full implementation of a diagnosis related group methodology for payment and prior authorization of inpatient hospital services. Existing regulations provide for a two-year transition followed by full implementation but do not provide all the necessary details of the fully implemented method. 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 October 29, 1997, to Scott Crawford, Manager, Division of Financial Operations, Department of Medical Assistance Services, 600 East Broad Street, 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 or (804) 371-4981.

VA.R. Doc. No. R98-19; Filed September 10, 1997, 11:45 a.m.

#### STATE MENTAL HEALTH, MENTAL RETARDATION AND SUBSTANCE ABUSE SERVICES BOARD

##### † Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Mental Health, Mental Retardation and Substance Abuse Services Board intends to

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## Notices of Intended Regulatory Action

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consider repealing regulations entitled: **12 VAC 35-140-10 et seq. Mandatory Standards for Community Mental Health Programs**. The purpose of the proposed action is to repeal regulations that were superseded by 12 VAC 35-102-10 et seq., Rules and Regulations for the Licensure of Facilities and Providers of Mental Health, Mental Retardation and Substance Abuse Services. The agency does not intend to hold a public hearing on the proposed repeal after publication.

Statutory Authority: § 37.1-10 of the Code of Virginia.

Public comments may be submitted until 5 p.m. on November 13, 1997.

**Contact:** Marion Greenfield, Policy Analyst, Office of Planning and Regulations, Department of Mental Health, Mental Retardation and Substance Abuse Services, P.O. Box 1797, Richmond, VA 23218, telephone (804) 786-6431 or FAX (804) 371-0092.

VA.R. Doc. No. R98-38; Filed September 24, 1997, 9:54 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 Mental Health, Mental Retardation and Substance Abuse Services Board intends to consider repealing regulations entitled: **12 VAC 35-150-10 et seq. Mandatory Standards for Community Mental Retardation Programs**. The purpose of the proposed action is to repeal regulations that were superseded by 12 VAC 35-102-10 et seq., Rules and Regulations for the Licensure of Facilities and Providers of Mental Health, Mental Retardation and Substance Abuse Services. The agency does not intend to hold a public hearing on the proposed repeal after publication.

Statutory Authority: § 37.1-10 of the Code of Virginia.

Public comments may be submitted until 5 p.m. on November 13, 1997.

**Contact:** Marion Greenfield, Policy Analyst, Office of Planning and Regulations, Department of Mental Health, Mental Retardation and Substance Abuse Services, P.O. Box 1797, Richmond, VA 23218, telephone (804) 786-6431 or FAX (804) 371-0092.

VA.R. Doc. No. R98-43; Filed September 24, 1997, 9:56 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 Mental Health, Mental Retardation and Substance Abuse Services Board intends to consider repealing regulations entitled: **12 VAC 35-160-10 et seq. Mandatory Standards for Community Substance Abuse Services**. The purpose of the proposed action is to repeal regulations that were superseded by 12 VAC 35-102-10 et seq., Rules and Regulations for the Licensure of Facilities and Providers of Mental Health, Mental Retardation

and Substance Abuse Services. The agency does not intend to hold a public hearing on the proposed repeal after publication.

Statutory Authority: § 37.1-10 of the Code of Virginia.

Public comments may be submitted until 5 p.m. on November 13, 1997.

**Contact:** Marion Greenfield, Policy Analyst, Office of Planning and Regulations, Department of Mental Health, Mental Retardation and Substance Abuse Services, P.O. Box 1797, Richmond, VA 23218, telephone (804) 786-6431 or FAX (804) 371-0092.

VA.R. Doc. No. R98-42; Filed September 24, 1997, 9:56 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 Mental Health, Mental Retardation and Substance Abuse Services Board intends to consider repealing regulations entitled: **12 VAC 35-170-10 et seq. Regulations for Certification of Case Management**. The purpose of the proposed action is to repeal the regulation promulgated pursuant to the 1990 Appropriations Act. There currently exists no statutory authority for this regulation as the cited provision of the 1990 Appropriations Act is no longer in effect. The agency does not intend to hold a public hearing on the proposed repeal after publication.

Statutory Authority: Item 466.F.5 of the 1990 Appropriations Act.

Public comments may be submitted until 5 p.m. on November 13, 1997.

**Contact:** Marion Greenfield, Policy Analyst, Office of Planning and Regulations, Department of Mental Health, Mental Retardation and Substance Abuse Services, P.O. Box 1797, Richmond, VA 23218, telephone (804) 786-6431 or FAX (804) 371-0092.

VA.R. Doc. No. R98-40; Filed September 24, 1997, 9:55 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 Mental Health, Mental Retardation and Substance Abuse Services Board intends to consider promulgating regulations entitled: **12 VAC 35-171-10 et seq. Certification of the Qualifications of Providers of Rehabilitation Mental Health/Mental Retardation Case Management Services**. The purpose of the proposed regulation is to define the specific knowledge, skills, and abilities that mental health and mental retardation case managers must have for Medicaid reimbursement. The agency does not intend to hold a public hearing on the proposed regulation after publication.

Statutory Authority: §§ 37.1-10 and 37.1-182.2 of the Code of Virginia.

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## Notices of Intended Regulatory Action

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Public comments may be submitted until 5 p.m. on November 13, 1997.

**Contact:** Marion Greenfield, Policy Analyst, Office of Planning and Regulations, Department of Mental Health, Mental Retardation and Substance Abuse Services, P.O. Box 1797, Richmond, VA 23218, telephone (804) 786-6431 or FAX (804) 371-0092.

VA.R. Doc. No. R98-41; Filed September 24, 1997, 9:56 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 Mental Health, Mental Retardation and Substance Abuse Services Board intends to consider promulgating regulations entitled: **12 VAC 35-210-10 et seq. Certification of the Qualifications of Providers of Behavior Consultation Services.** The purpose of the proposed regulation is to define the specific knowledge, skills, and abilities that mental retardation behavior consultants must have at entry level for Medicaid reimbursement for mental retardation waiver services. The agency does not intend to hold a public hearing on the proposed regulation after publication.

Statutory Authority: §§ 37.1-10 and 37.1-182.2 of the Code of Virginia.

Public comments may be submitted until 5 p.m. on November 13, 1997.

**Contact:** Marion Greenfield, Policy Analyst, Office of Planning and Regulations, Department of Mental Health, Mental Retardation and Substance Abuse Services, P.O. Box 1797, Richmond, VA 23218, telephone (804) 786-6431 or FAX (804) 371-0092.

VA.R. Doc. No. R98-39; Filed September 24, 1997, 9:55 a.m.

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## TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

### BOARD FOR ACCOUNTANCY

#### Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board for Accountancy intends to consider amending regulations entitled: **18 VAC 5-20-10 et seq. Board for Accountancy Regulations.** The purpose of the proposed action is to establish an efficient staggered system for collection of renewal fees. Each regulant would be given a particular month in which to renew. The agency does not intend to hold a public hearing on the proposed regulation after publication.

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

Public comments may be submitted until October 16, 1997.

**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 ☎

VA.R. Doc. No. R97-759; Filed August 27, 1997, 11:50 a.m.

### BOARD FOR BRANCH PILOTS

#### Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board for Branch Pilots intends to consider amending regulations entitled: **18 VAC 45-20-10 et seq. Board for Branch Pilots Regulations.** The purpose of the proposed action is to increase fees for licenses and renewals in order to bring the board into compliance with the provisions of § 54.1-113 of the Code of Virginia. Other changes to the regulation which may be necessary will be considered. The agency intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: §§ 54.1-113, 54.1-201 and 54.1-902 of the Code of Virginia.

Public comments may be submitted until October 31, 1997.

**Contact:** Mark N. Courtney, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8514, FAX (804) 367-2475 or (804) 367-9753/TDD ☎

VA.R. Doc. No. R98-13; Filed September 9, 1997, 3:21 p.m.

### BOARD FOR HEARING AID SPECIALISTS

#### Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board for Hearing Aid Specialists intends to consider amending regulations entitled: **18 VAC 80-10-10 et seq. Public Participation Guidelines.** The purpose of the proposed action is to solicit public comment which will assist the board in evaluating the regulations for effectiveness. The agency intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: §§ 9-6.14:7.1 and 54.1-201 of the Code of Virginia.

Public comments may be submitted until October 31, 1997.

**Contact:** David E. Dick, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8507, FAX (804) 367-2475 or (804) 367-9753/TDD ☎

VA.R. Doc. No. R98-01; Filed September 16, 1997, 9:24 a.m.

# Notices of Intended Regulatory Action

## Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board for Hearing Aid Specialists intends to consider amending regulations entitled: **18 VAC 80-20-10 et seq. Board for Hearing Aid Specialists Regulations.** The purpose of the proposed action is to increase fees and solicit public comment which will assist the board in evaluating the regulations for effectiveness. The agency intends to hold a public hearing on the proposed regulation after publication.

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

Public comments may be submitted until October 31, 1997.

**Contact:** David E. Dick, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8507, FAX (804) 367-2475 or (804) 367-9753/TDD ☎

VA.R. Doc. No. R98-03; Filed September 16, 1997, 9:24 a.m.

## BOARD FOR OPTICIANS

### Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board for Opticians intends to consider amending regulations entitled: **18 VAC 100-20-10 et seq. Board for Opticians Regulations.** The purpose of the proposed action is to establish a definition section; clarify entry requirements for licensure; establish provisions for reciprocity; specify examination procedures and examination content for licensure examination and contact lenses examination; modify the procedures and provisions regarding renewal, reinstatement, and the standards of practice and conduct; and establish an efficient staggered system for collection of renewal fees. The agency intends to hold a public hearing on the proposed regulation after publication.

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

Public comments may be submitted until October 16, 1997.

**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 ☎

VA.R. Doc. No. R97-758; Filed August 27, 1997, 11:50 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 135-20-10**

**et seq. Virginia Real Estate Board Licensing Regulations.** The purpose of the proposed action is to implement the Consumer Real Estate Settlement Protection Act (CRESPA) effective July 1, 1997. The agency intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: § 6.1-2.25 of the Code of Virginia.

Public comments may be submitted until October 29, 1997.

**Contact:** Karen W. O'Neal, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8552, FAX (804) 367-2475 or (804) 367-9753/TDD ☎

VA.R. Doc. No. R98-2; Filed August 29, 1997, 11:45 a.m.

## TITLE 19. PUBLIC SAFETY

### DEPARTMENT OF STATE POLICE

#### † 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 State Police intends to consider amending regulations entitled: **19 VAC 30-70-10 et seq. Motor Vehicle Safety Inspection Rules and Regulations.** The purpose of the proposed action is to amend existing administrative regulations governing vehicle inspections to comply with mandates of the amended sections of the Code of Federal Regulations and the Code of Virginia. The agency does not intend to hold a public hearing on the proposed regulation after publication.

Statutory Authority: § 46.2-1165 of the Code of Virginia.

Public comments may be submitted until November 12, 1997.

**Contact:** Captain W. Steven Flaherty, Safety Officer, Department of State Police, Safety Division, P.O. Box 27472, Richmond, VA 23261, telephone (804) 378-3479, FAX (804) 378-3487 or toll-free 1-800-553-3144/TDD ☎

VA.R. Doc. No. R98-51; Filed September 25, 1997, 1:46 p.m.

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# PUBLIC COMMENT PERIODS - PROPOSED REGULATIONS

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## 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.

## TITLE 11. GAMING

**Contact:** William H. Anderson, Policy Analyst, Virginia Racing Commission, 10700 Horsemen's Rd., New Kent, VA 23124, telephone (804) 966-4200 or FAX (804) 966-8906.

### VIRGINIA RACING COMMISSION

**November 19, 1997 - 9:30 a.m.** – Public Hearing  
Tyler Building, 1300 East Main Street, Richmond, Virginia.

**December 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 Virginia Racing Commission intends to amend regulations entitled: **11 VAC 10-70-10 et seq. Regulations Pertaining to Horse Racing with Pari-Mutuel Wagering: Stewards.** The purpose of the proposed action is to establish procedures for stewards hearings and establish a steward to oversee the operation of satellite facilities.

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

**Contact:** William H. Anderson, Policy Analyst, Virginia Racing Commission, 10700 Horsemen's Rd., New Kent, VA 23124, telephone (804) 966-4200 or FAX (804) 966-8906.

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**November 19, 1997 - 9:30 a.m.** – Public Hearing  
Tyler Building, 1300 East Main Street, Richmond, Virginia.

**December 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 Virginia Racing Commission intends to amend regulations entitled: **11 VAC 10-90-10 et seq. Regulations Pertaining to Horse Racing with Pari-Mutuel Wagering: Formal Hearings.** The purpose of the proposed action is to establish procedures by which the Virginia Racing Commission may conduct reviews of decisions taken by the stewards.

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

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# PROPOSED REGULATIONS

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For information concerning Proposed Regulations, see Information Page.

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## 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.

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## TITLE 11. GAMING

### VIRGINIA RACING COMMISSION

Title of Regulation: 11 VAC 10-70-10 et seq. Regulations Pertaining to Horse Racing With Pari-Mutuel Wagering: Stewards (amending 11 VAC 10-70-20, 11 VAC 10-70-30, 11 VAC 10-70-40, 11 VAC 10-70-50, 11 VAC 10-70-60, 11 VAC 10-70-70, 11 VAC 10-70-80, 11 VAC 10-70-110, 11 VAC 10-70-170 and 11 VAC 10-70-180).

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

Public Hearing Date: November 19, 1997 - 9:30 a.m.

Public comments may be submitted until December 15, 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 pertaining to stewards to strengthen its administrative oversight of live racing at racetracks and satellite facilities thereby protecting the public health, safety and welfare.

The proposed regulation establishes the position of a steward to provide oversight of the operations of satellite facilities in the Commonwealth with authority to review applications for employment, and to conduct hearings in regard to applicants for permits and the conduct of holders of permits. Furthermore, the commission will employ all three stewards at live race meetings to ensure that the Commonwealth's interest in having horse racing of the highest quality is protected.

Substance: The proposed regulation provides for a new position of steward for satellite facilities who shall be responsible to the commission for the operation of the facilities in accordance with state law and the regulations of the commission. The steward will be vested with all of the general powers accorded stewards at the racetrack in exercising the immediate supervision, control and regulation of satellite facilities. The steward's primary responsibility will

be the observation of conduct of simulcast horse racing at satellite facilities.

The proposed regulation also provides that all three stewards, the principal racing officials, at the live race meetings will be employees of the commission. Previously, the licensee was entitled to appoint one of the stewards; however, the commission has determined that to ensure that racing is of the highest quality that all three of the principal racing officials should be employees of the commission.

The proposed regulation also incorporates the exemption from the Virginia Administrative Process Act (§ 9-6.14:1 et seq. of the Code of Virginia) in substituting stewards hearings for informal fact-finding proceedings. However, the same procedures and protections set forth in the Virginia Administrative Process Act are left intact in the amended regulation for stewards hearings.

Issues: The main advantage of the proposed regulation relating to stewards is that it enhances the commission's regulatory control over the sport of horse racing and its ancillary gaming aspects. The commission is specifically charged by § 59.1-364 of the Code of Virginia, which states in part, "...to maintain horse racing in the Commonwealth of the highest quality and free of any corrupt, incompetent, dishonest or unprincipled practices and to maintain in such racing complete honesty and integrity." These amendments were drafted with the specific purpose of furthering the aims set forth in the Act. There is no particular disadvantage to licensees or horsemen through these proposed amendments.

Estimated Impact: There will be little or no impact associated with the public's compliance. The proposed regulation will relieve licensees of the need to retain one steward for live race meetings. However, these amendments will result in the establishment of one full-time equivalent position and another part-time contractual employee. These two positions will be funded from revenue generated through the licensee tax upon pari-mutuel wagering.

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

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## Proposed Regulations

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

**Summary of the proposed regulation.** The Virginia Racing Commission proposes to amend the regulation regarding duties pertaining to stewards. The amendments will incorporate the latest changes in the Model Rules of the Association of Racing Commissioners International. The amendments will also incorporate changes mandated by House Bill 635 passed by the 1996 General Assembly.

**Estimated economic impact.** The substantive portions of the proposed regulation that could have an economic impact include: (i) creating a new position of steward for satellite facilities who shall be responsible for the operation of the facilities, and (ii) shifting the appointment of a third steward from the licensee to the commission, thus making all three stewards employees of the commission.

The appointment of a steward to oversee the running of satellite facilities will ensure that operations are run under the guidelines set forth by the commission. This will increase public confidence in the operations of the satellite facilities and could increase public participation in pari-mutuel wagering.

Under the current arrangement, the licensee appointed one of the three stewards who oversee live race meetings. This steward being employed by the licensee will seek to protect the interest of the licensee, while the other two would protect the interest of the public and the commission. Under the new regulations, the commission will appoint all three stewards. So long as the stewards remain impartial, this arrangement will be beneficial since the stewards will serve the interests of everyone involved. However, if there is a perceived hint of partiality, there could be an increase in grievances filed by licensees with the commission. The commission will assume the responsibility of paying the salary of the steward, which will increase the amount of money the licensee gets to keep. However, this potentially decreases the pool of money available for purses and winnings.

The net economic impact of this regulation is uncertain. Depending on the magnitudes of the various impacts it could be positive or negative. The net impact in any case will be small.

**Businesses and entities affected.** Licensees would not have to pay the salary of the third steward. There will be a decrease in the pool of money available for purses and winnings, which could affect wagerers, racehorse owners, and breeders.

**Localities particularly affected.** No localities will be particularly affected.

**Projected impact on employment.** Any impact on employment will be too small to measure.

**Effects on the use and value of private property.** Any effect on the use and value of private property will be too small to measure.

**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 commission finds that it is in general agreement with the analysis. However, the commission does not believe the employment of additional stewards will decrease the pool of money available for purses.

**Summary:**

*The regulation establishes the duties, powers and responsibilities of stewards for the conduct of horse racing at live race meetings and simulcast horse racing at satellite facilities licensed by the Virginia Racing Commission. The regulation also incorporates some of the provisions of the Model Rules of the Association of Racing Commissioners International as well as the exemption granted by the General Assembly from the Virginia Administrative Process Act.*

**11 VAC 10-70-20. Appointment.**

~~There shall be Three stewards, all of whom shall be employees of the commission, shall be appointed for each race meeting licensed by the commission. Two of the stewards shall be appointed by the commission and the third shall be appointed by the licensee. The licensee shall disclose its nominee for steward to the commission no later than 45 days prior to the commencement of the race meeting. No steward shall be appointed by a licensee unless first approved by the commission. The commission, in its discretion, may appoint one or more stewards for the satellite facilities licensed by the commission.~~

**11 VAC 10-70-30. Senior Commonwealth Steward.**

One of the ~~two three~~ stewards ~~appointed~~ employed by the commission for each race meeting shall be designated as the Senior Commonwealth Steward. The Senior Commonwealth Steward shall preside at all ~~informal fact-finding proceedings~~ hearings conducted by the stewards at the race meetings. In matters pertaining to the operation of satellite facilities, a single steward shall preside at all hearings.

**11 VAC 10-70-40. Authority.**

The steward or stewards for each race meeting or satellite facility licensed by the commission shall be responsible to the commission for the conduct of the race meeting or for the operation of the satellite facilities in accordance with the Code of Virginia and the regulations of the commission. The steward or stewards shall have authority over all holders of permits and shall have authority to resolve conflicts or disputes that are related to the conduct of racing or operation of the satellite facilities.

**11 VAC 10-70-50. General powers.**

The steward or stewards shall exercise immediate supervision, control and regulation of horse racing at each race meeting or at a satellite facility licensed by the

commission and shall be responsible to the commission. The powers of the stewards shall include:

1. Determining all questions, disputes, protests, complaints, or objections concerning horse racing which arise during a race meeting *or at a satellite facility* and enforcing their rulings;
2. Taking disciplinary action against any holder of a permit found violating federal laws, state laws, local ordinances or regulations of the commission;
3. Reviewing applications for permits and either granting or denying the permits *to participate in horse racing at race meetings or satellite facilities*;
4. Enforcing the regulations of the commission in all matters pertaining to horse racing *or satellite facilities*;
5. Issuing rulings pertaining to the conduct of horse racing *or satellite facilities*;
6. Varying any arrangement for the conduct of a race meeting including but not limited to postponing a race or races, canceling a race, or declaring a race "no contest";
7. Requesting assistance from other commission employees, racing officials, members of industry or the licensee's security service in the investigation of possible rule infractions;
8. Conducting ~~informal fact finding proceedings~~ *hearings* on all questions, disputes, protests, complaints, or objections concerning racing matters *or satellite facilities*; and
9. Substituting another qualified person where any ~~permit holder~~ *racing official* is unable to perform his duties.

### 11 VAC 10-70-60. Duties.

In addition to the duties necessary and pertinent to the general supervision, control and regulation of race meetings *or satellite facilities*, the stewards shall have the following specific duties:

1. Causing investigations to be made in all instances of possible violations of federal laws, state laws, local ordinances and regulations of the commission;
2. Being present within the enclosure *at a race meeting* no less than 90 minutes before post time of the first race and remaining until 15 minutes after the last race is declared "official";
3. Being present in the stewards' stand during the running of all races *at race meetings*;
4. Administering examinations for applicants applying for permits as trainers, jockeys, apprentice jockeys or farriers to determine the applicants' qualifications for the permits;
5. Determining the identification of horses;
6. Determining eligibility of horses for races restricted to Virginia-breds;

7. Determining eligibility of a horse or person to participate in a race;
8. Supervising the taking of entries and the drawing of post positions;
9. Approving or denying requests for horses to be excused from racing;
10. Locking the totalizator at the start of the race so that no more pari-mutuel tickets may be sold;
11. Determining alleged violations of these regulations in the running of any race through their own observation or by patrol judges and posting the "inquiry" sign on the infield results board when there are alleged violations;
12. Determining alleged violations of these regulations in the running of any race brought to their attention by any participant and posting the "objection" sign on the infield results board when there are alleged violations;
13. Causing the "official" sign to be posted on the infield results board after determining the official order of finish for the purposes of the pari-mutuel payout;
14. Reviewing the video tapes of the previous day's races and determining the jockeys whom the stewards feel should review the films for instructional purposes;
15. Making periodic inspections of the facilities within the enclosure *at race meetings* including but not limited to the stable area, paddock, and jockeys' room;
16. Reporting their findings of their periodic inspections of the facilities to the commission;
17. Filing with the commission a written daily report *at race meetings* which shall contain a detailed written record of all questions, disputes, protests, complaints or objections brought to the attention of the stewards, a summary of any interviews relating to these actions, copies of any rulings issued by the stewards, and any emergency actions taken and the basis for the actions; and
18. Submitting to the commission after the conclusion of the race meeting a written report setting out their findings on the conduct of the race meeting, the condition of the facilities and any recommendation for improvement that they deem appropriate; and
19. *Observing the conduct of simulcast horse racing at satellite facilities.*

### 11 VAC 10-70-70. Objections and protests.

The stewards receive and hear all objections lodged by jockeys or drivers after the completion of a race, and all protests lodged by holders of a permit before or after the completion of a race under the following provisions:

1. The stewards shall keep a written record of all objections and protests;

## Proposed Regulations

2. Jockeys shall indicate their intention of lodging an objection ~~immediately upon arriving at the scales to weigh in a manner prescribed by the stewards;~~
3. Drivers shall indicate their intention of lodging an objection immediately after the race by reporting to the patrol judge;
4. If the placement of the starting gate or line is in error, a protest must be made prior to the time that the first horse enters the starting gate or line;
5. Protests, other than those arising out of the running of a race, shall be in writing, clearly stating the nature of the protest, signed by the holder of a permit making the protest, and filed with the stewards at least one hour before post time of the race out of which the protest arises;
6. Protests, arising out of the running of a race, must be made to the stewards as soon as possible after the completion of the race but before the race is declared official and the stewards may call and examine any witness;
7. Until a final determination is made on an objection or protest and any administrative remedies and all appeals thereof are exhausted, the purse money for the race shall be retained by the horsemen's bookkeeper or licensee and paid only upon the approval of the stewards or commission; and
8. A holder of a permit may not withdraw a protest without the permission of the stewards.

### 11 VAC 10-70-80. Period of authority.

The period of authority shall commence at a period of time prior to the race meeting and shall terminate at a period of time after the end of the race meeting as designated by the commission. *The period of authority for the steward or stewards at satellite facilities shall commence and terminate at a period of time designated by the commission.*

### 11 VAC 10-70-110. ~~Informal fact finding proceedings~~ Stewards hearings.

~~Informal fact finding proceedings~~ *The following provisions shall apply to hearings conducted by the stewards includes the following:*

1. The Senior Commonwealth Steward shall preside at the ~~informal fact finding proceeding hearing or, in the case of satellite facilities, one steward shall conduct the hearing;~~
2. The *steward or stewards* may issue subpoenas to compel the attendance of witnesses or for the production of reports, books, papers, registration documents or any other materials they deem appropriate. *However, nothing in this section shall be taken to authorize discovery proceedings;*
3. The *steward or stewards* shall administer oaths to all witnesses;
4. The *steward or stewards* may examine any witnesses at ~~informal fact finding proceedings hearings;~~
5. Written notice shall be given to the holder of a permit in a reasonable time prior to the ~~informal fact finding proceeding hearing;~~
6. The written notice shall inform the holder of a permit of the charges against him, the basis thereof and possible penalties;
7. The holder of a permit shall be informed of his right to counsel, the right to present a defense including witnesses for that purpose, and the right to cross-examine any witnesses;
8. The *steward or stewards* may grant a continuance of any ~~informal fact finding proceeding hearing~~ for good cause; and
9. A recording of the proceedings shall be made and forwarded to the commission in the event of a request for a ~~formal hearing review of the decision of the steward or stewards.~~

### 11 VAC 10-70-170. Orders following disciplinary actions.

Any disciplinary action taken by the *steward or stewards* or by the commission shall be ~~made~~ *provided* in writing to the holder of a permit, setting forth the federal or state law, local ordinance or regulation that was violated, the date of the violation, the factual or procedural basis of the finding, the extent of the disciplinary action taken, and the date when the disciplinary action is to take effect. The order following disciplinary action may be hand delivered or mailed to the holder of the permit, but in either case, shall be duly acknowledged by the holder of a permit.

### 11 VAC 10-70-180. Fines.

All fines imposed by the *steward or stewards* or by the commission shall be payable within 72 hours, excluding Saturdays, Sundays or holidays. Fines shall be payable in cash, checks or money orders.

**NOTICE:** The forms used in administering 11 VAC 10-70-10 et seq., Regulations Pertaining to Horse Racing With Pari-Mutuel Wagering: Stewards, are listed below. Any amended or added forms are reflected in the listing and are published following the listing.

#### FORMS

~~Steward's~~ Stewards' Decision (9/97).

Notice of Stewards Hearing (9/97).

VA.R. Doc. No. R97-350; Filed September 23, 1997, 12:29 p.m.

Commonwealth of Virginia  
Virginia Racing Commission

STEWARDS' DECISION

Race Meeting: \_\_\_\_\_ Ruling No: \_\_\_\_\_  
Date of Violation: \_\_\_\_\_ Date Issued: \_\_\_\_\_  
Permit Holder: \_\_\_\_\_ Permit No: \_\_\_\_\_  
DOB: \_\_\_\_\_ SS#: \_\_\_\_\_ Category: \_\_\_\_\_  
Address: \_\_\_\_\_ City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

The disciplinary action of \_\_\_\_\_

\_\_\_\_\_ is taken for the following reasons \_\_\_\_\_

\_\_\_\_\_ for violation of \_\_\_\_\_

Senior Commonwealth Steward \_\_\_\_\_

Commonwealth Steward \_\_\_\_\_

Commonwealth Steward \_\_\_\_\_

Commonwealth of Virginia  
Virginia Racing Commission

NOTICE OF STEWARDS HEARING

Race Meeting: \_\_\_\_\_ Date Notice Issued: \_\_\_\_\_

\_\_\_\_\_, is hereby notified in writing of a Stewards Hearing to be conducted by the Virginia Racing Commission at: Time: \_\_\_\_\_; Date: \_\_\_\_\_; and Place: \_\_\_\_\_

The Stewards Hearing will concern: \_\_\_\_\_

The basis of the Stewards Hearing is: \_\_\_\_\_

The possible penalties are: \_\_\_\_\_

The holder is hereby informed of his right to counsel, the right to present a defense including witnesses for that purpose, and the right to cross-examine any witnesses.

Senior Commonwealth Steward: \_\_\_\_\_

Commonwealth Steward: \_\_\_\_\_

Commonwealth Steward: \_\_\_\_\_

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# Proposed Regulations

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**Title of Regulation:** 11 VAC 10-90-10 et seq. Regulations Pertaining to Horse Racing With Pari-Mutuel Wagering: ~~Formal Hearings~~ Appeals to the Commission.

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

**Public Hearing Date:** November 19, 1997 - 9:30 a.m.

Public comments may be submitted until December 15, 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 promulgated this regulation to implement the exemption granted by the General Assembly for stewards from the provisions of the Virginia Administrative Process Act (§ 9-6.14:1 et seq. of the Code of Virginia) and also establish administrative due process procedures for appeals. This regulation will assist the commission in protecting the public health, safety and welfare of applicants for permits as well as holders of permits.

**Substance:** The proposed regulation recognizes that applicants for permits as well as holders of permits may appeal to the commission for a review of decisions reached through stewards hearings.

Furthermore, the proposed regulation retains the same procedures for the conduct of a review by the commission as found in the Virginia Administrative Process Act that establishes rights and responsibilities of the person appealing to the commission as well as the commission.

Lastly, the proposed regulation deletes the terminology "informal fact-finding conference" and substitutes the terminology "stewards hearing" where appropriate to recognize the exemption granted to the stewards from the Virginia Administrative Process Act.

**Issues:** The main advantage of the proposed regulation relating to appeals to the commission is that it enhances the commission's regulatory control over the sport of horse racing and its ancillary gaming aspects. The commission is specifically charged by § 59.1-364 of the Code of Virginia, which states in part, "...to maintain horse racing in the Commonwealth of the highest quality and free of any corrupt, incompetent, dishonest or unprincipled practices and to maintain in such racing complete honesty and integrity." These amendments were drafted with the specific purpose of furthering the aims set forth in the Act. There is no particular disadvantage to applicants for permits or holders of permits through these proposed amendments.

**Estimated Impact:** There will be little or no impact associated with the public's compliance. The proposed regulation merely recognizes the exemption of stewards from the provisions of the Virginia Administrative Process Act while maintaining the rights and responsibilities of all parties to the administrative due process proceedings.

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

**Summary of the proposed regulation.** The Virginia Racing Commission proposes to amend the regulation regarding formal hearings. The amendments will incorporate the latest changes in the Model Rules of the Association of Racing Commissioners International. The amendments will also incorporate changes mandated by House Bill 635 passed by the 1996 General Assembly.

**Estimated economic impact.** The substantive portion of the proposed regulation that could have an economic impact relates to providing a forum for applicants as well as holders of permits to request the commission to review decisions reached by the stewards.

The economic value of such a forum is difficult to measure. There is definitely added benefit to the decision-making process if individuals have the opportunity to appeal decisions that they deem unfair to them. It gives the public confidence in the decision-making process and could possibly increase the number of applicants for racing permits. In this regard, the benefit from regulation though small is tangible and should outweigh the cost of providing the forum for commission review.

**Businesses and entities affected.** Applicants for permits as well as permit holders will be affected by this regulation. They will have an outlet to appeal decisions that affect them. The cost to these individuals is difficult to measure at this time.

**Localities particularly affected.** No localities will be particularly affected.

**Projected impact on employment.** Any impact on employment will be too small to measure.

**Effects on the use and value of private property.** Any effect on the use and value of private property will be too small to measure.

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 commission finds that it is in general agreement with the analysis. However, the commission does believe providing a procedure for internal administrative due process is an important component of a regulatory agency, regardless of its economic impact.

Summary:

*The regulation establishes the rights and responsibilities of applicants for permits and holders of permits who request a review by the Virginia Racing Commission of a decision by the stewards. The regulation also sets forth the procedures to be followed in the conduct of a review by the commission.*

CHAPTER 90.

REGULATIONS PERTAINING TO HORSE RACING WITH  
PARI-MUTUEL WAGERING: FORMAL HEARINGS  
APPEALS TO THE COMMISSION.

**11 VAC 10-90-10. Generally.**

A holder of or applicant for a permit who wishes to contest a denial of a permit or disciplinary action of the stewards may request a ~~formal hearing~~ review by the commission. A disciplinary action taken by the steward or stewards shall not be stayed or superseded by the filing of a request for a ~~formal hearing~~ review unless the commission so orders. A stay in the implementation of a disciplinary action may be granted by the executive secretary of the commission.

**11 VAC 10-90-20. Where to file a request.**

A request for a ~~formal hearing~~ commission review shall be sent by certified mail or hand delivered to the ~~main~~ general business office of the commission.

1. A request for a ~~formal hearing~~ commission review must be submitted within 72 hours of receipt of the order being contested by the holder of or applicant for a permit, excluding Saturdays, Sundays and holidays;
2. A request for a ~~formal hearing~~ commission review must be delivered by certified mail or by hand and 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;
3. Delivery to other than the ~~main~~ general business office of the commission or to other commission personnel is not effective; and
4. The applicant for or holder of a permit assumes full responsibility for the method chosen to file a request for a ~~formal hearing~~ commission review.

**11 VAC 10-90-30. Content of request.**

The request shall state:

1. The disciplinary action of or denial of a permit by the steward or stewards being contested;
2. The basis for the request; and
3. Any additional information the applicant for or holder of a permit may wish to include concerning the request.

**11 VAC 10-90-40. Withdrawal of a request.**

A An applicant for or holder of a permit may withdraw a request, which has been filed with the commission, by submitting a written statement to the ~~main~~ general business office of the commission within 72 hours of filing a request declaring his intention to withdraw the request. The commission, in its discretion, may accept or reject a request to withdraw a request.

**11 VAC 10-90-50. Procedures for conducting a formal hearing commission review.**

The commission shall conduct a ~~formal hearing~~ its review within 45 days of receipt of a request for a ~~formal hearing~~ on review of a denial of a permit or a disciplinary action taken by the steward or stewards. The following provisions shall apply to ~~formal hearing~~ reviews by the commission:

1. If any commissioner determines that he has a conflict of interest or cannot accord a fair and impartial ~~hearing~~ review, that commissioner shall not take part in the ~~hearing~~ review;
  2. The commissioners, in their discretion, may appoint an independent hearing officer to preside at the ~~formal hearing~~ review and prepare a proposed written decision for their consideration;
  3. Unless the parties otherwise agree, a notice setting the ~~hearing~~ date, time and location of the review shall be sent to the holder of or applicant for a permit at least 10 days before the date set for the ~~hearing~~ review;
  4. The ~~formal hearing~~ proceedings shall be open to the public.
    - a. The ~~hearing~~ proceedings shall be electronically recorded and the recordings will be kept until any time limits for any subsequent court appeals have expired.
    - b. A court reporter may be used. The court reporter shall be paid by the person who requests him. If the applicant for or holder of a permit elects to have a court reporter, a transcript shall be provided to the commission. The transcript shall become part of the commission's records.
  6. ~~The provisions of §§ 0-6-14:12 through 0-6-14:14 of the Administrative Process Act shall apply with respect to the rights and responsibilities of the holder of a permit and of the commission.~~
5. The proceedings shall include the following:

- a. The commission may issue subpoenas to compel the attendance of witnesses or for the production of reports, books, papers, registration documents or any

# Proposed Regulations

other materials it deems appropriate. However, nothing in this section shall be taken to authorize discovery proceedings;

- b. Oaths shall be administered to all witnesses;
- c. The commission may examine any witnesses;
- d. Written notice shall be given to the holder of or applicant for a permit in a reasonable time prior to the review;
- e. The written notice shall inform the holder of a permit of the charges against him, the basis thereof and possible penalties;
- f. The holder of a permit shall be informed of his right to counsel, the right to present a defense including witnesses for that purpose, and the right to cross-examine any witnesses;
- g. The commission may grant a continuance of any review for good cause; and
- h. A record of the proceedings shall be made.

6. 6. The ~~formal hearing review proceeding~~ is a hearing on the record of the ~~informal fact-finding proceeding~~ ~~stewards hearing~~ and not a new hearing; therefore, presentations by both sides will be limited to arguments and comments regarding the record of the ~~informal fact-finding proceeding~~ ~~stewards hearing~~.

6. 7. The commission, in its discretion, may allow new evidence to be introduced which, through the exercise of reasonable diligence, could not have been found at the time of the ~~informal fact-finding proceeding~~ ~~stewards hearing~~.

## 11 VAC 10-90-60. Decision by commission.

The commission's decision shall be in writing and shall be sent to the *applicant for or holder of a permit* by certified mail, return receipt requested. The original written decision shall be retained by the commission and become part of its records.

1. Prior to rendering its decision, the parties to the ~~formal hearing review~~ shall be given the opportunity, on request, to submit in writing for the record proposed findings and conclusions and statements of reasons therefor.
2. If the commission has appointed a hearing officer to preside at the ~~formal hearing review~~, the commission shall consider the proposed written decision of the hearing officer and any exceptions filed thereto after which the commission may adopt, modify or reject the hearing officer's proposed decision.
3. The commission's decision shall briefly state the findings, conclusions, reasons, or basis therefor upon the evidence presented by the record and relevant to the basic law under which the commission is operating

together with the appropriate order, permit, grant of benefits, sanction, relief or denial thereof.

VA.R. Doc. No. R97-348; Filed September 23, 1997, 12:28 p.m.

## TITLE 20. PUBLIC UTILITIES AND TELECOMMUNICATIONS

### STATE CORPORATION COMMISSION

**EDITOR'S NOTICE:** Attachment A, which is the service list referenced in both orders printed below, is not being published. However, it is available for public inspection at the State Corporation Commission, Document Control Center, Tyler Building, 1st floor, 1300 East Main Street, Richmond, Virginia, from 8:15 a.m. to 5 p.m., Monday through Friday.

**Title of Regulation:** 20 VAC 5-310-10. Rules for Filing an Application to Provide Electric Service Under a Special Rate, Contract or Incentive.

**Statutory Authority:** §§ 12.1-13 and 56-235.2 of the Code of Virginia.

AT RICHMOND, SEPTEMBER 16, 1997

COMMONWEALTH OF VIRGINIA, *ex rel.*

STATE CORPORATION COMMISSION

CASE NO. PUE970695

*Ex Parte*, in re: Promulgation of Guidelines for Special Rates, Contracts or Incentives pursuant to Virginia Code § 56-235.2 D

### ORDER FOR NOTICE AND HEARING

The 1996 General Assembly amended § 56-235.2 of the Code of Virginia ("Code") to permit utilities to request special rates, contracts, or incentives for particular customers or classes of customers. The amended Code provision also includes a subsection requiring the Commission to issue guidelines for special rates, contracts or incentives to ensure that other customers will not be caused to bear increased rates as a result. Pursuant to that Code section, the Commission Staff proposes the Draft Guidelines for Special Rates, Contracts or Incentives ("Draft Guidelines") attached hereto as Appendix A.

The Commission, upon consideration of this matter, finds that the Commission Staff should provide notice of its Draft Guidelines and that this matter should be scheduled for hearing. The Commission also invites interested parties to file written comments concerning the Draft Guidelines and to propose any additions, modifications, or deletions which are desired.

Accordingly, IT IS THEREFORE ORDERED THAT:

(1) This matter is docketed and assigned Case No. PUE970695.

(2) Pursuant to Rule 7:1 of the Commission Rules of Practice and Procedure ("Rule" or "Rules"), a Hearing Examiner is appointed to conduct all further proceedings in this matter.

(3) A copy of this Order and its Appendix shall be made available for public inspection at the Commission's Document Control Center, located on the first floor at the Tyler Building, 1300 East Main Street, Richmond, Virginia, from 8:15 a.m. to 5:00 p.m., Monday through Friday.

(4) A public hearing on the Draft Guidelines is scheduled for December 4, 1997, beginning at 10:00 a.m., in the Commission's courtroom located in the Tyler Building, 1300 East Main Street, Richmond, Virginia 23219.

(5) Any interested person may file written comments concerning the Draft Guidelines and requests to address the Commission at the public hearing. Such comments and requests shall refer to Case No. PUE970695 and shall be filed no later than November 5, 1997, with William J. Bridge, Clerk of the State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23216.

(6) On or before October 8, 1997, the Division of Energy Regulation shall publish the following notice once as a classified advertisement in major newspapers of general circulation throughout the Commonwealth.

NOTICE OF CONSIDERATION BY THE VIRGINIA STATE CORPORATION COMMISSION OF PROPOSED GUIDELINES GOVERNING SPECIAL RATES, CONTRACTS OR INCENTIVES - CASE NO. PUE970695

The State Corporation Commission ("Commission") is considering guidelines governing special rates, contracts or incentives pursuant to the provisions of § 56-235.2 D of the Code of Virginia.

The Commission issued an order for notice and hearing. A set of proposed guidelines is attached to that order as Appendix A. Copies of the order and the proposed guidelines are available for public inspection at the Commission's Document Control Center, located on the first floor of the Tyler Building, 1300 East Main Street, Richmond, Virginia, from 8:15 a.m. to 5:00 p.m., Monday through Friday.

Any interested person may file written comments concerning the proposed guidelines and requests to address the Commission at the public hearing. Such comments and requests shall refer to Case No. PUE970695 and shall be filed no later than November 5, 1997, with William J. Bridge, Clerk of the State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23216.

VIRGINIA STATE CORPORATION COMMISSION, DIVISION OF ENERGY REGULATION.

(7) The Division of Energy Regulation shall forthwith send a copy of this Order and Appendix A thereto to the Virginia Register for publication.

(8) On or before October 31, 1997, the Division of Energy Regulation shall file with the Clerk of the Commission proof of compliance with paragraphs (6) and (7) herein.

AN ATTESTED COPY of this order shall be sent to all investor-owned electric utilities, all electric cooperatives, and all gas utilities, all telephone utilities and all water and sewer utilities as shown on Attachment A attached hereto; Thomas B. Nicholson, Esquire, Division of Consumer Counsel, Office of the Attorney General, 900 East Main Street, Richmond, Virginia 23219; Jean Ann Fox, Vice President, Virginia Committee for Fair Utility Rates, 114 Coachman Drive, Yorktown, Virginia 23693; Dennis R. Bates, Esquire, Office of Fairfax County Attorney, 12000 Government Center Parkway, Fairfax, Virginia 22035-0064; Jeffrey M. Gleason, Esquire, Southern Environmental Law Center, 201 West Main Street, Suite 14, Charlottesville, Virginia 22902; and the Commission's Division of Energy Regulation and Office of General Counsel.

\* \* \*

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

CASE NO. PUE970695

Ex Parte, in re: Promulgation of Guidelines for Special Rates, Contracts or Incentives pursuant to § 56-235.2 D of the Code of Virginia

HEARING EXAMINER'S RULING

September 19, 1997

On September 19, 1997, Staff of the State Corporation Commission filed a motion requesting modification to the notice provisions set forth in the Commission's Order for Notice and Hearing issued in this matter on September 16, 1997. In support of its motion, Staff states that the notice specified for publication in ordering paragraph (6) inadvertently omitted the date for the public hearing on this matter. Staff further states that the requested relief is necessary to ensure proper notice of this matter.

Upon consideration of this matter, I find that the requested relief should be granted. Accordingly, IT IS DIRECTED that ordering paragraph (6) of the Commission's Order for Notice and Hearing dated September 16, 1997, be replaced with the following:

(6) On or before October 8, 1997, the Division of Energy Regulation shall publish the following notice once as a classified advertisement in major newspapers of general circulation throughout the Commonwealth.

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# Proposed Regulations

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NOTICE OF CONSIDERATION BY THE  
VIRGINIA STATE CORPORATION COMMISSION OF  
PROPOSED GUIDELINES GOVERNING SPECIAL RATES,  
CONTRACTS OR INCENTIVES,  
CASE NO. PUE970695

The State Corporation Commission ("Commission") is considering guidelines governing special rates, contracts or incentives pursuant to the provisions of § 56-235.2 D of the Code of Virginia. The Commission has scheduled a public hearing to commence at 10:00 a.m. on December 4, 1997, in the Commission's second floor courtroom, Tyler Building, 1300 East Main Street, Richmond, Virginia, to consider this matter.

The Commission's Staff has proposed guidelines to govern applications for special rates, contracts or incentives filed under § 56-235.2 D of the Code of Virginia ("Proposed Guidelines"). The Proposed Guidelines are attached to the Commission's Order for Notice and Hearing issued on September 16, 1997. A copy of the Proposed Guidelines is available for public inspection at the Commission's Document Control Center, located on the first floor of the Tyler Building, 1300 East Main Street, Richmond, Virginia, from 8:15 a.m. to 5:00 p.m., Monday through Friday.

Any interested person may file written comments concerning the Proposed Guidelines and requests to address the Commission at the public hearing. Such comments and requests shall refer to Case No. PUE970695 and shall be filed no later than November 5, 1997, with William J. Bridge, Clerk of the State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218.

Any person desiring to make a statement at the public hearing, need only appear at the Commission courtroom at 9:45 a.m. on the day of the hearing and identify himself or herself to the Bailiff as a public witness.

Individuals with disabilities who require an accommodation to participate in the hearing may contact the Commission at 1-800-552-7945 (voice) or 1-804-371-9206 (TDD). Individuals requesting accommodations should contact the Commission at either of these numbers at least seven days before the scheduled hearing date.

VIRGINIA STATE CORPORATION COMMISSION  
DIVISION OF ENERGY REGULATION

/s/ Howard P. Anderson, Jr., Hearing Examiner

Document Control Center is requested to mail or deliver a copy of the above ruling on September 19, 1997 to: all investor-owned electric utilities, all electric cooperatives, and all gas utilities, all telephone utilities and all water and sewer utilities as shown on Attachment A attached hereto; Thomas B. Nicholson, Senior Assistant Attorney General, Division of Consumer Counsel, Office of the Attorney

General, 900 East Main Street, Second Floor, Richmond, VA 23219; Jean Ann Fox, Vice President, Virginia Committee for Fair Utility Rates, 114 Coachman Drive, Yorktown, VA 23693; Dennis R. Bates, Esquire, Office of Fairfax County Attorney, 12000 Government Center Parkway, Fairfax, VA 22035-0064; Jeffrey M. Gleason, Esquire, Southern Environmental Law Center, 201 West Main Street, Suite 14, Charlottesville, VA 22902; Judith W. Jagdmann, Esquire, Commission counsel; and the Commission's Divisions of Public Utility Accounting, Economics and Finance, Energy Regulation and Office of General Counsel.

APPENDIX A

## CHAPTER 310.

### RULES FOR FILING AN APPLICATION TO PROVIDE ELECTRIC SERVICE UNDER A SPECIAL RATE, CONTRACT OR INCENTIVE.

#### **20 VAC 5-310-10. Guidelines for special rates, contracts or incentives.**

*Any application for approval of a special rate, contract or incentive filed pursuant to § 56-235.2 of the Code of Virginia shall:*

- 1. Provide a copy of the proposed special rate, contract or incentive.*
- 2. Describe the characteristics of the customers to whom the proposed special rate, contract or incentive would apply, and describe the tariffs each such customer would have taken service under except for the special rate, contract or incentive.*
- 3. Explain in detail the need for and intended purpose of the special rate, contract or incentive and why current tariffs would not accomplish the purpose.*
- 4. Provide all supporting detail and work papers used to develop the proposed special rate, contract or incentive.*
- 5. Provide estimated cost of implementation and give complete detail of said cost.*
- 6. If the proposed special rate, contract or incentive would be offered as a substitute for a tariff currently in effect, show in detail how the proposed special rate, contract or incentive was derived.*
- 7. If the proposed special rate, contract or incentive would be offered as a substitute for a tariff currently in effect, describe in detail the estimated effect the proposed special rate, contract or incentive will have on annual revenues and return on equity. Such description shall include a detailed calculation on an annual basis of the revenue the customer would provide under tariffed rates and under the contract amount.*
- 8. Describe in complete detail how the company will ensure that other customers will not bear increased rates as a result of the proposed special rate, contract or incentive.*

9. Explain in detail why the proposed special rate, contract or incentive (i) will protect the public interest, (ii) will not unreasonably prejudice or disadvantage any customer or class of customers, and (iii) will not jeopardize the continuation of reliable electric service.

VA.R. Doc. No. R98-34; Filed September 22, 1997, 2:45 p.m.

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Division of Communications

Title of Regulation: 20 VAC 5-400-10 et seq. Telecommunications (repealing 20 VAC 5-400-80).

Title of Regulation: 20 VAC 5-402-10 et seq. Telecommunications Service Measurements.

Statutory Authority: §§ 12.1-13 and 56-265.4:4 of the Code of Virginia.

AT RICHMOND, SEPTEMBER 17, 1997

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

CASE NO. PUC970146

Ex Parte: In the matter of revising rules governing service standards for local exchange telephone companies

ORDER ESTABLISHING RULEMAKING PROCEEDING AND INVITING COMMENTS

By Order of June 10, 1993, the Commission adopted Regulations Governing Service Standards for Local Exchange Telephone Companies. (20 Virginia Administrative Code 5-400-80).

Since those rules were adopted, the telecommunications industry has changed. With the enactment of the Telecommunications Act of 1996, 47 U.S.C. § 251 et. seq., and the enactment of § 56-265.4:4 C of the Code of Virginia, many additional competitive local exchange telephone companies ("CLECs") will be offering telecommunications services.

To address changes in the local service marketplace, the Commission's Division of Communications has drafted revised service rules and measurement procedures, a copy of which is attached hereto as Appendix A. The proposed rules and measurement procedures pertain to all incumbent and competitive LECs. Those companies serving 20,000 or more access lines shall compute and report service data to the Division of Communications monthly. Reporting exemptions may be made by the Staff on a case by case basis. For example, resellers of local service may not be required to report network results. Those companies serving less than 20,000 access lines shall be prepared to present service measurement data to the S.C.C. when required. Failure to comply with service standards adopted as Commission rules would constitute a violation punishable

pursuant to either § 56-483 or § 12.1-33 of the Code of Virginia or both. Accordingly,

IT IS THEREFORE ORDERED THAT:

(1) This matter is docketed as Case No. PUC970146;

(2) The Commission's Division of Communications on or before September 30, 1997, shall cause a copy of the following notice to be published in newspapers having general circulation throughout the Commonwealth as classified advertising;

NOTICE OF PROPOSED REVISED RULES GOVERNING THE SERVICE STANDARDS FOR VIRGINIA'S LOCAL EXCHANGE TELEPHONE COMPANIES

The Virginia State Corporation Commission ("SCC") has proposed revising its rules governing service standards for Virginia's local exchange telephone companies ("LECs"). The purpose of these revisions is to assure continuation of quality telephone service throughout the Commonwealth and provide sanctions for any deterioration in service.

The text of the proposed revisions to rules can be examined at the Commission's Division of Communications or the Document Control Center located at Floor 1 of the Tyler Building, 1300 East Main Street, Richmond, Virginia, open Monday through Friday, 8:15 a.m. until 5:00 p.m. Copies of the proposed amendments to rules may be ordered from the Commission's Division of Communications, P.O. Box 1197, Richmond, Virginia 23218.

The Commission will not conduct a public hearing unless substantial objections are raised to the proposed revisions to rules and a hearing is requested. Interested persons may submit written comments or requests for hearing concerning the proposed amendments to rules on or before October 31, 1997, by writing William J. Bridge, Clerk, Virginia State Corporation Commission, P.O. Box 2118, Richmond, Virginia 23216, making reference to Case No. PUC970146.

VIRGINIA STATE CORPORATION COMMISSION

(3) Any comments or requests for hearing on the proposed rules must be filed on or before October 31, 1997; and

(4) If no substantial objections or requests for a hearing are filed on or before October 31, 1997, the Commission may adopt its proposed Rules Governing Service Standards for Local Exchange Telephone Companies without conducting a hearing.

ATTESTED COPIES hereof shall be sent by the Clerk of the Commission to each certified local exchange telephone company operating in Virginia as shown on Appendix B attached hereto; to each interexchange telephone company operating in Virginia as shown on the service list attached hereto as Appendix C; to the Division of Consumer Counsel,

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## Proposed Regulations

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Office of the Attorney General, 900 East Main Street, 2nd Floor, Richmond, Virginia 23219; and to the Commission's Office of General Counsel and Divisions of Communications, Public Utility Accounting, Economics and Finance, and Public Service Taxation.

**20 VAC 5-400-80. ~~Regulation governing service standards for local exchange telephone companies; penalty. (Repealed.)~~**

~~Each local exchange telephone company shall provide the necessary equipment, plant facilities, and personnel within its certificated area(s) to deliver high quality customer service.~~

~~There are eight key indicators that shall be used to measure the quality of service being furnished by the local exchange companies. Where applicable, service results from these key indicators shall be banded as follows:~~

~~Satisfactory—Represents good service.~~

~~Weakspot—Requires management attention and corrective action.~~

~~Unsatisfactory—A level of service requiring immediate corrective action and management follow up.~~

~~The eight key indicators and their performance level bands are as follows:~~

~~SERVICE INDICATOR: Commission complaints per 1000 access lines per year.~~

~~DEFINITION: All customer complaints received by the Commission that, upon investigation, prove to be justified.~~

~~PERFORMANCE: Less than one per 1000 access lines per year~~

~~SERVICE INDICATOR: Trouble reports per 100 access lines per month.~~

~~DEFINITION: All customer trouble reports received, whether trouble was found or not found.~~

~~PERFORMANCE:~~

~~0—6.0 Sat.~~

~~6.1—8.0 Wksept.~~

~~Over 8.0 Unsat.~~

~~SERVICE INDICATOR: Percent repeated trouble reports per month.~~

~~DEFINITION: The incidence of two or more trouble reports received from the same access lines within the same 30 day period, stated as a percent of total trouble reports.~~

~~PERFORMANCE:~~

~~0—16% Sat.~~

~~16.1—20% Wksept.~~

~~Over 20% Unsat.~~

~~SERVICE INDICATOR: Network reports per 100 access lines per month.~~

~~DEFINITION: All customer trouble reports, whether found or not found, that are charged against the central office.~~

~~PERFORMANCE:~~

~~0—.35 Sat.~~

~~0.36—.45 Wksept.~~

~~Over .45 Unsat.~~

~~SERVICE INDICATOR: Network switching performance, percent satisfactory per month.~~

~~DEFINITION: An index that measures the overall performance of central office equipment in providing dial tone, switching and connecting customers, and collecting call billing data.~~

~~PERFORMANCE BAND:~~

~~95.5—100% Sat.~~

~~92.0—95.4% Wksept.~~

~~Under 92% Unsat.~~

~~SERVICE INDICATOR: Business office accessibility, percent per month~~

~~DEFINITION: The percent of all calls to the business office which are answered live within 20 seconds.~~

~~PERFORMANCE BAND:~~

~~85—100% Sat.~~

~~80—84.9% Wksept.~~

~~Under 80% Unsat.~~

~~SERVICE INDICATOR: Repair service accessibility, percent per month.~~

~~DEFINITION: The percent of all calls to repair service which are answered live within 20 seconds.~~

~~PERFORMANCE BAND:~~

~~85—100% Sat.~~

~~80—84.9% Wksept.~~

~~Under 80% Unsat.~~

~~SERVICE INDICATOR: Service orders completed within five working days, percent per month.~~

~~DEFINITION: The percent of all single line new service orders completed within five working days of service application or the customer requested completion date.~~

~~PERFORMANCE BAND:~~

~~90—100% Sat.~~

~~85—89.9% Wksept.~~

~~Under 85% Unsat.~~

~~Local exchange companies which exceed 20,000 access lines shall report data to the Commission's Division of Communications each month on the above described eight key indicators.~~

~~Nothing in this section shall be deemed to excuse a local exchange company from submitting any additional information requested by the Commission's Division of Communications.~~

~~Violations of this section shall be punishable pursuant to either § 56-483 or § 12.1-33 of the Code of Virginia or both.~~

CHAPTER 402.

TELECOMMUNICATIONS SERVICE MEASUREMENTS.

**20 VAC 5-402-10. Service quality and the Virginia State Corporation Commission; service standards; measurement and reporting requirements.**

A. High quality service is a basic standard and tradition within the telecommunications industry. Virginia patrons, customers, and users of the telecommunications network are conditioned by this tradition to routinely expect superb service at all times.

The Virginia State Corporation Commission ("SCC") is the agency charged under the statutes of the Commonwealth of Virginia with regulatory oversight over this state's telecommunications service. The SCC's authority to conduct plant tests, investigate services, and obtain service-related reports is covered by the following sections of the Code of Virginia:

- § 12.1-33. Fine for disobedience of commission orders.
- § 56-35. Regulation of public service companies.
- § 56-246. Tests and equipment therefor.
- § 56-247. Commission may change regulations, measurements, practices, services, or acts.
- § 56-249. Reports by utilities.
- § 56-483. Refusal or neglect to make reports; obstructing commission in discharge of duties; violations in general.

Pursuant to its authority, the commission issued its Final Order Adopting Rules, dated June 10, 1993, in Case No. PUC930009, Ex Parte: In the matter of adopting rules governing service standards for local exchange telephone companies (formerly 20 VAC 5-400-80). The commission now adopts new service standards which replace those outlined in Case No. PUC930009. The newly adopted service standards are outlined and described in this and succeeding sections of this chapter.

B. Each company which has been issued a Certificate of Convenience and Necessity to operate as a local exchange carrier ("LEC") within the Commonwealth of Virginia shall provide the necessary equipment, plant facilities, and personnel within its certificated area or areas to deliver high quality customer service.

There are five key areas in which the SCC measures LEC-provided service quality. The five key areas are customer perception/satisfaction, installation, repair, network, and answer time. Twelve specific service measurements are used to evaluate LEC service performance in the five areas. Where applicable for each LEC, the service results for each of the 12 service measurements shall be grouped into bands as follows:

- Satisfactory - Represents good service.
- Weakspot - Requires management attention and corrective action.
- Unsatisfactory - A level of service requiring immediate corrective action and management follow up.

The five key service areas and their associated 12 service measurements used to evaluate LEC performance are listed below. Also listed is the section of this chapter which contains a definition and specific instructions concerning each of the 12 service measurements.

KEY SERVICE AREAS AND SERVICE MEASUREMENTS	CHAPTER SECTION
<b>CUSTOMER PERCEPTION/SATISFACTION</b>	
-Commission Complaints Per 1,000 Access Lines Per Year - Annualized.	20 VAC 5-402-20
-Trouble Reports Per 100 Access Lines Per Month.	20 VAC 5-402-30
<b>INSTALLATION</b>	
-Service Orders Completed Within Objective Interval - Percent Per Month.	20 VAC 5-402-40
-Customer Service Order Commitments Met - Percent Per Month.	20 VAC 5-402-50
<b>REPAIR</b>	
-Out Of Service Trouble Reports Cleared Within 24 Hours - Percent Per Month.	20 VAC 5-402-60
-Customer Repair Commitments Met - Percent Per Month.	20 VAC 5-402-70
-Repeated Trouble Reports - Percent Per Month.	20 VAC 5-402-80
<b>NETWORK</b>	
-Dial Tone Delay	20 VAC 5-402-90
-Percent of Switching Systems Meeting Objective	

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*-List of Switching Systems Not Meeting Dial Tone Delay Objective for Three or More Consecutive Months.*

*-Network Blocking* 20 VAC 5-402-100

*-Percent of Final Trunk Groups Meeting Objective*

*List of Final Trunk Groups Not Meeting Network Blocking Objective for Three or More Consecutive Months.*

*-Network Reports Per 100 Access Lines Per Month* 20 VAC 5-402-110

### ANSWER TIME

*-Business Office Accessibility - Percent Per Month.* 20 VAC 5-402-120

*-Repair Service Accessibility - Percent Per Month.* 20 VAC 5-402-130

C. The SCC's Division of Communications shall determine and administer the process of results reporting for those LECs required to submit monthly information to the SCC. The Division of Communications shall publish a service quality report each quarter based upon the monthly data received from reporting LECs. The quarterly service report shall be distributed to the commission and to designated officials of each reporting LEC. Copies of each quarterly report shall be retained by the Division of Communications as public information.

All incumbent LECs ("ILEC") and competitive LECs ("CLEC") which serve 20,000 or more access lines shall compute and report service data to the SCC's Division of Communications each month on the 11 service measurements described in 20 VAC 5-402-30 through 20 VAC 5-402-130. Should a reporting LEC determine that some specific measurement described in the above listed sections does not fit its operations, the Division of Communications should be consulted for guidance. The SCC's Division of Communications shall compute quarterly results on commission complaints as specified in 20 VAC 5-402-20 for all ILECs and CLECs which serve 20,000 or more access lines. The count of access lines used to determine reporting requirements and results computation in the various sections shall be as specified in 20 VAC 5-402-140.

All ILECs and CLECs which serve less than 20,000 access lines as determined in accordance with 20 VAC 5-402-140 shall be prepared to present data to the SCC, when required, as described in the above paragraph. ILECs and CLECs which serve less than 20,000 access lines shall be responsible for notifying the SCC's Division of Communications when the access line threshold for monthly service data reporting is reached. Monthly service reporting shall begin in accordance with instructions from the SCC's Division of Communications.

D. It is the intent of the SCC that the telecommunications service measurements outlined in this chapter and the resulting reports received from LECs reflect all service rendered by the reporting LECs which is subject to SCC regulation. All ILECs and CLECs should include regulated service rendered to any Virginia consumer.

When an incumbent LEC provides service to a consumer for a competitive LEC, such service may be reportable by both the incumbent LEC and the competitive LEC. For example, a competitive carrier may answer its customer and take a repair or service installation request. In this example, an incumbent LEC may perform the repair service or installation work for the competitive carrier customer. Under such an arrangement, the incumbent LEC must report the consumer work to the SCC. Work performed by the incumbent for the competitive carrier will be reported combined with the work results for its own customers. In the above example, the competitive carrier would report the performance on repair service or business office accessibility or both. The key point is as outlined in the above paragraph. Regulated work performed by any LEC, incumbent or competitive, must be reported in the results forwarded to the SCC.

**20 VAC 5-402-20. Commission complaints per 1,000 access lines per year - annualized; definitions; performance criteria; performance measurement computation.**

A. As used in this section, the following terms mean:

"Access line" means a customer dial tone line which provides access to the public switched network. See 20 VAC 5-402-140 for further definition and specific instructions on counting and reporting access lines to the SCC.

"Justified complaint" means any issue raised by a LEC's customer or user of service in which the SCC determines that the service involved is subject to SCC regulation and that the LEC either violated its tariffs, procedures or policies; used questionable judgment; was untimely in resolving the customer's problem; or handled the customer in a less than totally courteous manner. Complaints which after investigation and corrective action do not meet the "justified" description are classified as "unjustified."

"Regulated telephone service" means any service provided by the LEC which is subject to the surveillance and constraints of the SCC as provided under the statutes of the Commonwealth of Virginia.

B. Customers or users of service or both who are unable to resolve issues with local exchange carriers ("LEC") regarding regulated telephone service may appeal to the SCC for assistance in resolving their problems. When the SCC receives such an appeal, it gives very high priority to prompt resolution of the appellant's concerns and expects equally high priority treatment from the LEC.

The SCC staff receives and processes many public contacts regarding the operations of the telecommunications industry. Normally, the SCC staff does not process a

customer contact as a complaint until after the customer has made a reasonable effort to resolve problems directly with the LEC. The SCC representative who deals with the customer determines whether or not the issue or issues are subject to SCC jurisdiction and, if so, should be considered a complaint. Issues defined as complaints are investigated for accurate facts and corrective action is initiated in accordance with the LECs' tariffs, commission orders and rulings, and the Code of Virginia.

A key step in the complaint investigation process is involvement of the responsible LEC. As stated in the first paragraph of this subsection, high priority attention is expected for the resolution of complaints. When a complaint is forwarded to a LEC, the SCC expects a response or problem resolution or both according to the following guidelines:

- |   |   |
|---|---|
| - Customer "Out-Of-Service" Condition                                       | - Completion of service restoration and report to the SCC within 24 hours of report receipt.                        |
| - Emergency "911" Issues  | - Immediate and continuing action by the LEC until the 911 problem is resolved and daily status reports to the SCC. |
| - All other issues, such as billing, collection, construction charges, etc. | - Problem resolution and final report to the SCC within 5 to 10 working days of complaint receipt.                  |

When problem resolution is complete, the SCC representative who handled the complaint determines whether it was "justified" or "unjustified." The level of justified commission complaints against a LEC is closely watched by the SCC. The incidence of complaints for each reporting LEC is computed and stated each quarter as "Commission Complaints Per 1,000 Access Lines Per Year - Annualized."

C. The SCC's criteria for "satisfactory" performance on justified complaints is less than one per 1,000 access lines per year. An annual rate of justified complaints which is one or greater is considered to be "unsatisfactory."

D. 1. All computations for this measurement are completed by the SCC. The data used are the count of justified complaints and the count of access lines which is submitted by the LEC to the SCC.

2. The measurement "Commission Complaints Per 1,000 Access Lines Per Year" is computed each quarter and annualized according to the following formulas:

a. First Quarter Result.

Step 1. Determine the total justified appeals for January through March and multiply that number by four, deriving the "annualized first quarter justified appeals."

Step 2. Divide the March count of LEC access lines by 1,000 to derive "thousands of access lines."

Step 3. Divide the "annualized first quarter justified appeals" derived in Step 1 by the "thousands of access lines" derived in Step 2 to derive the first quarter "Commission Complaints Per 1,000 Access Lines Per Year - Annualized."

b. Second Quarter Result.

Step 1. Determine the total justified appeals for January through June and multiply that number by two, deriving the "annualized second quarter justified appeals."

Step 2. Divide the June count of LEC access lines by 1,000 to derive "thousands of access lines."

Step 3. Divide the "annualized second quarter justified appeals" derived in Step 1 by the "thousands of access lines" derived in Step 2 to derive the second quarter "Commission Complaints Per 1,000 Access Lines Per Year - Annualized."

c. Third Quarter Result.

Step 1. Determine the total justified appeals for January through September. Divide the total for January through September by three to determine the "average justified appeals per quarter." Multiply the "average justified appeals per quarter" by four, deriving the "annualized third quarter justified appeals."

Step 2. Divide the September count of LEC access lines by 1,000 to derive "thousands of access lines."

Step 3. Divide the "annualized third quarter justified appeals" derived in Step 1 by the "thousands of access lines" derived in Step 2 to derive the third quarter "Commission Complaints Per 1,000 Access Lines Per Year - Annualized."

d. Fourth Quarter Result.

Step 1. Determine the total justified appeals for January through December. This total becomes the "annualized fourth quarter justified appeals."

Step 2. Divide the December count of LEC access lines by 1,000 to derive "thousands of access lines."

Step 3. Divide the "annualized fourth quarter justified appeals" derived in Step 1 by the "thousands of access lines" derived in Step 2 to derive the fourth quarter "Commission Complaints Per 1,000 Access Lines Per Year - Annualized."

3. The quarterly results computed as described in subdivision D 2 of this section will be reported as the LEC's performance on "Commission Complaints Per 1,000 Access Lines Per Year - Annualized."

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**20 VAC 5-402-30. Trouble reports per 100 access lines per month; definitions, performance bands.**

A. As used in this section, the following terms mean:

"Access line" means a customer dial tone line which provides access to the public switched network. See 20 VAC 5-402-140 for further definition and specific instructions on counting and reporting access lines to the SCC.

"Network interface" means the point where all customer premises wiring and equipment is connected or disconnected with the LEC network.

"Network interface device" or "NID" means an industry provided jack of a type provided for in Federal Communications Commission ("FCC") regulation, 47 CFR Part 68, which readily permits the connection and disconnection of all customer premises equipment with the LEC network.

"Regulated telephone service" means any service provided by the LEC which is subject to the surveillance and constraints of the SCC as provided under the statutes of the Commonwealth of Virginia.

"Trouble report" means any oral or written notice from a customer or user of regulated telephone service of a condition which affects or may affect service quality or performance.

B. The level of customer trouble reports is a good indication of a local exchange carrier's ("LEC") performance in providing telephone service. Trouble reports normally occur as a result of malfunctioning telecommunications equipment or associated telephone plant or both.

The SCC requires a report each month from measured LECs on their level of customer trouble reports. The report required is defined as the incidence of all customer trouble reports received each month on services subject to regulation by the SCC, whether the troubles were found or not found in the telecommunications equipment or associated telephone plant, per 100 access lines.

The purpose of the measurement "Trouble Reports Per 100 Access Lines Per Month" is to determine the performance of LECs in providing telephone service to its customers which is relatively free of malfunctioning telecommunications equipment or associated telephone plant.

The SCC considers a level of customer trouble reports no greater than six per 100 access lines per month to be "satisfactory" service.

C. The SCC performance bands on this measurement are as follows:

0 - 6.0	Satisfactory
6.1 - 8.0	Weakspot
Over 8.0	Unsatisfactory

D. 1. Except as provided in subdivision 2 of this subsection, count and include as a trouble report any

oral or written notice of difficulty on regulated telephone service which is identified as occurring on LEC equipment, up to and including the NID.

2. Exclude from the count of trouble reports the following:

a. Any report of trouble from an employee of the LEC which is discovered through diagnostic or other work done during maintenance of telephone equipment.

b. All reports on official lines used for service internal to the LEC's operations.

c. Any report from a customer or user concerning a problem with service not subject to regulation by the SCC.

d. Any contact with a customer or user concerning a matter not related to service difficulty or trouble.

E. 1. Determine a monthly total count for the LEC of all trouble reports as defined in the definition of "trouble report" in subsection A of this section and in subdivision D 1 of this section.

2. Determine an end of report month count of all LEC access lines as defined in the definition of "access line" in subsection A of this section.

3. Divide the total derived in subdivision 1 of this subsection by the total of subdivision 2 of this subsection and multiply by 100 as described below:

$$\frac{\text{Total Month Trouble Reports}}{\text{Total Access Lines at End of Month}} \times 100 = \text{Trouble Reports Per 100 Access Lines Per Month}$$

4. Report the result derived in subdivision 3 of this subsection to the SCC as the Trouble Reports Per 100 Access Lines for the month of report.

**20 VAC 5-402-40. Service orders completed within objective interval - percent per month; definitions; performance bands; service orders included in measurement; performance measurement computation.**

A. As used in this section, the following words and terms mean:

"Application date" means the date that the ILEC or CLEC receives application for service from a customer or receives a service deposit if one is required.

"Appointment" means a definite commitment for service completion negotiated with the customer.

"Appointment met" means if the work called for on the service order has been fully completed from a service standpoint on or before the initial appointment date.

"Appointment types" include:

1. *Standard interval appointment.* An appointment, proposed by the ILEC or CLEC and accepted by the customer, for service completion on a specific date any time within the five- or three-working-day objective (whichever interval is controlling) specified by the SCC.

2. *Extended interval appointment.* An appointment requested by the customer for service completion beyond five or three working days (whichever interval is controlling) of service application.

"Residential and small business service order" means a customer initiated service order for basic dial tone service which either newly connects or moves to a new address any residential or small business customer with no more than four access lines.

"Small business" means an account which is billed at a business rate as specified in the LEC's tariff and has no more than four access lines.

B. Both incumbent and competitive local exchange carriers ("ILEC" and "CLEC") should endeavor to satisfy 95% of all requests for new service from residential and small business customers within five working days after receipt of an application unless a later installation date is requested by the customer. There is one exception to the five-day objective interval. CLECs should satisfy the service requests of customers with number portability needs within three working days after receipt of the information required to transport the number from the ILEC. ILECs and CLECs should make provisions for adequate inside and outside plant facilities based on realistic anticipated demand for new service. A service order should be issued for each customer request for service regardless of the availability of facilities or force required to perform the work.

The SCC considers order completion within five working days of the service application date to be "satisfactory" for residential and small business new service orders where number portability is not an issue. When number portability from an ILEC to a CLEC is required, the SCC considers order completion by the CLEC within three working days of information receipt from the ILEC to be "satisfactory." When a customer specifically requests service order completion on a date beyond the five- or three- (with number portability) working-day interval, the service order is excluded from the count for this measurement. Such exclusion, however, must be at the specific customer initiated request and not for customer acceptance of a company initiated suggestion for completion beyond the objective interval.

The purpose of the measurement "Service Orders Completed Within Objective Interval - Percent Per Month" is to determine the performance of ILECs and CLECs in completing work requested by customers on residential and small business new service orders in a timely manner.

This measurement is defined as the number of all residential and small business new service orders completed within the SCC defined objective intervals expressed as a percentage of all residential and small business orders

subject to measure. See subsection D of this section for the specification of service orders to be included in this measurement.

C. The SCC performance bands on this measurement are as follows:

95.0 - 100.0%	Satisfactory
85.0 - 94.9%	Weakspot
Under 85.0%	Unsatisfactory

D. For the purpose of this plan, measurement is applied only to customer initiated residential and small business service orders of the following types:

1. *New connect order.* This order type is used for the initial connection or reconnection of main service.

2. *Change of address order.* When a customer changes locations or addresses, count the order which installs service at the new address. Typically, LECs refer to this order as the "To" or "T" portion of the order.

All orders of any type other than those specified in this subsection are excluded from this measurement plan. NOTE: Extended interval appointment orders as defined in subdivision 2 of the definition of "appointment types" in subsection A of this section are excluded.

E. 1. Subsection D of this section specifies the service orders to be included in this measurement. Count the total of all orders specified in subsection D of this section and completed during the month of the report.

2. Count all service orders (as specified in subsection D of this section) with standard interval appointments (as defined in subdivision 1 of the definition of "appointment types" in subsection A of this section) and with "appointments met" (as described in subsection A of this section).

3. Divide the total derived in subdivision 2 of this subsection by the total of subdivision 1 of this subsection and multiply by 100, as described below.

Customer Initiated Residential and/or Small Business New Service Orders With Standard Interval Appointments Met	X 100 = The Percent of all Customer Initiated Residential and/or Small Business Service Orders Completed Within Objective Interval
Total of all Customer Initiated Residential and/or Small Business New Service Orders	

4. Report the percentage derived in subdivision 3 of this subsection to the SCC each month as the Service Orders Completed Within Objective Interval - Percent Per Month.

**20 VAC 5-402-50. Customer service order commitments met - percent per month; definitions; performance bands;**

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## service order commitments; performance measurement computations.

A. As used in this section, the following words and terms mean:

"Emergency operating condition" means any unusual situation which affects the functioning of the LEC network in such a manner as to require an "Unusual Operating Conditions Report" to the SCC in accordance with the guidelines issued by this agency on such reports. Typically, such conditions are caused by catastrophic storms, major damage to telecommunications plant, or similar conditions.

"Regulated telephone service" means any service provided by the LEC which is subject to the surveillance and constraints of the SCC as provided under the statutes of the Commonwealth of Virginia.

"Residential or small business service order" means a customer initiated service order for basic dial tone service which either newly connects or moves to a new address any residential or small business customer with no more than four access lines.

"Service order commitment made" means a specific time, quoted to a customer at the time the request for service is placed, given as the deadline by which the work for the customer is to be completed and the service available for use.

"Service order commitment met" means the work for the customer is completed and the service is available for use by not later than the commitment made to the customer at the time the request for service was placed.

"Small business" means an account which is billed at a business rate as specified in the LEC's tariff and has no more than four access lines.

B. Customers who file requests for newly installed service or movement of existing service should be given commitments by the local exchange companies ("LEC") concerning when they can expect order completion. A record of the service order commitments made and service order commitments met should be kept by the LEC. LECs should measure their performance in meeting their customer service order commitments.

The SCC considers that, except in the case of emergency operating conditions, 90% to 100% of all residential and small business service orders for new service connection or movement of existing service on regulated telephone service should be completed for customer use by no later than the deadline quoted to the customer when the service order was taken. A report is required each month from measured LECs on their performance in meeting this service standard.

The measurement for monthly reporting to the SCC is defined as the number of residential and small business customer service order commitments for regulated telephone service met as a percentage of all residential and small business customer service order commitments for regulated

telephone service made during the report month. The purpose of the report is to determine the LECs' performance in meeting the service standard described in the above paragraph.

C. The SCC performance bands on this service standard are as follows:

90.0 - 100.0%	Satisfactory
88.0 - 89.9%	Weakspot
Below 88.0%	Unsatisfactory

D. 1. For the purpose of this plan, measurement is applied only to customer initiated residential and small business new service orders of the following types:

a. New Connect Order. This order type is used for the initial connection or reconnection of main service.

b. Change of Address Order. When a customer changes locations or addresses, count the order which installs service at the new address. Typically, LECs refer to this order as the "To" or "T" portion of the order.

2. Count and include all service order commitments made during the report month on regulated telephone service orders as described in subdivision 1 of this subsection.

3. Count and include all service order commitments met during the report month on regulated telephone service orders as described in subdivision 1 of this subsection.

4. Exclude from the count any commitment on any service orders other than those specified in subdivision 1 of this subsection.

E. 1. Determine a monthly total count of all service order commitments made as provided in subdivision D 2 of this section.

2. Determine a monthly total count of all service order commitments met as provided in subdivision D 3 of this section.

3. Divide the total derived in subdivision 2 of this subsection by the total of subdivision 1 of this subsection and multiply by 100 as described below:

$$\frac{\text{Total Month Customer Service Order Commitments Met}}{\text{Total Month Customer Service Order Commitments Made}} \times 100 = \text{Customer Service Order Commitments Met - Percent Per Month}$$

4. Report the result derived in subdivision 3 of this subsection to the SCC as the Customer Service Order Commitments Met - Percent Per Month.

**20 VAC 5-402-60. Out-of-service trouble reports cleared within 24 hours - percent per month; definitions; performance bands; trouble reports; performance measurement computation.**

A. As used in this section, the following terms mean:

"Emergency operating condition" means any unusual situation which affects the functioning of the LEC network in such a manner as to require an "Unusual Operating Conditions Report" to the SCC in accordance with the guidelines issued by this agency on such reports. Typically, such conditions are caused by catastrophic storms, major damage to telecommunications plant, or similar conditions.

"Network interface" means the point where all customer premises wiring and equipment is connected or disconnected from the LEC network.

"Network interface device" or "NID" means an industry provided jack of a type provided for in Federal Communications Commission ("FCC") regulation, 47 CFR Part 68, which readily permits the connection and disconnection of all customer premises equipment from the LEC network.

"Out-of-service" means any condition which prevents a customer or user from originating and receiving calls on a line.

"Regulated telephone service" means any service provided by the LEC which is subject to the surveillance and constraints of the SCC as provided under the statutes of the Commonwealth of Virginia.

"Trouble report" means any oral or written notice from a customer or user of regulated telephone service of a condition which affects or may affect service quality or performance.

B. Timely and effective work in clearing customer reports of trouble is a key responsibility for local exchange companies ("LEC"). High priority should be given to clearing reports from customers which indicate that they are "out-of-service."

The SCC considers that, except in the case of emergency operating conditions, 90% to 100% of all "out-of-service" trouble reports should be cleared, with restoration of service, within 24 hours of trouble report receipt. A report is required each month from measured LECs on their performance in meeting this service standard.

The measurement for monthly reporting to the SCC is defined as the number of out-of-service trouble reports cleared during the report month, with service restored within 24 hours of report receipt, as a percentage of all out-of-service trouble reports received during the report month. The purpose of the report is to determine the LECs' performance in meeting the service standard described in the above paragraph.

C. The SCC performance bands on this service standard are as follows:

90.0 - 100.0%	Satisfactory
85.0 - 89.9%	Weakspot
Below 85.0%	Unsatisfactory

D. 1. Except as provided in subdivision 2 of this subsection, count and include as a trouble report any oral or written notice of difficulty on regulated telephone service which is identified as occurring on LEC equipment, up to and including the NID, and the customer is identified as being out-of-service.

2. Exclude from the out-of-service trouble report count the following:

- a. Any report of trouble from an employee of the LEC which is discovered through diagnostic or other work done during maintenance of telephone equipment.
- b. All reports on official lines used for service internal to the LEC's operations.
- c. Any report from a customer or user concerning a problem with service not subject to regulation by the SCC.
- d. Any contact with a customer or user concerning a matter not related to service difficulty or trouble.
- e. Any out-of-service trouble report on which the customer specifically initiates a request that clearance action be delayed beyond 24 hours.
- f. Any out-of-service trouble report on which the LEC representative, upon arriving at the customer location during the agreed upon appointment time, is unable to gain access to the customer equipment necessary for trouble analysis and clearance.

E. 1. Determine a monthly total count of all out-of-service trouble reports as defined in subdivision D 1 of this section.

2. Count the out-of-service trouble reports determined in subdivision 1 of this subsection on which service was restored and the trouble was cleared within 24 hours of the report receipt.

3. Divide the total derived in subdivision 2 of this subsection by the total of subdivision 1 of this subsection and multiply by 100 as described below:

$$\frac{\text{Total Month Out-Of-Service Trouble Reports Cleared Within 24 Hours}}{\text{Total Month Out-Of-Service Trouble Reports}} \times 100 = \text{Out-of-Service Trouble Reports Cleared Within 24 Hours - Percent Per Month}$$

4. Report the result derived in subdivision 3 of this subsection to the SCC as the "Out-Of-Service Trouble Reports Cleared Within 24 Hours - Percent Per Month."

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**20 VAC 5-402-70. Customer repair commitments met - percent per month; definitions, performance bands; customer repair; commitments; performance measurement computations.**

A. As used in this section, the following terms mean:

"Customer repair commitment made" means a specific time, quoted to a customer at the time of trouble report filing, given as the deadline by which either the LEC technician will be dispatched or the customer's trouble will be cleared.

"Customer repair commitment met" means one in which either the LEC technician was dispatched by no later than the time quoted to the customer or the trouble was cleared by no later than the time quoted to the customer when the trouble report was filed.

"Emergency operating condition" means any unusual situation which affects the functioning of the LEC network in such a manner as to require an "Unusual Operating Conditions Report" to the SCC in accordance with the guidelines issued by this agency on such reports. Typically, such conditions are caused by catastrophic storms, major damage to telecommunications plant, or similar conditions.

"Regulated telephone service" means any service provided by the LEC which is subject to the surveillance and constraints of the SCC as provided under the statutes of the Commonwealth of Virginia.

"Trouble report" means any oral or written notice from a customer or user of regulated telephone service of a condition which affects or may affect service quality or performance.

B. Customers who file trouble reports on regulated telephone service with local exchange companies ("LEC") should be given commitments by the LEC concerning either when they can expect a service technician to be dispatched or their service problems to be cleared. A record of the customer repair commitments made and customer repair commitments met should be kept by the LEC. LECs should measure their performance in meeting their customer repair service commitments.

The SCC considers that, except in the case of emergency operating conditions, 90% to 100% of all regulated telephone service customer repair commitments made when the trouble report was filed will be met. A report is required each month from measured LECs on their performance in meeting this service standard.

The measurement for monthly report to the SCC is defined as the number of customer repair commitments met on regulated telephone service as a percentage of all customer repair commitments made on regulated telephone service during the report month. The purpose of the report is to determine the LECs' performance in meeting the service standard described in this subsection.

C. The SCC performance bands on this service standard are as follows:

90 - 100%	Satisfactory
85 - 89%	Weakspot
Below 85%	Unsatisfactory

D. 1. Except as provided in subdivision 3 of this subsection, count and include all customer repair commitments made on regulated telephone service during the report month.

2. Except as provided in subdivision 3 of this subsection, count and include all customer repair commitments met on regulated telephone service during the report month.

3. Exclude from the counts of customer repair commitments made and customer repair commitments met the following:

a. Any report of trouble from an employee of the LEC which is discovered through diagnostic or other work done during maintenance of telephone equipment.

b. All reports on official lines used for service internal to the LEC's operations.

c. Any report from a customer or user concerning a problem with service not subject to regulation by the SCC.

d. Any contact with a customer or user concerning a matter not related to service difficulty or trouble.

e. Any commitment on which the LEC representative, upon arriving at the customer location during the agreed upon appointment time, is unable to gain access to the customer equipment necessary for trouble analysis and clearance.

E. 1. Determine a monthly total count of all customer repair commitments made as provided in subdivision D 1 of this section.

2. Determine a monthly total count of all customer repair commitments met as provided in subdivision D 2 of this section.

3. Divide the total derived in subdivision 2 of this subsection by the total of subdivision 1 of this subsection and multiply by 100 as described below:

$$\frac{\text{Total Month Customer Repair Commitments Met}}{\text{Total Month Customer Repair Commitments Made}} \times 100 = \text{Customer Repair Commitments Met - Percent Per Month}$$

4. Report the result derived in subdivision 3 of this subsection to the SCC as the "Customer Repair Commitments Met - Percent Per Month."

**20 VAC 5-402-80. Repeated trouble reports - percent per month; definitions; performance bands; reported trouble reports; performance measurement computation.**

A. As used in this section, the following terms mean:

"Access line" means a customer dial tone line which provides access to the public switched network. See 20 VAC 5-402-140 for further definition and specific instructions on counting and reporting access lines to the SCC.

"Regulated telephone service" means any service provided by the LEC which is subject to the surveillance and constraints of the SCC as provided under the statutes of the Commonwealth of Virginia.

"Trouble report" means any oral or written notice from a customer or user of regulated telephone service of a condition which affects or may affect service quality or performance.

B. Users of telecommunications service normally contact their local exchange carriers ("LEC") with customer trouble reports as a result of malfunctioning telecommunications equipment or associated telephone plant or both. The LECs, as a part of their service, take the action required to clear the customer trouble reports and eliminate the problems which are the source of the customers' reports. Customers expect that their complaints will be effectively dealt with and their service malfunctions eliminated the first time they report the problem to the LEC.

When a telecommunications user reports any trouble on the same line again, it becomes a "repeated report." Repeated reports are a high source of customer irritation.

The SCC requires a monthly report from measured LECs on the incidence of repeated trouble reports. The monthly report required is named "Repeated Trouble Reports - Percent Per Month." It is defined as the incidence of two or more customer trouble reports involving regulated telephone service received from the same access lines within a 30-day period, stated as a percentage of total trouble reports. The purpose of the report is to measure the LEC's performance in minimizing repeated reports.

The SCC considers "satisfactory" service on the incidence of repeated trouble reports to be a percentage per month which is not greater than 16%.

C. The SCC performance bands on this service standard are as follows:

0 - 16.0%	Satisfactory
16.1 - 20.0%	Weakspot
Over 20.0%	Unsatisfactory

D. 1. Except as provided in subdivision 2 of this subsection, count and include as a repeated trouble report any oral or written notice on a service problem of any nature involving regulated telephone service which occurs more than once on the same access line and is received within a 30-day period of the first report.

2. Exclude from the count of repeated trouble reports the following:

a. Any report of trouble from an employee of the LEC which is discovered through diagnostic or other work done during maintenance of telephone equipment.

b. All reports on official lines used for service internal to the LEC's operations.

c. Any report from a customer or user concerning a problem with service not subject to regulation by the SCC.

d. Any contact with a customer or user concerning a matter not related to service difficulty or trouble.

E. 1. Determine a monthly total count of all repeated reports as defined in subdivision D 1 of this section.

2. Determine a monthly total count of all trouble reports as defined in the definition of "trouble report" in subsection A of this section.

3. Divide the total derived in subdivision 1 of this subsection by the total of subdivision 2 of this subsection and multiply by 100 as described below:

$$\frac{\text{Total Month Repeated Trouble Reports}}{\text{Total Month Customer Trouble Reports}} \times 100 = \text{Repeated Trouble Reports - Percent Per Month}$$

4. Report the result derived in subdivision 3 of this subsection to the SCC as the "Repeated Trouble Reports - Percent Per Month."

**20 VAC 5-402-90. Dial tone delay - percent of switching systems meeting objective; definitions; performance bands; switching systems; performance measurement computation.**

A. As used in this section, the following words and terms mean:

"Access line" means a customer dial tone line which provides access to the public switched network. See 20 VAC 5-402-140 for further definition and specific instructions on counting and reporting access lines to the SCC.

"Central office" means a switching system through which connections are made between access lines within the area served by that system and access lines in the same or other switching systems within the same or other exchanges.

"Dial tone" means a distinctive sound transmitted to a switching system user who lifts a telephone instrument receiver or otherwise energizes an access line in an attempt to initiate a call. The sound signals to the switching system user that pulsing or dialing can begin.

"Exchange" means a geographical area in which local telecommunications service is provided at specific rates and charges. An exchange may include one or more central offices or switching systems.

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"Switching system" means an assembly of hardware and software arranged for establishing connections between access lines within the area served by that system and access lines in the same or other systems within the same or other exchanges. A switching system is synonymous with the term "central office."

B. The telecommunications industry has always emphasized the need for a proper balance between service and cost. One key element in this balance is dial tone speed. The amount of switching hardware and software provided by a local exchange company ("LEC") can impact upon the speed with which dial tone is provided to customers who wish to originate calls. Historically, an objective level of dial tone speed has been maintained by the telecommunications industry at 98.5% dial tone received within three seconds during the busy hour.

The SCC considers an individual switching system dial tone speed objective of 98.5% within three seconds during the busy hour to be "satisfactory" service. The SCC expects LECs to maintain dial tone speed service at the level of 98.5% within three seconds during the busy hour in no less than 98.5% of all its switching systems which furnish dial tone each month. The SCC also expects no single switching system which is a source of customer dial tone to fail to meet the 98.5% in three seconds during the busy hour objective for more than two consecutive months. A report is required each month from measured LECs on their performance in meeting these service standards.

Dial tone speed performance data to be reported to the SCC each month by measured LECs is as defined below:

1. Dial Tone Delay - Percent of Switching Systems Meeting Objective. This measurement is defined as the number of switching systems that are a source of subscriber dial tone which meet the monthly objective of 98.5% dial tone delivered in three seconds during the busy hour as a percentage of all switching systems that are a source of subscriber dial tone.
2. List the names or exchange locations or both of all switching systems which do not meet the objective of 98.5% dial tone delivered in three seconds for the report month.
3. List the names or exchange locations or both of all switching systems which do not meet the objective level of 98.5% dial tone delivered in three seconds for the current report month and the two consecutive previous months.

C. The SCC performance bands on these service standards are as follows:

1. Dial Tone Delay - Percent of Switching Systems Meeting Objective:

98.5 - 100.0%	Satisfactory
96.6 - 98.4%	Weakspot
Below 96.6%	Unsatisfactory

2. Switching Systems Not Meeting the Dial Tone Delay Objective for Three or More Consecutive Months:

None	Satisfactory
One or More	Unsatisfactory

- D. 1. Include any switching system in the measurement results which is a source of dial tone to subscribers.
2. Exclude from the results any switching system which does not supply dial tone to subscribers but is used exclusively, as an example, for such tasks as call distribution to operator services, repair service, and business office functions, or toll switching.
- E. 1. Utilizing the software furnished by the switching systems vendor or vendors, or by other appropriate means, determine the report month dial tone speed performance for each switching system included in the measurement.
2. Count the number of switching systems which meet the objective of 98.5% dial tone speed attempts completed within three seconds for the report month.
3. Divide the total derived in subdivision 2 of this subsection by the total number of switching systems included in the measurement per subdivision D 1 of this section and multiply by 100 as described below:

Number of Switching Systems Meeting the Objective 98.5% Dial Tone Speed Returned Within 3 Seconds		Total Number of Switching Systems Included in the Measurement	X 100 = Dial Tone Delay - Percent of Switching Systems Meeting Objective
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4. List by name or exchange location or both all switching systems which do not meet the objective of 98.5% dial tone delivered in three seconds for the report month.
5. List by name or exchange location or both all switching systems which do not meet the objective level of 98.5% dial tone delivered in three seconds for the current report month and the two consecutive preceding months.
6. Report the results derived in subdivision 3 of this subsection and the lists compiled in subdivisions 4 and 5 of this subsection each month to the SCC.

**20 VAC 5-402-100. Network blocking - percent of final trunk groups meeting objective; definitions; performance bands; trunk groups; performance measurement computation.**

A. As used in this section, the following terms mean:

"Central office" means a switching system through which connections are made between access lines within the area served by that system and access lines in the same or other switching systems within the same or other exchanges.

"Final trunk group" means a nonalternate route set of telecommunications paths between two central offices or between a central office and a tandem switching system. Call attempts routed via final trunk groups must either find an idle trunk for completion or be blocked. This is known as a "no circuit (NC)" condition. Final trunk groups are liberally engineered to provide a low incidence of blocking during their busy hour.

"High usage trunk group" means a set of telecommunications paths between two points for first-routing calls. High usage trunk groups are engineered to handle a certain amount of offered call attempts during the trunk group busy hour and alternately route calls as an overflow to a second or final group for attempted completion.

"Tandem switching system" means a central office used primarily as an intermediate switching point for calls between other central offices.

B. Users of telephone service expect their calls to complete without frequent blockage in the telecommunications network. A key element in meeting this public service expectation is the provision of sufficient trunks or paths for carrying subscriber calls between switching systems.

Paths in a telecommunications network may be configured into high usage trunk groups between central offices which overflow to alternate routes. When all high usage trunks are busy, call attempts are directed through tandem switching systems via final trunk groups between the tandem systems and the central offices. If high usage trunk groups between switching systems are not justified, then final trunk groups between the interconnected central offices are provided. Once a call is routed to a final trunk group, a call must find a trunk, or path, within the group for call completion or be blocked. The final trunk group is the last resort for either establishing a connection or blocking a call. When a call is blocked, a "no circuit (NC)" condition exists.

The trunking network is normally engineered on the basis of 1.0% blocking. This objective means that during the individual busy hour of each final trunk group no more than 1.0% of all attempts to complete a call will encounter an NC condition. The SCC considers NC conditions no greater than 1.0% during the trunk group busy hour on 98% of all local exchange carrier (LEC) final trunk groups to be "satisfactory" service. The SCC also expects no single final trunk group to exceed 1.0% NC during its busy hour for more than two consecutive months. A report is required each month from measured LECs on their performance in meeting these service standards.

Network blocking performance data to be reported to the SCC each month by measured LECs is as defined below:

1. Network Blocking - Percent of Final Trunk Groups Meeting Objective. This measurement is defined as the number of final trunk groups which meet the monthly objective of no more than 1.0% NC during their individual busy hour as a percentage of all final trunk groups.

2. List the names of all final trunk groups not meeting the monthly objective of no more than 1.0% NC during their individual busy hour for the report month.

3. List the names of all trunk groups not meeting the objective of no more than 1.0% NC during their individual busy hour for the current report month and the two consecutive previous months.

C. The SCC performance bands on these service standards are as follows:

1. Network Blocking - Percent of Final Trunk Groups Meeting Objective:

98.0 - 100.0%	Satisfactory
96.0 - 97.9%	Weakspot
Below 96.0%	Unsatisfactory

2. Final Trunk Groups Exceeding the NC Objective for Their Individual Busy Hour for Three or More Consecutive Months:

None	Satisfactory
One or More	Unsatisfactory

D. 1. Include all final trunk groups in the measurement results which are used to carry public message calls.

2. Exclude from the measurement any type of trunk group which alternately routes calls to another trunk group in handling public message calls. All trunk groups which are dedicated to private line use should be excluded. Exclude all trunk groups associated with choke networks or mass calling networks or both.

E. 1. Utilizing the software furnished by vendors or by other appropriate means, determine the report month busy hour percent NC performance for each final trunk group included in the measurement.

2. Count the number of final trunk groups which meet the objective of 1.0% or less NC during the trunk group busy hour for the report month.

3. Divide the total derived in subdivision 2 of this subsection by the total number of final trunk groups included in the measurement per subdivision D 1 of this section and multiply by 100 as described below:

$$\frac{\text{Number of Final Trunk Groups Meeting the Objective of 1.0\% or Less NC}}{\text{Total Number of Final Trunk Groups Included in the Measurement}} \times 100 = \text{Network Blocking - Percent of Final Trunk Groups Meeting Objective}$$

4. List by name all final trunk groups which do not meet the objective of 1.0% NC or less during the individual trunk group busy hour for the report month.

5. List by name all final trunk groups which do not meet the objective level of 1.0% NC or less during the

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individual trunk group busy hour for the current report month and the two consecutive preceding months.

6. Report the results derived in subdivision 3 of this subsection and the lists compiled in subdivisions 4 and 5 of this subsection each month to the SCC.

## **20 VAC 5-402-110. Network reports per 100 access lines per month; definitions; performance bands; network reports; performance measurement computation.**

A. As used in this section, the following words and terms mean:

"Access line" means a customer dial tone line which provides access to the public switched network. See 20 VAC 5-402-140 for further definition and specific instructions on counting and reporting access lines to the SCC.

"Central office" means a switching system through which connections are made between access lines within the area served by that system and access lines in the same or other switching systems within the same or other exchanges.

"Exchange" means a geographical area in which local telecommunications service is provided at specific rates and charges. An exchange may include one or more central offices or switching systems.

"Regulated telephone service" means any service provided by the LEC which is subject to the surveillance and constraints of the SCC as provided under the statutes of the Commonwealth of Virginia.

"Switching system" means an assembly of hardware and software arranged for establishing connections between access lines within the area served by that system and access lines in the same or other systems within the same or other exchanges. A switching system is synonymous with the term "central office."

B. 1. The level of customer reports on trouble occurring within the network is a good indication of how a local exchange company's ("LEC") switching systems and associated components are performing in processing end user calls. Customer trouble reports identified as occurring within the network can indicate malfunctions which may cause rapidly deteriorating service quality.

2. Network reports are all customer trouble reports on regulated telephone service which are caused by a central office or switching system whether the trouble is found or not found. Network reports include all customer trouble reports on equipment permanently associated with customer lines and/or equipment common to customer lines and the trouble occurs on regulated telephone service. Trouble reports dispatched to outside plant forces (cable maintenance personnel, for example) for diagnostic and corrective action are excluded from the definition of network reports. Network reports, in addition to their use in this measurement, are included in the total trouble reports used to derive the service measurement "Trouble Reports Per 100 Access Lines

Per Month." See 20 VAC 5-402-60 for further clarification on the subject of customer trouble reports.

3. The SCC requires a report each month from measured LECs on their level of network reports. The report required is defined as the incidence of network reports received each month on services subject to regulation by the SCC whether the troubles were found or not found in the central offices, switching systems and associated components as described in subdivision 2 of this subsection, per 100 access lines.

4. The purpose of the measurement "Network Reports Per 100 Access Lines Per Month" is to determine the performance of LECs in providing telephone network service to its customers which is relatively free of malfunctions.

5. The SCC considers a level of network reports no greater than 0.35 per 100 access lines per month to be "satisfactory" service.

C. The SCC performance bands on this measurement are as follows:

0 - 0.35	Satisfactory
0.36 - 0.45	Weakspot
Over 0.45	Unsatisfactory

D. 1. Except as provided in subdivision 2 of this subsection, count and include as a network report any oral or written notice of difficulty on regulated telephone service which meets the trouble report description specified in subdivision B 2 of this section.

2. Exclude from the count of network reports the following:

a. Any report of trouble from an employee of the LEC which is discovered through diagnostic or other work done during maintenance of telephone equipment.

b. All reports on official lines used for service internal to the LEC's operations.

c. Any report from a customer or user concerning a problem with service not subject to regulation by the SCC.

d. Any contact with a customer or user concerning a matter not related to service difficulty or trouble.

e. Any trouble report which does not fit the network report description outlined in subdivision B 2 of this section.

E. 1. Determine a monthly total count for the LEC of all network reports as defined in subdivisions B 2 and D 1 of this section.

2. Determine an end of report month count of all LEC access lines as defined in the term "access line" in subsection A of this section.

3. Divide the total derived in subdivision 1 of this subsection by the total of subdivision 2 of this subsection and multiply by 100 as described below:

$$\frac{\text{Total Month Network Reports}}{\text{Total Access Lines at End of Month}} \times 100 = \text{Network Reports Per 100 Access Lines Per Month}$$

4. Report the result derived in subdivision 3 of this subsection to the SCC as the "Network Reports Per 100 Access Lines" for the month of report.

**20 VAC 5-402-120. Business office accessibility - percent per month; definitions; performance bands; measurement parameters; performance measurement computation.**

A. As used in this section, the following words mean:

"Automated Menu System" means a telecommunications answering system designed for handling heavy incoming call volume that sends a call to the first available answering position or, if all positions are busy, plays a recorded message and puts calls in a queue until an answering position becomes available. In an automated menu system, the incoming call originator must make a selection concerning which type of response is desired between options offered by a recording. After making a selection, the customer responds to an automated prompt either by depressing a key or by voice.

"Emergency operating condition" means any unusual situation which affects the functioning of the LEC network in such a manner as to require an "Unusual Operating Conditions Report" to the SCC in accordance with the guidelines issued by this agency on such reports. Typically, such conditions are caused by catastrophic storms, major damage to telecommunications plant, or similar conditions.

"Queue" means a lineup of items, calls, or conditions waiting to move through or complete a process. Used in this measurement, a queue is a lineup of customer calls waiting for connection to a live business office agent.

B. Local exchange carrier ("LEC") customers expect prompt connection, when requested, to a live agent for the transaction of business. Customer connection to a live agent may occur in one of two ways. The customer may be connected either through an automated "menu" system requiring positive key/voice response from the customer after prompt or directly after dialing the LEC number. Under either method of access to a live agent, the customer expects and should receive prompt connection. This rule intends that a customer's request will be handled at the time the call is answered. It is not the intent of this measurement to handle the customer's request on a call back basis after the call is answered by a live agent.

The SCC considers that, except in the case of emergency operating conditions, 85% to 100% of all customers who wish to be connected to a live business office agent should be so

connected in no longer than 20 seconds. A report is required each month from measured LECs on their performance in meeting this service standard.

The measurement for monthly report to the SCC is defined as the number of calls offered directly to the business office agent or to a call waiting queue and that are answered by the business office agent within 20 seconds, expressed as a percentage of all calls offered. The purpose of the report is to determine the LECs' performance in meeting the service standard described in this subsection.

C. The SCC performance bands on this service standard are as follows:

85.0 - 100.0%	Satisfactory
80.0 - 84.9%	Weakspot
79.9% Or Less	Unsatisfactory

D. 1. Business office accessibility is a measure of work force performance in answering customer calls by a live agent within the objective time of 20 seconds. The measurement time for each customer call shall be as follows:

- a. Call Offered Directly to a Live Agent. The call time is measured from the completion of customer dialing to the answer by the business office agent.
- b. Call Offered to a Queue. The call time starts with the customer's request for a live agent through either a depressed key or voice command and ends when a live agent answers the customer.

2. Business office accessibility performance measurement rests upon the assumption that the LEC has furnished sufficient numbers of lines or trunks to reach the business office without significant equipment blockage. Any indication of significant equipment shortage, such as customer complaints to the SCC, may be the cause of an investigation by the SCC/LEC and may invalidate the business office accessibility results until the investigation or corrective action is completed or both.

3. Performance measurement data shall be collected during all hours in which the LEC business office is available to receive customer calls.

4. Count all monthly calls for a live agent offered under either or both methods described in subdivision 1 of this subsection. The monthly call count shall include abandoned calls and calls which overflow out of the system as well as answered calls.

5. All calls offered to a live agent should be timed in accordance with subdivision 1 of this subsection. Obtain a monthly count of all calls offered to a live agent which are answered in 20 seconds or less.

E. 1. Determine the monthly count of all calls offered to a live agent and answered within 20 seconds as described in subdivision D 5 of this section.

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2. Determine a count of all monthly calls offered to a live agent as described in subdivision D 4 of this section.

3. Divide the total derived in subdivision 1 of this subsection by the total derived in subdivision 2 of this subsection and multiply by 100 as described below:

Total Month Calls Offered to  
a Live Human Agent and  
Answered Within 20 Seconds

Total Month Calls Offered to  
a Live Human Agent

X 100 = Business  
Office Accessibility -  
Percent Per Month

4. Report the result derived in subdivision 3 of this subsection to the SCC as the "Business Office Accessibility - Percent Per Month."

**20 VAC 5-402-130. Repair service accessibility - percent per month; definitions; performance bands; measurement parameters; performance measurement computation.**

A. As used in this section, the following words mean:

"Automated Menu System" means a telecommunications answering system designed for handling heavy incoming call volume that sends a call to the first available answering position or, if all positions are busy, plays a recorded message and puts calls in a queue until an answering position becomes available. In an automated menu system, the incoming call originator must make a selection concerning which type of response is desired between options offered by a recording. After making a selection, the customer responds to an automated prompt either by depressing a key or by voice.

"Emergency operating condition" means any unusual situation which affects the functioning of the LEC network in such a manner as to require an Unusual Operating Conditions Report to the SCC in accordance with the guidelines issued by this agency on such reports. Typically, such conditions are caused by catastrophic storms, major damage to telecommunications plant, or similar conditions.

"Queue" means a lineup of items, calls, or conditions waiting to move through or complete a process. Used in this measurement, a queue is a lineup of customer calls waiting for connection to a live repair service agent.

B. Local exchange carrier ("LEC") customers expect prompt connection to a live agent for the transaction of business when they request it. Customer connection to a live agent may occur in one of two ways. The customer may be connected either through an automated "menu" system requiring positive key/voice response from the customer after prompt or directly after dialing the LEC number. Under either method of access to a live agent, the customer expects and should receive prompt connection. This rule intends that a customer's request will be handled at the time the call is answered. It is not the intent of this measurement to handle the customer's request on a call back basis after the call is answered by a live agent.

The SCC considers that, except in the case of emergency operating conditions, 85% to 100% of all customers who wish to be connected to a live repair service agent should be so connected in no longer than 20 seconds. A report is required each month from measured LECs on their performance in meeting this service standard.

The measurement for monthly report to the SCC is defined as the number of calls offered directly to the repair service agent or to a call waiting queue and that are answered by the repair service agent within 20 seconds, expressed as a percentage of all calls offered. The purpose of the report is to determine the LECs' performance in meeting the service standard described in this subsection.

C. The SCC performance bands on this service standard are as follows:

85.0 - 100.0%	Satisfactory
80.0 - 84.9%	Weakspot
79.9% Or Less	Unsatisfactory

D. 1. Repair service accessibility is a measure of work force performance in answering customer calls for a live agent within the objective time of 20 seconds. The measurement time for each customer call shall be as follows:

- Call Offered Directly to a Live Agent. The call time is measured from the completion of customer dialing to the answer by the repair service agent.
- Call Offered to a Queue. The call time starts with the customer's request for a live agent through either a depressed key or voice command and ends when a live agent answers the customer.

2. Repair service accessibility performance measurement rests upon the assumption that the LEC has furnished sufficient numbers of lines or trunks to reach repair service without significant equipment blockage. Any indication of significant equipment shortage, such as customer complaints to the SCC, may be the cause of problem investigation by the SCC/LEC and may invalidate the repair service accessibility results until the investigation and/or corrective action is completed.

3. Performance measurement data shall be collected during all hours in which the LEC repair service is available to receive customer calls.

4. Count all monthly calls for a live agent offered under either or both methods described in subdivision 1 of this subsection. The monthly call count shall include abandoned calls and calls which overflow out of the system, as well as answered calls.

5. All calls offered to a live agent should be timed in accordance with subdivision 1 of this subsection. Obtain a monthly count of all calls offered to a live agent which are answered in 20 seconds or less.

- E. 1. Determine the monthly count of all calls offered to a live agent and answered within 20 seconds as described in subdivision D 5 of this section.
2. Determine a count of all monthly calls offered to a live agent as described in subdivision D 4 of this section.
3. Divide the total derived in subdivision 1 of this subsection by the total derived in subdivision 2 of this subsection and multiply by 100 as described below:

Total Month Calls Offered to  
a Live Human Agent and  
Answered Within 20 Seconds

Total Month Calls Offered to  
a Live Human Agent

X 100 = Repair  
Service Accessibility  
- Percent Per Month

4. Report the result derived in subdivision 3 of this subsection to the SCC as the "Repair Service Accessibility - Percent Per Month."

**20 VAC 5-402-140. Access line count; specific lines included in count; FCC instructions.**

A. The monthly count of access lines should include only switched lines. Any line which is nonswitched (e.g., a designed, special service line such as an alarm or direct ring down circuit) is excluded from the access line count. WATS and "WATS-like" access lines as well as 800 and "800-like" access lines should be included. Coin (Public and Semi-Public) and customer owned pay telephone access lines are included. Analog access lines should be reported as 4kHz equivalents. Integrated digital systems network (ISDN) and other digital access lines should be reported as 64kbps equivalents. A fully equipped DS-1 line, for example, corresponds to 24 64kbps equivalents. Do not include official/company or concession circuits in the access line count.

B. The purpose of the following list is to assist the report preparer in accounting for and defining the various categories of SCC reportable access lines. In the following list, the use of the words "exclude" and "include" is intended to mean "move to another definition category in the list." "Exclude" and "include" within this list does not mean removing from the total access line count.

1. Analog Switched Access Lines (4 KHz or equivalent). Switched network access lines and equivalent 4 KHz analog access circuits or trunks. This will include access lines from a digital switch if the lines themselves are not terminated at the customer's premises as digital lines.
  - a. Main Analog Access Lines (4 KHz or equivalent). Total analog switched network access lines, excluding PBX Trunks, Centrex-CO lines, Centrex-CU Trunks, Hotel/Motel LD Trunks, and Multi-Line Semi-Public Lines. Provide the number of analog 4 KHz or equivalent access lines connecting to single or multiline telephones.

b. Analog PBX and Centrex Access Trunks (4 KHz or equivalent). Equivalent 4 KHz analog access circuits or trunks between the central office and a customer location PBX or Centrex; service is provided by equipment located on customer-controlled space including Centrex-CU Trunks, PBX Trunks, Hotel/Motel LD Trunks, and Multi-Line Semi-Public Lines.

c. Analog Centrex Extensions (4 KHz or equivalent). Equivalent 4 KHz analog circuits connecting a Centrex or PBX on telephone company premises to telephones on the customer's premises; service is provided by equipment on telephone company owned or leased space including Centrex-CO Lines.

2. Digital Switched Access Lines (64 Kbps or equivalent). Switched network access lines and equivalent 64kbps (or 56kbps) digital access circuits or trunks. To be classified as digital, the access lines must be terminated at the customer end as digital lines or be available for use by the customer as digital lines. This will not include access lines from a digital switch if the lines themselves are not terminated at the customer's premises as digital lines.

a. Main Digital Access Lines (64Kbps or equivalent). The 64kbps or 56kbps or ISDN B channels or other equivalent communications channels of digital subscriber lines as defined above that are circuit switched and can carry either voice or data. Do not include access lines connecting to a customer location PBX or Centrex.

b. Digital PBX and Centrex Access Trunks (64Kbps or equivalent). The number of 64kbps or equivalent digital lines terminated on a customer location PBX and/or Centrex. Include Centrex-CU lines.

c. Digital Centrex Extensions (64Kbps or equivalent). The number of 64Kbps or equivalent digital circuits connecting a Centrex or PBX on telephone company premises to telephones on the customer's premises; service is provided by equipment on telephone company owned or leased space including ISDN based Centrex-CO Lines.

Report the total access lines to the SCC and not the subtotals.

C. The guidelines contained in subsections A and B of this section are based on the Federal Communications Commission (FCC) issued FCC Report 43-08, the ARMIS Operating Data Report, dated December 1996. See specifically in the FCC document the instructions for "Table II - Switched Access Lines In Service By Technology" beginning on Page 22 of 31 and the instructions for "Table III - Access Lines In Service By Customer" beginning on Page 26 of 31.

V.A.R. Doc. Nos. R98-32 and R98-33; Filed September 19, 1997, 8:58 a.m.

# FINAL REGULATIONS

For information concerning Final Regulations, see Information Page.

## Symbol Key

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

## TITLE 6. CRIMINAL JUSTICE AND CORRECTIONS

### BOARD OF JUVENILE JUSTICE

**REGISTRAR'S NOTICE:** Pursuant to § 9-6.14:7.1 K of the Code of Virginia the Board of Juvenile Justice is suspending the regulatory process on 6 VAC 35-40-10 et seq. Predispositional and Postdispositional Group Home Standards (Repealing), 6 VAC 35-70-10 et seq. Standards for Juvenile Correctional Centers (Repealing), 6 VAC 35-90-10 et seq. Standards for Post Dispositional Confinement for Secure Detention and Court Service Units (Repealing), 6 VAC 35-100-10 et seq. Standards for Secure Detention (Repealing), 6 VAC 35-120-10 et seq. Standards for Family Group Homes (Repealing) and 6 VAC 35-140-10 et seq. Standards for Juvenile Residential Facilities which are scheduled to become effective on January 1, 1998. The regulatory process is suspended in order to solicit additional public comments.

A public hearing will be held on Wednesday, November 12, 1997, at 1 p.m. at the Department of Juvenile Justice, 700 E. Franklin Street, Board Room, Richmond, Virginia. Public comments may be submitted until November 12, 1997. Direct comments and inquiries to Donald Carignan, Regulatory Coordinator, Department of Juvenile Justice, 700 E. Franklin Street, P. O. Box 1110, Richmond, VA 23218-1110, telephone (804) 371-0743 or FAX (804) 371-0773.

**Title of Regulation:** 6 VAC 35-40-10 et seq. Predispositional and Postdispositional Group Home Standards (REPEALED).

**Title of Regulation:** 6 VAC 35-70-10 et seq. Standards for Juvenile Correctional Centers (REPEALED).

**Title of Regulation:** 6 VAC 35-90-10 et seq. Standards for Post Dispositional Confinement for Secure Detention and Court Service Units (REPEALED).

**Title of Regulation:** 6 VAC 35-100-10 et seq. Standards for Secure Detention (REPEALED).

**Title of Regulation:** 6 VAC 35-120-10 et seq. Standards for Family Group Homes (REPEALED).

**Title of Regulation:** 6 VAC 35-140-10 et seq. Standards for Juvenile Residential Facilities.

**Statutory Authority:** §§ 16.1-309.9, 66-10 and 66-25.1 of the Code of Virginia.

**Effective Date:** January 1, 1998.

## Summary:

*These Standards for Juvenile Residential Facilities replace five separate regulations governing secure detention homes, postdispositional confinement in secure detention, predispositional and postdispositional group homes, family group homes, and juvenile correctional centers. Since Standards for the Interdepartmental Regulation of Residential Facilities for Children, commonly referred to as "CORE Standards," will continue to apply to these facilities, the deletion of standards that duplicated CORE will not change fundamental requirements.*

*These consolidated standards also provide, for the first time, standards for juvenile boot camps, work camps, juvenile industries projects in juvenile correctional centers, and independent living programs. The consolidated standards also reflect changes in the law, such as the mental health screening required when a juvenile is admitted to secure detention.*

*In general, the proposed consolidated standards are simpler and more flexible than the regulations they replace, while continuing to protect resident juveniles, staff, volunteers and visitors in the facilities and the safety of the public.*

**Summary of Public Comments 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 Donald Carignan, Regulatory Coordinator, Board of Juvenile Justice, P.O. Box 1110, Richmond, VA 23228-1110, telephone (804) 371-0743.

## CHAPTER 140.

### STANDARDS FOR JUVENILE RESIDENTIAL FACILITIES.

#### PART I.

#### GENERAL PROVISIONS.

#### 6 VAC 35-140-10. Definitions.

*Unless the context clearly indicates otherwise, terms that are defined in Standards for the Interdepartmental Regulation of Residential Facilities for Children shall have the same meaning when used in this chapter, and the following words and terms have the following meanings:*

*"Board" means Board of Juvenile Justice.*

*"Boot camp" means a short-term secure or nonsecure juvenile residential program that includes aspects of basic military training, such as drill and ceremony.*

[ "~~Control room~~" means a ~~room on a living unit where staff can monitor the activities of juveniles on the unit and serves as the staff office.~~ ]

"Department" means the Department of Juvenile Justice.

"~~Detention home~~" means a [~~local or regional public or private locked residential secure~~] facility which [~~has construction fixtures designed to prevent escape and to restrict the movement and activities of houses~~] juveniles [~~held in lawful custody who are ordered detained pursuant to the Code of Virginia~~].

[ "~~Family operated group home~~" means a private home in which juveniles may reside upon placement by a lawful child-placing agency.

"Health-trained staff person" means a person trained to provide assistance to a physician, physician's assistant, or other professional medical staff by performing such duties as preparing or reviewing screening forms for needed follow up, preparing residents and their records for sick call, and assisting in the implementation of medical orders regarding diets, housing and work assignments.

"Independent living program" means a residential program designed to help residents obtain skills which will allow them to become self-sufficient adults and which provides limited supervision by adults and encourages independent decision making. ]

"Infraction" or "rule violation" means a violation of the program's rules of conduct, in one of the following degrees of severity:

"Major rule violation" means any action that is illegal or [ any action ] expressly prohibited by those legally responsible for administration and operation of the facility [ ~~including any actions which threaten~~ which threatens ] the life, safety or security of persons or property [ and requires due process for resolution ].

"Moderate infraction" or "intermediate infraction" means a violation of the program's rules of conduct [ ~~causing a loss of some significance and~~ ] requiring use of due process procedures [ ~~that may result in disciplinary confinement, loss of privileges, or lengthened time in the program~~ for resolution ].

"Minor infraction" means a violation of the program's rules of conduct that staff may resolve informally [ ~~without imposing serious penalties~~ ].

[ "Isolation" means the confinement of a resident, after due process, in a single self-contained cell for a specified period of time as a disciplinary sanction for rule infractions. During isolation, all activities with the exception of eating, sleeping, personal hygiene, reading and writing are restricted and the resident is not permitted to participate in activities with other residents. ]

[ "~~Juvenile~~" or "~~youth~~" means any person less than 18 years of age. ]

"Juvenile correctional center" means a secure facility operated by, or under contract with, the Department of Juvenile Justice to house and treat [ persons ] committed [ juveniles to the department. Unless the context clearly indicates otherwise, the term includes the reception and diagnostic center].

"Main control center" means the central point within a secure facility where security activities are monitored and controlled 24 hours a day [ ~~with equipment, staffing and access appropriate to the facility's security level~~ ].

"Master file" means the complete record of a [ juvenile committed resident ] which is retained at the reception and diagnostic center.

"Medical record" means the complete record of medical screening and examination information and ongoing records of medical and ancillary service delivery including all findings, diagnoses, treatments, dispositions, prescriptions and their administration.

[ "Military style discipline" means a system whereby staff in a boot camp, Junior ROTC program or other military-style program are authorized to respond to minor infractions at the moment they notice the infraction being committed by imposing immediate sanctions. The offender may be directed immediately to perform some physical feat, such as pushups or some other sanction as provided for in the facility's written policies and procedures. ]

"Personal control [ unit room ]" means [ ~~an area containing a~~ ] sleeping [ ~~rooms room~~ ] with locked doors, [ ~~which houses where~~ ] residents [ are housed ] who have serious behavior problems [ ~~or who are a threat to~~ which threaten ] self, others or facility security.

"Resident" means a juvenile or other person who is legally placed in or formally admitted to the facility. In some facilities residents may be referred to as wards or detainees.

[ "Room confinement" means restricting a resident to his room.

"Secure facility" means a local, regional or state publicly or privately operated residential facility for children which has construction fixtures designed to prevent escape and to restrict the movement and activities of juveniles held in lawful custody.

"Segregation" means the placement of a resident, after proper administrative process, in a housing unit reserved for special management of residents for purposes of protective care or custodial management. ]

"Shall" means that an obligation to act is imposed.

[ "~~Summary punishments~~" means those punishments in a boot camp or Junior Reserve Officer Training Corps (JROTC) program that staff may impose at the moment they notice a minor infraction being committed, such as directing the offender to perform some physical feat, such as 20 pushups. ]

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"Transfer file" means the complete record of a [ *juvenile committed resident* ] which accompanies the [ *juvenile resident* ] to whatever facility the [ *juvenile resident* ] is transferred [ to ] while in direct state care.

"Volunteer" means any individual or group who [ ; ] of their own free will [ ; and ] without any financial gain [ ; ] provides goods or services to the program without compensation.

"Wilderness work camp" means a secure residential facility in a remote wilderness setting providing a program of therapeutic hard work to increase vocational skills.

## 6 VAC 35-140-20. Other applicable standards.

These standards will be applied [ in conjunction ] with Standards for the Interdepartmental Regulation of Residential Facilities for Children, jointly issued by the Board of Juvenile Justice, the State Board of Education, the State Mental Health, Mental Retardation and Substance Abuse Services Board, and the Board of Social Services. [ ~~Family operated group homes are not subject to the Standards for the Interdepartmental Regulation of Residential Facilities for Children.~~ ]

## 6 VAC 35-140-30. Applicability.

A. All residential programs must meet the applicable standards in Parts I (6 VAC 35-140-10 et seq.) and II (6 VAC 35-140-60 et seq.) of this chapter.

B. Detention homes, juvenile correctional centers, wilderness work camps and boot camps operated as secure facilities must also meet the applicable standards in Part III (VAC 35-140-430 et seq.) of this chapter.

[ ~~6 VAC 35-140-40. Substitute standards authorized on trial basis.~~ ]

[ ~~To encourage the development of outcome based performance measures in juvenile residential facilities, and to provide for trial testing of such measures, the board may, on a case-by-case basis and for a specified time, authorize individual programs to use an outcome-based or performance-based measure in place of a specific requirement of this regulation.~~ ]

[ ~~6 VAC 35-140-50, 6 VAC 35-140-40. ] Periodic review of regulation; ] Previous regulations terminated.~~

[ ~~A. These standards shall be reviewed beginning three years after their effective date, and revised or amended pursuant to the Administrative Process Act.~~

B. ] This chapter replaces the following: Standards for Juvenile Correctional Centers (6 VAC 35-70-10 et seq.); Standards for Secure Detention (6 VAC 35-100-10 et seq.), Family Group Homes (6 VAC 35-120-10 et seq.), [ ~~Holdover Standards (6 VAC 35-80-10 et seq.)~~ ], Standards for Post-Dispositional Confinement for Detention Homes and Court Service Units (6 VAC 35-90-10 et seq.), and Predispositional and Postdispositional Group Home Standards (6 VAC 35-40-10 et seq.).

## PART II. STANDARDS FOR ALL JUVENILE RESIDENTIAL FACILITIES.

### Article 1.

#### Program Operation.

[ ~~6 VAC 35-140-60, 6 VAC 35-140-50. ] Nondiscrimination.~~

Written policy, procedure and practice shall provide that:

1. Youth are not discriminated against based on race, national origin, color, creed, [ religion, ] sex or disability;
2. Males and females in coeducational programs have equal access to all programs and activities; they may be housed in the same unit, but not the same sleeping room;
3. [ ~~Consistent with facility security,~~ ] Reasonable accommodation is made to integrate [ youth residents ] with disabilities with the general population and grant them access to program and service areas, provided such accommodation is [ consistent with facility security and is ] unlikely to place the [ *juvenile resident or others* ] into situations of direct threat [ to health or safety ]; and
4. Youth are not subjected to corporal or unusual punishment, humiliation, mental abuse, or punitive interference with the daily functions of living, such as eating or sleeping.

[ ~~6 VAC 35-140-60. Residents' admission and orientation.~~

Written policy, procedure and practice governing the admission and orientation of residents shall provide for:

1. Verification of legal authority for placement;
2. Search of the resident and the resident's possessions, including inventory and storage or disposition of property, as appropriate;
3. Medical screening;
4. Notification of family including admission, visitation, and general information;
5. Interview with resident to answer questions and obtain information;
6. Explanation to resident of program services and schedules; and
7. Assignment of resident to a housing unit or room.

**6 VAC 35-140-65. Orientation to facility rules and disciplinary procedures.**

A. During the orientation to the facility, residents shall be given written information describing facility rules, the punishments for rule violations, and the facility's disciplinary procedures. These shall be explained to the resident and documented by the dated signature of resident and staff.

B. Where a language or literacy problem exists which can lead to a resident misunderstanding facility rules and

regulations, staff or a qualified person under the supervision of staff shall assist the resident.

## 6 VAC 35-140-70. Resident's grievance procedure.

Written policy, procedure and practice shall provide that residents are oriented to and have continuing access to a grievance procedure which provides for:

1. Resident participation in the grievance process, with assistance from staff upon request;
2. Documented, timely responses to all grievances with the reasons for the decision;
3. At least one level of appeal;
4. Administrative review of grievances;
5. Protection of residents from reprisal for filing a grievance; and
6. Retention of all documentation related to grievances for three years from the date of the filing of the grievance.]

## [ ~~6 VAC 35-140-70~~, 6 VAC 35-140-75. ] Residents' mail.

[ ~~A. In accord with~~ ] Written [ ~~procedures~~ policy, procedure ] and [ practice shall provide that: ]

- [ 1. ] In the presence of a witness, staff may [ ~~+~~4. ] open and inspect incoming [ and outgoing ] mail for contraband, but shall not read it; and
2. [ ~~Open and inspect outgoing mail when there is reason to suspect that a resident's mail contains contraband or threatens safety or security.~~ Based on legitimate interests of facility order and security, staff may read, censor or reject residents' mail and shall notify residents when incoming or outgoing letters are withheld in part or in full; ]

[ ~~B. 3. ] Staff shall not open or read correspondence and mail:~~

- [ 4. a. ] From a court, legal counsel, administrators of the grievance system or administrators of the department; or
- [ 2. b. ] Addressed to parents, family, legal guardian, [ guardian ad litem, ] counsel, courts, officials of the committing authority, public officials or grievance administrators [ - unless permission has been obtained from a court of competent jurisdiction or when there is a reasonable belief that the security of a state facility is threatened as provided for by written department procedures; ]

[ 4. Incoming and outgoing letters shall be held for no more than 24 hours and packages for no more than 48 hours, excluding weekends and holidays;

5. Cash, stamps and other specified items shall be held for the resident; ]

[ ~~C. 6. ] Upon request, each [ youth resident ] shall be given postage and writing materials [ for all legal correspondence and ] to mail at least two letters per week [ ~~in addition to all legal correspondence~~; and ]~~

[ ~~D. 7. Residents shall be permitted to correspond ] at their own expense [ ~~youths shall be permitted to correspond~~ ] with any person or organization provided such correspondence does not pose a threat to facility order and security [ and is not being used to violate or to conspire to violate the law ].~~

## 6 VAC 35-140-80. Telephone calls.

[ ~~The facility shall have~~ Residents shall be permitted access to a telephone in accordance with ] policies and procedures [ ~~governing residents' use of the telephone~~ that take into account the need for facility security and order, resident behavior, and program objectives ].

## 6 VAC 35-140-90. Visitation.

[ ~~The facility shall have~~ A. Residents shall be permitted to have visitors, consistent with written ] policies and procedures [ ~~governing visits~~, and that take into account the need for facility security and order and the behavior of individual residents and visitors.

B. The facility ] shall have a designated visiting area.

## [ 6 VAC 35-140-100. School classrooms.

In facilities that operate school programs at the facility, school classrooms shall be designed in consultation with the appropriate education authorities to comply with applicable state or local requirements. ]

## [ ~~6 VAC 35-140-100~~. Youths' 6 VAC 35-140-110. Residents' ] funds.

[ Written ] policy, procedure and practice shall provide that [ ~~youths' residents'~~ ] funds are used only for their benefit; [ ~~to pay court ordered restitutions, fines or costs~~ for payments ordered by a court of competent jurisdiction ] ; or to pay [ ~~institution fines imposed through~~ restitution for damaged property or personal injury as determined by ] disciplinary procedures.

## [ ~~6 VAC 35-140-110. Juvenile grievance procedure.~~

All residents shall have access to a grievance process that by policy, procedure and practice provides for:

1. ~~Staff and resident participation in the grievance process;~~
2. ~~Documented, timely responses to all grievances, with the reasons for the decision;~~
3. ~~At least one level of appeal;~~
4. ~~Administrative review of grievances. ]~~

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## 6 VAC 35-140-120. Contraband.

~~[ The facility shall have and follow~~ Written [ ~~procedures to~~ policy, procedures and practice shall provide for the ] control, [ ~~detect~~ detection ] and [ ~~dispose~~ disposition ] of contraband.

## 6 VAC 35-140-130. Criminal activity.

[ Written ] policy, procedure and practice shall require that:

1. All [ ~~known~~ ] criminal activity by residents is reported to the [ ~~facility director or family group home supervisor or designee~~ program administrator ] for appropriate action; and
2. Any [ ~~known~~ ] felony committed on or off the premises by residents or staff is reported [ ~~, as appropriate, to the facility director or group home supervisor or designee, to the program administrator and~~ ] the [ appropriate ] state [ ~~police, or~~ ] local law-enforcement [ ~~, or the intake officer agency~~ ].

## 6 VAC 35-140-140. Transportation.

[ It shall be the responsibility of the facility to have transportation available or to make the necessary arrangements for ] routine and emergency transportation [ ~~shall be available~~ ].

## 6 VAC 35-140-150. Nonresidential programs and services.

Any nonresidential services offered shall comply with all applicable laws and regulations.

## 6 VAC 35-140-160. Insurance.

A. Each residential program shall have:

1. Liability insurance for all employees;
2. Insurance to protect volunteers, if [ applicable the program uses volunteers ];
3. Premises liability insurance;
4. Vehicle insurance for facility vehicles.

B. Staff shall be informed when hired of the requirements to provide insurance coverage while using personal vehicles for official business.

## 6 VAC 35-140-170. Computer security.

If log book type information is recorded on computer, all entries shall post the date, time and name of the person making an entry; [ the computer shall be so equipped as to prevent ] previous entries [ ~~cannot be~~ from being ] overwritten.

## 6 VAC 35-140-180. Release procedures.

Residents shall be released only in accord with written policy and procedure.

## Article 2. Health Care.

## 6 VAC 35-140-190. Health screening [ ~~and mental health screening~~ ] at admission.

[ Written ] policy, procedure and practice shall require that:

1. [ ~~All youth newly admitted to a facility or system~~ To prevent newly-arrived residents who pose a health or safety threat to themselves or others from being admitted to the general population, all residents shall immediately upon admission ] undergo a preliminary health screening [ ~~consisting of a structured interview and observation~~ ] by [ ~~individuals who have been trained to use~~ health care personnel or health-trained staff, using ] a health screening [ ~~tool or instrument~~ form ] that has been approved by the facility's health authority.

[ ~~2. In secure detention facilities, a mental health screening shall be provided in accordance with § 16.1-248.2 of the Code of Virginia.~~

~~3.~~ 2.] Youth [ admitted to the facility ] who pose a health or safety threat to themselves or others are not admitted to the facility's general population [ but provision shall be made for them to receive comparable services ].

[ ~~4.~~ 3.] Immediate health care is provided to [ youth residents ] who need it.

## 6 VAC 35-140-200. [ Training regarding ] special medical needs of residents.

[ Written policy, procedure and practice shall provide that ] staff shall be trained in [ universal precautions regarding HIV ] and [ shall ] follow procedures for dealing with residents [ ~~who are HIV positive or~~ ] who have infectious or communicable diseases.

## 6 VAC 35-140-210. Informed consent as to health care.

[ Written policy, procedure and practice shall provide that:

1. ] The informed consent to health care shall be obtained from the [ youth resident ], parent, guardian or legal custodian as required by law.

[ 2. Residents may refuse, in writing, medical treatment and care.

3. When health care is rendered against the resident's will, it shall be in accordance with applicable laws and regulations. ]

## 6 VAC 35-140-220. Residents' medical record.

A. [ Written policy, procedure and practice shall provide that ] residents' active medical records shall be:

1. Kept confidential [ from unauthorized persons ] and in a file separate from the case record;
2. Readily accessible in case of emergency; and
3. Made available to authorized staff [ ~~as defined in policy and procedure~~ ].

B. Residents' inactive medical records shall be retained and disposed of as required by The Library of Virginia.

## 6 VAC 35-140-230. Hospitalization of residents.

When a resident needs hospital care, a parent or legal guardian, a staff member, or a law-enforcement officer, as appropriate, shall accompany the resident and stay at least during admission and [ , in the case of securely detained or committed residents, ] until appropriate [ ~~continuing supervision is arranged~~ security arrangements are made ].

## 6 VAC 35-140-240. [ ~~Payment for treatment of preexisting conditions. (Reserved.)~~ ]

[ ~~The facility shall pay for the treatment of preexisting medical, dental, psychological or psychiatric conditions when:~~

- ~~1. The condition gives rise to a health emergency or the health authority determines that treatment of such a preexisting condition is necessary to the youth's health while a resident at the facility; and~~
- ~~2. The facility administrator has determined that no other source of payment is available. ]~~

## 6 VAC 35-140-250. Suicide prevention.

[ Written ] policy, procedure and practice shall provide that there is a suicide prevention and intervention program [ developed in consultation with a local or state mental health authority, ] and all direct care staff are trained in it.

### Article 3. Personnel.

## 6 VAC 35-140-260. Background checks on personnel.

A. All persons selected for employment after [ November 12, 1997 ] , all family group home parents, all persons who teach in the facility or provide professional services on a regular basis, and all volunteers and interns who work [ ~~on a regular basis and will be alone with one juvenile, one-on-one with residents~~ ] shall immediately undergo a check [ , as specified in department procedures, ] of references, criminal records, central registry and, if appropriate, driving record.

B. If direct care staff are hired pending the completion of background checks, they shall always work with staff whose background checks have been completed.

## 6 VAC 35-140-270. Physical examination.

When the qualifications for a position require a given level of health or physical ability, all persons selected for such positions shall be examined by a physician at the time of employment to ensure [ ~~that~~ that they have the level of ] medical health [ ~~and~~ or physical ] ability [ required ] to perform assigned duties.

## 6 VAC 35-140-280. Training.

[ A. ] Initial orientation and annual training shall be provided to all staff, relief staff, volunteers, interns and family group home parents, in accord with each position's job

description and annual training plan. [ ~~As applicable to the position, the annual training plan shall address:~~

- ~~1. The training required by 6 VAC 35-140-200, 6 VAC 35-140-210, 6 VAC 35-140-260, 6 VAC 35-140-670 and 6 VAC 35-140-690;~~
- ~~2. Training required by the Standards for the Interdepartmental Regulation of Residential Facilities for Children; and~~
- ~~3. Training goals and objectives specific to the position.~~

B. Prior to assuming their duties, staff responsible for supervising residents shall receive an orientation that addresses at least the following items:

1. The facility's program philosophy and services;
2. Residents' rules and the facility's behavior management program;
3. Residents' rights and responsibilities;
4. Residents' disciplinary and grievance procedures;
5. Security and emergency procedures; and
6. Documentation requirements.

C. All full-time staff who provide direct services or supervision to residents or families shall receive at least 40 hours of training annually, not including initial orientation. As applicable to the individual's position, this training shall include the training required by:

1. The Standards for the Interdepartmental Regulation of Residential Facilities for Children; and
2. The standards in this regulation dealing with;
  - a. Suicide prevention (6 VAC 35-140-250);
  - b. Special medical needs of residents (6 VAC 35-140-200);
  - c. Health screenings at admission (6 VAC 35-140-190); and
  - d. Mechanical restraints (6 VAC 35-140-680). ]

## 6 VAC 35-140-290. Outside personnel [ working in the facility ].

A. Facility staff shall monitor [ all situations in which ] outside personnel [ ~~working~~ perform any kind of work ] in the immediate presence of youth [ in the facility ].

B. Adult inmates or persons assigned to perform services as a result of a conviction in an adult court shall not work in areas [ of the facility ] where youth are present.

### Article 4. Safety and Physical Environment.

## 6 VAC 35-140-300. Showers.

Residents shall have [ ~~access to showers~~ the opportunity to shower ] daily.

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## 6 VAC 35-140-310. Inspections.

All safety, emergency and communications systems shall be inspected by designated staff according to a schedule which is approved by the facility administrator and which meets all applicable regulations.

## 6 VAC 35-140-320. Repair or replacement of defective equipment.

Whenever equipment is found to be defective, immediate steps shall be taken to rectify the situation and to repair or replace the defective equipment.

## 6 VAC 35-140-330. Lighting in housing and activity areas.

A. Sleeping and activity areas shall provide natural lighting.

B. There shall be night lighting sufficient to observe residents.

## 6 VAC 35-140-340. Fire prevention.

A. There shall be a fire prevention plan that provides for an adequate fire protection service.

B. The facility shall have receptacles for disposing of flammable materials.

C. All flammable, toxic and caustic materials shall be stored and used in accord with federal, state and local requirements.

D. Flame retardant and nontoxic materials shall be used in construction and furnishings.

### Article 5.

#### Independent Living Programs.

## 6 VAC 35-140-350. Independent living programs.

Independent living programs shall have a written description of the curriculum and methods used to teach living skills, which shall include finding and keeping a job, managing personal finances, household budgeting, and other life skills.

### Article 6.

#### Standards for Family Group Homes.

## 6 VAC 35-140-360. Requirements of family group home systems.

Family group home systems shall have [ written ] policies and procedures for:

1. Setting the number of youth to be housed in each home and room of the home, and prohibiting youth and adults from sharing sleeping rooms without specific approval from the program administrator;
2. Providing supervision of and guidance for the family group home parents and relief staff;
3. Admitting and orienting [ juveniles placed in a home residents ];

4. [ Promptly ] Preparing [ and periodically reviewing ] a treatment plan for each [ juvenile resident within 30 days of admission, or 72 hours in the case of a temporary care facility, and reviewing the plan quarterly ];

5. Providing appropriate programs and services from intake through release;

6. Providing [ youth residents with ] spending money;

7. Managing [ juvenile resident ] records and releasing information;

8. Providing medical and dental care to [ juveniles residents ];

9. Notifying [ interested parties promptly parents, guardians, the placing agency and the regulatory authority ] of any serious incident [ as specified in department policy ];

10. Making a [ qualified program supervisor or designated staff ] person available to [ youths residents ] and house parents 24 hours a day;

11. Ensuring the secure control of any firearms [ and ammunition ] in the home.

## 6 VAC 35-140-370. Examination by physician.

Each [ youth resident ] admitted to a family group home [ for more than 60 days ] shall have a physical examination including tuberculosis screening within [ 44 30 ] days of admission, unless the [ youth resident ] was examined within six months prior to admission to the program.

## 6 VAC 35-140-380. Requirements of family group homes.

Each family group home shall have:

1. [ A ] fire extinguisher, inspected annually;
2. Smoke alarm devices in working condition;
3. Alternative methods of escape from second story;
4. Modern sanitation facilities;

[ 5. Inspection of private water supplies;

6. 5. ] Freedom from physical hazards;

[ 7. 6. ] A written emergency plan that is communicated to all new residents at orientation;

[ 8. 7. ] [ A An up-to-date ] listing of medical and other emergency resources in the community;

[ 9. 8. ] A separate bed for each [ juvenile resident ], with clean sheets and linens weekly;

[ 10. 9. ] A bedroom that is well illuminated and ventilated; that is in good repair; that is not a hallway, unfinished basement or attic; and that provides conditions for privacy through the use of dividers or furniture arrangements;

[ 11. 10. ] A place to store [ youths' residents' ] clothing and personal items;

- [ 42 11. ] Sanitary toilet and bath facilities that are adequate for the number of residents;
- [ 43 12. ] A safe and clean place for indoor and outdoor recreation;
- [ 44 13. ] Adequate and comfortable furniture;
- [ 45 14. ] Adequate laundry facilities or laundry services;
- [ 46 15. ] A clean and pleasant dining area; [ and
- 47. 16. ] Adequate and nutritionally balanced meals [ ; and
- 17. Daily provision of clean clothing and articles necessary for maintaining proper personal hygiene. ]

Article 7.  
Boot Camps.

**6 VAC 35-140-390. Staff physical and psychological qualifications.**

The boot camp shall include in the qualifications for staff positions a statement of:

1. The physical fitness level requirements for each staff position; and
2. Any psychological assessment or evaluation required prior to employment.

**6 VAC 35-140-400. [ Juveniles' Residents' ] physical qualifications.**

The boot camp shall have written policies and procedures that [ govern address ]:

1. Admission [ criteria ], including [ the physical conditioning a youth must demonstrate to qualify for admission a required written statement from a physician that the juvenile meets the American Pediatric Council's guidelines to participate in contact sports and from a licensed mental health professional that the juvenile is an appropriate candidate for a boot camp program ] ; and
2. Discharge, should a [ juvenile resident ] be physically unable to keep up with the program.

**6 VAC 35-140-410. [ Juveniles' Residents' ] nonparticipation.**

The boot camp shall have [ written ] procedures [ approved by the department ] for dealing with [ youth residents ] who are not complying with boot camp program requirements.

**6 VAC 35-140-420. Program description.**

The boot camp shall have a written program description that states:

1. How [ youths' residents' ] physical training, work assignment, education and vocational training and treatment program participation will be interrelated;

2. The length of the boot camp program and the kind and duration of treatment and supervision that will be provided upon the [ juvenile's resident's ] release from the residential program;
3. Whether [ youth residents ] will be cycled through the program individually or in platoons; and
4. The program's incentives and sanctions, including whether military or correctional discipline will be used; if military [ style ] discipline is used, written procedures shall specify what summary punishments are permitted.

PART III.  
STANDARDS FOR ALL SECURE FACILITIES.

Article 1.  
General Requirements of Secure Facilities.

**[ 6 VAC 35-140-430. Mental health assessment in secure detention.**

Written policy, procedure and practice shall provide that:

1. As part of the intake process in each secure detention facility, staff shall ascertain the resident's need for a mental health assessment; and
2. If staff determine that a mental health assessment is needed, it shall take place within 24 hours of such determination. ]

**[ ~~6 VAC 35-140-430~~ 6 VAC 35-140-440 ]. Classification plan.**

[ Juveniles Residents ] shall be assigned to sleeping rooms and living units according to a [ written ] plan that takes into consideration facility design, staffing levels, and [ the ] behavior [ and characteristics ] of individual [ juveniles and characteristics of the facility's juvenile population residents ].

**[ ~~6 VAC 35-140-440. Juvenile's~~ 6 VAC 35-140-450. Resident's ] physical examination [ ; responsibility for preexisting conditions ].**

[ A. ] Within five days of admission, all [ juveniles residents ] who are not directly transferred from another secure juvenile residential facility shall be medically examined by a [ physician or a ] qualified health care practitioner [ operating under the supervision of a physician ] to determine if the [ youth resident ] requires medical attention or poses a threat to the health of staff or other [ juveniles residents ].

[ B. The secure custody facility shall not accept financial responsibility for preexisting medical, dental, psychological or psychiatric conditions except on an emergency basis. ]

**[ ~~6 VAC 35-140-450.~~ 6 VAC 35-140-460. ] Health authority.**

A physician, health administrator or health agency shall be designated the health authority responsible for arranging all levels of health care, consistent with law and medical ethics.

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~~[ 6 VAC 35-140-460. 6 VAC 35-140-470. ] Medical space and equipment.~~

~~There shall be a central medical room with medical examination facilities equipped in consultation with the health authority.~~

~~[ 6 VAC 35-140-470. Juveniles' 6 VAC 35-140-480. Residents' ] personal possessions.~~

~~[ Juveniles' Residents' ] personal possessions shall be inventoried [ and documented in the case file ] upon admission and either:~~

- ~~1. Securely stored [ during the juvenile's residence ] and returned upon release;~~
- ~~2. Given to the [ juvenile's resident's ] parents or guardians; or~~
- ~~3. Shipped to the [ juvenile's resident's ] last known address.~~

~~[ 6 VAC 35-140-480. 6 VAC 35-140-490. ] Area and equipment restrictions.~~

~~A. Written procedures shall govern access to all areas where food or utensils are stored.~~

~~B. All security, maintenance, educational, recreational, culinary, and medical equipment shall be inventoried and controlled.~~

~~C. [ Juveniles Residents ] shall not be permitted to work in the detention home food service.~~

~~[ 6 VAC 35-140-490. 6 VAC 35-140-500. ] Reading materials.~~

~~Reading materials that are appropriate to residents' ages and levels of competency shall be available to all [ juveniles, residents ] and shall be coordinated by a designated person.~~

~~[ 6 VAC 35-140-500. 6 VAC 35-140-510. ] Postdispositional [ detention placements ].~~

~~[ A. If a detention home or group home accepts postdispositional placements, it shall have written policies, procedure and practice governing the postdispositional program which shall have regard for reasonable utilization of the facility.~~

~~B. ] When a juvenile is ordered by a court, pursuant to § 16.1-248.1 B of the Code of Virginia, into a facility that houses postdispositionally detained youth, the facility shall [ :~~

- ~~1. Obtain from the supervising agency a copy of the court order, the resident's most recent social history, and any other written information considered by the court during the sentencing hearing; and~~
- ~~2. ] Have a written plan with the court service unit [ within five days ] to enable such youth to take part in one or more [ community locally available ] treatment programs appropriate for their rehabilitation [ which may be provided in the community or at the facility ].~~

~~[ 6 VAC 35-140-510. 6 VAC 35-140-520. ] Housing and activity areas.~~

~~In [ all secure detention facilities and in juvenile correctional centers constructed after January 1, 1998, in ] sleeping rooms and activity areas, residents shall have [ access to ] fresh drinking water [ and toilet facilities ].~~

~~[ 6 VAC 35-140-520. Sleeping rooms in personal control units.~~

~~There shall be no more than two juveniles in each room in personal control units. ]~~

~~6 VAC 35-140-530. Outdoor recreation.~~

~~There shall be [ a level, well-drained an appropriate outdoor ] area in which residents are permitted to exercise daily [ , subject to unless prevented by documented adverse ] weather conditions [ and or threat to ] facility security [ , behavior management and discipline procedures ].~~

~~6 VAC 35-140-540. Supervision of [ juveniles residents ] by staff.~~

~~A. Staff shall provide 24-hour awake supervision seven days a week.~~

~~B. [ In juvenile correctional centers, ] When both males and females are housed in the same living unit, at least one male and one female staff member shall be actively supervising at all times.~~

~~C. [ In secure detention facilities, ] Staff shall always be in plain view of staff of the opposite sex when entering an area occupied by [ juveniles residents ] of the opposite sex.~~

~~[ 6 VAC 35-140-550. Major rule violations.~~

~~A. During the orientation to the facility, major rule violations and the punishments for such violations shall be explained to the juvenile and documented by the juvenile's and staff member's signatures and date.~~

~~B. Where a language or literacy problem exists which can lead to resident misunderstanding of facility rules and regulations, staff or a qualified person under the supervision of staff shall assist the resident. ]~~

~~[ 6 VAC 35-140-560. 6 VAC 35-140-550. ] Due process.~~

~~[ The secure facility shall have and follow procedures for:~~

- ~~1. Reporting major rule violations to supervisory personnel;~~
- ~~2. Conducting a timely, impartial investigation and hearing including provisions for the youth to participate in and to be represented at the hearing;~~
- ~~3. Recording and notifying the parties of the hearing's findings and any action taken;~~
- ~~4. Expunging all reference to the charges if the youth is found innocent;~~

~~5. Reviewing the hearing record to ensure conformity with policy and regulations; and~~

~~6. Permitting the juvenile to appeal the decision.~~

In each secure custody facility, written policy, procedure and practice shall provide the following:

1. Staff shall prepare a disciplinary report when a resident has committed a major or moderate violation of facility rules or a minor violation that is required by department procedure to be reported.

2. When necessary to protect the facility's security or the safety of the resident or others, a resident who is charged with a major rule violation may be confined pending a due process hearing for up to 24 hours; an administrator who was not involved in the incident must approve any longer confinement.

3. A resident who is charged with a major or moderate rule violation shall be:

a. Given a written copy of the charge within 24 hours of the infraction;

b. Scheduled for a hearing no later than 48 hours after the infraction, excluding weekends and holidays; and

c. Given 24 hours notice of the time and place of the hearing, but the hearing may be held within 24 hours with the resident's written consent.

4. Disciplinary hearings on rule violations shall be conducted by an impartial person or panel of persons; a record of the proceedings shall be made and shall be kept for six months.

5. Residents charged with rule violations shall be present at the hearing unless they waive that right in writing or through their behavior but may be excluded during the testimony of any resident whose testimony must be given in confidence. The reason for the resident's absence or exclusion shall be documented.

6. Residents shall be permitted to make a statement and present evidence at the hearing and to request witnesses on their behalf. The reasons for denying such requests shall be documented.

7. At the resident's request, a staff member shall represent the resident at the hearing and question witnesses. A staff member shall be appointed to help the resident when it is apparent that the resident is not capable of effectively collecting and presenting evidence on his own behalf.

8. A written record shall be made of the hearing decision and given to the resident. The hearing record shall be kept in the resident's file and in the disciplinary committee's records.

9. The disciplinary report shall be removed from the file of a resident who is found not guilty.

10. The facility administrator or designee shall review all disciplinary hearings and dispositions to ensure conformity with policy and regulations.

11. The resident shall have the right to appeal the disciplinary hearing decision to the facility administrator or designee within 24 hours of receiving the decision. The appeal shall be decided within 24 hours of its receipt, and the resident shall be notified in writing of the results within three days. These time frames do not include weekends and holidays. ]

[ ~~6 VAC 35-140-570, 6 VAC 35-140-560.~~ ] **Room confinement [ and isolation ].**

A. Written [ policy, ] procedures [ and practice ] shall govern how and when [ juveniles residents ] may be confined [ within the facility ] to a room and shall provide for:

1. Staff checks at least every 30 minutes and more often if indicated by the circumstances;

2. Staff checks at least every 15 minutes when the resident is on suicide watch; and

3. At least one hour of physical exercise daily. ]

B. If a [ juvenile resident ] in secure detention is confined to his room for [ more than 24 hours, the superintendent or designee shall be notified. If the confinement extends to ] more than 72 hours, the confinement shall be [ immediately ] reported to the regional manager along with the steps being taken or planned [ by the facility ] to resolve the situation [ and followed immediately with a faxed copy of the report to the regional manager ].

C. If a [ juvenile resident ] in a juvenile correctional center is confined for more than [ 24 hours, the superintendent or designee shall be notified. If the confinement extends to ] 72 hours, the Chief of Operations for Juvenile Correctional Centers, or designee, must approve the continued confinement. [ Residents who are confined to their rooms shall be given an opportunity to exercise daily.

D. Room confinement as a sanction, or isolation, shall not exceed five days. ]

[ ~~6 VAC 35-140-580, 6 VAC 35-140-570.~~ ] **Questioning of residents.**

[ No local, state or federal authority shall be permitted to question a resident without The facility shall have written policy, procedure and practice governing ] the permission [ of required to be obtained from ] the committing agency, attorney, parent or guardian or other person standing in loco parentis [ before permitting any local, state or federal authority to question a resident ].

[ ~~6 VAC 35-140-580.~~ ] **Facility area searches.**

Written policy, procedure and practice shall provide for regular searches of the facility and shall provide for respecting residents' rights to their own property. ]

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## 6 VAC 35-140-590. Searches of [ juveniles residents ].

[ ~~Written~~ ] policy, procedure and practice shall provide [ for searches of residents' persons to maintain facility security and control contraband and shall specify ] that:

1. [ ~~Unreasonable searches and undue force are prohibited~~ The resident shall not be touched any more than is necessary to conduct a comprehensive search ].
2. Only qualified medical personnel conduct body cavity searches [ and only when specifically authorized by the facility director or a court ].
3. Strip searches are performed [ visually ] by staff of the same sex as the resident [ in an area that ensures privacy ].
4. Any witness to a body cavity search or strip search is of the [ ~~resident's sex~~ same gender as the resident ].

## 6 VAC 35-140-600. [ Main ] Control center.

[ ~~Staff shall monitor and coordinate~~ To maintain the internal ] security, ~~safety and communications systems from~~ of the facility, ] a [ main ] control center [ ~~with restricted~~ that is secured from residents' ] access [ shall be staffed ] 24 hours a day [ to integrate all external and internal security functions and communications networks ].

## 6 VAC 35-140-610. Communications systems.

A. There shall be a [ ~~communications system means for communicating~~ ] between the [ main ] control center and living areas.

B. The facility shall be able to provide communications in an emergency.

C. A secure custody facility shall have a communications system linked to the community, and written procedures governing its use.

## 6 VAC 35-140-620. Keys.

A. [ ~~Each key's current location shall be readily accounted for~~ The facility shall have a written key control plan to keep keys secure at all times ].

[ ~~B. Keys shall be identified in a manner appropriate to the level of security.~~

~~C. B. ]~~ Fire and emergency keys shall be instantly identifiable by sight and touch.

[ ~~D. C. ]~~ There shall be different masters for the interior security and outer areas.

[ ~~E. Keys shall be kept secure at all times. ]~~

## 6 VAC 35-140-630. Control of perimeter.

There shall be a [ written ] plan to control the perimeter [ by appropriate means ] to contain [ ~~confined juveniles~~ residents ] and to prevent unauthorized access by the public.

## 6 VAC 35-140-640. Escapes.

[ ~~The secure facility shall have and follow~~ Written policies, ] procedures [ and practice shall govern staff actions to be taken ] regarding escapes and AWOLS.

## 6 VAC 35-140-650. Transportation of detained [ youth juveniles; transfer to department ].

A. Detained juveniles shall be transported in accord with "Guidelines for Transporting Juveniles in Detention" issued by the board in accord with § 16.1-254 of the Code of Virginia.

B. When a juvenile is transported to the department from a detention home, all information pertaining to the [ ~~youth's~~ juvenile's ] medical, [ educational, ] behavioral and family [ ~~problems~~ circumstances during the resident's stay in detention ] shall be sent to the department (i) with the juvenile, if the home is given at least 24 hours notice; or (ii) [ ~~as soon as possible~~ within 24 hours ] after the [ ~~youth~~ juvenile ] is transported, if such notice is not given.

## 6 VAC 35-140-660. Chemical agents.

[ ~~A. Written procedure and practice shall provide for a progressive response to juvenile behavior which at a minimum begins with verbal calming and delineates when physical, mechanical or chemical restraints may be used, including documentation requirements.~~

~~B. Written policy shall restrict the use of a chemical agent only to instances of justifiable protection of residents and staff and shall prohibit the use of any chemical agent as a means of punishment.~~

~~C. Only those chemical agents that have been approved by the board shall be permitted in the facility. There shall be a written description, including the name and chemical analysis, of the chemical agent to be maintained for use. Written procedure shall prohibit the use of any other chemical agent except one that has the same analysis and composition.~~

~~D. Written procedure and practice shall require the safe and secure storage of the chemical agent and shall specify:~~

~~1. Which staff have access to and are authorized to use the chemical agent;~~

~~2. The circumstances under which staff members may carry the chemical agent on their person; and~~

~~3. That only properly trained staff may use the chemical agent. A program of training shall include at least:~~

~~a. An understanding of the circumstances under which the chemical agent may be used;~~

~~b. An overview of the chemical agent's symptoms and their duration; the chemical agent's medical and physiological effects; and the requirements for storage, maintenance and replacement;~~

~~c. How to properly use the chemical agent;~~

~~d. Decontamination procedures; and~~

~~e. First aid, postexposure observation for nonmedical staff, and treatment.~~

~~E. Written procedure and practice shall require periodic inspection of the chemical agent consistent with the scheduled inspection of other security devices, and must provide for the disposal of outdated canisters as required by the manufacturer.~~

~~F. Written procedure must specify the decontamination steps to be followed after the situation is stabilized and the requirements for postexposure observation. At a minimum it shall include close monitoring of the subject's breathing for 24 hours and the provision of emergency medical treatment, if needed.~~

~~G. Written procedure shall provide for immediate reporting of the use of the chemical agent to the facility administrator or designee, and the completion of a department reportable incident form.~~

Tear gas, mace, pepper spray and related chemical agents for security shall not be used by staff nor allowed on the premises except when the board has approved the use of a specific chemical agent in an individual facility based on a demonstrated compelling security need and the establishment of adequate safeguards in accordance with guidelines issued by the board. ]

## 6 VAC 35-140-670. Mechanical restraints.

~~[ A. Only restraints approved by the board shall be permitted in the facility.~~

~~B. Restraints shall be kept at a designated location.~~

~~C. When transporting or moving juveniles, the use of mechanical restraints shall be in accord with written procedures.~~

Written policy, procedure and practice shall govern the use of mechanical restraints in each secure custody facility. Such policies and procedures shall be approved by the regulatory authority and shall specify:

1. The conditions under which handcuffs, waist chains, leg irons, disposable plastic cuffs and leather restraints may and may not be used;

~~D. 2. That ] the approval of the facility director or designee shall be obtained immediately upon using restraints in an emergency situation.~~

~~[ E. 3. That ] restraints shall never be applied as punishment.~~

~~[ F. Juveniles 4. That residents ] shall not be restrained to a fixed object [ or restrained in an unnatural position ].~~

~~[ G. Mechanical restraints shall be used only to protect persons or property or prevent escapes after other efforts to control the situation have failed, and in accordance with law.~~

~~H. Mechanical restraints used shall be the least restrictive needed to control the behavior.~~

~~I. No juvenile shall be restrained for longer than necessary to regain control of his behavior.~~

J. 5. That ] each use of mechanical restraints, except when used to transport a [ juvenile resident ], shall be recorded in the [ youth's resident's ] case file or in a central log book.

## 6 VAC 35-140-680. Training required to use mechanical restraints.

If a facility uses mechanical restraints, [ written policy, procedure and practice shall provide that ] all staff who are authorized to use restraints shall receive department-approved training in their use, including how to check the [ youth's resident's ] circulation and how to check for injuries; only properly trained staff shall use restraints.

## 6 VAC 35-140-690. Monitoring restrained [ juveniles residents ].

[ Written policy, procedure and practice shall provide that ] when a [ youth resident ] is mechanically restrained, staff shall [ : ]

[ 1. ] Provide for the [ youth's resident's ] reasonable comfort and ensure the [ youth's resident's ] access to water, meals and toilet, and [ either ; ]

[ 4. 2. Make a direct personal ] check on the [ youth resident ] at least every 15 minutes [ ; ] and more often if the [ youth's resident's ] behavior warrants [ ; or . ]

[ 2. Keep the youth under constant visual supervision along an uninterrupted line of sight, either directly, or through windows, or via video monitoring. ]

## 6 VAC 35-140-700. Consultation with mental health professional.

[ A. Written policy, procedure and practice shall provide that:

1. ] When a [ youth resident ] is restrained for more than two hours cumulatively in any 24-hour period, [ except when being transported, trained ] staff shall make and document a determination, arrived at in accordance with policies and procedures, as to whether a mental health problem is indicated [ ; and ]

[ B. 2. ] If a mental health problem is indicated, staff shall [ immediately consult with and ] document that they have consulted with a licensed mental health professional or the local community services board.

## Article 2. Wilderness Work Camps.

## 6 VAC 35-140-710. Wilderness work camps.

The wilderness work camp shall have a written [ statement describing program description including ]:

1. Its intended juvenile offender population;

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2. How [ youths' a resident's ] work assignment, education and vocational training and treatment program participation will be interrelated;
3. The length of the wilderness work camp program and the kind and duration of treatment and supervision that will be provided upon the [ juvenile's resident's ] release from the residential program; and
4. The program's incentives and sanctions.

## Article 3. Juvenile Correctional Centers.

### **6 VAC 35-140-720. Coordination with court service unit staff.**

A. Treatment staff at the reception and diagnostic center [ and at each juvenile correctional center ] shall notify each [ youth's resident's ] probation or parole officer of [ the ] scheduled [ staffings and treatment team meetings to review the youth's progress staffing ].

B. The [ facility's juvenile correctional center's ] treatment staff [ and shall notify ] the [ resident's ] probation or parole officer [ taking part in of ] the [ scheduled ] treatment team meeting [ shall: ]

1. ~~Review the youth's service plan and adjust as needed;~~
2. ~~Sign the reviewed service plan; and~~
3. ~~Send a copy to the reception and diagnostic center.~~

C. ~~Treatment staff shall send the court service unit progress reports on each youth at least once every 60 days. ]~~

### **[ 6 VAC 140-730. Isolation and segregation.**

A. Residents placed in isolation shall be housed no more than one to a room.

B. Residents placed in personal control units or segregation units shall be housed no more than two to a room. ]

### **[ ~~6 VAC 35-140-730. 6 VAC 35-140-740. ] Post orders or shift duties.~~**

[ ~~The superintendent or designee shall issue For each security post in the facility there shall be ] post orders or shift duties that provide details for carrying out daily operations. [ The post orders or shift duties shall be submitted to the Chief of Operations for Juvenile Correctional Centers, or designee, prior to implementation. ]~~

### **[ ~~6 VAC 35-140-740. 6 VAC 35-140-750. ] Population count.~~**

There shall be a system for each shift to count residents and notify [ appropriate designated ] staff of any changes in resident population. All housing moves, school and work assignments, admissions and releases shall be reflected on a daily master count sheet.

### **[ ~~6 VAC 35-140-750. 6 VAC 35-140-760. ] Institutional operating procedures.~~**

Institutional operating procedures shall be in place that are consistent with standard operating procedures [ ~~that have been~~ ] approved by the Chief of Operations for Juvenile Correctional Centers.

### **[ ~~6 VAC 35-140-760. 6 VAC 35-140-770. ] Transfer file.~~**

A. A separate transfer file shall be kept for each [ youth resident ], documenting all treatment and significant events. All transfer files shall be kept current and in a uniform manner.

B. An exact copy of all material added to the transfer file shall be sent to the reception and diagnostic center for inclusion in the [ youth's resident's ] master file.

### **[ ~~6 VAC 35-140-770. 6 VAC 35-140-780. ] Privately operated juvenile correctional centers.~~**

In addition to the other requirements of juvenile correctional centers, privately operated juvenile correctional centers shall:

1. House only juveniles who have been committed to the department and who have been properly transferred to the facility by the department, unless otherwise specified by contract with the department; [ and ]

2. Follow the department's case management procedures and practices [ ; and ].

[ ~~3. Provide a written summary of a resident's behavior and other significant observations to the department upon request. ]~~

### **[ ~~6 VAC 35-140-780. 6 VAC 35-140-790. ] Junior ROTC program.~~**

Each Junior ROTC program shall have a written description of the program that states:

1. Criteria [ juveniles residents ] must meet to enter and remain in the program;

2. How military [ style ] discipline, including [ ~~summary punishments~~ immediate sanctions ], will be applied; and

3. Criteria and procedures for terminating a [ juvenile's resident's ] participation in the program.

### **[ ~~6 VAC 35-140-790. 6 VAC 35-140-800. ] Agreements governing juvenile industries work programs.~~**

A. If the department enters into an agreement with a public or private entity for the operation of a work program pursuant to § 66-25.1 of the Code of Virginia, the agreement shall:

1. Comply with all applicable federal and state laws and regulations, including but not limited to the Fair Labor Standards Act (29 USC § 201 et seq.), child labor laws, workers' compensation insurance laws, and the Standards for the Interdepartmental Regulation of Residential Facilities for Children relating to work and employment;

2. State the length of the agreement and the criteria by which it may be extended or terminated;

3. Specify where [ juveniles residents ] will work and, if not at a juvenile correctional center, the security arrangements at the work site;

4. Summarize the educational, vocational or job training benefits to [ youth residents ].

B. The agreement shall address how [ juveniles residents ] will be hired and supervised, including:

1. The application and selection process;
2. The qualifications required of [ youth residents ] hired;
3. A requirement that there be a job description for each [ juvenile's resident's ] position;
4. Evaluation of each [ youth's resident's ] job related behaviors and attitudes, attendance and quality of work; and
5. Whether and how either party may terminate a [ youth's resident's ] participation.

C. The agreement shall address [ youth's resident's ] compensation including:

1. Whether [ juveniles residents ] are to be paid directly by the outside entity or through the department; and
2. If applicable, whether any deductions shall be made from the [ juvenile's residents' ] compensation for subsistence payments, restitution to victims, etc.

D. As applicable, the agreement shall specify:

1. That accurate records be kept of the work program's finances, materials inventories, and [ youths' residents' ] hours of work, and that such records be subject to inspection by either party and by an independent auditor;
2. How the project's goods or services will be marketed;
3. How proceeds from the project will be collected and distributed to the parties;
4. Which party is responsible for providing:
  - a. The materials to be worked on;
  - b. The machinery to be used;
  - c. Technical training and supervision in the use of equipment or processes;
  - d. Utilities;
  - e. Transportation of raw materials and finished goods; [ and ]
  - f. Disposal of waste generated in the work project [ ; and
  - g. Safety and other special equipment and clothing required by juvenile workers ].

**INCORPORATED BY REFERENCE**

"Guidelines for Transporting Juveniles in Detention," Board of Youth and Family Services, June 13, 1991.

VA.R. Doc. No. R97-413; Filed September 24, 1997, 12:05 p.m.

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Title of Regulation: 6 VAC 35-80-10 et seq. Holdover Standards (REPEALED).

Title of Regulation: 6 VAC 35-110-10 et seq. Minimum Standards for Court Services in Juvenile and Domestic Relations District Courts (REPEALED).

Title of Regulation: 6 VAC 35-130-10 et seq. Standards for Outreach Detention (REPEALED).

Title of Regulation: 6 VAC 35-150-10 et seq. Standards for Nonresidential Services Available to Juvenile and Domestic Relations District Courts.

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

Effective Date: November 12, 1997.

Summary:

This regulation is a revision of Standards for Court Service Units, which has not been revised since at least 1983. The regulation establishes minimum standards for court service staffs and related supportive personnel so that "uniform services, insofar as is practical, will be available to juvenile and domestic relations district courts throughout the Commonwealth" (§ 16.1-233 C of the Code of Virginia).

The regulation also establishes standards for the development, implementation, operation and evaluation of the nonresidential community-based programs and services such as those authorized by the Virginia Juvenile Community Crime Control Act (§ 16.1-309.2 et seq. of the Code of Virginia).

The regulation seeks to balance the goal of establishing statewide minimum levels of service delivery with the goal of permitting program flexibility to meet diverse local circumstances. The regulation places increased emphasis on outcomes and effectiveness and less emphasis on the measurement of inputs or activities.

Changes from the proposed regulation are as follows:

1. 6 VAC 35-150-10 is amended by redefining "intake officer" to mean "probation officer" and to define "mechanical restraint" and "physical restraint";
2. 6 VAC 35-150-55 is added to establish a caseload average for probation officers;
3. 6 VAC 35-150-80 is amended to clarify requirements for background checks of staff and volunteers;

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4. 6 VAC 35-150-90 is amended to require 40 hours of training annually for staff who provide direct services to juveniles and their families and to require 20 hours of training annually for all clerical staff;

5. 6 VAC 35-150-100 is amended to reinstate existing CSU standard D2, which details the personnel policies and procedures that must be in place;

6. 6 VAC 35-150-150 is amended to provide exceptions to the requirements for reports prepared for the court;

7. 6 VAC 150-160 is amended to require inclusion of the police or prosecutor's version of an offense in a social history when available and to require gang affiliation, employment status and driver's license information;

8. 6 VAC 35-150-165 is added requiring court ordered custody investigations be in conformance with "Guidelines for Custody Investigations";

9. 6 VAC 35-150-170 is added regarding services to cases in which the court has ordered support payments;

10. 6 VAC 35-150-270 is amended to clarify intake officers' responsibilities;

11. 6 VAC 35-150-250 is amended to require staff to cooperate with department personnel and state and local law-enforcement authorities in locating absconders;

12. 6 VAC 35-150-310 is amended to clarify that services to juveniles in postdispositional placements may be provided in the facility or in the community;

13. 6 VAC 35-150-335 is added to address informal supervision;

14. 6 VAC 35 150-350 is amended to require that parole supervision plans be prepared for judicial review hearings for serious juvenile offenders;

15. 6 VAC 35-150-410 is amended to clarify the information required to be sent to the department when a juvenile is committed and, if transferred directly from the court, the requirement to immediately notify the reception and diagnostic center;

16. 6 VAC 35-150-425 is added clarifying the applicability of the standards;

17. 6 VAC 35-150-435 is added to provide standards for contracted services;

18. 6 VAC 35-150-440 is amended to clarify what is required in employee background checks;

19. 6 VAC 35-150-500 is amended to clarify protections for juveniles who may be involved in research;

20. 6 VAC 35-150-560 is amended to provide for sharing of service plans with supervising probation and parole officers;

21. Article 3 (6 VAC 35-150-620 et seq.) of Part II is amended to set standards for all sites at which services are provided to juveniles in day programs;

22. 6 VAC 35-150-680 is amended permit the use of physical and mechanical restraints in limited situations.

23. 6 VAC 35-150-690 is amended to provide limits on the use of time-out; and

24. 6 VAC 35-150-700 et seq. is amended to clarify the conditions under which electronic monitoring may be used and the conditions that must be met when it is used.

Summary of Public Comments 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: Donald Carignan, Regulatory Coordinator, Board of Juvenile Justice, P.O. Box 1110, Richmond, VA 23228-1110, telephone (804) 371-0743.

## CHAPTER 150.

### STANDARDS FOR NONRESIDENTIAL SERVICES AVAILABLE TO JUVENILE AND DOMESTIC RELATIONS DISTRICT COURTS.

#### PART I.

#### GENERAL PROVISIONS.

#### 6 VAC 35-150-10. Definitions.

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

"Agency" means any governmental entity of the Commonwealth or any unit of local government including counties, cities, towns and regional governments and the departments thereof, and including any entity, whether public or private, with which any of the foregoing has entered into a contractual relationship for the provision of services as described in this chapter.

"Alternative day services" or "structured day treatment" means nonresidential programs that provide services, which may include counseling, supervision, recreation, and education, to juveniles at a central facility.

"Behavior management" means the planned and systematic use of various techniques selected according to group and individual differences of juveniles and designed to teach awareness of situationally appropriate behavior, strengthen desirable behavior, and reduce or eliminate undesirable behavior. [~~The term is consistently generic, not confined to techniques derived specifically from behavior therapy, operant conditioning, etc.~~]

"Board" means the Board of Juvenile Justice.

"Case record" means written or electronic information regarding one person, and the person's family if applicable.

"Counseling" means the planned use of interpersonal relationships to promote behavioral change or social adjustment.

"Counselor" means an individual who provides counseling.

"Department" means the Department of Juvenile Justice.

"Diversion" means the provision of programs and services, consistent with the protection of the public safety, to youth who can be cared for or treated through alternatives to the juvenile justice system as provided for in § 16.1-227 of the Code of Virginia.

"Electronic monitoring" means the use of electronic devices to verify a person's compliance with certain judicial orders or conditions of release from incarceration, or short term sanction for noncompliance with rules of probation or parole.

"Human research" means any medical or psychological investigation designed to develop or contribute to general knowledge by using human subjects who may be exposed to possible physical or psychological injury as a consequence of participation as subjects and which departs from the application of established and accepted methods appropriate to meet the subjects' needs.

"Individual service plan" means a written plan of action developed, and modified at intervals, to meet the needs of each juvenile. It specifies short-term and long-term goals, the methods and times frames for reaching the goals and the individuals responsible for carrying out the plan.

"Intake" means the process for screening complaints and requests alleged to be within the [ ~~purview~~ jurisdiction ] of the juvenile and domestic relations district court.

"Intake officer" means the [ ~~court service unit staff person~~ probation officer ] who [ ~~performs~~ is authorized to perform ] the intake function.

"Intensive supervision" means frequent contacts, strict monitoring of behavior, and counseling provided to predispositional or postdispositional youth who are at high risk of committing new offenses.

"Juvenile [ , ]" [ ~~or~~ ] "youth" [ or "child" ] means a person less than 18 years of age.

"Local plan" means a document or set of documents prepared by one or more localities pursuant to § 16.1-309 3 D of the Code of Virginia, describing a range of community-based sanctions and services addressing individual juvenile offenders' needs and local juvenile crime trends.

[ "Mechanical restraint" means equipment used to physically restrain or control a person's behavior, such as handcuffs, shackles or straightjackets. ]

"Nonresidential services" means services that are not part of a residential program, including those provided by a residential program to nonresidents.

"Outreach detention" means intensive supervision of youth who might otherwise be in secure detention.

"Parole" means supervision of an individual released from commitment to the department as provided for by § 16.1-293 of the Code of Virginia.

[ "Physical restraint" means the application of approved techniques by trained program staff to control the actions of juveniles by means of physical contact. ]

"Probation" means a court-ordered disposition placing an individual under the supervision of a probation officer.

"Program" means the planned application of staff and resources to achieve the stated mission for working with juveniles identified in Article 12.1 (§ 16.1-309.2 et seq.) of Chapter 11 of Title 16.1 of the Code of Virginia.

"Provider" means an agency, organization or association that runs a program or service.

"Shall" means an obligation to act is imposed.

"Substance abuse assessment and testing" means a qualified professional's assessment and evaluation of the nature of, and the factors that contribute to, individual or family problems associated with substance abuse, and recommendations for treatment and related services.

"Supervision" means visiting or making other contact with, or providing treatment, rehabilitation or services to a juvenile as required [ by ] the court or an intake officer.

"Supervision plan" means a written plan of action, updated as needed, to provide supervision and treatment for a specific individual. It specifies needs, goals, methods, time frames, and who is responsible for each step. A single supervision plan may include, as appropriate, specific plans for supervision during probation and parole, and for treatment of a youth and services for the youth's family during commitment.

"Surveillance officer" means a person, other than a probation or parole officer, who makes contact with a juvenile under supervision to verify the juvenile's presence at work, school, home, etc. A surveillance officer may be an employee of a court service unit or other service provider, or a properly trained and supervised volunteer.

"Tamper" means any accidental or purposeful alteration to electronic monitoring equipment that interferes with or weakens the monitoring system.

"Time-out" means a systematic behavior management technique designed to reduce or eliminate inappropriate behavior by temporarily removing a juvenile from contact with people or other reinforcing stimuli. [ ~~A time-out room shall not be locked nor the door secured in any way that will prohibit the juvenile from opening it. Time-out shall not be used for periods longer than 30 consecutive minutes. ]~~

"Unit" or "CSU" means court service unit.

"Volunteer" means any individual or group who [ ; ] of their own free will [ ; and ] without any financial gain [ ; ] provides goods or services to the program without compensation.

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## **6 VAC 35-150-20. Previously adopted regulations superseded.**

These Standards for Nonresidential Services Available to Juvenile and Domestic Relations District Courts supersede:

[ 1. 6 VAC 35-80-10 et seq., Holdover Standards, issued by the Board of Youth and Family Services, September 9, 1992;

4- 2. ] 6 VAC 35-110-10 et seq., Minimum Standards for Court Services in Juvenile and Domestic Relations District Courts, issued by the Board of Corrections January 12, 1983, and adopted by the Board of Youth and Family Services July 12, 1990; and

[ 2- 3. ] 6 VAC 35-130-10 et seq., Standards for Outreach Detention, adopted by the State Board of Corrections on June 9, 1981, revised on March 3, 1983, and adopted by the State Board of Board of Youth and Family Services in 1990.

## **6 VAC 35-150-30. Applicability.**

A. Parts I (6 VAC 35-150-10 et seq.) and II ( [ ~~6-VAC-35-150-60 et seq.~~ 6 VAC 35-150-55 et seq. ] ) of this chapter apply to all court service units for juvenile and domestic relations district courts.

B. Parts I (6 VAC 35-150-10 et seq.) and III ( [ ~~6-VAC-35-150-430 et seq.~~ 6 VAC 35-150-425 et seq. ] ) of this chapter apply to programs and services (i) for which the CSU contracts or (ii) to which the CSU refers juveniles who are before the court or before an intake officer, including programs and services included in a local "Virginia Community Crime Control Act" plan. 6 VAC 35-150-600, 6 VAC 35-150-610 and Articles 3 (6 VAC 35-150-620 et seq.) and 4 (6 VAC 35-150-700 et seq.) of Part III of this chapter also apply to those programs and services that are operated by the court service unit.

## **6 VAC 35-150-40. Outcome-based and performance-based standards authorized.**

The board may, in its discretion on a case-by-case basis and for a specified time, exempt individual units or programs from specific standards set out in this chapter [ ; ] and authorize the unit or program to implement on an experimental basis one or more substitute standards that measure performance or outcomes.

## **6 VAC 35-150-50. Licensure by other agencies.**

[ ~~Licensure by another state agency~~ A current license or certificate issued by the Commonwealth ] shall be accepted as evidence of a program's compliance with [ the one or more ] specific standards of this chapter [ that when the requirements for licensure or certification ] are substantially the same as [ , or exceed, ] the requirements [ for such licensure set out in the standard ].

## PART II.

### OPERATING STANDARDS FOR COURT SERVICE UNITS.

#### Article 1.

##### Administration.

## **[ 6 VAC 35-150-55. Probation officers' caseload.**

The average caseload for probation officers in the unit shall not exceed 30 cases. ]

## **6 VAC 35-150-60. Organizational structure.**

There shall be a written description and organizational chart of the unit showing current lines of authority, responsibility and accountability, including the unit director's reporting responsibility.

## **6 VAC 35-150-70. Court service unit director.**

Consistent with policies and procedures of the department or the locality, as applicable, the court service unit director shall:

1. Plan, coordinate, and direct all services, programs, and personnel of the unit;
2. With involvement of the staff, set specific written unit goals and objectives and communicate these to all staff;
3. Request and manage the spending of state and local budget allocations;
4. Provide required financial, managerial and programmatic reports;
5. Coordinate the unit's relations with the court, the public, other agencies and the press;
6. Ensure that there is supervision for all staff, as provided for in job descriptions and consistent with performance evaluations;
7. Ensure availability of appropriate staff to respond to emergencies; and
8. Ensure that there are unit procedures for processing complaints about staff or services.

## **6 VAC 35-150-80. Background checks.**

[ ~~Consistent with department~~ Written ] policy, [ procedure and practice shall provide that ] all new unit employees and auxiliary personnel, including volunteers, shall undergo a preemployment check of references [ and criminal and driving records ; criminal history checks with the automated Virginia Criminal Information Network (VCIN), the National Criminal Information Center (NCIC), and the Department of Motor Vehicles (DMV); and fingerprint checks by the State Police and the FBI ] ; those who have direct contact with youth shall also undergo a child protective services registry check.

## **6 VAC 35-150-90. Training.**

[ Written policy, procedure and practice shall provide that: ]

- [ A. 1.] All staff shall receive [ documented ] orientation and annual training appropriate to their duties and to

address any needs identified [ ~~in their performance plan~~ by the individual and the supervisor;

2. All full-time employees who provide direct services to juveniles and their families shall receive 40 hours of training annually;

3. All clerical staff shall receive at least 20 hours of training annually; and

~~B.~~ 4. ] All volunteers and interns shall receive [ documented ] orientation and training appropriate to their duties.

**6 VAC 35-150-100. Personnel policies and operating procedures.**

All [ court service units shall have and make available to all ] staff [ ~~shall have access to current unit operating procedures, applicable federal, state and local rules and regulations, and personnel~~ ] policies and procedures [ ~~of the department or the local government approved by their parent governmental~~ ] authority [ ~~, as appropriate,~~ in the following areas:

1. Recruitment and selection;
2. Grievance and appeal;
3. Annual employee evaluation;
4. Confidential individual employee personnel records;
5. Discipline;
6. Equal employment opportunity;
7. Leave and benefits;
8. Resignations and terminations;
9. Orientation;
10. Position qualifications;
11. Job descriptions;
12. Promotion;
13. Probationary period; and
14. Competitive salary. ]

**6 VAC 35-150-110. Volunteers.**

If volunteers are used [ , written policy, procedure and practice shall provide that ]:

1. They shall comply with all applicable board policies and department and unit procedures;
2. One or more designated persons shall coordinate volunteer services; and
3. Volunteers shall be registered with the department for liability insurance purposes.

**6 VAC 35-150-120. Reportable incidents.**

[ Written policy, procedure and practice shall provide that when an event or incident occurs which is required by

department procedures to be reported, ] staff shall report [ ~~all incidents~~ the event or incident ] as required [ by ] and in accordance with department procedures.

**6 VAC 35-150-130. Research.**

[ Written policy, procedure and practice shall provide that: ]

[ ~~A.~~ 1. ] Youth shall not be used as subjects of human research unless the unit specifically permits human research in accord with Chapter 5.1 (§ 32.1-162.16 et seq.) of Title 32.1 of the Code of Virginia and department policy.

[ ~~B.~~ 2. ] The testing of medicines or drugs for experimentation or research is prohibited.

**6 VAC 35-150-140. Records management.**

[ Written policy, procedure and practice shall provide that: ]

[ ~~A.~~ 1. ] The unit shall have a system for indexing all case records [ - ; ]

[ ~~B.~~ 2. ] Case records shall be kept up to date, uniform in content and arrangement within the unit [ - ; ]

[ ~~C.~~ 3. ] Juvenile case records shall be kept in a secure location accessible only to authorized staff [ - ; ]

[ ~~D.~~ 4. ] All records shall be maintained and disposed of in accordance with The Library of Virginia requirements as provided for in department procedures [ - ; ]

[ ~~E.~~ 5. ] Any disclosure or release of information shall be in accordance with the Code of Virginia [ - ; and ]

[ ~~F.~~ 6. ] The case records of youth placed in any postdispositional residential care shall contain:

- [ ~~1.~~ a. ] Social history;
- [ ~~2.~~ b. ] Order or agreement concerning the placement;
- [ ~~3.~~ c. ] Dates of acceptance and placement;
- [ ~~4.~~ d. ] Reason for placement;
- [ ~~5.~~ e. ] Financial and tuition arrangements, if appropriate; and
- [ ~~6.~~ f. ] Supervision and visitation agreements.

**6 VAC 35-150-150. Reports for the court.**

[ Written policy, procedure and practice shall provide that ] all reports prepared for the court shall be prepared and reviewed in accordance with unit procedures [ - ; ] and [ , except for transfer reports and addenda to previously submitted reports, ] shall contain the following identifying information:

1. Full name of subject;
2. Social Security Number [ ~~, when available~~ ];
3. Address;
4. Race;

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5. Date of birth (must be verified);
6. Sex;
7. Parents or guardians (for juveniles only);
8. Author; and
9. Date of report.

## 6 VAC 35-150-160. Social history.

A. A social history shall be prepared for each juvenile placed on probation supervision with the court service unit or committed to the department.

B. [ Written policy, procedure and practice shall provide that ] when a juvenile is placed on probation without benefit of a predisposition report, the social history shall be completed within 60 days of receiving the case following disposition.

[ ~~B~~-C. Written policy, procedure and practice shall require that ] a current social history shall be prepared upon written request from other units [ ; ] when accompanied by a court order. An existing social history that is not more than 12 months old may be used [ ; ] provided an addendum is prepared updating all changed information.

[ ~~C~~-D. Written policy, procedure and practice shall provide that ] social history reports shall be in written form and include at least the following information:

1. Identifying information as listed in 6 VAC 35-150-150.
2. Court history - specific description of past, present and pending petitions and dispositions.

[ 3. Police or prosecutor's version of the instant offense, when available, for all juveniles who are committed to the department. ]

[ ~~3~~-4. ] Victim impact information, when [ applicable ordered by the court ]

[ 5. An accurate and up-to-date offense history. ]

[ ~~4~~-6. ] Previous contacts with the unit, including diversion and informal resolution at intake, and known contacts with other agencies or treatment services in the community.

[ ~~5~~-7. ] Subject: physical description; behavioral description; medical, educational, psychological information (as applicable); educational and other known handicaps or disabilities (if applicable); peer relationships [ , including gang affiliation ] ; response to authority [ ; employment status; and whether the subject has a driver's license ] .

[ ~~6~~-8. ] Family: parents/custodians/guardians - ages, marital status, court record, employment status, economic status, level of education, health, interpersonal relationships. Siblings - ages, court record, level of education.

[ ~~7~~-9. ] Home and neighborhood: Physical description of home and neighborhood, family's and officer's view of neighborhood impact on subject, and length of residence.

[ ~~8~~-10. ] Assessment of the subject's strengths and weaknesses and, if applicable, the subject's family.

[ ~~9~~-11. ] Recommendations may be included if permitted by the court.

[ ~~D~~-E. Written policy, procedure and practice shall provide that ] adults' social history reports, if ordered by the court, may be in a modified format as provided for in unit procedures.

## [ 6 VAC 35-150-165. Custody investigations.

If the unit performs custody investigations upon order of the court, written policy, procedure and practice shall provide that such investigations shall be completed in conformance with "Guidelines for Custody Investigations" jointly promulgated by the State Board of Juvenile Justice and the State Board of Social Services.

## 6 VAC 35-150-170. Services to cases in which the court has ordered support payments.

If the unit provides services to cases in which the court has ordered support payments, unit procedures developed in consultation with the judge or judges of the court shall set forth the criteria for returning persons to court for the nonpayment of court ordered support. ]

### Article 2. Budget and Finance.

## [ ~~6 VAC 35-150-170~~. 6 VAC 35-150-175. ] Suitable quarters.

A. The CSU director annually shall review the unit's needs for suitable quarters, utilities and furnishings and request from the appropriate governing body the resources to meet these needs.

B. [ Written policy, procedure and practice shall provide that ] intake, probation and parole officers shall have access to private office space so equipped that conversations may not be overheard from outside the office.

## 6 VAC 35-150-180. Prohibited financial transactions.

[ Written policy, procedure and practice shall provide that ] the unit shall not collect or disburse support payments, fines, or restitution.

## 6 VAC 35-150-190. Procedures for handling funds.

The court service unit director shall establish written policies [ which regulate how all , procedures and practice for handling ] funds [ are handled ] within the unit.

Article 3.  
Security and Safety.

**6 VAC 35-150-200. Security and emergency procedures.**

[ Written ] unit [ ~~procedures~~ policy, procedure and practice ] shall provide for:

1. Safety and security precautions for the office environment, to include at least fire, bomb threat, hostage and medical emergency situations; and
2. Safety and security precautions for staff making field visits to juveniles and their families.

**6 VAC 35-150-210. Physical force.**

[ Written policy, procedure and practice shall provide that: ]

- [ 1. ] Physical force shall be used only to protect self or others [ - ; and ]
- [ 2. ] Each use of physical force shall be reported in writing to the CSU director.

**6 VAC 35-150-220. Searches of youth.**

[ Written policy, procedure and practice shall provide that: ]

- [ 1. ] Only staff who have received training in the conduct of searches, as approved by the department, may search juveniles [ , ; ] and [ ~~then~~ ]
2. Searches of juveniles may be conducted [ ] only when permitted by and in accordance with the unit's written guidelines.

**6 VAC 35-150-230. Weapons.**

[ Written policy, procedure and practice shall provide that: ]

- [ 1. ] If a probation officer carries a weapon [ in the performance of his duties ], he may do so only when he is authorized by § 16.1-237 H of the Code of Virginia and when he is in compliance with a written policy promulgated by the department concerning the training, carrying and use of weapons, and which shall include requirements for a psychological or mental assessment, the successful completion of department approved training with annual department approved training thereafter, and written notification to the department that the probation officer will carry a weapon [ - ; and ]
2. ] All court service unit staff authorized to carry weapons shall have received training approved by the department regarding the limited circumstances when weapons may be carried and used as required by law and liability insurance coverage.

**6 VAC 35-150-240. Arrest of youth by staff.**

The court service unit director shall develop a written policy [ ~~governing~~ either prohibiting or permitting ] the arrest of juveniles by probation officers. If [ ~~the~~ arrests are permitted, written ] policy [ ~~permits~~ ~~arrests~~, it , procedure and practice ] shall require that:

1. When possible, any arrest action should be preceded by conference between the probation officer and the supervisor; and
2. If an arrest is necessary, probation officers trained in proper arrest procedures should make the arrest only when law-enforcement personnel are not available and when the safety of staff, the juvenile or the public may be in danger.

**6 VAC 35-150-250. Absconders.**

[ ~~Staff shall follow written unit procedures to~~ Written policy, procedure and practice shall require that staff cooperate with department personnel and state and local law-enforcement authorities to help ] locate and recover juveniles who fail to report for probation or parole supervision or who escape or run away from a juvenile correctional center, detention home or other juvenile placement.

**6 VAC 35-150-260. Transportation of detained juveniles.**

[ ~~A. CSU staff shall not transport juveniles who are in the custody of a secure detention facility.~~ Written policy, procedure and practice shall provide that:

1. ] Detained juveniles shall be transported in accord with "Guidelines for Transporting Juveniles in Detention" [ (June 13, 1991) ] issued by the board in accord with § 16.1-254 of the Code of Virginia.

[ ~~B. 2. ] When the CSU is responsible for the transportation of youth to special placements [ pursuant to § 16.1-286 of the Code of Virginia ] , staff shall make transportation arrangements appropriate to the security risk posed by the juvenile.~~

[ ~~C. 3. ] Routine transportation of juveniles in postdispositional detention shall be the responsibility of the parents or the program providing service to the juvenile.~~

Article 4.  
Intake.

**6 VAC 35-150-270. Intake duties.**

[ Written policy, procedure and practice shall provide that ] when making an intake determination as provided for by the Code of Virginia, whether in person or by telephone or interactive video conferencing, the intake officer shall:

1. Explain the steps and options in the intake process to each person present [ , including their constitutional and statutory rights ]; [ ~~and~~ ]
2. Consult with available parents [ or , ] guardians [ , legal custodian or other person standing in loco parentis ] to determine the appropriate placement, unless a court has ordered detention [ - ; and ]
3. Notify the juvenile's parents, guardians, legal custodian or other person standing in loco parentis in cases involving the juvenile's detention. ]

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## 6 VAC 35-150-280. Medical and psychiatric emergencies at intake.

[ Written policy, procedure and practice shall provide that if ] during the intake interview [ ~~if it comes to the attention of~~ ] the intake officer [ suspects ] that the youth [ ~~may require~~ requires ] emergency medical or psychiatric care, the intake officer shall:

1. Immediately contact the youth's parents or legal guardians to advise them of the emergency and any responsibilities they may have; and
2. [ ~~In cases that involve~~ Before ] placing a youth in a more restrictive setting, the intake officer shall arrange for the youth to receive the needed emergency care [ ~~before placing the youth~~ ].

## 6 VAC 35-150-290. Intake communication with detention.

[ Written policy, procedure and practice shall provide that ] when CSU staff facilitate the detention process, they shall give detention staff, [ ~~as soon as practicable,~~ ] by telephone or in writing [ no later than the time the juvenile arrives at the detention facility ] , the reason for detention and the instant offenses, and the following information when available and applicable: medical information; parents' names, addresses and phone numbers; prior record as regards sexual offenses, violence against persons or arson; suicide attempts; and gang affiliation.

### Article 5. Out-of-Home Placements.

## 6 VAC 35-150-300. Predispositionally placed youth.

A. [ Written policy, procedure and practice shall provide that ] a representative of the court service unit shall make face-to-face contact with each youth placed in predispositional detention, jail or shelter care [ , ] within five days of the placement [ , ] and shall make contact with the youth at least once every 10 days thereafter, either face-to-face or by telephone.

B. [ Written policy, procedure and practice shall provide that at least ] every 10 days, the CSU director or designee shall make and document a review of each predispositionally placed youth to determine whether there has been a material change sufficient to warrant recommending a change in placement.

C. [ Written policy, procedure and practice shall provide that ] when the unit has placed or is supervising a youth in a residential facility, designated staff shall be available to the facility's staff 24 hours a day in case of emergency.

## 6 VAC 35-150-310. Postdispositional detention.

[ Written policy, procedure and practice shall provide that ] when a juvenile is ordered by a court, pursuant to § 16.1-248.1 B of the Code of Virginia, into a facility that houses postdispositionally detained youth, the court service unit shall [ within 30 days of the court order ] have a written plan with the facility to enable such youth to take part in one or more

community treatment programs appropriate for their rehabilitation [ and available to youth in the community. The postdispositionally detained youth may receive the services at the facility or while on temporary release status, as determined by their risk to public safety and other relevant factors ].

## 6 VAC 35-150-320. Notice of youth's transfer.

[ Written policy, procedure and practice shall provide that ] when [ court service unit ] staff [ ~~learn~~ have knowledge ] that a youth has been moved from one facility or program to another [ ~~and the parents or guardians have not been notified~~ ], they shall notify the youth's parents or guardians within 24 hours and document the notification in the youth's case record.

## 6 VAC 35-150-330. Removal of youth from home.

[ Written policy, procedure and practice shall provide that ] when considering whether to remove a youth from his home for any reason other than to detain the youth, the youth's parents or guardians, if available, shall be included in making that decision [ ~~in accordance with unit procedures~~ ].

### Article 6. Probation, Parole and Other Supervision.

## [ 6 VAC 35-150-335. Informal supervision.

Written policy, procedure and practice shall provide that when unit personnel are supervising a juvenile in the absence of a court order, such supervision shall not exceed 90 days. ]

## 6 VAC 35-150-340. Beginning supervision.

[ Written policy, procedure and practice shall provide that ] no later than five [ ~~work~~ working ] days after (i) receiving the court order of probation or (ii) the juvenile's release from direct state care, a probation or parole officer shall:

1. See the subject face-to-face;
2. Give the subject the written rules of supervision, including any special conditions, and explain these to the subject and, when appropriate, to the subject's parents or guardians; and
3. Document that the rules and conditions of supervision have been given to the subject [ , ] and parents [ , ] if applicable.

## 6 VAC 35-150-350. Supervision plan.

A. [ Written policy, procedure and practice shall require that ] to provide for the public safety and address the needs of subjects and their families, subjects shall be supervised according to a written supervision plan that describes the range and nature of field and office contact with the subject [ ~~and~~ , ] with the parents or guardians of a juvenile subject [ , ] and with other agencies providing treatment or services ].

B. [ Written policy, procedure and practice shall provide that ] the supervision plan for juvenile probation shall be written and approved, in accordance with unit procedures,

within [ ~~60~~ 30 ] days of receiving a case after disposition, after consulting with the youth and, when appropriate, the youth's family.

C. [ Written policy, procedure and practice shall provide that ] when the youth resides in or is expected to return to the family home, the probation officer shall write a family involvement plan within 30 days of a committed youth's arrival at the reception and diagnostic center, after consulting with the youth's family, to involve the family with the youth during the youth's commitment, to prepare for the youth's release and, when appropriate, to work to change family members' behaviors.

D. [ Written policy, procedure and practice shall provide that ] a report on the family's progress toward planned goals shall be sent to the facility at which the juvenile is housed in direct state care at least once every 90 days.

E. [ Written policy, procedure and practice shall provide that ] a written supervision plan for parole shall be prepared for all [ ~~judicial review hearings as provided for by law, and for consideration by the Internal Review Committee before a ward's release from direct state care, in accordance with department procedure. The plan shall be developed~~ committed juveniles at least 60 days before their anticipated release ] after consulting with the subject and the juvenile correctional center staff and, when appropriate, staff of the Virginia Department of Rehabilitative Services, the Department of Correctional Education, the local school division in which the youth will be enrolled, and the youth's family.

[ F. Written policy, procedure and practice shall provide that a supervision plan for parole shall be prepared for all judicial review hearings for serious juvenile offenders as required by law and in accordance with the department's internal review process. ]

[ ~~F.~~ G. Written policy, procedure and practice shall provide that ] if the court has not ordered specific conditions of supervision, a supervision plan for an adult probation subject shall be prepared within [ ~~60~~ 30 ] days of receiving the case after disposition, after consulting with the adult and, if appropriate, his family.

#### 6 VAC 35-150-360. Periodic review.

A. [ Written policy, procedure and practice shall provide that ] each written supervision plan or family involvement plan shall be reviewed at least every 90 days with the subject and the subject's family, as applicable.

B. [ ~~In accordance with unit procedures,~~ Written policy, procedure and practice shall provide that a supervisor shall review ] each subject's case [ ~~shall be reviewed~~ ] at least once every 90 days from both a treatment and case management perspective to determine the appropriateness of the supervision plan or family involvement plan.

#### 6 VAC 35-150-370. Placements in the community.

[ Written policy, procedure and practice shall provide that ] when the unit (i) is supervising and (ii) has placed a subject in a community facility or program, unit staff shall advise the facility or program of the subject's service needs and shall maintain contact with the subject and the facility or program staff in accordance with the supervision plan.

#### 6 VAC 35-150-380. Violation of probation or parole.

[ ~~Unit procedures~~ Written policy, procedure and practice ] shall provide for actions to be taken when a subject violates probation or parole.

#### 6 VAC 35-150-390. Transfer of case supervision to another unit.

A. When a subject's legal residence is not within the jurisdiction of the original court service unit, supervision cases may be transferred to another unit providing similar services in Virginia. [ Written policy, procedure and practice shall provide that ] within 30 days of receiving a written request to transfer supervision, the receiving unit shall respond in writing to the initiating unit either accepting or, if the subject does not reside in the jurisdiction or the proposed placement is unacceptable, refusing the transfer.

B. [ Written policy, procedure and practice shall provide that ] the receiving unit shall provide supervision services for cases that are properly transferred unless exceptional circumstances exist.

C. [ Written policy, procedure and practice shall provide that ] the sending unit shall be responsible for supervising the case, in accord with written procedures governing such circumstances, until supervision is accepted by the receiving unit.

D. The sending unit shall send the receiving unit:

1. A copy of the petition or warrant;
2. Complete social history, if applicable, or as otherwise agreed by the units involved;
3. Copy of the court order placing the subject under supervision, including any court-ordered special rules or conditions, and the length of time that the subject is to remain under supervision, if specified;
4. Signed copy of conditions of supervision or contract, or as otherwise agreed by the units;
5. Summary of supervision, if applicable; [ ~~and~~ ]
6. For juveniles, the most recent known address of parent or guardian [ ; and
7. A current copy of the juvenile's offense history ] .

#### 6 VAC 35-150-400. Notice of release from supervision.

[ Written policy, procedure and practice shall provide that ] subjects [ ; ] and the parents [ or guardians ] of juvenile subjects [ ; ] shall be notified when they are released from probation or other supervision. Notice shall be by letter, copy

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of the court order, or an appearance in court [ 7 ] and shall be documented in the case record.

## Article 7.

### Juvenile in Direct Care.

#### 6 VAC 35-150-410. Commitment information.

[ A. Written policy, procedure and practice shall provide that ] when a youth is [ ~~committed to the department, and whenever possible before the youth's transfer~~ ] into direct state care, [ ~~unit staff shall send~~ the following items either accompany or precede the youth ] to the reception and diagnostic center [ : ] the order of commitment, copies of clinical reports, predisposition studies, record of immunizations when available, and any other information required by the Code of Virginia or department policy.

[ B. Written policy, procedure and practice shall provide that if a juvenile is transferred to the department directly from the court, in addition to ensuring the delivery of the items required in subsection A of this section, unit staff shall immediately notify the reception and diagnostic center by telephone of the youth's impending arrival. ]

#### 6 VAC 35-150-420. Contacts during youth's commitment.

[ Written policy, procedure and practice shall provide that ] during the period of a youth's commitment, a designated staff person shall:

1. Contact the juvenile correctional center treatment staff at least every 30 days;
2. Meet with the youth at least every 90 days; and
3. Contact the youth's family or custodians at least [ ~~every 30 days monthly~~ ] to provide services and support consistent with the family involvement plan unless prevented by documented exceptional circumstances.

## PART III.

### STANDARDS FOR PROGRAMS AND SERVICES.

## Article 1.

### General Requirements of Programs and Services.

#### [ 6 VAC 35-150-425. Applicability.

The following standards apply to programs and services (i) for which the CSU contracts or (ii) to which the CSU refers juveniles who are before the court or before an intake officer, including but not limited to programs and services included in a local Virginia Juvenile Community Crime Control Act plan. The standards for alternative day treatment and structured day programs, electronic monitoring, surveillance officers, and substance abuse and testing services also apply to those programs and services that are operated by the court service unit. ]

#### 6 VAC 35-150-430. Written statements required.

A. Each [ nonresidential ] program or service shall have a written statement of its:

1. Purpose;

2. Supervision and treatment objectives, including criteria for admission and for measuring a juvenile's progress;

3. General rules of juvenile conduct and the behavior management system with specific expectations for behavior and appropriate consequences [ 7 ] which shall be made available to juveniles and parents upon acceptance into the program;

4. Criteria and procedures for terminating services, including terminations prior to the juvenile's successful completion of the program;

5. Methods and criteria for evaluating program effectiveness;

6. Drug-free workplace policy; and

7. Policy regarding contacts with the news media.

B. [ Written policy, procedure and practice shall provide that ] the department administration shall be notified in writing of any plan to change any of the elements listed in subsection A of this section.

#### [ 6 VAC 35-150-435. Contracted services.

A. When a program contracts for services with public or private providers, it shall follow written procedures that govern the recruitment, screening and selection of providers.

B. Contracts with public or private sector providers shall identify the case coordinator.

C. Designated program staff shall monitor the delivery of services under the terms of the contract.

D. Contracts with public or private service providers shall require the provider to:

1. Develop a plan for the scope of services to the individual served;

2. Document receipt of the referral, services provided, and termination of services;

3. Make available to the purchasing agency all information specified in the contract;

4. Conduct the records checks required by 6 VAC 35-150-440 on all staff who provide services to individuals under the contract;

5. Participate in program evaluation as required by the Department of Juvenile Justice; and

6. Provide appropriate evidence of fiscal accountability and responsibility.

E. The standard of services provided by contractual vendors shall not be less than those required by this chapter. ]

**6 VAC 35-150-440. Employee and volunteer background check.**

[ Written policy, procedure and practice shall provide that ] no person shall provide services or conduct programs in direct contact with juveniles who has not had a reference check, [ ~~a criminal record check~~ criminal history checks with the automated Virginia Criminal Information Network (VCIN) and the National Criminal Information Center (NCIC), and fingerprint checks by the State Police and the FBI ], a central registry check, and a driving record check if applicable to the person's job duties, to ascertain whether there are criminal acts or other circumstances that would be detrimental to the safety of juveniles in the program.

**6 VAC 35-150-450. Limitation of contact with juveniles.**

[ Written policy, procedure and practice shall provide that ] when there are indications that an individual who is providing programs or services has a physical, mental or emotional condition that might jeopardize the safety of juveniles, [ the program administrator or ] department personnel may immediately require that the individual be removed from contact with juveniles until the situation is resolved.

**6 VAC 35-150-460. Personnel qualifications.**

[ A. Written policy, procedure and practice shall provide that ] staff and volunteers shall be qualified and trained for the positions and duties to which they are assigned [ ~~these~~ ].

[ B. Written policy, procedure and practice shall require that staff and volunteers ] who provide professional services shall be appropriately licensed or certified or be supervised by an appropriately licensed or certified person as required by law.

**6 VAC 35-150-470. Medical emergencies.**

The program or service shall have [ ~~procedures~~ written policy, procedure and practice ] to deal with medical emergencies that might occur while a juvenile is in attendance at the program.

**6 VAC 35-150-480. Financial record requirements.**

All programs and services shall [ :

1. ] Manage their finances in accordance with acceptable accounting procedures; [ ~~shall~~
2. ] Certify that all funds were handled in accord with the applicable Virginia Juvenile Community Crime Control Act plan, contract or other agreement; and [ ~~shall~~
3. ] Be subject to independent audit or examination by department personnel at the department's discretion.

**6 VAC 35-150-490. Juveniles' rights.**

A. [ Written policy, procedure and practice shall provide that ] juveniles shall not be excluded from a program nor be denied access to services on the basis of race, national origin, color, creed, gender, physical handicap or sexual orientation.

B. [ Written policy, procedure and practice shall provide that ] juveniles shall not be subjected to:

1. Deprivation of drinking water or food necessary to meet [ ~~a juvenile's~~ ] daily nutritional needs except as ordered by a licensed physician for a legitimate medical purpose and documented in the juvenile's record;
2. Any action which is humiliating, degrading or abusive;
3. Corporal punishment;
4. Unsanitary conditions;
5. Deprivation of access to toilet facilities;
6. Confinement in a room with the door [ so ] secured [ ~~in a manner~~ ] that [ ~~will prohibit~~ ] the juvenile [ ~~from opening~~ cannot open ] it.

**6 VAC 35-150-500. Juvenile participation in research.**

A. [ Written policy, procedure and practice shall prohibit ] medical or pharmaceutical testing for experimentation or research [ ~~shall be prohibited~~ ].

B. [ The program or service shall have either (i) a written policy prohibiting juveniles' participation in research or (ii) written policy, procedure and practice ensuring that ] juvenile's participation as subjects in [ ~~any other human~~ ] research shall be consistent with Chapter 5.1 (§ 32.1-162.16 et seq.) of Title 32.1 of the Code of Virginia, [ ~~unless the program or service has a written policy explicitly prohibiting juveniles' participation as subjects of human research as defined in that statute with § 16.1-305 of the Code of Virginia regarding confidentiality of juvenile records, with department policy regarding juveniles' participation in research, and with such regulations as may be promulgated by the state board regarding human research~~ ].

**6 VAC 35-150-510. Case management requirements.**

[ A. Written policy, procedure and practice shall provide that ] for each juvenile, a separate case record shall be kept up to date and in a uniform manner [ ~~and~~ ].

B. Written policy, procedure and practice shall provide that the juvenile case record ] shall always contain:

1. Identifying and demographic information on the juvenile;
2. Court order, placement agreement or service agreement;
3. Rules imposed by judge or probation officer, if applicable; and
4. Date of acceptance and release.

**6 VAC 35-150-520. Confidentiality of records.**

[ Written policy, procedure and practice shall provide that ] juveniles' records shall be kept confidential in accordance with applicable laws and regulations.

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## 6 VAC 35-150-530. Incident documentation and reporting.

[ Written policy, procedure and practice shall require that when an event or incident occurs which is required by department procedures to be reported, ] the program or service shall document and report [ ~~all serious incidents as defined and the event or incident as~~ ] required by [ and in accordance with ] department procedures.

## 6 VAC 35-150-540. Child abuse and neglect.

[ Written policy, procedure and practice shall provide that ] any case of suspected child abuse or neglect shall be reported immediately to the local department of public welfare or social services as required by § 63.1-248.3 of the Code of Virginia [ ; ] and documented in the juvenile's record.

### Article 2.

Specific Requirements for Particular Programs and Services.

## 6 VAC 35-150-550. Physical setting.

[ A. ] Each program that provides direct services to juveniles or their families within or at the program's office or place of operation shall comply with all applicable building, fire, sanitation, zoning and other federal, state and local standards [ ; ] and shall have premises liability insurance.

[ B. ] The [ interior inside ] and [ exterior outside ] of all buildings shall be [ ~~maintained in good repair and~~ ] kept clean [ , in good repair ] and free of rubbish.

## 6 VAC 35-150-560. Individual service or contact plan.

Programs that provide counseling, treatment or supervision shall:

1. Develop an individual service plan for each juvenile [ ; ] which shall specify the number and nature of contacts between the juvenile and staff;

[ 2. Provide the service plan information to the supervising probation or parole officer, when applicable, to be included in and monitored as part of the supervision plan; ]

[ ~~2-3.~~ ] Document all contacts with the juvenile, the juvenile's family and others involved with the case; and

[ ~~3-4.~~ ] Provide written progress reports to the referring agency at agreed upon intervals.

## 6 VAC 35-150-570. Response to crises.

All programs providing supervision or direct individualized services shall provide for response to juveniles' crises 24 hours a day [ ; ] and shall notify juveniles in writing how to get these services.

## 6 VAC 35-150-580. Emergencies and safety in juveniles' homes.

Programs that provide services in juveniles' homes shall [ ; ]

[ 1. ] Prescribe safety measures for staff making field visits and [ ~~shall~~ ]

[ 2. ] Provide for actions for staff to take in the event of:

[ ~~4- a.~~ ] Domestic violence;

[ ~~2- b.~~ ] Severe injury;

[ ~~3- c.~~ ] Threats and violence against staff; and

[ 4. d. ] Absence of life sustaining resources such as food or fuel.

## 6 VAC 35-150-590. Referrals.

Each program and service that accepts referrals shall have a written description of:

1. The population to be served;

2. Its criteria and requirements for accepting referrals, including whether a social history and diagnostic testing is required before accepting a youth; and

3. Intake and acceptance procedures.

## 6 VAC 35-150-600. Surveillance officers.

Programs that use staff or volunteer surveillance officers shall specify:

1. The nature and number of the surveillance officer's contacts with the youth under supervision;

2. How and to whom the officer will report such contacts and any problems identified.

## 6 VAC 35-150-610. Substance abuse and testing services.

Programs that provide substance abuse and testing services shall have a written description of:

1. The substance abuse assessment tools or instruments used;

2. The [ training required of persons who will conduct testing and the ] professional license or certification required of staff or contracted providers [ who will provide treatment services ]; and

3. How and to whom the results of the assessment and evaluation [ ; ] and any recommendations for treatment or other services [ ; ] will be reported.

### Article 3.

Alternative Day Treatment and Structured Day Programs.

## 6 VAC 35-150-620. Supervision of juveniles.

A. [ Written policy, procedure and practice shall provide that ] at all times that juveniles are on [ the any ] premises [ where alternative day treatment or structured day programs are provided ] , there shall be at least one [ ~~staff member~~ qualified person ] actively supervising who has a current first aid and CPR certification.

B. [ Written policy, procedure and practice shall provide that ] program staff are responsible for managing juveniles' behavior, and shall not delegate this responsibility to other juveniles except as part of an approved leadership training program under the supervision of qualified staff.

**6 VAC 35-150-630. Meals.**

[ Written policy, procedure and practice shall provide that ] if the program spans traditional meal times, juveniles shall be provided nutritionally balanced meals.

**6 VAC 35-150-640. Fire safety.**

A. [ ~~The program~~ Written policy, procedure and practice shall provide that each site to which juveniles report ] shall have a written fire plan [ ; ] developed with the consultation and approval of the appropriate local fire authority and reviewed with the local fire authority at least annually [ ; ] and updated if necessary.

B. [ Written policy, procedure and practice shall provide that at each site to which juveniles report, ] there shall be at least one documented fire drill each month.

C. [ Written policy, procedure and practice shall provide that ] each new staff member shall be trained in fire safety and emergency procedures before assuming supervision of juveniles.

**6 VAC 35-150-650. First-aid kits.**

[ Written policy, procedure and practice shall provide that ] a well stocked first-aid kit shall be [ ~~kept in the facility~~ available at each site to which juveniles report ] and in any vehicle used to transport juveniles and shall be readily accessible for minor injuries and medical emergencies.

**6 VAC 35-150-660. Delivery of medication.**

[ ~~There shall be~~ ] Written policy [ , procedure and practice ] governing the delivery of medication [ that shall ] either (i) [ ~~prohibits prohibit~~ ] staff from delivering medication or (ii) [ ~~designates designate~~ ] staff persons authorized to deliver prescribed medication by written agreement with a juvenile's parents; and [ that shall ] either (i) [ ~~permits permit~~ ] or (ii) [ ~~prohibits prohibit~~ ] self-medication by juveniles.

**6 VAC 35-150-670. Juveniles' medical needs.**

[ Written policy, procedure and practice shall provide that ] when necessary, program staff shall be notified of individual juveniles' medical needs or restrictions [ ; ] and given specific instructions for meeting these needs.

**6 VAC 35-150-680. Physical and mechanical restraint.**

A. [ Written policy, procedure and practice shall provide that ] only staff who have received department-sanctioned training may apply physical restraint, and only when a juvenile's uncontrolled behavior could result in harm to self or others and when less restrictive interventions have failed.

B. [ Written policy, procedure and practice shall provide that ] the use of physical restraint shall be only that which is minimally necessary to protect the juvenile or others.

C. [ Written policy, procedure and practice shall provide that ] any application of physical restraint shall be fully documented in the juvenile's record as to date, time, staff involved, circumstances, reasons for use of physical restraint and extent of physical restraint used.

D. [ Except in electronic monitoring and outreach detention programs serving juveniles who would otherwise be placed in secure detention or when a juvenile resists being taken into lawful custody, written policy, procedure and practice shall provide that ] the use of mechanical devices [ ~~or chemical substances~~ ] to restrain a juvenile's behavior is prohibited.

[ E. The use of chemical substances to restrain a juvenile's behavior is prohibited. ]

**6 VAC 35-150-690. Procedural requirements for time-out.**

[ A. ] A program that uses time-out shall have written [ ~~procedures~~ policy, procedure [ and practice ] to provide that juveniles in time-out shall:

1. Be able to communicate with staff;
2. Have bathroom privileges according to need; and
3. Be served any meal scheduled during the time-out period.

[ B. Written policy, procedure and practice shall provide that a time-out room shall not be locked nor the door secured in any way that will prohibit the juvenile from opening it.

C. Written policy, procedure and practice shall provide that time-out shall not be used for periods longer than 30 consecutive minutes. ]

**Article 4.  
Electronic Monitoring.**

**6 VAC 35-150-700. Not an automatic condition of supervision.**

[ Written policy, procedure and practice shall provide that ] electronic monitoring shall not be an automatic condition of probation, parole or predispositional supervision.

**6 VAC 35-150-710. Conditions of home and parents.**

[ Written policy, procedure and practice shall provide that: ]

- [ 1. ] Juveniles [ in an electronic monitoring program ] must reside in their own home or a surrogate home;
- [ 2. Before a juvenile is placed on electronic monitoring, ] parents or guardians must [ : ]

[ a. ] Give written consent [ , unless the electronic monitoring is ordered by a court of competent jurisdiction; ] and

[ b. ] Be fully oriented to the operation of the electronic monitoring device and program rules [ ~~before—a juvenile is placed on electronic monitoring~~ ].

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## 6 VAC 35-150-720. Required contacts.

[ Written policy, procedure and practice shall provide that as often as required by the written supervision or service plan, ] designated staff or volunteers shall [ : ]

[ 1. ] See each juvenile face-to-face [ , ; ] and [ shall ]

[ 2. ] Contact the juvenile's parents or guardians in person or by telephone [ , as required by the written supervision or service plan ] .

## 6 VAC 35-150-730. Tamperers and violations.

The program shall have written [ ~~procedures~~ policy, procedure and practice ] for responding to and investigating tamperers and program violations.

## 6 VAC 35-150-740. Time limits.

Written policy [ , procedure and practice ] shall establish the maximum time a juvenile may be electronically monitored [ ; if but shall not permit electronic ] monitoring [ could to ] extend beyond 45 days [ , the rationale and the unless an individual case, upon review by the program administrator, meets specific written ] criteria [ for imposing justifying ] a longer time period [ shall be stated in writing or continued electronic monitoring is ordered by a court of competent jurisdiction ] .

### INCORPORATED BY REFERENCE

"Guidelines for Transporting Juveniles in Detention," Board of Youth and Family Services, June 13, 1991.

"Guidelines for Custody Investigations," Board of Juvenile Justice and Board of Social Services, 1995.

VA.R. Doc. No. R97-415; Filed September 24, 1997, 12:04 p.m.

## TITLE 9. ENVIRONMENT

### STATE AIR POLLUTION CONTROL BOARD

**REGISTRAR'S NOTICE:** The State Air Pollution Control Board has claimed an exemption from the Administrative Process Act in accordance with § 9-6.14:4.1 C 4 (c) of the Code of Virginia, which excludes regulations that are necessary to meet the requirements of federal law or regulations, provided such regulations do not differ materially from those required by federal law or regulations. 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:** 9 VAC 5-20-10 et seq. Regulations for the Control and Abatement of Air Pollution: General Provisions (Rev. O97) (amending 9 VAC 5-20-203, 9 VAC 5-20-204 and 9 VAC 5-20-205).

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

**Effective Date:** January 1, 1998.

### Summary:

The amendments (i) revise the geographic delineation of the maintenance areas to correspond to the recent federal promulgation (9 VAC 5-20-203); (ii) revise the geographic delineation of the nonattainment areas to correspond to the recent federal promulgation (9 VAC 5-20-204); and (iii) revise the geographic delineation of the prevention of significant deterioration areas to correspond to the recent federal promulgation (9 VAC 5-20-205).

**Agency Contact:** Copies of the regulation may be obtained from Karen G. Sabasteanski, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4426. There is a charge of 20¢ per page over 50 pages.

## 9 VAC 5-20-203. 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 \_\_\_\_\_ Colonial Heights City  
Hopewell AQM \_\_\_\_\_ Hopewell City  
\_\_\_\_\_ Petersburg City  
\_\_\_\_\_ Prince George County  
\_\_\_\_\_ Dinwiddie County

Richmond AQMA \_\_\_\_\_ Richmond City  
\_\_\_\_\_ Charles City County  
\_\_\_\_\_ Chesterfield County  
\_\_\_\_\_ Goochland County  
\_\_\_\_\_ Hanover County  
\_\_\_\_\_ Henrico County  
\_\_\_\_\_ Powhatan County

Roanoke AQMA \_\_\_\_\_ Roanoke City  
\_\_\_\_\_ Salem City  
\_\_\_\_\_ Botetourt County

_____	Craig County
_____	Roanoke County
National Capital AQMA _____	Alexandria City
_____	Fairfax City
_____	Falls Church City
_____	Manassas City
_____	Manassas Park City
_____	Arlington County
_____	Fairfax County
_____	Loudoun County
_____	Prince William County

Maintenance areas are geographically defined below by locality for the criteria pollutants indicated.

1. Ozone.

Hampton Roads Ozone Maintenance 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	

2. Carbon monoxide.

Northern Virginia Carbon Monoxide Maintenance Area.

Arlington County	Alexandria City
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3. All other pollutants.

None.

9 VAC 5-20-204. Nonattainment areas.

Nonattainment areas are geographically defined below by locality for the criteria pollutants indicated. Following the name of each nonattainment area, in parentheses, is the classification assigned pursuant to § 181 (a) for ozone and § 186 (a) for carbon monoxide of the Federal Clean Air Act (42 USC § 7511 (a) and 42 USC § 7512 (a)).

1. Ozone.

a. Northern Virginia Ozone Nonattainment Area (serious).

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

b. Richmond Ozone Nonattainment Area (moderate).

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

\*Beginning at the intersection of State Route 156 and the Henrico/Charles City County Line, proceeding south along State Route 5/156 to the intersection with

State Route 106/156, proceeding south along Route 106/156 to the intersection with the Prince George/Charles City County Line, proceeding west along the Prince George/Charles City County line to the intersection with the Chesterfield/Charles City County line, proceeding north along the Chesterfield/Charles City County line to the intersection with the Henrico/Charles City County line, proceeding north along the Henrico/Charles City County line to State Route 156.

~~e. Hampton Roads Ozone Nonattainment Area (marginal).~~

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

~~d. c. White Top Mountain Ozone Nonattainment Area (marginal - rural transport area).~~

The portion above 4,500 feet elevation in Smyth County (located within the Jefferson National forest).

2. All other pollutants.

None.

9 VAC 5-20-205. Prevention of significant deterioration areas.

A. Prevention of significant deterioration areas are geographically defined below by locality for the following criteria pollutants:

1. Particulate matter.

AQCR 1 through 7	All areas
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2. Sulfur dioxide.

AQCR 1 through 7	All areas
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3. Carbon monoxide.

AQCR 1 through 7	All areas
------------------	-----------

4. Ozone (volatile organic compounds):

a. AQCR 1	All areas except the portion of White Top Mountain above 4,500 feet elevation located in Smyth County
b. AQCR 2	All areas
c. AQCR 3	All areas
d. AQCR 4	All areas except Stafford County
e. AQCR 5	All areas except Charles City County* Chesterfield County

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Hanover County  
Henrico County  
Colonial Heights City  
Hopewell City  
Richmond City

\*Beginning at the intersection of State Route 156 and the Henrico/Charles City County Line, proceeding south along State Route 5/156 to the intersection with State Route 106/156, proceeding south along Route 106/156 to the intersection with the Prince George/Charles City County Line, proceeding west along the Prince George/Charles City County line to the intersection with the Chesterfield/Charles City County line, proceeding north along the Chesterfield/Charles City County line to the intersection with the Henrico/Charles City County line, proceeding north along the Henrico/Charles City County line to State Route 156.

f. AQCR 6 All areas ~~except~~  
~~James City County~~  
~~York County~~  
~~Chesapeake City~~  
~~Hampton City~~  
~~Newport News City~~  
~~Norfolk City~~  
~~Poquoson City~~  
~~Portsmouth City~~  
~~Suffolk City~~  
~~Virginia Beach City~~  
~~Williamsburg City~~

g. AQCR 7 No area

## 5. Nitrogen oxides.

AQCR 1 through 7 All areas

## 6. Lead.

AQCR 1 through 7 All areas

B. All areas of the state are geographically defined as Prevention of Significant Deterioration Areas for the following pollutants:

Mercury  
Beryllium  
Asbestos  
Fluorides  
Sulfuric acid mist  
Vinyl chloride

Total reduced sulfur:

Hydrogen sulfide  
Methyl mercaptan  
Dimethyl sulfide  
Dimethyl disulfide

Reduced sulfur compounds:

Hydrogen sulfide  
Carbon disulfide

## Carbonyl sulfide

Municipal waste combustor organics (measured as total tetra-chlorinated through octa-chlorinated dibenzo-p-dioxins and dibenzofurans)

Municipal waste combustor metals (measured as particulate matter)

Municipal waste combustor acid gases (measured as the sum of SO<sub>2</sub> and HC1)

C. The classification of prevention of significant deterioration areas is as follows:

### 1. Class I.

a. Federal - James River Face Wilderness Area (located in AQCR 2) and Shenandoah National Park (located in AQCR 2 and AQCR 4).

b. State - None.

2. Class II - All areas of the state not designated in Class I.

3. Class III - None.

D. The area classification prescribed in subsection C of this section may be redesignated in accordance with 40 CFR 52.21(e), (g), (u) and (t).



COMMONWEALTH of VIRGINIA

VIRGINIA CODE COMMISSION  
General Assembly Building

910 CAPITOL STREET  
RICHMOND, VIRGINIA 23219  
(804) 786-3591

October 6, 1997

Mr. Thomas L. Hopkins, Director  
Department of Environmental Quality  
629 East Main Street  
Richmond, Virginia 23219

Attention: Cindy M. Berndt, Agency Regulatory Coordinator

Dear Mr. Hopkins:

This letter acknowledges receipt of the amendments to 9 VAC 5 Chapter 20, Rev. 097, Regulations for the Control and Abatement of Air Pollution - Nonattainment Areas.

As required by § 9-6.14:4.1 C 4(c) of the Code of Virginia, I have determined that these regulations are exempt from the operation of Article 2 of the Administrative Process Act since they do not differ materially from those required by federal law.

Sincerely,

A handwritten signature in cursive script that reads "E. M. Miller, Jr. /jc".

E. M. Miller, Jr.  
Acting Registrar of Regulations

VA.R. Doc. No. R98-45; Filed September 24, 1997, 11:13 a.m.

# Final Regulations

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**REGISTRAR'S NOTICE:** The State Air Pollution Control Board 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 or the appropriation act where no agency discretion is involved. 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 5-40-10 et seq. Regulations for the Control and Abatement of Air Pollution: Emission Standards (Rev. P97) (amending 9 VAC 5-40-5200).

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

**Effective Date:** January 1, 1998.

**Summary:**

The amendment redefines the term "localities outside the volatile organic compound emissions control areas" from all areas in the Commonwealth to the following localities: Charles City County, James City County, Roanoke County, Smith County, York County, Poquoson City, Roanoke City, Salem City and Williamsburg City.

**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. There is a charge of 20¢ per page.

**9 VAC 5-40-5200. Applicability and designation of affected facility.**

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

B. The provisions of this rule apply to sources of volatile organic compounds in volatile organic compound emissions control areas designated in ~~9 VAC 5-10-20, Appendix P 9 VAC 5-20-206~~. The provisions of this rule shall apply in localities outside the volatile organic compound emissions control areas according to the following schedule of effective dates:

1. On January 1, 1993, for facilities subject to the emission standards in 9 VAC 5-40-5220 A, B, and C and associated tank trucks that load at these facilities.
2. On January 1, 1996, for facilities subject to the emission standard in 9 VAC 5-40-5220 D and associated account trucks that load or unload at these facilities.
3. On January 1, 1999, for facilities subject to the emission standard in 9 VAC 5-40-5220 E.

For the purposes of this subsection, the term "localities outside the volatile organic compound emissions control areas" means the following localities: Charles City County, James City County, Roanoke County, Smith County, York County, Poquoson City, Roanoke City, Salem City and Williamsburg City.

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

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

VA.R. Doc. No. R98-49; Filed September 24, 1997, 11:14 a.m.

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**REGISTRAR'S NOTICE:** The State Air Pollution Control Board 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 or the appropriation act where no agency discretion is involved. 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 5-80-10 et seq. Regulations for the Control and Abatement of Air Pollution: Permits for New and Modified Sources (Rev. N97) (amending 9 VAC 5-80-60, 9 VAC 5-80-270, 9 VAC 5-80-370, 9 VAC 5-80-610, and 9 VAC 5-80-670).

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

**Effective Date:** January 1, 1998.

**Summary:**

The amendments remove provisions relating to localities particularly affected from the (i) federal operating permit regulation (Article 1 of 9 VAC 5 Chapter 80), specifically from definitions (9 VAC 5-80-60) and public participation (9 VAC 5-80-270); and (ii) the acid rain operating permit regulation (Article 3 of 9 VAC 5 Chapter 80), specifically from definitions (9 VAC 5-80-370), fast-track modifications for affected units (9 VAC 5-80-610), and public participation (9 VAC 5-80-670).

**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. There is a charge of 20¢ per page.

**VAC 5-80-60. Definitions.**

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

B. As used in this ~~rule~~ *article*, all terms not defined ~~here~~ *herein* 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. Terms defined.

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

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

"Affected unit" means a unit that is subject to any acid rain emissions reduction requirement or acid rain emissions limitation under 40 CFR Part 72, 73, 75, 76, 77 or 78.

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

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

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

- a. Any standard or other requirement provided for in the State Implementation Plan or the Federal Implementation Plan, including any source-specific provisions such as consent agreements or orders.
- b. Any term or condition of any preconstruction permit issued pursuant to 9 VAC 5-80-10, ~~9 VAC 5-80-20, Article 8 (9 VAC 5-80-1700 et seq.) of this part~~ or 9 VAC 5-80-30 or of any operating permit issued pursuant to 9 VAC 5-80-40, except for terms or conditions derived from applicable state requirements or from any requirement of these regulations not included in the definition of applicable requirement.

c. Any standard or other requirement prescribed under these regulations, particularly the provisions of 9 VAC 5 Chapter 40 (9 VAC 5-40-10 et seq.), 9 VAC 5 Chapter 50 (9 VAC 5-50-10 et seq.) or 9 VAC 5 Chapter 60 (9 VAC 5-60-10 et seq.), adopted pursuant to requirements of the federal Clean Air Act or under §§ 111, 112 or § 129 of the federal Clean Air Act.

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

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

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

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

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

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

j. With regard to temporary sources subject to 9 VAC 5-80-130, (i) any ambient air quality standard, except applicable state requirements, and (ii) requirements regarding increments or visibility as provided in ~~9 VAC 5-80-20 Article 8 (9 VAC 5-80-1700 et seq.) of this part.~~

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

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

- a. Any standard or other requirement prescribed by any regulation adopted pursuant to a requirement of the Code of Virginia governing a specific subject or category of sources.
- b. Any regulatory provision or definition directly associated with or related to any of the specific state requirements listed in this definition.

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

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

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VAC 5-80-90 sufficient to determine all applicable requirements and to evaluate the source and its application. Designating an application complete does not preclude the board from requesting or accepting additional information.

"Designated representative" means a responsible natural person authorized by the owners and operators of an affected source and of all affected units at the source, as evidenced by a certificate of representation submitted in accordance with subpart B of 40 CFR Part 72, to represent and legally bind each owner and operator, as a matter of federal law, in matters pertaining to the acid rain program. Whenever the term "responsible official" is used in this regulation, it shall be deemed to refer to the designated representative with regard to all matters under the acid rain program. Whenever the term "designated representative" is used in this regulation, the term shall be construed to include the alternate designated representative.

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

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

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

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

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

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

"Final permit" means the version of a permit issued by the board under this ~~rule~~ article that has completed all review

procedures required by 9 VAC 5-80-270 and 9 VAC 5-80-290.

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

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

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

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

"Major source" means:

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

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

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

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

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

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

"*Malfunction*" means any sudden and unavoidable failure of air pollution control equipment or process equipment or of a process to operate in a normal or usual manner that (i) arises from sudden and reasonably unforeseeable events beyond the control of the source, including acts of God, (ii) causes an exceedance of a technology-based emission limitation under the permit due to unavoidable increases in emissions attributable to the failure and (iii) requires immediate corrective action to restore normal operation.

Failures that are caused entirely or in part by poor maintenance, careless operation, or any other preventable upset condition or preventable equipment breakdown shall not be considered malfunctions.

"*Permit*," unless the context suggests otherwise, means any permit or group of permits covering a source subject to this ~~rule~~ *article* that is issued, renewed, amended, or revised pursuant to this ~~rule~~ *article*.

"*Permit modification*" means a revision to a permit issued under this ~~rule~~ *article* that meets the requirements of 9 VAC 5-80-210 on minor permit modifications, 9 VAC 5-80-220 on group processing of minor permit modifications, or 9 VAC 5-80-230 on significant modifications.

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

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

"*Proposed permit*" means the version of a permit that the board proposes to issue and forwards to the administrator for review in compliance with 9 VAC 5-80-290.

"*Regulated air pollutant*" means any of the following:

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

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

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

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a. The primary purpose of the source is the conduct of either (i) research and development into new products or processes or into new uses for existing products or processes or into refining and improving existing products or processes or (ii) basic research to provide for education or the general advancement of technology or knowledge.

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

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

"Responsible official" means one of the following:

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

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

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

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

c. For a municipality, state, federal, or other public agency: either a principal executive officer or ranking elected official. A principal executive officer of a federal agency includes the chief executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., a regional administrator of EPA).

d. For affected sources:

(1) The designated representative insofar as actions, standards, requirements, or prohibitions under Title IV of the federal Clean Air Act or the regulations promulgated thereunder are concerned; and

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

"State enforceable" means all limitations and conditions which are enforceable by the board, including those requirements developed pursuant to 9 VAC 5-20-110, requirements within any applicable order or variance, and any permit requirements established pursuant to 9 VAC 5-80-40 ~~et seq.~~ this chapter

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

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

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

## 9 VAC 5-80-270. Public participation.

A. Required public comment and public notice. Except for modifications qualifying for minor permit modification procedures and administrative permit amendments, draft permits for initial permit issuance, significant modifications, and renewals shall be subject to a public comment period of at least 30 days. The board shall notify the public using the procedures in subsection B of this section.

B. Notification. 4. The board shall notify the public of the draft permit or draft permit modification (i) by advertisement in ~~a local newspaper of general circulation in the locality particularly affected~~ and in a newspaper of general circulation in the ~~affected air quality control region area where the source is located~~ and (ii) through a notice to persons on a permit mailing list who have requested such information of the opportunity for public comment on the information available for public inspection under the provisions of subsection C of this section.

~~2. For major sources subject to this rule, the notice shall be mailed to the chief elected official and chief administrative officer and the planning district commission for the locality particularly affected.~~

## C. Content of the public notice and availability of information.

1. The notice shall include, but not be limited to, the following:

- a. The source name, address and description of specific location.
- b. The name and address of the permittee.
- c. The name and address of the regional office processing the permit.
- d. The activity or activities for which the permit action is sought.
- e. The emissions change that would result from the permit issuance or modification.

~~f. A statement of estimated local impact of the activity for which the permit is sought, including information regarding specific pollutants and the total quantity of each emitted pollutant and the type and quantity of fuels used.~~

~~g. f.~~ The name, address, and telephone number of a department contact from whom interested persons may obtain additional information, including copies of the draft permit or draft permit modification, the application, ~~air quality impact information if an ambient air dispersion analysis was performed~~ and all relevant supporting materials, including the compliance plan.

~~h. g.~~ A brief description of the comment procedures required by this section.

~~i. h.~~ A brief description of the procedures to be used to request a hearing or the time and place of the public hearing if the board determines to hold a hearing under subdivision E 3 of this section.

2. Information on the permit application (exclusive of confidential information under 9 VAC 5-20-150), as well as the draft permit or draft permit modification, shall be available for public inspection during the entire public comment period at the regional office.

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

## E. Opportunity for public hearing.

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

2. Following the initial publication of notice of a public comment period, the board will receive written requests for a public hearing to consider the draft permit or draft permit modification. The request shall be submitted within 30 days of the appearance of the notice in the newspaper. Request for a public hearing shall contain the following information:

a. The name, mailing address and telephone number of the requester.

b. The names and addresses of all persons for whom the requester is acting as a representative.

c. The reason why a hearing is requested, including the air quality concern that forms the basis for the request.

d. A brief, informal statement setting forth the factual nature and the extent of the interest of the requester or of the persons for whom the requester is acting as representative, including information on how the operation of the facility under consideration affects the requester.

3. The board shall review all requests for public hearing filed as required under subdivision E 2 of this section and, within 30 calendar days following the expiration of the public comment period, shall grant a public hearing if it finds both of the following:

a. There is significant public interest in the air quality issues raised by the permit application in question.

b. There are substantial, disputed air quality issues relevant to the permit application in question.

4. The board shall notify by mail the applicant and each requester, at his last known address, of the decision to convene or deny a public hearing. The notice shall contain the basis for the decision to grant or deny a public hearing. If the public hearing is granted, the notice shall contain a description of procedures for the public hearing.

5. If the board decides to hold a public hearing, the hearing shall be scheduled at least 30 and no later than 60 days after mailing the notification required in subdivision E 4 of this section.

6. The procedures for notification to the public and availability of information used for the public comment period as provided in subsection C of this section shall also be followed for the public hearing. The hearing shall be held in the affected air quality control region.

7. As an alternative to the requirements of subdivisions E 1 through E 6 of this section, the board may hold a public hearing if an applicant requests that a public hearing be held or if, prior to the public comment period, the board determines that the conditions in subdivisions E 3 a and b of this section pertain to the permit application in question.

8. The board may hold a public hearing for more than one draft permit or draft permit modification if the location for the public hearing is appropriate for the sources under consideration and if the public hearing time expected for each draft permit or draft permit modification will provide sufficient time for public concerns to be heard.

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9. Written comments shall be accepted by the board for at least 15 days after the hearing.

## F. Public comment record.

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

a. A record of the commenters.

b. A record of the issues raised during the public participation process so that the administrator may fulfill his obligation under § 505(b)(2) of the federal Clean Air Act to determine whether a citizen petition may be granted.

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

## 9 VAC 5-80-370. Definitions.

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

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

*"Acid rain compliance plan"* means the document submitted for an affected source in accordance with 9 VAC 5-80-430 specifying the method or methods (including one or more acid rain compliance options under 9 VAC 5-80-450 or 40 CFR Part 76) by which each affected unit at the source will meet the applicable acid rain emissions limitation and acid rain emissions reduction requirements.

*"Acid rain emissions limitation"* means:

1. For the purposes of sulfur dioxide emissions:

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

b. As adjusted:

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

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

(3) By allowance transfers to or from the compliance subaccount for that unit that were recorded or properly submitted for recordation by the allowance transfer deadline as provided in 40 CFR 73.35, after

deductions and other adjustments are made pursuant to 40 CFR 73.34(c); and

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

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

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

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

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

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

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

1. The permit application and any supporting or supplemental data submitted by the designated representative.

2. The draft permit.

3. The statement of basis.

4. Copies of any documents cited in the statement of basis and any other documents relied on by the board in issuing or denying the draft permit (including any records of discussions or conferences with owners, operators, or the designated representative of affected units at the source or interested persons regarding the draft permit), or, for any such documents that are readily available, a list of those documents and a statement of their location.

5. Copies of all written public comments submitted on the draft permit or denial of a draft permit.

6. The record of any public hearing on the draft permit or denial of a draft permit.

7. The acid rain permit.

8. Any response to public comments submitted on the draft permit or denial of a draft permit and copies of any documents cited in the response and any other documents relied on by the board to issue or deny the acid rain permit, or, for any such documents that are readily available, a list of those documents and a statement of their location.

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

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

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

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

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

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

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

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

"Allowances held" or "hold allowances" means the allowances recorded by the administrator, or submitted to the

administrator for recordation in accordance with 40 CFR 73.50, in an allowance tracking system account.

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

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

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

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

1. Any standard or other requirement provided for in the State Implementation Plan or the Federal Implementation Plan, including any source-specific provisions such as consent agreements or orders.
2. Any term or condition of any preconstruction permit issued pursuant to the new source review program or of any operating permit issued pursuant to 9 VAC 5-80-390, except for terms or conditions derived from applicable state requirements or from any requirement of these regulations not included in the definition of applicable requirement.
3. Any standard or other requirement prescribed under these regulations, particularly the provisions of 9 VAC 5 Chapter 40 (9 VAC 5-40-10 et seq.), 9 VAC 5 Chapter 50 (9 VAC 5-50-10 et seq.), or 9 VAC 5 Chapter 60 (9 VAC 5-60-10 et seq.), adopted pursuant to requirements of the federal Clean Air Act or under §§ 111, 112 or § 129 of the federal Clean Air Act.
4. Any requirement concerning accident prevention under § 112(r)(7) of the federal Clean Air Act.
5. Any standard or other requirement of the acid rain program under Title IV of the federal Clean Air Act or the acid rain program regulations.
6. Any compliance monitoring requirements established pursuant to either § 504(b) or § 114(a)(3) of the federal Clean Air Act or these regulations.
7. Any standard or other requirement for consumer and commercial products under § 183(e) of the federal Clean Air Act.

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

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

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

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

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

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

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

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

*"Basic Phase II allowance allocations"* means:

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

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

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

*"Certificate of representation"* means the completed and signed submission required by 40 CFR 72.20, for certifying the appointment of a designated representative for an affected source or a group of identified affected sources

authorized to represent the owners and operators of such source or sources and of the affected units at such source or sources with regard to matters under the acid rain program.

*"Certifying official"* means:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"Designated representative" means a responsible natural person authorized by the owners and operators of an affected source and of all affected units at the source, as evidenced by a certificate of representation submitted in accordance with Subpart B of 40 CFR Part 72, to represent and legally bind each owner and operator, as a matter of federal law, in matters pertaining to the acid rain program. Whenever the term "responsible official" is used in this rule

article, it shall be deemed to refer to the "designated representative" with regard to all matters under the acid rain program. Whenever the term "designated representative" is used in this rule article, the term shall be construed to include the alternate designated representative listed in the certificate of representation in accordance with 40 CFR 72.22 and 72.24. The designated representative may not be the responsible official with regard to the requirements of this rule article that do not pertain to the acid rain program.

"Diesel fuel" means a low sulfur fuel oil of grades 1-D or 2-D, as defined by the American Society for Testing and Materials ASTM D975-94, "Standard Specification for Diesel Fuel Oils" (see 9 VAC 5-20-21).

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

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

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

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

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

"EPA" means the United States Environmental Protection Agency.

"Excess emissions" means:

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

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

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

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

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

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

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

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

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

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

"Fuel oil" means any petroleum-based fuel (including diesel fuel or petroleum derivatives such as oil tar) as defined by the American Society for Testing and Materials in ASTM D396-92, "Standard Specification for Fuel Oils" (see 9 VAC 5-20-21), and any recycled or blended petroleum products or petroleum by-products used as a fuel whether in a liquid, solid or gaseous state.

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

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

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

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

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

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

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

"Independent power production facility" means a source that:

1. Is nonrecourse project-financed;
2. Is used for the generation of electricity, 80% or more of which is sold at wholesale; and
3. Is a new unit required to hold allowances under Title IV of the federal Clean Air Act; provided that direct public utility ownership of the equipment comprising the facility does not exceed 50%.

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

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

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

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

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

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

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

"New source review program" means a program for the preconstruction review and permitting of new stationary sources or expansions to existing ones in accordance with 9 VAC 5-80-10, ~~9 VAC 5-80-20~~ Article 8 (9 VAC 5-80-1700 et seq.) of this part, or 9 VAC 5-80-30 promulgated to implement the requirements of §§ 110 (a)(2)(C), 165 (relating to permits in prevention of significant deterioration areas) and 173 (relating to permits in nonattainment areas) of the federal Clean Air Act.

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

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

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

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

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

"Operating permit" means a permit issued under this rule, ~~Rule 8-5 (9 VAC 5-80-50 et seq.)~~ article, Article 1 (9 VAC 5-80-50 et seq.) of this part, 40 CFR Part 72, or any other regulation implementing Title V of the federal Clean Air Act.

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

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

"Owner or operator" means any person who is an owner or who operates, controls, or supervises an affected unit or

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affected source and shall include, but not be limited to, any holding company, utility system, or plant manager of an affected unit or affected source.

*"Permit"* (unless the context suggests otherwise) means any permit or group of permits covering a source subject to this *rule article* that is issued, renewed, amended, or revised pursuant to this *rule article*.

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

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

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

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

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

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

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

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

1. A power sales agreement;
2. A state regulatory authority order requiring a utility to (i) enter into a power sales agreement with the facility; (ii) purchase from the facility; or (iii) enter into arbitration concerning the facility for the purpose of establishing terms and conditions of the utility's purchase of power;
3. A letter of intent or similar instrument committing to purchase power (actual electrical output or generator output capacity) from the source at a previously offered or lower price and a power sales agreement applicable

to the source executed within the time frame established by the terms of the letter of intent but no later than November 15, 1992, or, where the letter of intent does not specify a time frame, a power sales agreement applicable to the source executed on or before November 15, 1992; or

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

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

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

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

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

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

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

*"Qualifying repowering technology"* means:

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

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

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

"Regulated air pollutant" means any of the following:

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

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

"Responsible official" means one of the following:

1. For a business entity, such as a corporation, association or cooperative:
  - a. The president, secretary, treasurer, or vice-president of the business entity in charge of a principal business function, or any other person who performs similar policy- or decision-making functions for the business entity, or
  - b. A duly authorized representative of such business entity if the representative is responsible for the overall operation of one or more manufacturing, production, or operating facilities applying for or subject to a permit and either:
    - (1) The facilities employ more than 250 persons or have gross annual sales or expenditures exceeding \$25 million (in second quarter 1980 dollars); or
    - (2) The authority to sign documents has been assigned or delegated to such representative in accordance with procedures of the business entity

and the delegation of authority is approved in advance by the board; or

2. For a partnership or sole proprietorship: a general partner or the proprietor, respectively; or
3. For a municipality, state, federal, or other public agency: either a principal executive officer or ranking elected official. A principal executive officer of a federal agency includes the chief executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., a regional administrator of EPA); or
4. For affected sources:
  - a. The designated representative insofar as actions, standards, requirements, or prohibitions under Title IV of the federal Clean Air Act or the regulations promulgated thereunder are concerned; and
  - b. The designated representative or any other person specified in this definition for any other purposes under this rule article or 40 CFR Part 70.

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

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

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

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

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

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

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

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

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

1. In person;
2. By United States Postal Service certified mail with the official postmark or, if service is by the administrator or the board, by any other mail service by the United States Postal Service; or
3. By other means with an equivalent time and date mark used in the regular course of business to indicate the date of dispatch or transmission and a record of prompt delivery. Compliance with any "submission," "service," or "mailing" deadline shall be determined by the date of dispatch, transmission, or mailing and not the date of receipt.

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

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

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

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

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

"Utility" means any person that sells electricity.

"Utility competitive bid solicitation" means a public request from a regulated utility for offers to the utility for meeting

future generating needs. A qualifying facility, independent power production facility may be regarded as having been "selected" in such solicitation if the utility has named the facility as a project with which the utility intends to negotiate a power sales agreement.

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

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

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

Notwithstanding subdivisions 1 and 2 of this definition, a unit that was in operation during 1985, but did not serve a generator that produced electricity for sale during 1985, and did not commence commercial operation on or after November 15, 1990, is not a utility unit for purposes of the acid rain program.

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

## **9 VAC 5-80-610. Fast-track modifications for affected units.**

A. The following permit revisions are, at the option of the designated representative submitting the permit revision, either fast-track modifications under this section or permit modifications for affected units under 9 VAC 5-80-600:

1. Incorporation of a compliance option under 9 VAC 5-80-450 that the designated representative did not submit for approval and comment during the permit issuance process.
2. Addition of a nitrogen oxides averaging plan to a permit.
3. Changes in a repowering plan, nitrogen oxides averaging plan, or nitrogen oxides compliance deadline extension.

B. The following requirements apply with respect to service, notification, and public participation:

1. The designated representative shall serve a copy of the fast-track modification on the following at least five days prior to the public comment period specified in subdivisions 2 and 3 of this subsection:

- a. The administrator,
- b. The board,
- c. Affected states, and
- d. Persons on a permit mailing list who have requested information on the opportunity for public comment, and
- e. ~~The chief elected official, chief administrative officer, and the planning district commission for the locality particularly affected.~~

2. Within five business days of serving copies of the fast-track modification under subdivision 1 of this subsection, the designated representative shall give public notice of the fast-track modification by publication in a newspaper of general circulation in the area where the source is located or in a state publication designed to give general public notice. The notice shall contain the information listed in 9 VAC 5-80-670 C 1 a through C 1 h. The notice shall also state that a copy of the fast-track modification is available (i) from the designated representative and (ii) for public inspection during the entire public comment period at the regional office.

3. The public shall have a period of 30 days, commencing on the date of publication of the notice, to comment on the fast-track modification. Comments shall be submitted in writing to the board and to the designated representative.

C. The timetable for issuance shall be as follows:

1. Within 30 days of the close of the public comment period, the board shall consider the fast-track modification and the comments received and approve, in whole or in part or with changes or conditions as appropriate, or disapprove the modification.

2. A fast-track modification shall be effective immediately upon approval and issuance, in accordance with 9 VAC 5-80-510 B 5.

### 9 VAC 5-80-670. Public participation.

A. Except for modifications qualifying for minor permit modification procedures and administrative permit amendments, draft permits for initial permit issuance, significant modifications, and renewals shall be subject to a public comment period of at least 30 days. The board shall notify the public using the procedures in subsection B of this section.

B. The board shall notify the public of the draft permit or draft permit modification (i) by advertisement in ~~a local newspaper of general circulation in the locality particularly affected and~~ in a newspaper of general circulation in the ~~affected air quality control region area where the source is located~~ and (ii) through a notice to persons on a permit mailing list who have requested such information of the opportunity for public comment on the information available for public inspection under the provisions of subsection C of

~~this section. For sources subject to this rule, the notice shall be mailed to the chief elected official and chief administrative officer and the planning district commission for the locality particularly affected.~~

C. The following requirements apply with respect to content of the public notice and availability of information:

1. The notice shall include, but not be limited to, the following:

a. The source name, address and description of specific location.

b. The name and address of the permittee.

c. The name and address of the regional office processing the permit.

d. The activity or activities for which the permit action is sought.

e. The emissions change that would result from the permit issuance or modification.

~~f. A statement of estimated local impact of the activity for which the permit is sought, including information regarding specific pollutants and the total quantity of each emitted pollutant and the type and quantity of fuels used.~~

~~g. f.~~ The name, address, and telephone number of a department contact from whom interested persons may obtain additional information, including copies of the draft permit or draft permit modification, the application, ~~air quality impact information if an ambient air dispersion analysis was performed~~ and all relevant supporting materials, including the compliance plan.

~~h. g.~~ A brief description of the comment procedures required by this section.

~~i. h.~~ A brief description of the procedures to be used to request a hearing or the time and place of the public hearing if the board determines to hold a hearing under subdivision E 3 of this section.

2. Information on the permit application (exclusive of confidential information under 9 VAC 5-20-150), as well as the draft permit or draft permit modification, shall be available for public inspection during the entire public comment period at the regional office.

D. The board shall provide such notice and opportunity for participation by affected states as is provided for by 9 VAC 5-80-690.

E. The following requirements apply with respect to opportunity for public hearing:

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

2. Following the initial publication of notice of a public comment period, the board shall receive written requests

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for a public hearing to consider the draft permit or draft permit modification. The request shall be submitted within 30 days of the appearance of the notice in the newspaper. Request for a public hearing shall contain the following information:

- a. The name, mailing address and telephone number of the requester.
- b. The names and addresses of all persons for whom the requester is acting as a representative.
- c. The reason why a hearing is requested, including the air quality concern that forms the basis for the request.
- d. A brief, informal statement setting forth the factual nature and the extent of the interest of the requester or of the persons for whom the requester is acting as representative, including information on how the operation of the facility under consideration affects the requester.

3. The board shall review all requests for public hearing filed as required under ~~subsection~~ *subdivision* E 2 of this section and, within 30 calendar days following the expiration of the public comment period, shall grant a public hearing if it finds both of the following:

- a. There is significant public interest in the air quality issues raised by the permit application in question.
- b. There are substantial, disputed air quality issues relevant to the permit application in question.

4. The board shall notify by mail the applicant and each requester, at his last known address, of the decision to convene or deny a public hearing. The notice shall contain the basis for the decision to grant or deny a public hearing. If the public hearing is granted, the notice shall contain a description of procedures for the public hearing.

5. If the board decides to hold a public hearing, the hearing shall be scheduled at least 30 and no later than 60 days after mailing the notification required in subdivision 4 of this subsection.

6. The procedures for notification to the public and availability of information used for the public comment period as provided in subsection C of this section shall also be followed for the public hearing. The hearing shall be held in the affected air quality control region.

7. As an alternative to the requirements of subdivisions 1 through 6 of this subsection, the board may hold a public hearing if an applicant requests that a public hearing be held or if, prior to the public comment period, the board determines that the conditions in subdivisions 3 a and b of this subsection pertain to the permit application in question.

8. The board may hold a public hearing for more than one draft permit or draft permit modification if the location

for the public hearing is appropriate for the sources under consideration and if the public hearing time expected for each draft permit or draft permit modification will provide sufficient time for public concerns to be heard.

9. Written comments shall be accepted by the board for at least 15 days after the hearing.

F. The board shall keep (i) a record of the commenters and (ii) a record of the issues raised during the public participation process so that the administrator may fulfill his obligation under § 505(b)(2) of the federal Clean Air Act to determine whether a citizen petition may be granted. Such records shall be made available to the public upon request.

VA.R. Doc. No. R98-50; Filed September 24, 1997, 11:13 a.m.

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**REGISTRAR'S NOTICE:** The following regulatory action is exempt from the Administrative Process Act in accordance with § 9-6.14:4.1 C 4 (b) of the Code of Virginia, which excludes regulations that are required by order of any state or federal court of competent jurisdiction where no agency discretion is involved. 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 5-120-10 et seq. Regulation for the Control of Emissions from Fleet Vehicles (REPEALED).

**Statutory Authority:** § 46.2-1179.1 of the Code of Virginia.

**Effective Date:** November 12, 1997.

**Summary:**

The Circuit Court for the City of Richmond (i) determined that the regulation (9 VAC 5 Chapter 120) adopted on April 2, 1996, and published in the Virginia Register (12:16 VA.R. 2127-2144 April 29, 1996) was not in compliance with the enabling statute and set it aside and (ii) ordered the State Air Pollution Control Board to readopt the regulation in a version that complied with the Code of Virginia.

**Agency Contact:** Questions on the regulation should be referred to David Kinsey, Environmental Services Division, Department of Environmental Quality, P.O. Box 10009, Richmond, Virginia 23240, telephone (804) 698-4432.

VA.R. Doc. No. R98-47; Filed September 24, 1997, 11:13 a.m.

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**REGISTRAR'S NOTICE:** The following regulatory action is exempt from the Administrative Process Act in accordance with § 9-6.14:4.1 C 4 (b) of the Code of Virginia, which excludes regulations that are required by order of any state or federal court of competent jurisdiction where no agency discretion is involved. 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 5-121-10 et seq. Regulation for the Control of Emissions from Fleet Vehicles (Revision MF).

**Statutory Authority:** §§ 10.1-1308 and 46.2-1179.1 of the Code of Virginia.

**Effective Date:** November 12, 1997.

Summary:

*The Circuit Court for the City of Richmond (i) determined that the original regulation (9 VAC 5 Chapter 120) adopted on April 2, 1996, and published in the Virginia Register (12:16 VA.R. 2127-2144 April 29, 1996) was not in compliance with the enabling statute and set it aside and (ii) ordered the State Air Pollution Control Board to readopt the regulation in a version that complied with the Code of Virginia.*

*The readopted regulation (9 VAC 5 Chapter 121) requires that owners or operators of fleets with 10 or more vehicles make a percentage of annual vehicle purchases clean-fuel fleet vehicles and applies to covered fleets which operate in the following localities in the program area: (i) the Northern Virginia area: Arlington County, Fairfax County, Fauquier County, Loudoun County, Prince William County, Stafford County, the City of Alexandria, the City of Fairfax, the City of Falls Church, the City of Manassas, and the City of Manassas Park; (ii) the Richmond area: Caroline County, Charles City County, Chesterfield County, Hanover County, Henrico County, the City of Colonial Heights, the City of Hopewell, and the City of Richmond; and (iii) the Hampton Roads area: James City County, York County, the City of Chesapeake, the City of Hampton, the City of Newport News, the City of Norfolk, the City of Poquoson, the City of Portsmouth, the City of Suffolk, the City of Virginia Beach, and the City of Williamsburg. The program requires that a specific percentage of new purchases of covered fleet vehicles by covered fleet owners be phased in over three years according to a specific schedule which begins in model year 1995 for federal covered fleets and 1998 for covered fleets in the Northern Virginia, Richmond, and Hampton Roads areas.*

*The difference between the regulation (9 VAC 5 Chapter 120) set aside by the court and the readopted regulation (9 VAC 5 Chapter 121) is that the readopted regulation (i) does not contain the provisions relating to Richmond and Hampton Roads that allowed a delay for implementation until 2007 and (ii) requires that all covered fleet operators begin the purchase of clean fuel fleet vehicles in 1998. (See comparison sheet below.)*

Comparison Sheet:

The provisions of the regulation affected by the court order are found in 9 VAC 5-120-130. The differences in wording between the old regulation (9 VAC 5 Chapter 120) that was set aside by the court and the new regulation (9 VAC 5 Chapter 121) readopted to comply with the court order are shown below:

~~9 VAC 5-120-130~~ 9 VAC 5-121-130. Clean-fuel fleet vehicle purchase requirements for covered fleet owners.

~~A. For the Northern Virginia region of the program area,~~ Covered fleet owners shall make purchases of clean-fuel fleet vehicles beginning with model year 1998 vehicles. This subsection shall apply to fleet vehicles or in the case of multi-regional fleets that portion of the fleet vehicles (i) registered, (ii) having a base of operations, or (iii) having a majority of travel in one or more localities in the ~~Northern Virginia region program area.~~

~~B. For the Richmond and Hampton Roads regions of the program area, covered fleet owners shall make purchases of clean-fuel fleet vehicles beginning with model year 2007 vehicles. For the purposes of the vehicle purchase phase in rate in Table III A, the phase in schedule shall begin in model year 2007 and proceed thereon. This subsection shall apply to fleet vehicles or in the case of multi-regional fleets that portion of the fleet vehicles (i) registered, (ii) having a base of operations, or (iii) having a majority of travel in one or more localities in the Richmond or Hampton Roads regions.~~

~~C. B.~~ Covered fleet owners shall register with the department prior to making any clean-fuel fleet vehicles purchases.

~~D. C.~~ Purchase requirements shall be in terms of a percentage of the total number of new covered fleet vehicles of each class purchased each year by a covered fleet owner.

~~E. D.~~ The purchase requirements may be extended as provided in ~~9 VAC 5-120-140~~ 9 VAC 5-121-140 B and ~~9 VAC 5-120-150~~ 9 VAC 5-121-150 C.

~~F. E.~~ The purchase requirements shall be phased in over three years according to the schedule in Table III-A.

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TABLE III-A  
VEHICLE PURCHASE REQUIREMENT PHASE IN RATE

Vehicle Class	Model Year 1998	Model Year 1999	Model Year 2000+
LDV/LDT	30%	50%	70%
HDV	50%	50%	50%

G. F. The purchase requirements of this program may be met by (i) purchasing new vehicles which meet the clean-fuel fleet vehicle LEV, ULEV, or ZEV standards, (ii) by converting conventional vehicles to clean-fuel fleet vehicles which meet the applicable standards, or (iii) by redeeming credits.

H. G. Purchase requirements may be waived for one year at a time for covered fleet owners that demonstrate financial hardship. Purchase requirements may be waived only for that portion of the required clean-fuel fleet vehicle purchases that would cause the covered fleet owner to exceed the criteria for financial hardship.

**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. There is a charge of 20¢ per page for copies.

Questions on the regulation should be referred to David Kinsey, Environmental Services Division, Department of Environmental Quality, P.O. Box 10009, Richmond, Virginia 23240, telephone (804) 698-4432.

## CHAPTER 121.

### REGULATION FOR THE CONTROL OF EMISSIONS FROM FLEET VEHICLES.

#### PART I. DEFINITIONS.

#### 9 VAC 5-121-10. General.

A. For the purpose of this chapter and subsequent amendments or any orders issued by the board, the words or terms shall have the meanings given them in 9 VAC 5-121-20.

B. Unless specifically defined in the Virginia Clean-Fuel Fleets Law or in this chapter, terms used shall have the meanings commonly ascribed to them by recognized authorities.

#### 9 VAC 5-121-20. Terms defined.

"Adjusted loaded vehicle weight (ALVW)" means the numerical average of the vehicle curb weight and the gross vehicle weight rating (GVWR).

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

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

"Available commercially" means that vehicles are available for sale in quantities and appropriate classifications sufficient to meet a fleet operators program requirements.

"Base of operations" means the area in which a fleet vehicle is primarily garaged.

"Bi-fuel" or "dual-fuel vehicle" means any motor vehicle capable of operating on two different fuels, but not a mixture of the fuels. A bi-fuel or dual-fuel vehicle (i) qualifies as a clean-fuel fleet vehicle when certified as meeting the standards prescribed in Part IV (9 VAC 5-121-140 et seq.) for both fuels and (ii) is eligible to earn credits as provided in Part V (9 VAC 5-121-160 et seq.) when the above requirements are met.

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

"Capable of being centrally fueled" means a fleet, or that part of a fleet, consisting of vehicles that could be refueled 100% of the time at a location that is owned, operated, or controlled by the covered fleet owner, or is under contract with the covered fleet owner. The fact that one or more vehicles in a fleet is not capable of being centrally fueled does not exempt an entire fleet from this chapter. For purposes of this definition, "location" means any building, structure, facility, or installation (i) which is owned or operated by the same person, (ii) which is located on one or more contiguous properties, (iii) which is under the control of the same person and (iv) which contains a fueling pump or pumps for the use of the vehicles owned or controlled by that person. The determination of "capable of being centrally fueled" shall be in accordance with the procedures in Section III 4 of the preamble to 40 CFR Part 88 (58 FR 64679, December 9, 1993) or other procedures approved by the department. The term "capable of being centrally fueled" does not include vehicles which are under normal circumstances garaged at a personal residence while not in use and are not centrally fueled.

"Centrally fueled" means a fleet, or that part of a fleet, consisting of vehicles that are fueled 100% of the time at a location that is owned, operated or controlled by the covered fleet owner, or is under contract with the covered fleet owner. Any vehicle that is under normal circumstances garaged at a personal residence at night but that is, in fact, centrally fueled 100% of the time shall be considered to be centrally fueled for the purpose of this definition. The fact that one or more vehicles in a fleet is not centrally fueled does not exempt an entire fleet from this regulation. The fact that a vehicle is not centrally fueled does not mean it could not be centrally fueled in accordance with the definition of "capable of being centrally fueled." For purposes of this definition, "location" means any building, structure, facility, or installation (i) which is owned or operated by the same person, (ii) which is located on one or more contiguous properties, (iii) which is under the control of the same person and (iv) which contains a fueling pump or pumps for the use of the vehicles owned or controlled by that person.

"Clean alternative fuel" means any fuel, including methanol, ethanol, other alcohols, reformulated gasoline, diesel, natural gases, liquefied petroleum gas, hydrogen, and electricity or other power source used in a clean-fuel vehicle that complies with the standards applicable to such vehicle under the federal Clean Air Act when using such fuel or other power source. In case of a flexible-fuel vehicle or dual-fuel vehicle, "clean alternative fuel" means only a fuel for which the vehicle was certified when operating on clean alternative fuel.

"Clean-fuel fleet vehicle" means a vehicle for which one of the following vehicle emission standards apply:

1. Low-emission vehicle standards.
2. Ultra low-emission vehicle standards.
3. Zero-emission vehicle standards.

For the above standards three weight classes are included: light-duty vehicles and trucks (LDV-LDT) under 6,000 pounds Gross Vehicle Weight Rating (GVWR); LDTs between 6,000 pounds and 8,500 pounds GVWR; and heavy-duty vehicles (HDVs) over 8,500 pounds GVWR but up to and including 26,000 GVWR. The standards apply to dedicated, dual or flexible fuel conversions of LDVs, LDTs and HDVs. Vehicle conversions shall meet the emissions standards of 40 CFR Part 88 and shall also meet the applicable emission standards and provisions of 40 CFR Part 86 to the extent they are not consistent with the requirements of 40 CFR Part 88 in addition to any other requirements imposed on such vehicles by the U.S. Environmental Protection Agency pursuant to the federal Clean Air Act.

"Clean-fuel vehicle aftermarket conversion certifier" means the business or entity that obtains a certificate of conformity with the clean-fuel vehicle standards and requirements for a vehicle or engine conversion configuration pursuant to the requirements of 40 CFR Parts 86 and 88.

"Commerce" means commerce between any place in the Commonwealth of Virginia and any place outside thereof.

"Compliance document" means any document, device, or symbol which contains statistical, quality control, or quality assurance information required by the department under this chapter for the purpose of evaluating the performance of the clean-fuel fleet program against state or federal requirements.

"Confidential information" means a secret formulae, secret process, secret methods or other trade secrets which are proprietary information certified by the signature of the responsible person for the owner to meet the following criteria: (i) information for which the owner has been taking and will continue to take measures to protect confidentiality; (ii) information that has not been and is not presently reasonably obtainable without the owner's consent by private citizens or other firms through legitimate means other than discovery based on a showing of special need in a judicial or quasi-judicial proceeding; (iii) information which is not publicly available from sources other than the owner; and (iv)

information the disclosure of which would cause substantial harm to the owner.

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

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

"Control" means:

1. When used to join all entities under common management, means any one or a combination of the following:

- a. A third person or firm has equity ownership of 51% or more in each of two or more firms.
- b. Two or more firms have common corporate officers, in whole or in substantial part, who are responsible for the day-to-day operation of the companies.
- c. One firm leases, operates, supervises, or in 51% or greater part owns equipment, facilities or both used by another person or firm, or has equity ownership of 51% or more of another firm.

2. When used to refer to the management of vehicles, means a person has the authority to decide who may operate a particular vehicle, and the purposes for which the vehicle may be operated.

3. When used to refer to the management of people, means a person has the authority to direct the activities of another person or employee in the precise situation, such as the work place.

"Conventional fuel" or "conventional gasoline" means any gasoline which has not been certified under 40 CFR 80.40.

"Conversion configuration" means any combination of vehicle or engine conversion hardware and a base vehicle of a specific engine family.

"Covered fleet" means any fleet of 10 or more motor vehicles which are owned or operated, leased or otherwise controlled by a single person and which can be centrally fueled. For purposes of this definition the term "can be centrally fueled" means the sum of those vehicles that are centrally fueled and those vehicles that are capable of being centrally fueled. All motor vehicles owned or operated, leased or otherwise controlled by such person, by any person who controls such person, by any person under common control with such person, and by any person under common control with such person shall be treated as owned by such person. Vehicle types described below as exempt from the program shall not be counted toward the 10-vehicle criterion. The term "covered fleet" does not include:

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1. Motor vehicles under normal circumstances garaged at a personal residence at night unless the vehicles are centrally fueled;
2. Motor vehicles held for lease or rental to the general public;
3. Motor vehicles held for sale by motor vehicle dealers (including dealer demonstration vehicles);
4. Vehicles used for motor vehicle manufacturer product evaluations or tests;
5. Law-enforcement and other emergency vehicles; or
6. Nonroad vehicles including farm and construction vehicles.

"Covered fleet owner" means a person who owns or operates a fleet of at least 10 covered fleet vehicles and that fleet is operated in a single region of the program area (even if the covered fleet vehicles are garaged outside of the region). For the purpose of determining the 10-vehicle criterion, the program region shall include the geographic area of the entire nonattainment area in areas where the program region is part of a multistate nonattainment area.

"Covered fleet vehicle" means only a motor vehicle which is:

1. In a vehicle class for which emission standards prescribed in Part IV (9 VAC 5-121-140 et seq.) are applicable;
2. In a covered fleet which is centrally fueled or capable of being centrally fueled; and
3. Operated in a single region of the program area.

For the purposes of this definition, the program region shall include the geographic area of the entire nonattainment area in areas where the program region is part of a multistate nonattainment area.

"Dealer" means any person who is engaged in the sale or the distribution of new motor vehicles or new motor vehicle engines to the ultimate purchaser.

"Dealer demonstration vehicle" means any vehicle that is operated by a motor vehicle dealer solely for the purpose of promoting motor vehicles sales, either on the sales lot or through other marketing or sales promotions, or for permitting potential purchasers to drive the vehicle for prepurchase or prelease evaluation. The term "dealer demonstration vehicle" does not include vehicles held by dealers for their own business purposes, such as shuttle buses, loaner vehicles, or other repair or business-related vehicles.

"Dedicated-fuel vehicle" means a vehicle which operates on one specific fuel other than gasoline, diesel, or fuel mixtures containing more than 15% by volume of gasoline.

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

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

"Dual-fuel" or "bi-fuel vehicle" means any motor vehicle capable of operating on two different fuels, but not a mixture of the fuels. A dual-fuel or bi-fuel vehicle (i) qualifies as a clean-fuel fleet vehicle when certified as meeting the standards prescribed in Part IV (9 VAC 5-121-140 et seq.) for both fuels and (ii) is eligible to earn credits as provided in Part V (9 VAC 5-121-160 et seq.) when the above requirements are met.

"Emergency vehicle" means any of the following:

1. Law-enforcement vehicles operated by or under the direction of a federal, state, or local law-enforcement officer (i) in the chase or apprehension of violators of the law or persons charged with or suspected of any such violation or (ii) in response to an emergency call.
2. Regional detention center vehicles operated by or under the direction of a correctional officer responding to an emergency call or operating in an emergency situation.
3. Vehicles used to fight fire, including publicly-owned state forest warden vehicles, when traveling in response to a fire alarm or emergency call.
4. Ambulances, rescue or life-saving vehicles designed or used for the principal purpose of supplying resuscitation or emergency relief where human life is endangered.

The term "emergency vehicle" does not include tow trucks or other utility vehicles that may be authorized to exceed the speed limit in special circumstances.

"Emission standard" means any provision of Part IV (9 VAC 5-121-140 et seq.) which prescribes an emission limitation, or other emission control requirements for motor vehicle air pollution.

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

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

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

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

"Federal tier I" or "tier I" means new gaseous and particulate tail pipe emission standards for use in certifying new light duty vehicles and light duty trucks, beginning with the 1994 model year and are completely phased-in by the

1996 model year, as promulgated by the U.S. Environmental Protection Agency.

"Financial hardship" means (i) the cost of a clean-fuel fleet vehicle of a type or model that meets the normal requirements and practices of the principal business of the fleet operator exceeds 25% of a nonclean-fuel fleet vehicle or (ii) the covered fleet operator's annual budget to own and operate that portion of the fleet covered by the requirements of this chapter increases by more than 1.0% in a budget year.

"Flexible-fuel vehicle" means any motor vehicle capable of operating on any mixture of two or more different fuels. A flexible-fuel vehicle (i) qualifies as a clean-fuel fleet vehicle when certified on any blend of two fuels as meeting the standards prescribed in Part IV (9 VAC 5-121-140 et seq.) and (ii) is eligible to earn credits as provided in Part V (9 VAC 5-121-160 et seq.) when the above requirements are met. Credits shall be allocated based on the less stringent certification standard.

"Formal hearing" means administrative proceedings other than those informational or factual inquiries of an informal nature provided in §§ 9-6.14:7.1 and 9-6.14:11 of the Administrative Process Act and includes only (i) opportunity for private parties to submit factual proofs in formal proceedings as provided in § 9-6.14:8 of the Administrative Process Act in connection with the making of regulations or (ii) a similar right of private parties or requirement of public agencies as provided in § 9-6.14:12 of the Administrative Process Act in connection with case decisions.

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

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

"Light HDV" means any affected motor vehicle weighing more than 8,500 pounds and less than or equal to 19,500 pounds GVWR.

"Medium HDV" means any affected motor vehicle weighing more than 19,500 pounds and less than or equal to 26,000 pounds GVWR.

"Heavy HDV" means any affected motor vehicle weighing more than 26,000 pounds.

"Held for lease or rental to the general public" means, in reference to a motor vehicle, that it is owned or controlled primarily for the purpose of short-term rental or extended-term leasing (with or without maintenance), without a driver, pursuant to a contract.

"Implementation plan" means the plan, including any revision thereof, which has been submitted by the

Commonwealth and approved in Subpart VV of 40 CFR Part 52 by the administrator under § 110 of the federal Clean Air Act, or promulgated in Subpart VV of 40 CFR Part 52 by the administrator under § 110(c) of the federal Clean Air Act, or promulgated or approved by the administrator pursuant to regulations promulgated under § 301(d) of the federal Clean Air Act and which implements the relevant requirements of the federal Clean Air Act.

"Inherently low emissions vehicle (ILEV)" means a LEV meeting ULEV NO<sub>x</sub> standards and having negligible evaporative emissions, as defined in 40 CFR 88.311-93. No dual-fuel or flexible-fuel vehicle shall be considered an ILEV unless it is certified to the applicable standard on all fuel types for which it is designed to operate.

"Law-enforcement vehicle" means any vehicle (i) which is primarily operated by a civilian or military police officer or sheriff, or by personnel of the Federal Bureau of Investigation, the Drug Enforcement Administration, or other agencies of the federal government, or by state highway patrols, or other similar law-enforcement agencies, and (ii) which is used for the purpose of law-enforcement activities including, but not limited to, chase, apprehension, surveillance, or patrol of people engaged in or potentially engaged in unlawful activities. For federal law-enforcement vehicles, the definition contained in Executive Order 12759, Section 11: Alternative Fueled Vehicle for the Federal Fleet, Guidance Document for Federal Agencies (58 FR 16258 April 19, 1991), shall apply. The term "law-enforcement vehicle" does not include law-enforcement agency vehicles used primarily for administrative or staff purposes.

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

1. Designed primarily for purposes of transportation of property or is a derivation of such a vehicle.
2. Designed primarily for transportation of persons and has a capacity of more than 12 persons.
3. Equipped with special features enabling off-street or off-highway operation and use.

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

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

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

"Low emission vehicle (LEV)" means a motor vehicle as defined in 42 USC § 7583.

"Majority of travel" means that more than 50% of the annual miles traveled by the vehicle are in one or more

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localities in a region of the program area. This can be determined by (i) record keeping, by vehicle, for all miles traveled inside and outside of the region which demonstrates that more than half of the annual miles traveled are within the region or (ii) records of total customer base which show that more than 50% of the customers have a location inside of the region. Other methods may be accepted based on case-by-case determinations. For vehicles garaged within a region having the majority of travel outside the region boundaries, the above methods shall be used to determine whether such vehicles shall be subject to the program requirements.

"Mobile Emission Reduction Credit" or "MERC" means an air quality credit which is generated according to Part X (9 VAC 5-121-280 et seq.).

"Model year (MY)" means, for purposes of fleet purchase requirements, September 1 through August 31.

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

"New covered fleet vehicle" means a vehicle that has not been previously controlled by the current purchaser, regardless of the model year. All vehicles leased or purchased for a fleet are considered in determining the number of new covered fleet vehicles to be purchased by a covered fleet owner for purposes of calculating percentage purchase requirements. The term "new covered fleet vehicle" does not include any:

1. Motor vehicle manufactured before November 12, 1997; and
2. Motor vehicle transferred (i) due to the purchase of a company not previously controlled by the purchaser, (ii) as part of an employee transfer or (iii) for seasonal requirements not to exceed 120 days.

"New motor vehicle" means, except with respect to vehicles or engines imported or offered for importation, a motor vehicle the equitable or legal title to which has never been transferred to an ultimate purchaser; and "new motor vehicle engine" means an engine in a new motor vehicle or a motor vehicle engine the equitable or legal title to which has never been transferred to the ultimate purchaser; and with respect to imported vehicles of engines, such terms mean a motor vehicle and engine, respectively, manufactured after the effective date of a regulation issued under § 202 of the federal Clean Air Act which is applicable to such vehicle or engine (or which would be applicable to such vehicle or engine had it been manufactured for importation into the United States).

"NMHC" means nonmethane hydrocarbons contained in a gas sample, including all oxygenated organic gases containing five or fewer carbon atoms; aldehydes, ketones, alcohols, ethers, and all known alkanes, alkenes, alkynes and aromatics containing 12 or fewer carbon atoms.

"NMOG" means the total mass of nonmethane organic gas in the emissions of a vehicle including oxygenated and nonoxygenated hydrocarbon emissions.

"Nonattainment area" means, for any air pollutant, an area which is designated "nonattainment" with respect to that pollutant under the provisions of § 107(d) of the federal Clean Air Act.

"Noncovered fleet" means nine or less motor vehicles which are owned, operated, leased or rented for use by a common owner or have been consigned for maintenance to a common facility.

"Noncovered vehicle" means any vehicle that is exempt from this chapter.

"Nonexempt fleet vehicle" means any motor vehicle which is not specifically exempt under § 241(5) of the federal Clean Air Act.

"Nonmethane hydrocarbon equivalent" means the sum of the carbon mass emissions of nonoxygenated nonmethane hydrocarbons plus the carbon mass emissions of alcohols, aldehydes, or other organic compounds which are separately measured in accordance with the applicable test procedures of 40 CFR Part 86, expressed as gasoline-fueled vehicle nonmethane hydrocarbons. In the case of exhaust emissions, the hydrogen-to-carbon ratio of the equivalent hydrocarbon is 1.85:1. In the case of diurnal and hot soak emissions, the hydrogen-to-carbon ratios of the equivalent hydrocarbons are 2.33:1 and 2.2:1 respectively.

"Original equipment manufacturer (OEM)" means any person engaged in the manufacturing or assembling of new motor vehicles, new motor vehicle engines, or importing such vehicles or engines for resale, or who acts for and is under the control of any such person in connection with the distribution of new motor vehicles, or new motor vehicle engines, but shall not include any dealer with respect to new motor vehicles or new motor vehicle engines received by him in commerce. "Original equipment manufacturer" shall also include any business, individual, or entity that obtains a certificate of conformity with the clean-fuel vehicle standards and requirements for a vehicle or engine configuration pursuant to the requirements of 40 CFR Parts 86 and 88 prior to placing a vehicle into service.

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

"Owner" means any person, including bodies politic and corporate, associations, partnerships, personal representatives, trustees and committees, as well as individuals, who owns, leases, operates, controls or supervises a covered fleet.

"Owned or operated, leased, or otherwise controlled by such person" means either of the following:

1. Such person holds the beneficial title to the vehicle.

2. Such person uses the vehicle for transportation purposes pursuant to a contract or similar arrangement, the term of such contract or similar arrangement is for a period of 120 days or more, and such person has control over the vehicle pursuant to the definition of control.

"Partially covered fleet" means a vehicle fleet that contains 10 or more covered fleet vehicles and includes noncovered vehicles.

"Party" means any person named in the record who actively participates in the administrative proceeding or offers comments through the public participation process. The term "party" also means the department.

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

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

"Program area" means the territorial area encompassed by the boundaries of localities in the following designated regions:

1. The Northern Virginia Region: Arlington County, Fairfax County, Fauquier County, Loudoun County, Prince William County, Stafford County, the City of Alexandria, the City of Fairfax, the City of Falls Church, the City of Manassas, and the City of Manassas Park.

2. The Richmond Region: Caroline County, Charles City County, Chesterfield County, Hanover County, Henrico County, the City of Colonial Heights, the City of Hopewell, and the City of Richmond.

3. The Hampton Roads Region: James City County, York County, the City of Chesapeake, the City of Hampton, the City of Newport News, the City of Norfolk, the City of Poquoson, the City of Portsmouth, the City of Suffolk, the City of Virginia Beach, and the City of Williamsburg.

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

"Responsible official" means one of the following:

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

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

b. A duly authorized representative of such business entity if the representative is responsible for the overall operation of one or more operating facilities and has authority to sign documents and such authority has been assigned or delegated to such representative in accordance with procedures of the business entity and the delegation of authority is approved in advance by the board;

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

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

"Test weight (TW)" means the vehicle curb weight added to the gross vehicle weight rating and divided by two.

"Transitional low emission vehicle (TLEV)" means a motor vehicle which has been certified as not exceeding the applicable standards prescribed in Part IV (9 VAC 5-121-140 et seq.).

"Transportation control measures (TCMs)" means those air pollution control measures which are directed at limiting the location and use of motor vehicles, including, but not limited to, the following: carpools, special bus lanes, rapid transit systems, commuter park and ride lots, bicycle lanes, signal system improvements, and employer commute options. TCMs do not include those control measures which are directed at limiting emissions directly from mobile sources, such as the following: Federal Motor Vehicle Emission Standards (40 CFR Part 86), fuel volatility limits, air pollution control anti-tampering programs, clean-fuel fleet programs, and motor vehicle emissions inspection programs.

"Ultimate purchaser" means, with respect to any new motor vehicle or new motor vehicle engine, the first person who in good faith purchases such new motor vehicle or new engine for purposes other than resale.

"Ultra-low emissions vehicle (ULEV)" means a motor vehicle as defined in 42 USC § 7583.

"Under normal circumstances garaged at personal residence" means, in reference to a motor vehicle, that, when not in use, it is normally parked at the personal residence of the individual who usually operates it, rather than at a central refueling, maintenance, or business location or any combination thereof.

"Used for motor vehicle manufacturer product evaluations and tests" means, in reference to a motor vehicle, that it is (i) owned and operated by a motor vehicle manufacturer or a motor vehicle component manufacturer or (ii) owned or held by a university research department, independent testing laboratory or other such evaluation facility solely for the purpose of evaluating the performance of such vehicle for engineering, research and development, or quality control

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reasons. The term "used for motor vehicle manufacturer product evaluations and tests" does not include any vehicles that are held by manufacturers for their own business purposes, such as:

1. Vehicles allocated to sales people for their business use,
2. Delivery vehicles, and
3. Other business related vehicles.

"Variance" means the temporary exemption of an owner or other person from this chapter, or a temporary change in this chapter as it applies to an owner or other person.

"Vehicle conversion" or "conversion" means a nonoriginal equipment manufacturer produced vehicle that is certified by the U.S. Environmental Protection Agency as meeting clean-fuel fleet vehicle standards.

"Vehicle curb weight" means actual manufacturer's estimated weight of the vehicle in operational status with all standard equipment and weight of fuel at normal tank capacity, and the weight of optional equipment computed in accordance with 40 CFR 86.082-24. Incomplete light-duty trucks shall have the curb weight specified by the manufacturer.

"Vehicle miles traveled " means the total miles traveled in one year as supported by records and documentation. Where no such documentation exists, the vehicle miles traveled shall be assumed to be 10,000 miles per year.

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

"Virginia Clean-Fuel Fleets Law" means §§ 46.2-1176, 46.2-1179.1, 46.2-1180 A, 46.2-1187, and 46.2-1187.1 of Title 46.2 of the Code of Virginia.

"Virginia Clean-Fuel Fleet Program" means the program for the regulation and purchase of clean-fuel fleet vehicles to reduce vehicle emissions as established by the Virginia Clean-Fuel Fleets Law.

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

"Virginia Voluntary Mobile Emission Credit Program" means the program in Part X (9 VAC 5-121-280 et seq.) for the generation of voluntary mobile emissions credits to receive early or additional air quality credits.

"Zero emissions vehicle (ZEV)" means a motor vehicle as defined in 42 USC § 7583.

## PART II. GENERAL PROVISIONS.

### 9 VAC 5-121-30. Applicability and authority of the department.

A. The provisions of this chapter, unless specified otherwise, apply to any owner of a covered fleet vehicle specified in subsection B of this section.

B. The provisions of this chapter, unless specified otherwise, apply to the following covered fleet vehicles:

1. Any covered fleet vehicle registered by the Virginia Department of Motor Vehicles and garaged within the program area.
2. Any covered fleet vehicle registered by the Virginia Department of Motor Vehicles and garaged outside of the program area which has (i) a base of operations in the program area or (ii) a majority of travel in the program area.
3. Any covered fleet vehicle (i) owned or operated by a United States government agency located within the program area, (ii) operated on or commuting to a federal facility within the program area, or (iii) owned or operated by a U.S. government agency located outside the program area but with a base of operations in the program area or a majority of travel in the program area.
4. Any covered fleet vehicle (i) owned or operated by a state or local government agency located within the program area, (ii) operated on or commuting to a state or local government facility within the program area, or (iii) owned or operated by a state or local government agency located outside the program area but with a base of operations in the program area or a majority of travel in the program area.

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

D. The provisions of this chapter, unless specified otherwise, apply only to those pollutants for which emission standards are set forth in Part IV (9 VAC 5-121-140 et seq.).

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

F. This chapter is established to implement the provisions of the Virginia Clean-Fuel Fleets Law and the federal Clean Air Act.

G. The Administrative Process Act and Virginia Register Act provide that state regulations may incorporate documents by reference. Throughout this chapter, documents of the types specified below have been incorporated by reference, and in some cases they have been cross-referenced.

1. United States Code.
2. Code of Virginia.
3. Code of Federal Regulations.
4. Federal Register.

### 9 VAC 5-121-40. Hearings and proceedings.

A. The primary hearings and proceedings associated with this chapter are as follows:

1. For the public hearing required before considering variances and amendments to and revocation of

variances, the procedure for a public hearing shall conform to the provisions of 9 VAC 5-121-60.

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

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

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

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

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

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

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

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

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

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

#### **9 VAC 5-121-50. Appeal of case decisions.**

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

B. In cases where the board fails to make a case decision, the fleet owner or other party significantly affected, may provide written notice to the board that a decision is due in

accordance with §§ 9-6.14:11 and 9-6.14:12 of the Administrative Process Act. Appeals thereafter shall be in accordance with the Administrative Process Act.

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

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

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

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

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

#### **9 VAC 5-121-60. Variances.**

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

B. The board shall adopt variances and amend or revoke variances if warranted only after conducting a public hearing pursuant to public advertisement in at least one major newspaper of general circulation in the program area of the subject, date, time and place of the public hearing at least 30 days prior to the scheduled hearing. The hearing shall be conducted to give the public an opportunity to comment on the variance and the hearing record shall remain open for a minimum of 15 days after the hearing for the purpose of receiving additional public comment.

#### **9 VAC 5-121-70. Right of entry.**

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

#### **9 VAC 5-121-80. Conditions on approvals.**

A. The board or director may impose conditions upon an approval issued pursuant to this chapter (i) which may be necessary to carry out the policy of the Virginia Clean-Fuel Fleets Law and (ii) which are consistent with this chapter. Except as specified herein, nothing in this chapter shall be understood to limit the power of the board or department in this regard.

B. A fleet owner may consider any condition imposed by the board or director as a denial of the approval, which shall

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entitle the applicant to appeal the decision pursuant to 9 VAC 5-121-50.

## **9 VAC 5-121-90. Procedural information and guidance.**

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

1. Request data and information in addition to and in amplification of the provisions of this chapter;
2. Specify the methods and means to determine compliance with applicable provisions of this chapter;
3. Set forth the format by which all data and information should be submitted; and
4. Set forth how the regulatory programs should be implemented.

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

## **9 VAC 5-121-100. Relationship of state regulations to federal regulations.**

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

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

## **9 VAC 5-121-110. Delegation of authority.**

In accordance with the Virginia Clean-Fuel Fleets Law, the director, or a designee, may perform any act of the board provided under this chapter.

## **9 VAC 5-121-120. Availability of information.**

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

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

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

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

1. Information for which the fleet owner has been taking and will continue to take measures to protect confidentiality;
2. Information that has not been and is not presently reasonably obtainable without the consent of the fleet owner or motor vehicle owner by private citizens or other firms through legitimate means other than discovery based on a showing of special need in a judicial or quasi-judicial proceeding;
3. Information which is not publicly available from sources other than the fleet owner; and
4. Information the disclosure of which would cause substantial harm to the fleet owner.

### PART III.

### CLEAN-FUEL FLEET VEHICLE PURCHASE REQUIREMENTS.

## **9 VAC 5-121-130. Clean-fuel fleet vehicle purchase requirements for covered fleet owners.**

A. Covered fleet owners shall make purchases of clean-fuel fleet vehicles beginning with model year 1998 vehicles. This subsection shall apply to fleet vehicles or in the case of multi-regional fleets that portion of the fleet vehicles (i) registered, (ii) having a base of operations, or (iii) having a majority of travel in one or more localities in the program area.

B. Covered fleet owners shall register with the department prior to making any clean-fuel fleet vehicles purchases.

C. Purchase requirements shall be in terms of a percentage of the total number of new covered fleet vehicles of each class purchased each year by a covered fleet owner.

D. The purchase requirements may be extended as provided in 9 VAC 5-121-140 B and 9 VAC 5-121-150 C.

E. The purchase requirements shall be phased in over three years according to the schedule in Table III-A.

TABLE III-A  
VEHICLE PURCHASE REQUIREMENT PHASE IN RATE

Vehicle Class	Model Year 1998	Model Year 1999	Model Year 2000+
LDV/LDT	30%	50%	70%
HDV	50%	50%	50%

F. The purchase requirements of this program may be met by (i) purchasing new vehicles which meet the clean-fuel fleet vehicle LEV, ULEV, or ZEV standards, (ii) by converting conventional vehicles to clean-fuel fleet vehicles which meet the applicable standards, or (iii) by redeeming credits.

G. Purchase requirements may be waived for one year at a time for covered fleet owners that demonstrate financial hardship. Purchase requirements may be waived only for that portion of the required clean-fuel fleet vehicle purchases that would cause the covered fleet owner to exceed the criteria for financial hardship.

PART IV.  
EMISSION STANDARDS FOR CLEAN-FUEL FLEET VEHICLES.

9 VAC 5-121-140. Light-duty vehicle exhaust emission standards.

A. No light-duty clean-fuel fleet vehicle shall discharge nonmethane organic gases (NMOG), carbon monoxide (CO), nitrogen oxides (NO<sub>x</sub>), formaldehyde (HCHO), and particulate matter (PM), if applicable, in its exhaust emissions in excess of the limits set forth in Tables IV-A, IV-B, IV-C, IV-D, IV-E, IV-F IV-G, IV-H, IV-I and IV-J.

TABLE IV-A  
INTERMEDIATE USEFUL LIFE STANDARDS (grams/mile) FOR LIGHT-DUTY VEHICLES FOR HCs, CO, NO<sub>x</sub>, HCHO, AND PM

Vehicle emission category	NMOG	CO	NO <sub>x</sub>	HCHO	PM <sup>1</sup>
TLEV	0.125	3.4	0.4	0.015	
LEV	0.075 <sup>2</sup>	3.4 <sup>2</sup>	0.2	0.015 <sup>2</sup>	
ULEV	0.040	1.7	0.2 <sup>2</sup>	0.008	

<sup>1</sup> - Applies to diesel vehicles only.  
<sup>2</sup> - Applies to ILEVs.

TABLE IV-B  
FULL USEFUL LIFE STANDARDS (grams/mile) FOR LIGHT-DUTY VEHICLES FOR HCs, CO, NO<sub>x</sub>, HCHO, AND PM

Vehicle emission category	NMOG	CO	NO <sub>x</sub>	HCHO	PM <sup>1</sup>
TLEV	0.156	4.2	0.6	0.018	0.08
LEV	0.090 <sup>2</sup>	4.2 <sup>2</sup>	0.3	0.018 <sup>2</sup>	0.08 <sup>2</sup>
ULEV	0.055	2.1	0.3 <sup>2</sup>	0.011	0.04

<sup>1</sup> - Applies to diesel vehicles only  
<sup>2</sup> - Applies to ILEVs.

TABLE IV-C  
INTERMEDIATE USEFUL LIFE STANDARDS (grams/mile) FOR LIGHT LIGHT-DUTY TRUCKS FOR HCs, CO, NO<sub>x</sub>, HCHO, AND PM

LVW (pounds)	Vehicle emission category	NMOG	CO	NO <sub>x</sub>	HCHO	PM <sup>1</sup>
0-3750	TLEV	0.125	3.4	0.4	0.015	
	LEV	0.075 <sup>2</sup>	3.4 <sup>2</sup>	0.2	0.015 <sup>2</sup>	
	ULEV	0.040	1.7	0.2 <sup>2</sup>	0.008	
3751-5750	TLEV	0.160	4.4	0.7	0.018	
	LEV	0.100 <sup>2</sup>	4.4 <sup>2</sup>	0.4	0.018 <sup>2</sup>	
	ULEV	0.050	2.2	0.4 <sup>2</sup>	0.009	

<sup>1</sup> - Applies to diesel vehicles only.  
<sup>2</sup> - Applies to ILEVs.

TABLE IV-D  
FULL USEFUL LIFE STANDARDS (grams/mile) FOR LIGHT LIGHT-DUTY TRUCKS FOR HCs, CO, NO<sub>x</sub>, HCHO, AND PM

LVW (pounds)	Vehicle emission category	NMOG	CO	NO <sub>x</sub>	HCHO	PM <sup>1</sup>
0-3750	TLEV	0.156	4.2	0.6	0.018	0.08
	LEV	0.090 <sup>2</sup>	4.2	0.3	0.018 <sup>2</sup>	0.08 <sup>2</sup>
	ULEV	0.055	2.1 <sup>2</sup>	0.3 <sup>2</sup>	0.011	0.04
3751-5750	TLEV	0.200	5.5	0.9	0.023	0.08
	LEV	0.130 <sup>2</sup>	5.5 <sup>2</sup>	0.5	0.023 <sup>2</sup>	0.08 <sup>2</sup>
	ULEV	0.070	2.8	0.5 <sup>2</sup>	0.013	0.04

<sup>1</sup> - Applies to diesel vehicles only.  
<sup>2</sup> - Applies to ILEVs.

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TABLE IV-E

INTERMEDIATE USEFUL LIFE STANDARDS (grams/mile) FOR HEAVY LIGHT-DUTY TRUCKS FOR HCs, CO, NO<sub>x</sub>, HCHO, AND PM

ALVW (pounds)	Vehicle emission category	NMOG	CO	NO <sub>x</sub> <sup>2</sup>	HCHO	PM <sup>1</sup>
0-3750	LEV	0.125 <sup>3</sup>	3.4 <sup>3</sup>	0.4	0.015 <sup>3</sup>	
	ULEV	0.075	1.7	0.2 <sup>3</sup>	0.008	
3751-5750	LEV	0.160 <sup>3</sup>	4.4 <sup>3</sup>	0.7	0.018 <sup>3</sup>	
	ULEV	0.100	2.2	0.4 <sup>3</sup>	0.009	
5751-8500	LEV	0.195 <sup>3</sup>	5.0 <sup>3</sup>	1.1	0.022 <sup>3</sup>	
	ULEV	0.117	2.5	0.6 <sup>3</sup>	0.011	

<sup>1</sup> - Applies to diesel vehicles only.

<sup>2</sup> - Does not apply to diesel vehicles.

<sup>3</sup> - Applies to ILEVs.

TABLE IV-F

FULL USEFUL LIFE STANDARDS (grams/mile) FOR HEAVY LIGHT-DUTY TRUCKS FOR HCs, CO, NO<sub>x</sub>, HCHO, AND PM

ALVW (pounds)	Vehicle emission category	NMOG	CO	NO <sub>x</sub>	HCHO	PM <sup>1</sup>
0-3750	LEV	0.180 <sup>2</sup>	5.0 <sup>2</sup>	0.6	0.022 <sup>2</sup>	0.08 <sup>2</sup>
	ULEV	0.107	2.5	0.3 <sup>2</sup>	0.012	0.04
3751-5750	LEV	0.230 <sup>2</sup>	6.4 <sup>2</sup>	1.0	0.027 <sup>2</sup>	0.10 <sup>2</sup>
	ULEV	0.143	3.2	0.5 <sup>2</sup>	0.013	0.05
5751-8500	LEV	0.280 <sup>2</sup>	7.3 <sup>2</sup>	1.5	0.032 <sup>2</sup>	0.12 <sup>2</sup>
	ULEV	0.167	3.7	0.8 <sup>2</sup>	0.016	0.06

<sup>1</sup> - Applies to diesel vehicles only.

<sup>2</sup> - Applies to ILEVs.

TABLE IV-G

NMOG STANDARDS (grams/mile) FOR FLEXIBLE- AND DUAL-FUELED VEHICLES WHEN OPERATING ON CLEAN ALTERNATIVE FUEL FOR LIGHT LIGHT-DUTY TRUCKS AND LIGHT-DUTY VEHICLES

Vehicle Type	50,000 Mile NMOG Standard	100,000 Mile NMOG Standard
MY 1996 and later:		
LDTs (0-3750 pounds LVW and LDVs)	0.125	0.156
LDTs (3751-5750 pounds LVW)	0.160	0.200
Beginning MY 2001:		
LDTs (0-3750 pounds LVW) and LDVs	0.075	0.090
LDTs (3751-5750 pounds LVW)	0.100	0.130

TABLE IV-H

NMOG STANDARDS (grams/mile) FOR FLEXIBLE- AND DUAL-FUELED VEHICLES WHEN OPERATING ON CLEAN ALTERNATIVE FUEL FOR HEAVY LIGHT-DUTY TRUCKS

Vehicle Type	50,000 Mile NMOG Standard	120,000 Mile NMOG Standard
Beginning MY 1998:		
LDTs (0-3750 pounds ALVW)	0.125	0.180
LDTs (3751-5750 pounds ALVW)	0.160	0.230
LDTs (5751-8500 pounds ALVW)	0.195	0.280

TABLE IV-I

NMOG STANDARDS (grams/mile) FOR FLEXIBLE- AND DUAL-FUELED VEHICLES WHEN OPERATING ON CONVENTIONAL FUEL FOR LIGHT LIGHT-DUTY TRUCKS AND LIGHT-DUTY VEHICLES

Vehicle Type	50,000 Mile NMOG Standard	100,000 Mile NMOG Standard
Beginning MY 1996:		
LDTs (0-3750 pounds LVW) and LDVs	0.25	0.31
LDTs (3751-5570 pounds LVW)	0.32	0.40
Beginning MY 2001		
LDTs (0-3750 pounds LVW) and LDVs	0.125	0.156
LDTs (3751-5570 pounds LVW)	0.160	0.200

TABLE IV-J

NMOG STANDARDS (grams/mile) FOR FLEXIBLE- AND DUAL-FUELED VEHICLES WHEN OPERATING ON CONVENTIONAL FUEL FOR HEAVY LIGHT-DUTY TRUCKS

Vehicle Type	50,000 Mile NMOG Standard	120,000 Mile NMOG Standard
Beginning MY 1998:		
LDTs (0-3750 pounds ALVW)	0.25	0.36
LDTs (3751-5750 pounds ALVW)	0.32	0.46
LDTs (5751-8500 pounds ALVW)	0.39	0.56

B. If vehicles meeting the emission standards set forth in subsection A of this section are not offered for sale in the State of California and sold or otherwise available commercially in the Commonwealth of Virginia as of model year 1998, then the beginning of the purchase requirements set forth in 9 VAC 5-121-130 E shall be delayed until the first model year in which such vehicles are offered for sale in the State of California and sold or otherwise available commercially in the Commonwealth of Virginia.

C. For purposes of credit calculations, the emission standards listed in Tables IV-K shall be used.

**TABLE IV-K**  
**EMISSION STANDARDS FOR DETERMINING CREDIT WEIGHTINGS**  
 Light-Duty Vehicle and Light-Duty Truck Emission Levels for Credit Calculations

Vehicle Category	LDVs and LDTs ≤ 6000 gvwr and ≤ 3750 lvw (grams/mile)	LDTs ≤ 6000 gvwr and > 3750 lvw but ≤ 5750 lvw (grams/mile)	LDTs > 6000 gvwr and ≤ 3750 tw (grams/mile)	LDTs > 6000 gvwr and > 3750 tw (grams/mile)	LDTs > 6000 gvwr and > 5750 lvw but ≤ 8500 gvwr (grams/mile)
<b>Tier 1 Gasoline Vehicle:</b>					
NMHC <sup>1</sup> .....	0.25	0.32	0.25	0.32	0.39
CO .....	3.4	4.4	3.4	4.4	5.0
NO <sub>x</sub> .....	0.4	0.7	0.4	0.7	1.1
<b>LEV:</b>					
NMOC .....	0.075	0.1	0.125	0.16	0.195
CO .....	3.4	4.4	3.4	4.4	5.0
NO <sub>x</sub> .....	0.2	0.4	0.4	0.7	1.1
<b>ULEV:</b>					
NMOC .....	0.04	0.05	0.075	0.1	0.117
CO .....	1.7	2.2	1.7	2.2	2.5
NO <sub>x</sub> .....	0.2	0.4	0.2	0.4	0.6
<b>ZEV:</b>					
NMOC .....	0.0	0.0	0.0	0.0	0.0
CO .....	0.0	0.0	0.0	0.0	0.0
NO <sub>x</sub> .....	0.0	0.0	0.0	0.0	0.0

<sup>1</sup> - For purpose of credit calculations, NMHC is assumed to be equal to NMOG.

**9 VAC 5-121-150. Heavy-duty vehicle exhaust emission standards.**

A. No heavy-duty clean-fuel fleet vehicle shall discharge nonmethane hydrocarbon gases (NMHG), carbon monoxide (CO), nitrogen oxides (NO<sub>x</sub>), formaldehyde (HCHO), and particulate matter (PM), if applicable, in its exhaust emissions in excess of the limits set forth in Table IV-L.

**TABLE IV-L**  
**EMISSION STANDARDS FOR HEAVY-DUTY TRUCKS**

Vehicle Category	HDV > 8500 ≤ 26,000 gvwr (grams/brake horse-power per hour)
<b>LEV:</b>	
NMHC + NO <sub>x</sub> .....	3.8
CO .....	15.50
PM .....	0.10
<b>ULEV:</b>	
NMHC + NO <sub>x</sub> .....	2.50
CO .....	7.20
PM .....	0.05
HCHO .....	0.05
<b>ILEV:</b>	
NMHC + NO <sub>x</sub> .....	2.50
CO .....	14.40
PM .....	0.10
HCHO .....	0.05
<b>ZEV:</b>	
NMHC + NO <sub>x</sub> .....	0.0
CO .....	0.0
PM .....	0.0
HCHO .....	0.0

B. The standards set forth in Table IV-L refer to the exhaust emitted while the vehicle is being tested in accordance with the applicable test procedures set forth in 40 CFR Part 86, Subpart N.

C. If vehicles meeting the standards set forth in Table IV-L are not offered for sale in the State of California and sold or otherwise available commercially in the Commonwealth of Virginia as of model year 1998, then the beginning of the purchase requirements set forth in 9 VAC 5-121-130 E shall be delayed until the first model year in which such vehicles are offered for sale in the State of California and sold or otherwise available commercially in the Commonwealth of Virginia.

D. Exhaust emissions from engines used in heavy-duty low emission vehicles shall meet conventional vehicle standards set forth in 40 CFR Part 86 for total hydrocarbon, carbon monoxide, particulate, and organic material hydrocarbon equivalent.

E. A heavy-duty vehicle shall be certified as a ZEV if it is determined by engineering analysis that the vehicle satisfies the following conditions:

1. The vehicle fuel system shall not contain either carbon or nitrogen compounds (including air) which, when burned, form nonmethane hydrocarbons, oxides of nitrogen, carbon monoxide formaldehyde, or particulates as exhaust emissions.
2. All primary and auxiliary equipment and engines must have no emissions of nonmethane hydrocarbons, oxides

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of nitrogen carbon monoxide formaldehyde and particulates.

3. The vehicle fuel system and any auxiliary engine shall have no evaporative emissions.

4. Any auxiliary heater must not operate at ambient temperatures above 40°F.

F. For purposes of credit calculations, the emission standards set forth in Table IV-M shall be used.

**TABLE IV-M  
EMISSION STANDARDS FOR DETERMINING CREDIT  
WEIGHTINGS**

Heavy-Duty Engine Emission Levels for Credit Calculations

Vehicle Category	HDV 8,501-26,000 gvwr (grams/brake horse-power per hour)
Conventional Vehicles:	
HC + NO <sub>x</sub> <sup>1,2</sup> .....	5.3
CO .....	15.5
LEV:	3.8
NMHC + NO <sub>x</sub> ...	15.5
CO .....	
ULEV:	2.5
NMHC + NO <sub>x</sub> ...	7.2
CO .....	
ZEV:	0.0
NMHC + NO <sub>x</sub> ...	0.0
CO .....	

<sup>1</sup> - For the purposes of credit calculation, HC is assumed to be equal to NMHC.

<sup>2</sup> - The conventional heavy duty emissions standard is not a combined standard.

**PART V.  
CLEAN-FUEL FLEET VEHICLE CREDIT REQUIREMENTS.**

**9 VAC 5-121-160. Clean-fuel fleet vehicle credit requirements.**

All credit-generating vehicles shall meet the applicable emission standards in Part IV (9 VAC 5-121-140 et seq.) and other requirements of this chapter.

**9 VAC 5-121-170. Credit generation.**

A. Credits may be granted to a covered fleet owner for any of the following:

1. Purchase of a clean-fuel fleet vehicle during any period subsequent to the approval of this chapter by the U.S. Environmental Protection Agency but prior to the effective date of the commencement of the clean-fuel fleet vehicle purchase requirement if the purchase meets all other clean-fuel fleet vehicle requirements applicable to such purchase, including the requirement to use only

the fuel on which the vehicle was certified as a clean-fuel fleet vehicle.

2. Purchase of a greater number of clean-fuel fleet vehicles than required in Part III (9 VAC 5-121-130) which meet clean-fuel fleet vehicle emission standards specified in Part IV (9 VAC 5-121-140 et seq.).

3. Purchase of a clean-fuel fleet vehicle which meets more stringent emission standards than the LEV standards in Part IV (9 VAC 5-121-140 et seq.).

4. Purchase of a clean-fuel fleet vehicle in an exempt or noncovered vehicle category by the owner of a covered or partially covered fleet.

B. Credits may be granted to a fleet owner for the purchase of a clean-fuel fleet vehicle prior to the approval of this chapter by the U.S. Environmental Protection Agency if the purchase meets all clean-fuel fleet vehicle credit program requirements in this chapter, including the following:

1. The vehicle purchase is certified to meet emission standards in Part IV (9 VAC 5-121-140 et seq.).

2. The vehicle purchased, if not a dedicated-fuel vehicle, meets the standards in Part IV (9 VAC 5-121-140 et seq.) on any fuel that the vehicle operates on.

C. A bi-fuel or flexible-fuel vehicle which is purchased by a fleet owner to comply with this chapter shall only be operated in the program area region on the fuels on which it was certified as a clean-fuel fleet vehicle.

D. A noncovered or covered fleet owner who purchases or leases a clean-fuel fleet vehicle only to generate a clean-fuel fleet vehicle credit shall be subject to the same requirements of this chapter as a covered fleet owner who purchases or leases a clean-fuel fleet vehicle to demonstrate compliance with purchase requirements in Part III (9 VAC 5-121-130).

**9 VAC 5-121-180. Credit values.**

A. Credit values for LDVs and LDTs shall be rounded to two decimal places and determined in accordance with Table V-A:

**TABLE V-A  
Credits Based on Reduction in NMOG**

Vehicle Category	LDVs and LDTs ≤ 6000 gvwr and ≤ 3750 lvw	LDTs ≤ 6000 gvwr and > 3750 lvw and ≤ 5750 lvw	LDTs > 6000 gvwr and ≤ 3750 alvw	LDTs > 6000 gvwr and > 3750 alvw but ≤ 5750 alvw	LDTs > 6000 gvwr and > 5750 alvw but ≤ 8500 alvw
LEV .....	1.00	1.26	0.71	0.91	1.11
ULEV .....	1.20	1.54	1.00	1.26	1.56
ZEV .....	1.43	1.83	1.43	1.83	2.23

B. Credits generated by the purchase or lease of a qualifying LDV or a LDT clean-fuel fleet vehicle shall be designated at the time of issuance as light-duty clean-fuel fleet vehicle credits.

C. Credit values for HDVs shall be determined in accordance with Table V-B:

TABLE V-B  
Credits Based on Reduction in NMOG + NO<sub>x</sub>

Vehicle Category	Light HDV	Medium HDV	Heavy HDV
LEV .....	1.00	1.00	1.00
ULEV .....	1.87	1.87	1.87
ZEV .....	3.53	3.53	3.53

D. Credits generated by the purchase of a qualifying light, medium or heavy HDV clean-fuel fleet vehicle shall be designated at the time of issuance as light, medium or heavy HDV clean-fuel fleet vehicle credits.

**9 VAC 5-121-190. Credit use.**

A. All credits generated in accordance with this chapter may be sold, traded or held for later use without discount or depreciation of such credits to meet the requirements of this chapter.

B. Covered fleet owners may use credits to meet the purchase requirements specified in Part III (9 VAC 5-121-130) (i) by trading credits for vehicle purchases or (ii) by redeeming credits that have been held for later use.

C. A covered fleet owner desiring to demonstrate full or partial compliance with covered fleet purchase requirements by the redemption of credits shall surrender sufficient credits as determined by this chapter. In lieu of purchasing a clean-fuel fleet vehicle, a fleet owner shall surrender credits equal to the credit value for the corresponding vehicle class and credit calculation as defined in Table V-A or V-B.

D. Credits earned within the boundaries of an interstate nonattainment area may be traded within the boundaries of that nonattainment area.

E. Credits may be traded according to the specifications established in this section and in 9 VAC 5-121-200.

F. Credits earned as a result of clean-fuel fleet vehicle purchase requirements in one program area region shall not be used to demonstrate compliance in another program area region, even if a state contains more than one program area region.

G. Owners of noncovered fleets and covered fleets may generate credits and be eligible for TCM exemptions provided that requirements of this chapter are met.

**9 VAC 5-121-200. Credit allocation.**

A. Credits generated by the purchase of LDVs and LDTs of 8,500 pounds GVWR or less may be used to demonstrate compliance with covered fleet purchase requirements applicable to LDVs or LDTs of 8,500 pounds GVWR or less.

B. Credits generated by the purchase of vehicles of more than 8,500 pounds GVWR shall not be used to demonstrate compliance with the covered fleet purchase requirements for vehicles weighing 8,500 pounds GVWR or less.

C. Credits generated by the purchase of vehicles of 8,500 pounds GVWR or less shall not be used to demonstrate compliance with requirements for vehicles of more than 8,500 pounds GVWR.

D. Credits generated by the purchase of a HDV of a particular weight subclass may be used to demonstrate compliance with required HDV purchases for the same or lighter weight subclass. These credits shall not be used to demonstrate compliance with required HDV purchases for vehicles of heavier weight subclass than the weight subclass of the vehicle which generated the credits.

**9 VAC 5-121-210. Credit generation for noncovered fleets.**

A. Noncovered fleet owners have no purchase requirements but may be eligible to generate credits and Transportation Control Measures (TCM) exemptions if they purchase credit-generating vehicles which meet the emissions standards in Part IV (9 VAC 5-121-140 et seq.).

B. Notwithstanding Part III (9 VAC 5-121-130), noncovered fleet owners who want to generate credits shall be subject to all provisions of this chapter.

PART VI.  
EXEMPTIONS FROM TRANSPORTATION CONTROL MEASURES.

**9 VAC 5-121-220. Clean-fuel fleet vehicle transportation control measure (TCM) exemptions.**

A. Eligible clean-fuel fleet vehicles shall be exempt from time-of-day, day-of-week and other similar temporal-based TCMs which are established wholly or partially for air quality reasons and have an air quality element, as accounted for in the Implementation Plan except where such exemptions create a clear safety hazard.

B. Vehicles certified as clean-fuel fleet vehicles, except for ILEVs, shall not be exempt from TCMs where the temporal element is secondary to some other control element.

C. Vehicles certified as clean-fuel fleet vehicles shall be exempt from temporal TCMs commencing with the effective date of this chapter subject to the following:

1. The subject vehicle shall remain in compliance with applicable clean-fuel fleet vehicle emission standards in Part IV (9 VAC 5-121-140 et seq.) and other clean-fuel fleet vehicle credit program requirements.
2. Temporal clean-fuel fleet vehicle TCM exemptions are not effective outside program areas.
3. Clean-fuel fleet vehicle TCM exemptions are not transferrable between vehicles within the same fleet.
4. Clean-fuel fleet vehicle TCM exemptions shall not be sold or traded.

D. Clean-fuel fleet vehicles making use of the TCM exemptions shall be clearly identified as such by a special license plate issued by the Department of Motor Vehicles if

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the vehicle is to be eligible for TCM exemptions specified in subsection A of this section.

## PART VII.

### REQUIREMENTS FOR VEHICLE CONVERSIONS TO QUALIFY AS A CLEAN-FUEL FLEET VEHICLE.

#### 9 VAC 5-121-230. General.

A. Conversions of engines or vehicles which satisfy the requirements of 40 CFR 88.306-94 shall be treated as a clean-fuel vehicle under 40 CFR Part 88, Subpart C.

B. The engine or vehicle shall be converted using a conversion configuration which has been certified according to the provisions of 40 CFR Part 86 using applicable emission standards and other provisions from 40 CFR Part 88 for clean-fuel engines and vehicles.

C. The clean-fuel vehicle aftermarket conversion certifier (i) shall be considered a manufacturer for purposes of §§ 206 and 207 of the federal Clean Air Act and related enforcement provisions and (ii) shall be liable for in-use performance of all the vehicles produced under the certificate of conformity as outlined in 40 CFR Part 85.

D. The installation of the certified conversion configuration may be performed by the aftermarket conversion certifier.

1. The aftermarket conversion certifier shall submit a list of additional installers to the administrator within five working days if the installation of the certified conversion configuration is performed by an entity other than the aftermarket conversion certifier.

2. The aftermarket conversion certifier shall provide instructions for installation of the aftermarket conversion configuration to installers listed on the certificate and ensure that the configurations are properly installed.

E. The useful life period for the purpose of determining the in-use liability of the clean-fuel vehicle aftermarket conversion certifier shall be the original useful life of the vehicle prior to conversion.

F. The conversion from an engine or vehicle capable of operating on gasoline or diesel fuel only to a clean-fuel engine or vehicle shall not be considered a violation of the tampering provisions of § 203(a)(3) of the federal Clean Air Act if such conversion is done pursuant to a conversion configuration certificate by the aftermarket conversion certifier or by an installer listed on the certificate.

## PART VIII.

### CERTIFICATION REQUIREMENTS FOR COVERED AND NONCOVERED FLEET OWNERS.

#### 9 VAC 5-121-240. Covered fleet owner certification requirements.

A. A covered fleet owner shall certify as specified below that vehicle purchases and credits sold or traded for each model year meet the purchase requirements for compliance according to Part III (9 VAC 5-121-130).

1. Certification shall be provided annually within 30 days of the end of the model year.

2. Certification shall indicate reporting period, reporting person, program area region, number of covered fleet vehicles by weight classes, number of new covered fleet vehicles by weight class, number of new clean-fuel fleet vehicles purchased by weight class and emission standard (LEV, ULEV, ZEV), current model year credit balance, and cumulative credit balance.

B. The department shall verify the existence of credits prior to any transactions pertaining to selling or trading of credits.

C. All credit transactions shall be approved by the department.

D. Falsification of certification of compliance or credit generation shall constitute a violation of this chapter and the fleet owner shall be subject to enforcement procedures in Part IX (9 VAC 5-121-260 et seq.).

#### 9 VAC 5-121-250. Noncovered fleet owner certification requirements.

Noncovered fleet owners who wish to generate credits and participate in the program as defined by this chapter shall comply with all certification requirements in this section.

## PART IX.

### ENFORCEMENT PROCEDURES.

#### 9 VAC 5-121-260. Enforcement of regulations and orders.

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

1. *Administrative proceedings.* The department may negotiate to obtain compliance through administrative means. Such means may be a consent agreement or any other mechanism that ensures or obtains compliance, including but not limited to those means prescribed in 9 VAC 5-121-270. In cases where the use of an administrative means is expected to result in compliance within 90 days or less, preferential consideration shall be given to the use of a consent agreement. Unless specified otherwise in this chapter, the administrative means shall be approved by the board.

2. *Judicial proceedings.* The department may obtain compliance through legal means pursuant to §§ 10.1-1316 and 46.2-1187 of the Code of Virginia.

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

C. Orders and consent orders are considered administrative means and the board reserves the right to use such means in lieu of or to provide a legal basis for the enforcement of any administrative means negotiated or approved by the department under subsection A of this section.

D. Any enforcement proceeding under this section may be used as a mechanism to ensure that the compliance with this chapter is reasonably maintained by the owner or other person.

E. Case decisions regarding the enforcement of regulations and orders shall be made by the director. These decisions (i) may be regarded by the aggrieved party as a final decision of the board and appealed pursuant to 9 VAC 5-121-50 C or (ii) may be appealed to the board pursuant to 9 VAC 5-121-50 A.

**9 VAC 5-121-270. Civil charges: basis for civil charges; multiple violations.**

A. Compliance with this chapter by a covered fleet facility shall be the responsibility of the owner. Failure to comply with the appropriate provisions of the Virginia Clean-Fuel Fleets Law or this chapter may be considered sufficient cause for enforcement action, including negotiated civil charges. In addition thereto, violators are also subject to criminal prosecution. The department shall develop a schedule of civil charges that sets forth the type of civil charges that are appropriate for the different types of violations. This schedule shall be used in negotiating consent agreements with fleet owners. Each day of violation shall be a separate offense, and each motor vehicle shall be treated separately in assessing violations.

B. In the case of multiple violations considered at one time, the department may by consent of the fleet owner provide by order for separate civil charges for each violation.

**PART X.**

**VOLUNTARY MOBILE EMISSION REDUCTION CREDIT PROGRAM.**

**9 VAC 5-121-280. General.**

A. The Virginia Voluntary Mobile Emission Reduction Credit Program, herein known as "MERC Program," is established to encourage the creation and trading of air quality credits generated by reductions in vehicle emissions.

B. To the extent that this part conflicts with any regulation of the board promulgated to carry out the requirements of § 10.1-1322.3 of the Code of Virginia, the regulation promulgated to carry out § 10.1-1322.3 shall apply.

C. The MERC Program applies in the program area.

D. The creation and use of air quality credits under the MERC Program shall not be used to satisfy purchase requirements in Part IV (9 VAC 5-121-140 et seq.) in such a way that may result in the double counting of credits.

E. Covered and noncovered fleet owners may participate in the MERC Program.

F. Only vehicles which meet applicable standards of Part IV (9 VAC 5-121-140 et seq.) and vehicles which meet the standards of a TLEV may generate MERCs in accordance with the provisions in 9 VAC 5-121-290.

G. Where this part does not fully address a particular issue, the provisions of applicable U.S. Environmental Protection Agency policy and guidance documents shall govern. These include, but are not limited to, the following:

1. Economic Incentive Program Rules (58 FR 11110, February 23, 1993).

2. Interim Guidance on the Generation of Mobile Source Emission Reduction Credits (58 FR 11134, February 23, 1993).

3. Emissions Trading Policy Statement; General Principles for Creation, Banking, and Use of Emission Reduction Credits; Final Policy Statement and Accompanying Technical Issues Document (51 FR 43814, December 4, 1986).

H. To the extent that this part conflicts with any U.S. Environmental Protection Agency policy and guidance documents cited in subsection G of this section, the documents cited in subsection G of this section shall apply.

**9 VAC 5-121-290. MERC generation and values.**

A. All MERCs generated shall be (i) quantifiable, (ii) enforceable at both the federal and state levels, (iii) consistent with the implementation plan attainment and reasonable further progress demonstrations, (iv) surplus to reductions required by other federal and state regulations or relied upon in any relevant attainment plan or demonstration, and (v) permanent within the timeframe specified by the MERC program.

1. MERCs may be generated by the purchases of or by entering into a legal binding agreement according to 9 VAC 5-121-320 to purchase clean-fuel fleet vehicles or TLEVs.

2. MERCs shall not be generated if the credits generated by the purchases of clean-fuel fleet vehicles or TLEVs are otherwise required by federal or state law, permits or approvals, agreements, administrative or judicial orders, or other enforcement actions or regulations.

B. Federal Tier I emission standards shall be the baseline used to determine the amount of emission reductions attributable to a vehicle purchase for the creation of a MERC credit prior to 1998. After 1998 the baseline shall be LEV emission standards.

C. The emission standards listed in Tables X-A or X-B shall be used, depending upon vehicle weight class, for purposes of MERC calculations. Calculations shall be made for each pollutant listed in the following tables:

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**TABLE X-A**  
**EMISSION STANDARDS FOR DETERMINING CREDIT**  
**WEIGHTINGS FOR MERCs**  
 Light-Duty Vehicle and Light-Duty Truck Emission Levels for  
 Credit Calculations

Vehicle Category	LDVs and LDTs ≤ 6000 gvwr and ≤ 3750 lvw (grams/mile)	LDTs ≤ 6000 gvwr and > 3750 lvw but ≤ 5750 lvw (grams/mile)	LDTs > 6000 gvwr and ≤ 3750 tw (grams/mile)	LDTs > 6000 gvwr and > 3750 tw but ≤ 5750 tw (grams/mile)	LDTs > 6000 gvwr and > 5750 tw (grams/mile)
<b>Tier 1 Gasoline Vehicle:</b>					
NMHC <sup>1</sup> ...	0.25	0.32	0.25	0.32	0.39
CO .....	3.4	4.4	3.4	4.4	5.0
NO <sub>x</sub> .....	0.4	0.7	0.4	0.7	1.1
<b>TLEV:</b>					
NMOG ...	0.125	N/A	N/A	N/A	N/A
CO .....	3.4	N/A	N/A	N/A	N/A
NO <sub>x</sub> .....	0.4	N/A	N/A	N/A	N/A
<b>LEV:</b>					
NMOG ...	0.075	0.1	0.125	0.16	0.195
CO .....	3.4	4.4	3.4	4.4	5.0
NO <sub>x</sub> .....	0.2	0.4	0.4	0.7	1.1
<b>ULEV:</b>					
NMOG ...	0.04	0.05	0.075	0.1	0.117
CO .....	1.7	2.2	1.7	2.2	2.5
NO <sub>x</sub> .....	0.2	0.4	0.2	0.4	0.6
<b>ZEV:</b>					
NMOG ...	0.0	0.0	0.0	0.0	0.0
CO .....	0.0	0.0	0.0	0.0	0.0
NO <sub>x</sub> .....	0.0	0.0	0.0	0.0	0.0

<sup>1</sup> - For purpose of credit calculations, NMHC is assumed to be equal to NMOG.

**TABLE X-B**  
**EMISSION STANDARDS FOR DETERMINING CREDIT**  
**WEIGHTINGS**  
 Heavy-Duty Engine Emission Levels for Credit Calculations

Vehicle Category	HDV 8,501-26,000 gvwr (grams/brake horse-power per hour)
<b>Conventional Vehicles:</b>	
HC + NO <sub>x</sub> <sup>1,2</sup> .....	5.3
CO .....	15.5
<b>TLEV:</b>	
NMHC + NO <sub>x</sub> .....	N/A
CO .....	N/A
<b>LEV:</b>	
NMHC + NO <sub>x</sub> .....	3.5
CO .....	15.5
<b>ULEV:</b>	
NMHC + NO <sub>x</sub> .....	2.5
CO .....	7.2
<b>ZEV:</b>	
NMHC + NO <sub>x</sub> .....	0.0
CO .....	0.0

<sup>1</sup> - For the purposes of credit calculation, HC is assumed to be equal to NMHC.

<sup>2</sup> - The conventional heavy-duty emissions standard is not a combined standard.

D. MERC generation shall be determined by multiplying the annual vehicle miles traveled per vehicle by the difference between the federal Tier I values in Table X-A or X-B and values for the appropriate certification by weight class of the vehicle purchased. MERC credits shall be calculated in accordance with the following formula:

$$\text{MERC} = (A - B) \text{VMT}$$

where:

MERC = Mobile emission reduction credit, expressed in grams per year.

A = Tier I credit weighting value (LEV standard after 1998), expressed in grams per mile.

B = Credit weighting value of vehicle purchased, expressed in grams per mile.

VMT = Vehicle miles traveled, expressed in miles per year.

E. MERCs shall be assigned based on the emission credit for the least stringent vehicle certification of either a bi-fuel or dual-fuel vehicle.

### 9 VAC 5-121-300. MERC use and verification.

A. MERC use may include, but not be limited to, the following:

1. In situations involving delayed compliance or noncompliance penalties.
2. To satisfy emission reduction requirements beyond the reasonably available control technology requirements.
3. To satisfy reasonable available control technology requirements for existing sources.
4. To meet new source emissions offset requirements at the offset ratios specified in the federal Clean Air Act.

B. MERCs shall not be used to satisfy the requirements of (i) best available control technology, (ii) lowest achievable emission rate, (iii) new source performance standards, (iv) federal inspection and maintenance programs, and (v) employer trip reduction programs.

C. MERCs may be generated if they are based on controls which are surplus to any required controls or any trading activities which are allowed for within the guidance specific to the mobile source programs in subsection B of this section.

D. All MERCs generated in accordance with this program may be sold, traded, or held for later use without discount or depreciation of such credits.

E. MERCs generated in a program region (i) may be used in the same program region or (ii) may be used in another program region with an equal or higher air quality nonattainment classification than the area in which the source is located and emissions from such other area contribute to a violation of the national ambient air quality standard in the area in which the source is located.

F. All MERC uses and transactions shall be approved by the department on a case-by-case basis.

G. The department shall verify the existence of MERCs prior to any transactions pertaining to selling or trading of credits.

H. Falsification of certification of compliance or MERC generation shall constitute a violation of this chapter and the fleet owner shall be subject to enforcement procedures in Part IX (9 VAC 5-121-260 et seq.).

**9 VAC 5-121-310. Reporting requirements.**

A. All MERC Program participants shall file an annual report recording vehicle purchase and credit transactions for each model year in which they participate in the program.

B. The report shall be in a format acceptable to the department and shall include, but not be limited to, the following information:

1. Name of program participant.
2. Address of program participant.
3. Registration number provided by the department to the program participant.
4. Address and phone number of all fleet facilities or other sources of air pollution under the control of the program participant and subject to MERC credits.
5. Designated contact person for each fleet facility and source of air pollution subject to MERC credits.
6. Number of TLEV purchases, conversions and leased vehicles that meet TLEV standards.
7. Number of LDV purchases, conversions and leased vehicles that meet LEV standards.
8. Number of HDV purchases, conversions and leased vehicles that meet LEV standards.
9. MERC calculations for each vehicle and pollutant.

C. The report shall be submitted to the department within 30 days of the end of the calendar year.

**9 VAC 5-121-320. Legally binding agreements.**

The department may use one or more of the following as a mechanism to make MERCs legally enforceable:

1. Consent agreement.
2. Consent order.

**9 VAC 5-121-330. Enforcement.**

A. Any program participant that fails to carry-out any provisions of a legally-binding agreement entered into with the department may be subject to enforcement provisions in Part IX (9 VAC 5-121-260 et seq.).

B. Failure to comply with the reporting requirements in 9 VAC 5-121-310 may result in MERCs being invalid or other enforcement actions provided in Part IX (9 VAC 5-121-260 et seq.).

PART XI.

REQUIREMENTS FOR FEDERAL FLEETS.

**9 VAC 5-121-340. Compliance by federal fleets.**

A. Fleets owned or operated by any agency, department, or instrumentality of the United States shall comply with this chapter and shall be treated in the same manner as private or other government fleets, except as provided in subsection C of this section.

B. Federal agencies shall obtain clean-fuel fleet vehicles from original equipment manufacturers, to the extent possible, as required under § 248 of the federal Clean Air Act.

C. In accordance with § 46.2-1179 B of the Code of Virginia, federal covered fleet owners shall make purchases of clean-fuel fleet vehicles beginning with model year 1995 vehicles according to the conditions and phase-in purchase rate set forth in Part III (9 VAC 5-121-130), provided the phase-in schedule begins in 1995 and proceeds thereon. This subsection shall apply to fleet vehicles or in the case of multi-regional fleets that portion of the fleet vehicles (i) registered, (ii) having a base of operations, or (iii) having a majority of travel in one or more localities in the Northern Virginia Region.

VA.R. Doc. No. R98-48; Filed September 24, 1997, 11:12 a.m.

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**REGISTRAR'S NOTICE:** The following regulation filed by the State Air Pollution Control Board is exempt from the Administrative Process Act (§ 9-6.14:1 et seq. of the Code of Virginia) pursuant to §§ 9-6.14:7.1, 9-6.14:9.1, 9-6.14:9.2 and 9-6.14:9.3, which exclude the issuance by the State Air Pollution Control Board of variances to its regulations.

**Title of Regulation:** 9 VAC 5-190-10 et seq. Variance for Merck Stonewall Plant.

**Statutory Authority:** §§ 10.1-1307 and 10.1-1308 of the Code of Virginia.

**Effective Date:** November 15, 1997.

**Summary:**

This order of the State Air Pollution Control Board is issued for the purpose of granting a site-specific variance to Merck & Co., Inc., (Merck) for the operation

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of its Stonewall Plant in Elkton, Virginia, under a Prevention of Significant Deterioration (PSD) permit in lieu of board regulations pertaining to new source review (NSR) permitting and Merck's existing permits. The variance is being granted in consideration of the proposed Project XL Final Project Agreement (FPA) addressing the Merck Stonewall Plant and the resultant, soon-to-be-promulgated amendments to federal rules (40 CFR Part 52, Approval and Promulgation of Implementation Plans, Subpart VV, § 52.2454 (added), and 40 CFR Part 60, Standards of Performance for New Stationary Sources, §§ 60.1 (d), 60.49b (u), and 60.112b (c) (added)) for which delegation of administrative authority to the Department of Environmental Quality is expected. The goal of this pilot project is to develop a regulatory structure for the Merck Stonewall Plant that both facilitates flexible manufacturing operations and achieves superior environmental performance while simplifying compliance with regulations.

The variance allows Merck to use compliance with the PSD permit as an alternate demonstration of compliance with provisions of the State Air Pollution Control Board regulations pertaining to:

1. Major and minor new source review permitting and registration
2. Virginia air toxics regulations
3. Notification, records and reporting
4. Emission standards for general process operations, incinerators and fuel burning equipment
5. Compliance and monitoring
6. Certain provisions of New Source Performance Standards (NSPS)
7. Certain provisions of federal operating permit regulations
8. Facility and control equipment malfunction reporting
9. Control programs
10. Compliance monitoring and performance testing

Additionally, the variance contains provisions regarding procedures for modifying the PSD permit.

The alternate regulatory system that would be established under the order addresses only the pollutants identified in the permit (generally the criteria pollutants with the exception of lead). Merck will fully comply with the forthcoming Maximum Achievable Control Technology (MACT) standard for the pharmaceutical industry. Merck will also be required to obtain a Title V operating permit, pursuant to the applicable Title V program in the board's regulations.

**Agency Contact:** Copies of the regulation may be obtained from Olive B. Critzer, Valley Regional Office, Department of Environmental Quality, P.O. Box 1129, Harrisonburg, VA 22801, telephone (540) 574-7800.

Questions on the variance should be referred to Larry M. Simmons, Regional Permit Manager, Valley Regional Office, Department of Environmental Quality, P.O. Box 1129, Harrisonburg, VA 22801, telephone (540) 574-7800.

### CHAPTER 190.

#### VARIANCE FOR MERCK STONEWALL PLANT.

##### **9 VAC 5-190-10. Applicability and designation of affected facility.**

The affected facility to which the provisions of this chapter apply is the Merck Stonewall Plant.

##### **9 VAC 5-190-20. Definitions.**

A. For the purpose of this chapter or any associated orders issued by the board, the words or terms shall have the meanings given them in subsection C of this section.

B. As used in this chapter, all terms not defined herein shall have the meanings given them in 9 VAC 5 Chapter 10 (9 VAC 5-10-10 et seq.), unless otherwise required by context.

C. Terms defined.

"Code" means the Code of Virginia.

"DEQ" means the Department of Environmental Quality, an agency of the Commonwealth described in § 10.1-1183 of the Code of Virginia.

"Emissions caps" means the sitewide limitations on the rate of emissions of criteria pollutants established and identified as emissions caps in 9 VAC 5-190-30.

"EPA" means the United States Environmental Protection Agency.

"Merck" means Merck & Co., Inc., a New Jersey corporation authorized to conduct business in Virginia and the owner/operator of a plant (the Stonewall Plant) located at Route 340 South in Elkton, Virginia.

"Order" means the order granting this variance.

"PM<sub>10</sub>" means particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers as measured by the applicable reference method or an equivalent method.

"PSD permit" means the Prevention of Significant Deterioration permit issued to Merck and Co., Inc., Stonewall Plant, pursuant to the order.

"Regional director" means the Director of the Valley Regional Office of the Department of Environmental Quality located in Harrisonburg, Virginia.

"SAPCB regulations" means 9 VAC 5 Chapters 10 through 80.

"Site," "facility" and "Stonewall Plant" mean the contiguous property at Route 340 South, Elkton, Virginia, under common control by Merck & Co., Inc., and its successors in ownership.

"VAC" or "9 VAC" means Title 9 of the Virginia Administrative Code. This title comprises the environmental regulations for the Commonwealth of Virginia, including the regulations of the State Air Pollution Control Board.

"Variance" means this chapter.

## 9 VAC 5-190-30. Sitewide emissions caps.

A. On or after the date that Merck provides written notification to the DEQ that it accepts and will operate under the provisions of this chapter and Sections 1, 3 and 4 of the PSD permit, no owner or other person shall cause or permit to be discharged into the atmosphere from the affected facility any emissions in excess of the following sitewide emissions caps:

The total criteria pollutant emissions cap (total emissions cap) shall be 1,503 tons per year (tpy). The criteria pollutants included in the cap are as follows: ozone (using volatile organic compounds (VOCs) as surrogate), sulfur dioxide (SO<sub>2</sub>), particulate matter (PM<sub>10</sub>), carbon monoxide (CO), and oxides of nitrogen (NO<sub>x</sub>). The emissions caps for individual criteria pollutants shall be as follows:

1. For SO<sub>2</sub>, the emissions cap shall be 719 tpy.
2. For PM<sub>10</sub>, the emissions cap shall be 42 tpy.
3. For NO<sub>x</sub>, the emissions cap shall be 291 tpy.

B. On or after the earlier of (i) the completion date of the powerhouse conversion project if Merck has provided the written notification pursuant to subsection A of this section or (ii) the first day of the month 12 months after completion of the powerhouse conversion project, no owner or other person shall cause or permit to be discharged into the atmosphere from the affected facility any emissions in excess of the following sitewide emissions caps:

The total criteria pollutant emissions cap (total emissions cap) shall be 1,202 tons per year (tpy). The criteria pollutants included in the cap are as follows: ozone (using volatile organic compounds (VOCs) as surrogate), sulfur dioxide (SO<sub>2</sub>), particulate matter (PM<sub>10</sub>), carbon monoxide (CO), and oxides of nitrogen (NO<sub>x</sub>). The emissions caps for individual criteria pollutants shall be as follows:

1. For SO<sub>2</sub>, the emissions cap shall be 539 tpy.
2. For PM<sub>10</sub>, the emissions cap shall be 42 tpy.
3. For NO<sub>x</sub>, the emissions cap shall be 262 tpy.

C. Upon completion of the stack test for the powerhouse required by Table 4.2 of the PSD permit, the emissions cap for PM<sub>10</sub> prescribed in subsection B of this section may be adjusted by the DEQ based on the results of the stack test and in accordance with Section 4.3.2 of the PSD permit.

## 9 VAC 5-190-40. Major new source review permitting and registration requirements.

A. This section applies in lieu of regulatory requirements for the following pollutants: ozone (using volatile organic compounds as surrogate), sulfur dioxide, particulate matter,

particulate matter (PM<sub>10</sub>), carbon monoxide, and oxides of nitrogen. This section is not intended to provide an alternate method of compliance for any future regulatory requirements designed to address particulate matter with aerodynamic diameter less than or equal to a nominal 2.5 microns (PM<sub>2.5</sub>).

B. For the pollutants cited in subsection A of this section, compliance with this chapter and the PSD permit shall constitute compliance with the following provisions of the SAPCB regulations:

- 9 VAC 5-20-160.
- 9 VAC 5 Chapter 50, Part II, Article 4 (9 VAC 5-50-240 et seq.).
- 9 VAC 5-80-30.
- 9 VAC 5 Chapter 80, Part II, Article 8 (9 VAC 5-80-1700 et seq.).

## 9 VAC 5-190-50. Other regulatory requirements.

A. This section applies in lieu of regulatory requirements for all pollutants except: lead, particulate matter regulated as PM<sub>2.5</sub>, or any criteria pollutant which is listed in the definition of "significant" in 9 VAC 5-80-1710 C by an amendment adopted after November 15, 1997.

B. For the pollutants cited in subsection A of this section, compliance with this chapter and the PSD permit shall constitute compliance with the following provisions of the SAPCB regulations:

1. Pertaining to minor new source review permitting and registration:
  - 9 VAC 5-20-160.
  - 9 VAC 5 Chapter 50, Part II, Article 4 (9 VAC 5-50-240 et seq.).
  - 9 VAC 5-80-10.
  - 9 VAC 5-80-11.
2. Pertaining to standards of performance for stationary sources:
  - 9 VAC 5 Chapter 50, Part II, Article 4 (9 VAC 5-50-240 et seq.).
3. Pertaining to the Virginia Air Toxics Program requirements:
  - 9 VAC 5 Chapter 40, Part II, Article 3 (9 VAC 5-40-160 et seq.).
  - 9 VAC 5 Chapter 50, Part II, Article 3 (9 VAC 5-50-160 et seq.).
4. Pertaining to notification, records, and reporting requirements:
  - 9 VAC 5-40-50.
  - 9 VAC 5-50-50.
5. Pertaining to emission standards for general process operations, incinerators, and fuel burning equipment:
  - 9 VAC 5-40-22.
  - 9 VAC 5 Chapter 40, Part II, Article 4 (9 VAC 5-40-240 et seq.).

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9 VAC 5 Chapter 40, Part II, Article 7 (9 VAC 5-40-730 et seq.).

9 VAC 5 Chapter 40, Part II, Article 8 (9 VAC 5-40-880 et seq.).

## 6. Pertaining to compliance and monitoring requirements:

9 VAC 5-40-20.

9 VAC 5-40-21.

9 VAC 5-40-40.

9 VAC 5-40-41.

9 VAC 5-50-40.

## 9 VAC 5-190-60. Certain emissions standards, permitting, and other requirements.

A. This section applies in lieu of regulatory requirements for all pollutants except: lead, particulate matter regulated as  $PM_{2.5}$ , or any criteria pollutant which is listed in the definition of "significant" in 9 VAC 5-80-1710 C by an amendment adopted after November 15, 1997.

B. For the pollutants cited in subsection A of this section, compliance with this chapter and the PSD permit shall constitute compliance with the following provisions of the SAPCB regulations:

### 1. Pertaining to standards of performance for new stationary sources:

a. For the natural gas-fired boilers installed in accordance with Section 2.1 of the PSD permit, compliance with that permit shall constitute compliance with all requirements of 9 VAC 5 Chapter 50, Part II, Article 5 (9 VAC 5-50-400 et seq.).

b. For any new and existing bulk volatile organic liquid storage vessels (including petroleum liquid storage vessels) that would otherwise only be subject to notification, recordkeeping and reporting requirements, compliance with the PSD permit shall constitute compliance with 9 VAC 5 Chapter 50, Part II, Article 5 (9 VAC 5-50-400 et seq.).

### 2. Pertaining to control programs:

9 VAC 5-20-170, except for visible emissions and odor.

### 3. Pertaining to facility and control equipment maintenance or malfunction, except for visible emissions and odor:

9 VAC 5-20-180.

9 VAC 5-50-20.

### 4. Pertaining to compliance, monitoring, and performance testing:

9 VAC 5-40-30, all except 9 VAC 5-40-30 B.

9 VAC 5-50-30, all except 9 VAC 5-50-30 B.

C. Should any regulation of the board become applicable to the Stonewall Plant after November 15, 1997, that establishes requirements for any of the criteria pollutants

listed in 9 VAC 5-190-30, Merck may choose to comply directly with the requirements of these new regulations or to make commensurate reductions in applicable emission caps in accordance with Section 1.2.2 of the PSD permit.

## 9 VAC 5-190-70. Federal operating permits.

A. Merck shall be subject to the provisions of 9 VAC 5 Chapter 80, Part II, Article 1 (9 VAC 5-80-50 et seq.) except as follows:

1. Compliance with monitoring requirements specified in Section 4 of the PSD permit shall constitute compliance with any monitoring requirements in 9 VAC 5-80-110 E that would be applicable to provisions of the PSD permit.

2. Compliance with recordkeeping and reporting requirements specified in Section 4 of the PSD permit shall constitute compliance with any recordkeeping and reporting requirements in 9 VAC 5-80-110 F 1 and 9 VAC 5-80-110 F 2 a that would be applicable to the PSD permit.

3. The PSD permit and documentation submitted in obtaining the PSD permit are deemed sufficient for the permit application requirements pertaining to the applicable requirements in the PSD permit. For applicable requirements outside of the PSD permit, Merck shall submit information on standard forms provided by DEQ, or in accordance with instructions accompanying those forms, or as otherwise acceptable to DEQ.

4. Merck's initial federal operating permit application need not list equipment, emissions or applicable requirements as of the time of application, but rather as of the conditions representative of the PSD permit.

5. Merck's initial federal operating permit application compliance certification need not be based on applicable requirements as of the time of application, but rather as of the conditions representative of the PSD permit, expressed as a future commitment to meet those requirements if they are not in effect at the time of application.

6. If all of the provisions of the PSD permit have not become effective by January 10, 2000, Merck shall submit a revised application for a federal operating permit which shall list all equipment, emissions and applicable requirements as they exist at that time and shall make the applicable compliance certification in accordance with those current requirements.

B. Merck shall be subject to the provisions of 9 VAC 5 Chapter 80, Part II, Article 2 (9 VAC 5-80-310 et seq.) and shall provide DEQ with emission inventory update information sufficient to allow DEQ to assess permit program fees.

## 9 VAC 5-190-80. PSD permit issuance and modifications.

A. DEQ shall issue and modify the PSD permit in accordance with the procedures set forth below. Public participation activities associated with issuance of the PSD

permit which were conducted prior to November 15, 1997, shall be considered applicable toward meeting the requirements of this section. DEQ shall specify within the PSD permit the conditions under which the PSD permit may be modified.

B. DEQ shall provide for public participation prior to issuing the PSD permit. At a minimum, DEQ shall:

1. Make available for public inspection in at least one location in the area of the site the information submitted by the permittee, the DEQ's analysis of the effect on air quality, including the preliminary determination and a copy or summary of any other materials considered in making the preliminary determination;
2. Notify the public by advertisement in a newspaper of general circulation in the area of the site of the application of the preliminary determination and of the opportunity for comment at a public hearing as well as written public comment;
3. Provide a 30-day period for submittal of public comment;
4. Send a copy of the notice of public comment to the following: the EPA Administrator, through the appropriate regional office; any other state or local air pollution control agencies; the chief executives of the city and county where the site is located; any state, federal land manager, or other governing body whose lands may be affected by emissions from the site; and
5. Provide opportunity for a public hearing for interested persons to appear and submit written or oral comments on the air quality impact of the site, the control technology required, and other appropriate considerations.

C. For any change that does not meet the criteria for an administrative permit modification established in subdivision D 1 of this section, DEQ shall provide an opportunity for public participation consistent with the provisions of subsection B of this section prior to processing the permit modification.

D. The following provisions govern administrative permit modifications:

1. An administrative permit modification is a permit revision that:
  - a. Corrects typographical errors;
  - b. Identifies a change in the name, address, or phone number of any person identified in the PSD permit or provides a similar minor administrative change at the site;
  - c. Requires more frequent monitoring, recordkeeping, or reporting by the permittee;
  - d. Allows for a change in ownership or operational control of a source where DEQ determines that no other change in the permit is necessary provided that

a written agreement containing a specific date for transfer of permit responsibility, coverage, and liability between the current and new permittee has been submitted to DEQ;

e. Updates the emission calculation methods specified in the permit provided that the change does not also involve a change to any sitewide emissions cap;

f. Changes the monitoring, recordkeeping, or reporting requirements for equipment that has been shutdown or is no longer in service; or

g. Makes any other change that is stipulated in the PSD permit as qualifying as an administrative permit modification, provided that the permit condition which includes such stipulation has already undergone public participation in accordance with subsection A of this section.

2. DEQ may make an administrative permit modification consistent with the following procedures:

a. DEQ shall take final action on any request for an administrative permit modification within 60 days from receipt of the request and may incorporate such changes without providing notice to the public provided that DEQ designates any such permit revisions as having been made pursuant to this subdivision.

b. DEQ shall submit a copy of the revised permit to the EPA Administrator.

c. Merck may implement the changes addressed in the request for an administrative permit modification immediately upon submittal of the request to DEQ.

**9 VAC 5-190-90. Transfer of ownership.**

A. The terms of this chapter and the PSD permit are transferable to a new owner upon sale of the site in accordance with provisions specified by the PSD permit.

B. In the case of a transfer of ownership of the site, the new owner shall comply with this chapter and the PSD permit. The new owner shall notify the DEQ of the change in ownership within 30 days of the transfer and shall comply with the requirements of 9 VAC 5-190-80 D.

C. In the case of a name change of the site, the owner shall comply with this chapter and the PSD permit. The owner shall notify the DEQ of the change in source name within 30 days of the name change and shall comply with the requirements of 9 VAC 5-190-80 D.

**9 VAC 5-190-100. Applicability of future regulation amendments.**

Subsequent amendments to the SAPCB regulations to which this chapter applies shall not apply to the Stonewall Plant unless and until the board amends this chapter to specifically address the applicability of the regulatory amendments to the facility. In any action to amend this

# Final Regulations

chapter, the board shall, to the maximum extent possible, preserve the operating flexibility and regulatory simplification achieved by the Merck XL project and justified by the superior environmental performance it provides.

VA.R. Doc. No. R98-46; Filed September 24, 1997, 11:14 a.m.

## TITLE 14. INSURANCE

### STATE CORPORATION COMMISSION

**REGISTRAR'S NOTICE:** The State Corporation Commission is exempt from the Administrative Process Act in accordance with § 9-6.14:4.1 A 2 of the Code of Virginia, which exempts courts, any agency of the Supreme Court, and any agency which by the Constitution is expressly granted any of the powers of a court of record.

#### Bureau of Insurance

**Title of Regulation:** 14 VAC 5-71-10 et seq. Rules Governing Viatical Settlement Providers and Viatical Settlement Brokers.

**Statutory Authority:** §§ 12.1-13 and 38.2-5706 of the Code of Virginia.

**Effective Date:** October 15, 1997.

**Agency Contact:** Copies of the regulation may be obtained from Raquel Pino-Moreno, State Corporation Commission, P.O. Box 1197, Richmond, VA 23218, telephone (804) 371-9859. Copying charges are \$1.00 for the first two pages and 50¢ for each page thereafter.

AT RICHMOND, SEPTEMBER 16, 1997

COMMONWEALTH OF VIRGINIA

At the relation of the

STATE CORPORATION COMMISSION

CASE NO. INS970124

**Ex Parte:** In the matter of adopting Rules Governing Viatical Settlement Providers and Viatical Settlement Brokers

#### ORDER ADOPTING REGULATION

WHEREAS, by order entered herein July 15, 1997, the Commission ordered that a hearing be conducted on September 11, 1997, for the purpose of considering the adoption of a regulation proposed by the Bureau of Insurance ("Bureau") entitled "Rules Governing Viatical Settlement Providers and Viatical Settlement Brokers";

WHEREAS, the Commission conducted the aforesaid hearing where it received technical and substantive amendments to the proposed regulation;

THE COMMISSION, having considered the proposed regulation and the amendments thereto, is of the opinion that the regulation, as amended, should be adopted;

THEREFORE, IT IS ORDERED that the regulation entitled "Rules Governing Viatical Settlement Providers and Viatical Settlement Brokers" which is attached hereto should be, and it is hereby, ADOPTED to be effective October 15, 1997.

AN ATTESTED COPY hereof shall be sent by the Clerk of the Commission to the Bureau of Insurance in care of Deputy Commissioner Gerald A. Milsky who shall forthwith give further notice of the adoption of the regulation by mailing a copy of this order, together with a complete copy of the regulation, to all life insurance companies licensed in the Commonwealth of Virginia and other interested parties.

#### CHAPTER 71.

#### RULES GOVERNING VIATICAL SETTLEMENT PROVIDERS AND VIATICAL SETTLEMENT BROKERS.

#### 14 VAC 5-71-10. Purpose.

[ A. ] *The purpose of this chapter (14 VAC 5-71-10 et seq.) is to implement the Viatical Settlements Act, Chapter 57 (§ 38.2-5700 et seq.) of Title 38.2 of the Code of Virginia.*

[ B. ] *This chapter is designed to [ : ]*

[ 1. ] *Regulate persons in the business of offering, advertising, negotiating, contracting for, providing or doing any act in this Commonwealth in furtherance of making or proposing to make a viatical settlement contract [ -to; ]*

[ 2. ] *Provide required standards of disclosure [ -and to; ]*

[ 3. ] *Protect policyholders and the public against the adverse effects of excessive, inadequate or unfairly discriminatory rates which could result if persons transacting the business of viatical settlement providers are allowed to operate an unregulated industry with an aggressive marketing approach targeted to [ terminally-ill ] individuals [ with a catastrophic or life-threatening illness or condition ] which deals in death benefits derived from insurance;*

[ 4. ] *Provide an additional means of securing financial assistance among [ terminally-ill ] individuals [ with a catastrophic or life-threatening illness or condition ] ;*

[ 5. ] *Provide formal regulatory controls for the assignment, sale or other transfer of life insurance policies and benefits which, notwithstanding the provisions of § 38.2-301 of the Code of Virginia, enable [ a terminally-ill an ] individual [ with a catastrophic or life-threatening illness or condition ] to utilize life insurance benefits to obtain funding for life-sustaining treatment, comfort or care; and*

[ 6. ] *Recognize that assignment of life insurance benefits without an insurable interest in the life of the person should only be made in good faith and not for [*

~~wager~~—of monetary ] speculation, and that such assignment must not promote an interest in the early death of the insured.

[ C. ] This chapter is not designed to regulate or monitor the financial solvency of persons in the business of viatical settlements.

[ D. ] Sales of fractional interests in a life insurance policy or interests in a pool of such policies shall constitute the sale of a "security" as that term is defined in the Virginia Securities Act (§ 13.1-501 et seq. of the Code of Virginia).

#### 14 VAC 5-71-20. Definitions.

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

"Viatical settlement" means compensation or other valuable consideration paid to the viator in return for the viator's assignment, transfer, sale, devise or bequest of the death benefit or ownership of a life insurance policy or certificate to the viatical settlement provider which compensation or other valuable consideration is less than the expected death benefit of the life insurance policy or certificate.

"Viatical settlement broker" means any person who, for another and for a fee, commission or other valuable consideration, offers or advertises the availability of viatical settlements, introduces viators to viatical settlement providers, or offers or attempts to negotiate viatical settlements between a viator and one or more viatical settlement providers; however, "viatical settlement broker" does not include an attorney, accountant or financial planner who is not paid by the viatical settlement provider and who is retained to represent the viator.

"Viatical settlement contract" means a written agreement between a viatical settlement provider and a person who owns a life insurance policy or who owns or is covered under a group policy insuring the life of a person who has a catastrophic or life-threatening illness or condition; under the terms of the agreement, the viatical settlement provider will pay compensation or other valuable consideration, which is less than the expected death benefit of the insurance policy or certificate, in return for the viator's assignment, transfer, sale, devise or bequest of the death benefit or ownership of the insurance policy or certificate to the viatical settlement provider. "Viatical settlement contracts" do not include accelerated death benefit provisions contained in life insurance policies, whether issued with the original policy or as a rider, according to the regulations (14 VAC 5-70-10 et seq.) promulgated by the [ State Corporation ] Commission.

"Viatical settlement provider" means a person that conducts the business of viatical settlements directly or indirectly as agent or attorney-in-fact for one or more persons entering into or attempting to enter into a viatical settlement contract. "Viatical settlement provider" does not include: (i) any bank, savings bank, savings institution, credit union or other licensed lending institution which takes an assignment

of a life insurance policy as collateral for a loan; (ii) the issuer of a life insurance policy which makes a policy loan on a policy that it has issued, permits surrender of the policy or pays other policy benefits, including accelerated benefits according to regulations promulgated by the [ State Corporation ] Commission; or (iii) any individual who enters into only one agreement in a calendar year for the transfer of the death benefit or ownership of the insurance policy or certificate for any value less than the expected death benefit.

"Viaticated policy" means a life insurance policy or a certificate of life insurance issued under a group life insurance policy that has been acquired or transferred pursuant to the terms of a viatical settlement contract.

"Viator" means the owner of a life insurance policy or the holder of a certificate issued under a group life insurance policy insuring the life of a person with a catastrophic or life-threatening illness or condition who enters into an agreement under the terms of which the viatical settlement provider will pay compensation or other valuable consideration, which compensation or other valuable consideration is less than the expected death benefit of the insurance policy or certificate, in return for the assignment, transfer, sale, devise or bequest of the death benefit or ownership of the insurance policy or certificate to the viatical settlement provider. "Viator" does not include a viatical settlement provider or any subsequent owner of a viaticated policy.

#### 14 VAC 5-71-30. License requirements for viatical settlement providers.

A. A viatical settlement provider shall not enter into or solicit a viatical settlement contract without first obtaining a license from the [ State Corporation ] Commission.

B. The application shall be on a form required by the [ State Corporation ] Commission.

C. The application shall be accompanied by a fee of \$500. The license may be renewed biennially by submitting a renewal application form and fee of \$500 prior to April 1 of the renewal year. Failure to submit a renewal application form and fee within the time prescribed shall result in an automatic expiration of the license on June 30 of the renewal year.

D. Only those individuals named in the application may act as viatical settlement providers.

E. The [ State Corporation ] Commission may ask for such additional information as is necessary to determine whether the applicant complies with the requirements of § 38.2-5701 of the Code of Virginia.

F. Viatical settlement providers shall acquire and maintain a surety bond in the amount of \$100,000. A copy of the executed bond shall be filed with the [ State Corporation ] Commission at the time of application for a license and with each renewal.

G. Viatical settlement providers, either directly or through a broker, shall be required to provide a written disclosure form to the viator at the time of solicitation for the viatical

# Final Regulations

settlement and again at the time the viatical settlement contract is signed by all parties. Disclosure forms containing identical or substantially similar wording to the following are deemed to be approved for use in Virginia and need not be filed. Whether a disclosure form contains "substantially similar" wording, as that term is used herein, shall be determined at the sole discretion of the [ State Corporation ] Commission. Under no circumstances shall a disclosure form be considered to contain wording "substantially similar" unless the form addresses each and every element contained in the form contained herein. Viatical settlement providers wishing to utilize disclosure forms the wording of which differs substantially from that contained herein may not utilize such forms until they have been filed with and approved by the [ State Corporation ] Commission, either with the initial application for a viatical settlement provider license or at such later time as the viatical settlement provider may determine that it wishes to utilize a different form.

PROVIDER/COMPANY NAME

## DISCLOSURE FORM

### VIATICATING YOUR LIFE INSURANCE POLICY?

Are you thinking about viaticating your life insurance policy? If you are, your decision could be a good one -- or a mistake. You will not know for sure unless you carefully consider all of the options available to you and the consequences of viaticating your life insurance policy.

We are required to inform you of the following:

- Make sure you understand the facts. You should ask your insurance company to review all the possible alternatives that your life insurance policy may offer in lieu of a viatical settlement.
- Compensation from a viatical settlement may be taxable. You should seek assistance from a personal tax advisor.
- The proceeds from a viatical settlement may be subject to the claims of creditors.
- Compensation from a viatical settlement may affect your eligibility for medical assistance or other government benefits or entitlements. You should seek advice from the appropriate government agencies.
- You have the right to rescind your viatical settlement contract within 30 days of the date the agreement was signed by the parties or 15 days of the receipt of the viatical settlement proceeds, whichever occurs first.
- We are required to disclose to you the date by which the viatical settlement funds will be available to you and the source of those funds.
- The viatical settlement broker is presumed to represent this viatical settlement provider, unless you have obtained a prior written agreement to the contrary from the broker. If the broker represents this viatical

settlement provider, he cannot seek or obtain any compensation from you.

Review all options and issues before you decide. This way you can be sure you are making a decision that is in your best interest.

_____ Applicant's Signature	_____ Date	_____ Signature of authorized representative of viatical settlement provider
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### 14 VAC 5-71-40. License requirements for viatical settlement brokers.

A. A viatical settlement broker shall not solicit a viatical settlement contract without first obtaining a license from the [ State Corporation ] Commission.

B. A viatical settlement broker shall make application on a form required by the [ State Corporation ] Commission.

C. The application shall be accompanied by a fee of \$50. The license may be renewed yearly by submitting a renewal form and payment of a fee of \$50 by July 31. Failure to submit a renewal form and fee within the time prescribed shall result in an automatic expiration of the license on August 1.

D. The license shall be a limited license which allows solicitation only of viatical settlements.

E. Prelicensing examination, prelicensing education and continuing education required of other agents in §§ 38.2-1815 through 38.2-1817 and 38.2-1866 of the Code of Virginia shall not apply to viatical settlement brokers.

F. The [ State Corporation ] Commission may ask for such additional information as is necessary to determine whether the applicant complies with the requirements of § 38.2-5702 of the Code of Virginia.

~~[ G. A viatical settlement broker shall acquire and maintain an errors and omissions policy in an amount commensurate with the broker's exposure and satisfactory to the commission. ]~~

### 14 VAC 5-71-50. Other requirements for brokers.

A. In the absence of a written agreement making the broker the viator's agent, viatical settlement brokers shall be presumed to be agents of viatical settlement providers.

B. Viatical settlement brokers shall not, without the written agreement of the viator obtained prior to performing any services in connection with a viatical settlement, seek or obtain any compensation from the viator.

### 14 VAC 5-71-60. Standards for evaluation of reasonable payments.

In order to assure that viators receive a reasonable return for viaticating a life insurance policy or certificate, the following shall be minimum face value percentages:

Minimum Percentage of Face Value (at time of viatication and withdrawals) Less Outstanding Loans Received by Viator	Insured's Life Expectancy
80%	Less than 6 months
70%	At least 6 but less than 12 months
65%	At least 12 but less than 18 months
60%	At least 18 but less than 24 months
50%	Twenty-four months or more

The percentage may be reduced by 5.0% for viaticating a policy written by an insurer rated less than the highest four categories by at least two rating agencies, such as A.M. Best or other comparable rating agencies, based on the most recent publication of such rating agencies at the time of viatication.

#### 14 VAC 5-71-70. Reporting requirements.

A. On or before March 1 of each calendar year, each viatical settlement provider licensed in this Commonwealth shall file an annual statement on a form prescribed by the [ State Corporation ] Commission containing the following information for the previous calendar year:

1. For each life insurance policy or certificate viaticated:
  - a. Date viatical settlement was entered into;
  - b. Life expectancy of viator at time of contract;
  - c. Face amount of policy at the time it was viaticated;
  - d. Amount paid by the viatical settlement provider to the viator to viaticate the policy; and
  - e. If the viator has died:
    - (1) Date of death; and
    - (2) Total insurance premiums paid by viatical settlement provider to maintain the policy or certificate in force;
2. Breakdown of applications received, accepted and rejected, by disease category of insured person with [ ~~terminal or catastrophic disease~~ a catastrophic or life-threatening illness or condition ] ;
3. Breakdown of policies or certificates viaticated by issuer and policy type;
4. Number of secondary market vs. primary market transactions;
5. Portfolio size; and
6. Amount of outside borrowings.

B. On or before March 1 of each calendar year, each viatical settlement broker licensed in this Commonwealth shall file an annual statement on a form prescribed by the [ State Corporation ] Commission containing the following information for each life insurance policy or certificate viaticated for the previous calendar year:

1. Date viatical settlement was entered into;
2. Life expectancy of viator at time of contract;
3. Face amount of policy at the time it was viaticated;
4. Amount paid by the viatical settlement provider to the viator to viaticate the policy; and
5. Commission paid by the viatical settlement provider to the viatical settlement broker.

#### 14 VAC 5-71-80. Annual notification and modification of application and annual statement forms.

The Bureau of Insurance shall be permitted to modify the data requirements of the application and annual statement forms on an annual basis or as needed. Any such modifications shall be provided to all persons described in 14 VAC 5-71-10, in the form of an administrative letter sent by regular mail to the person's mailing address shown in the bureau's records. Failure by a person to receive such annual notice shall not be cause for exemption or grounds for noncompliance with the reporting requirements set forth in these rules.

#### 14 VAC 5-71-90. General rules.

A. With respect to policies containing a provision for double or additional indemnity for accidental death, the additional payment shall remain payable to the beneficiary last named by the viator prior to entering into the viatical settlement contract, or to such other beneficiary, other than the viatical settlement provider, as the viator may thereafter designate, or, in the absence of a designation, to the estate of the viator.

B. Payment of the proceeds of a viatical settlement pursuant to § 38.2-5705 C of the Code of Virginia shall be by means of wire transfer to the account of the viator or by certified check.

C. Payment of the proceeds pursuant to a viatical settlement shall be made in a lump sum. Retention of a portion of the proceeds by the viatical settlement provider or escrow agent is not permissible.

D. A viatical settlement provider or broker shall not discriminate in the making of viatical settlements on the basis of race, age, sex, national origin, creed, religion, occupation, marital or family status or sexual orientation, or discriminate between viators with dependents and without dependents.

E. A viatical settlement provider or broker shall not pay or offer to pay any finder's fee, commission or other compensation to any viator's physician, attorney, accountant or other person providing medical, legal or financial planning services to the viator, or to any other person acting as an agent of the viator with respect to the viatical settlement.

F. Contacts for the purpose of determining the health status of the viator by the viatical settlement provider or broker after the viatical settlement has occurred [ ~~should~~ shall ] be limited to once every three months for viators with a life expectancy of more than one year and to no more than one

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## Final Regulations

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per month for viators with a life expectancy of one year or less. The provider or broker shall explain the procedure for these contacts at the time the viatical settlement contract is entered into.

G. Viatical settlement providers and brokers shall not solicit investors who could influence the treatment of the illness of the viators whose coverage would be the subject of the investment.

H. Viatical settlement providers and brokers shall adhere to the following advertising standards:

1. Advertising [ ~~should~~ shall ] be truthful and not misleading by fact or implication.
2. If the advertiser emphasizes the speed with which the viatication will occur, the advertising must disclose the average time frame from completed application to the date of offer and from acceptance of the offer to receipt of the funds by the viator.
3. If the advertising emphasizes the dollar amounts available to viators, the advertising shall disclose the average purchase price as a percent of face value obtained by viators contracting with the advertiser during the past six months.

### 14 VAC 5-71-100. Severability.

If any provision of this chapter (14 VAC 5-71-10 et seq.) or the application thereof to any person or circumstance is for any reason held to be invalid, the remainder of the chapter and the application of such provision to other persons or circumstances shall not be affected thereby.

VA.R. Doc. No. R97-640; Filed September 19, 1997, 8:56 a.m.



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# GOVERNOR

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## GOVERNOR'S COMMENTS ON PROPOSED REGULATIONS

### TITLE 2. AGRICULTURE

#### BOARD OF AGRICULTURE AND CONSUMER SERVICES

Title of Regulation: 2 VAC 5-180-10 et seq. Rules and Regulations Governing Pseudorabies in Virginia.

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: May 12, 1997

VA.R. Doc. No. R97-647, Filed September 17, 1997, 11:35 a.m.

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### TITLE 4. CONSERVATION AND NATURAL RESOURCES

#### BOARD OF CONSERVATION AND RECREATION

Title of Regulation: 4 VAC 3-20-10 et seq. Stormwater Management Regulations.

Governor's Comment:

I have reviewed this proposed regulation on a preliminary basis. It is mandated by federal and state law. 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: August 5, 1997

VA.R. Doc. No. R97-695, Filed September 17, 1997, 11:35 a.m.

#### DEPARTMENT OF MINES, MINERALS AND ENERGY

Title of Regulation: 4 VAC 25-150-10 et seq. Virginia Gas and Oil Regulation.

Governor's Comment:

I have reviewed this proposed regulation on a preliminary basis. While I reserve the right to take action authorized by the Administrative Process Act during the final adoption

period, I have no objection to the proposed regulation based on the information and public comment currently available.

/s/ George Allen  
Governor  
Date: July 31, 1997

VA.R. Doc. No. R97-687, Filed September 17, 1997, 11:35 a.m.

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### TITLE 6. CRIMINAL JUSTICE AND CORRECTIONS

#### CRIMINAL JUSTICE SERVICES BOARD

Title of Regulation: 6 VAC 20-20-10 et seq. Rules Relating to Compulsory Minimum Training Standards for Law-Enforcement Officers.

Governor's Comment:

I have reviewed this proposed regulation on a preliminary basis. It is mandated by state and federal law. 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: August 21, 1997

VA.R. Doc. No. R97-714, Filed September 17, 1997, 11:35 a.m.

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### TITLE 11. GAMING

#### CHARITABLE GAMING COMMISSION

Title of Regulation: 11 VAC 15-12-10 et seq. Public Participation Guidelines.

Governor's Comment:

I have reviewed this proposed regulation on a preliminary basis. It is mandated by federal and state law. While I reserve the right to take action authorized by the Administrative Process Act during the final adoption period, I have no objection to the proposed regulation based on the information and public comment currently available.

/s/ George Allen  
Governor  
Date: July 30, 1997

VA.R. Doc. No. R97-689, Filed September 17, 1997, 11:34 a.m.

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# Governor

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Title of Regulation: 11 VAC 15-22-10 et seq. Charitable Gaming Rules and Regulations.

Governor's Comment:

I have reviewed this proposed regulation on a preliminary basis. It is mandated by federal and state law. While I reserve the right to take action authorized by the Administrative Process Act during the final adoption period, I have no objection to the proposed regulation based on the information and public comment currently available.

/s/ George Allen

Governor

Date: July 30, 1997

VA.R. Doc. No. R97-690; Filed September 17, 1997, 11:34 a.m.

\*\*\*\*\*

Title of Regulation: 11 VAC 15-31-10 et seq. Supplier Regulations.

Governor's Comment:

I have reviewed this proposed regulation on a preliminary basis. It is mandated by federal and state law. While I reserve the right to take action authorized by the Administrative Process Act during the final adoption period, I have no objection to the proposed regulation based on the information and public comment currently available.

/s/ George Allen

Governor

Date: July 30, 1997

VA.R. Doc. No. R97-681; Filed September 17, 1997, 11:34 a.m.

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## TITLE 12. HEALTH

### STATE BOARD OF HEALTH

Title of Regulation: 12 VAC 5-90-10 et seq. Regulations for Disease Reporting and Control.

Governor's Comment:

I reviewed the proposed regulatory amendments on a preliminary basis. The amendments are mandated by state law. While I reserve the right to take action authorized by the Administrative Process Act during the final adoption period, I have no objection to these proposed amendments based on the information and public comment currently available.

/s/ George Allen

Governor

Date: June 2, 1997

VA.R. Doc. No. R97-696; Filed September 17, 1997, 11:35 a.m.

# The Legislative Record

Volume 7 No. 4

September 1997

## **SJR 350**

### **Commission on the Commonwealth's Planning and Budget Process**

*August 25, 1997, Richmond*

The Commonwealth's performance budgeting system is being touted as an improvement over state government's traditional incremental budgeting. The performance budgeting system and agency expenditure forecasting efforts were reviewed at the second meeting of the Commission on the Commonwealth's Planning and Budgeting Process.

### **Maximum Size of the Rainy Day Fund**

The revenue stabilization (or "rainy day") fund is intended to ease budgetary stress caused by revenue shortfalls resulting from

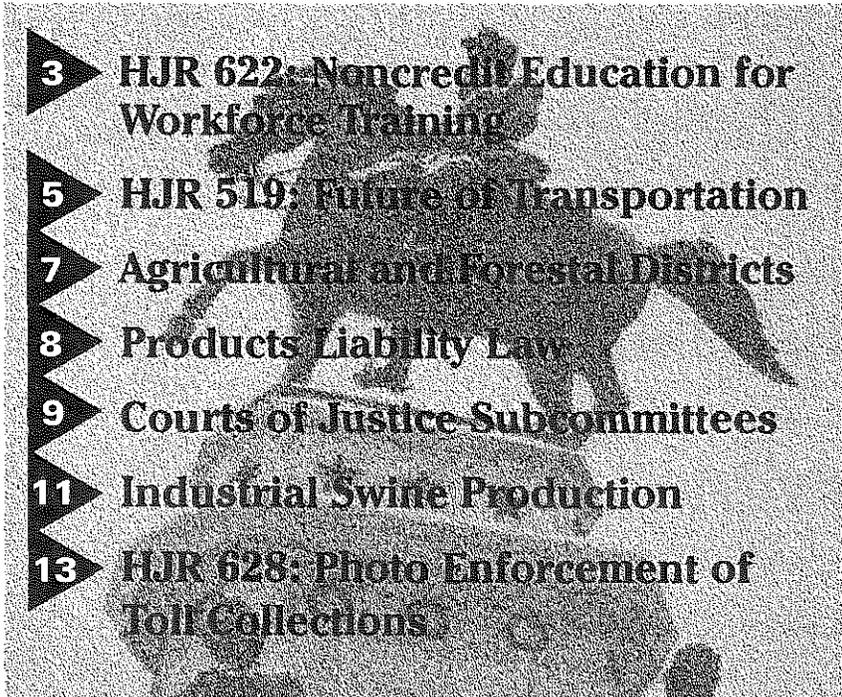
unforeseen economic downturns. Neither the Constitution nor the Virginia Code places a dollar cap on the fund's maximum size. The fund is expected to grow to \$338.9 million by July 1999.

In response to concerns about the absence of a dollar limit on the size of the fund, a Joint Legislative Audit and Review Commission (JLARC) official recounted the factors that led the General Assembly to base the maximum fund size for each upcoming fiscal year on a formula. The formula bases the maximum fund size on 10 percent of the average corporate and individual income tax and retail sales tax revenues for the previous three years. Basing the maximum fund size on a formula allows the fund to grow with the state's economy. Tying the maximum fund size to a percentage of income and sales tax revenues intentionally provides an automatic basis for accruing a substantial fund.

### **Performance Budgeting in Virginia**

According to the director of the Department of Planning and Budget (DPB), Virginia's performance budgeting system provides substantial benefits over the previous method of incremental budgeting. JLARC has noted that the program budgeting approach instituted at the recommendation of the Hopkins Commission had evolved by the early 1990s into incremental budgeting. Under incremental budgeting, agency allocations are determined based on the current appropriation, adjusted by funding for new program initiatives, and amended by requests for funds above the current base. Incremental budgeting has been criticized as lacking systematic means for reviewing programs, setting priorities, and focusing on long-term plans.

Performance budgeting attempts to address these deficiencies by linking long-range strategic planning, performance measurement, and budget development. The Commonwealth's performance budgeting system has been recognized by the National Performance Review as "best in class" for its strategic planning and performance measurement components.

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- 3** HJR 622: Noncredit Education for Workforce Training
  - 5** HJR 519: Future of Transportation
  - 7** Agricultural and Forestal Districts
  - 8** Products Liability Law
  - 9** Courts of Justice Subcommittees
  - 11** Industrial Swine Production
  - 13** HJR 628: Photo Enforcement of Toll Collections

**VIRGINIA DIVISION OF LEGISLATIVE SERVICES**

Volume 14, Issue 2

Monday, October 13, 1997

Executive branch agencies are required to prepare six-year strategic plans as part of their budget submissions for the 1998-2000 biennium. In these plans, agencies are expected to reexamine programs, consider financial goals, reassess priorities, and base funding on program performance. This approach was contrasted with six-year expenditure projections that merely extrapolate current programs into the future, assume priorities do not change, and disregard program performance. The Commonwealth required agencies to prepare six-year expenditure estimates starting in 1976, but discontinued the requirement in 1978. These expenditure estimates were characterized as an academic exercise. The estimates were highly inaccurate and not widely used. However, long-term client projections were acknowledged to be useful in identifying budget policy options.

Since 1993, the Code of Virginia has required agencies to submit to DPB, with their biennial budget estimate, an estimate of the amount that will be needed for the two succeeding biennial periods. The DPB director acknowledged that agencies have had latitude in complying with this requirement and noted that no requests have been made for the information submitted by agencies. The five-year plans prepared by agencies in 1995 for the 1996-98 budget cycle were submitted as part of the Governor's confidential working papers. In contrast, the agency strategic plans being prepared for the 1998-2000 biennium will be available to the public.

Six recommendations were offered to the commission. The General Assembly should (i) review agency strategic plans as part of programmatic and budget deliberations; (ii) take advantage of the statewide strategic planning process to obtain meaningful analysis of policy options and scenarios; (iii) prescribe additional performance measures and investigate targets and results; (iv) expand cooperation with the executive branch in developing six-year capital outlay plans; (v) take advantage of existing opportunities to participate in the revenue forecasting process; and (vi) implement an automated activity-based accounting and budgeting system.

### Forecasting Major Budget Drivers

The manager of DPB's Economic and Regulatory Analysis section reminded the commission that forecasting is the first step in planning. While short-term (biennial) forecasts have been very accurate, long-term forecasts face insurmountable uncertainty. Five- and six-year forecasts for revenues and for Medicaid, education, and prison populations have generally been off by between 7 and 8 percent. Investing in sound forecasting pays big dividends by improving the efficiency with which scarce resources are allocated.

DPB's forecasting responsibilities include coordinating expenditure forecasting, evaluating agency forecasts, assisting agencies in preparing forecasts, and forecasting budget drivers. Budget items forecast by DPB include TANF caseloads, Medicaid costs and enrollments, and correctional system populations. The Medicaid forecasting process, which required development of an econometric model, and the public safety forecasting pro-

cess, which uses a consensus process, were praised by the Department of Planning and Budget.

### Medicaid and Corrections

The Department of Medical Assistance Services prepares its own six-year Medicaid expenditure forecasts. After projecting baseline expenditures, the fiscal impact of proposed policy changes and new mandates are estimated. DMAS staff bases its primary forecasting process on exponential smoothing, a time series forecasting technique. Current forecasts extend through fiscal year 2010, though the accuracy of time series forecasts decreases as they are extended that far into the future. Alternative forecasts involving regression methods are used for several of the larger Medicaid categories, and the DMAS forecasts are compared with DPB's independent forecasts to arrive at a consensus forecast.

JLARC reviewed the Medicaid forecasting process in 1992 and 1997 and found that the forecasting modeling appears to be sound. JLARC found that Virginia's expenditure estimates do not appear to be less accurate than those of nearby states, states in the South, or across the nation.

Among the lessons relayed by DMAS to the commission were that forecasts require constant maintenance and updating, cannot be produced in isolation from program operations, and benefit from the use of multiple forecasting techniques. The 1997 expenditure forecast was cited as an example that short-term forecasts are more accurate than long-term forecasts. The July 1993 forecast exceeded the actual 1997 sum by 9.24 percent. The variance between the 1994 forecast and the actual number declined to 5.98 percent, and it fell to 1.79 percent for the 1995 forecast and to 0.62 percent for the 1996 forecast. While no one expects projections made six years in advance to be on target, long-range forecasting provides a measuring point that can be constantly adjusted based on changing circumstances and additional data. One measure of a long-range forecast's success is its usefulness as a starting point for planning purposes.

A representative of the Washington-based National Council on Crime and Delinquency (NCCD) described the consensus process for preparation of the corrections population forecasts. NCCD prepares prison population forecasts under contract with the Department of Corrections. The forecasting process uses a simulation model to prepare a baseline forecast based on one year of data. Under Virginia's consensus process for projecting inmate populations, the baseline projections undergo scrutiny by a technical review committee and a policy review committee. Using its simulation model software, NCCD can provide monthly forecasts for various categories of offenders.

### Education and Transportation

K-12 spending is a major driver of increases in the Commonwealth's budget. As the average daily membership is used to distribute the majority of state funds to localities, much

effort is invested in predicting this number. A representative of the Department of Education noted that instead of producing one statewide forecast, the department must prepare separate enrollment forecasts for each of the 137 school divisions in the Commonwealth for each year of the biennium.

Local information, in conjunction with the department's methodology, has produced highly accurate statewide projections in the short term. As with other expenditure-related projections presented to the commission, the accuracy increases as the forecasting horizon decreases because the later projections incorporate more actual data.

The State Council for Higher Education in Virginia (SCHEV) is responsible for reviewing and approving all enrollment projections proposed by public colleges and universities. Rather than generating a single statewide estimate, at least three projections are prepared for each institution. SCHEV's interim director observed that while the forecasting methodology has improved over the past two years, the process lacks a policy focus. An example of a policy issue not addressed in the forecasting process is whether enough Virginians are receiving tertiary education. While higher education can be characterized as a retail market driven by choice and demographic factors, high rates of participation are essential to the economic competitiveness of the Commonwealth and the nation.

The director identified serious problems obtaining basic data. Prior to 1995, demographic data was provided by the Weldon Cooper Center at the University of Virginia. Since the contract was terminated in 1995, SCHEV no longer has access to forecasts of the number of high school graduates beyond a three-year period. The importance of accurately forecasting enrollment growth is underscored when an institution's appropria-

tion includes funding for projected changes.

Highway and other transportation expenditures comprise nearly one quarter of the Commonwealth's non-general fund operating budget. A Department of Transportation official noted that in addition to preparing annual and biennial budgets and a six-year financial plan, the department integrates agency budget requirements with state and federal legislative processes to provide annual updated financial plans. The 1996-98 biennial budget total allocation is \$4.5 billion.

The six-year financial plan is based on the Department of Motor Vehicles' official state revenue estimate for Commonwealth Transportation Funds and utilizes current federal transportation funding estimates. The six-year financial plan is the basis for figures contained in annual updates to the six-year improvement program. The current forecast for 1997-2003 is \$14 billion. Depending on the results of Congressional reauthorization of ISTEA, the Commonwealth could receive between \$100 million and \$300 million in additional federal funds.

### Next Meeting

At its next meeting, the commission will review the efforts of other states to improve planning and budgeting processes. The commission will also review the experiences of those states that have established a legislative revenue forecasting capability.

Joseph V. Gartlan, Jr., *Chairman*  
Legislative Services contact: Franklin D. Munyan



## HJR 622

### Joint Subcommittee to Study Noncredit Education for Workforce Training in Virginia

*August 19, 1997, Danville*

At its third meeting, the HJR 622 Joint Subcommittee received testimony from business, education, and government representatives regarding workforce training needs and programs.

### VCCS Statistics

According to the chancellor of the Virginia Community College System (VCCS), in 1995-96, VCCS noncredit course

registrations totaled 97,526, while the noncredit headcount stood at 67,406. Credit course registrations and headcount were 763,102 and 207,198, respectively. Primary among the businesses served by VCCS are service industries, such as hotel, automotive, amusement, health, legal, and other services (38 percent) and public administration, including local, state, and federal governments (28 percent). According to a VCCS survey, 21 of 49 states (46 states responding) provide some level of state support for noncredit instruction. This support may range from partial funding of selected courses to full funding of all noncredit instruction addressing job preparation. Of the states supporting noncredit instruction, nine are rated in the top 10 in business expansion and relocations; Kentucky was the only state in this top 10 that does not fund noncredit instruction (see Table).

### Top 10 States in New Facilities and Expansions, 1994-96

Rank	State	New Facilities or Expansions
1	Ohio*	2,612
2	Texas*	1,986
3	North Carolina*	1,933
4	Illinois*	1,147
5	Florida*	1,087
6	California*	916
7	New York*	807
8	Michigan*	778
9	Georgia*	769
10	Kentucky	667
13	Virginia	545

\*state provides funding for noncredit courses  
Source: Conway Data.

### Virginia Programs

Workforce preparation is one of the top three factors in business location decisions, according to the deputy director of the Virginia Economic Development Partnership. In addition, Virginia needs a focused approach for addressing ongoing training needs of the existing workforce.

Currently in the Commonwealth, the Department of Business Assistance Services supports training programs for new and expanding industries, training often delivered by community colleges with general fund dollars. For existing industries, community colleges are the "trainers of choice," followed by four-year institutions of higher education. Private business pays for this training, including overhead costs, as there is no state support for specific equipment and faculty, and state policies regarding facilities use are unclear. No statewide strategy ensures a match between workforce resources and the employment needs of businesses identified as "high priority sectors."

The lack of state funding for community college noncredit training efforts, the VCCS chancellor contended, limits the ability of community colleges to respond to training needs, and the consequent higher costs restrict individual access to these initiatives. In addition, the Commonwealth's business recruitment efforts are hampered, and existing industries suffer a loss of "competitive edge" due to the expense of continuous retraining of their workers. The creation of incentives for students to enter high-demand, high-wage jobs in which there are insufficient numbers of trained workers was cited.

### Suggested Improvements

Suggested alternatives to the current practice were providing general funds for all students in noncredit programs targeting job preparation; supporting noncredit courses and programs in high-demand, high-wage occupations only; or allocating a standard amount for each community college for outreach and noncredit instructional costs. Also suggested was continuing and expanding the Virginia Works "Funds for Innovation" initiative to promote new initiatives supporting business and industry, including noncredit course equipment needs through the Higher Education Equipment Trust Fund, and including space needs in noncredit enrollments.

At the request of the joint subcommittee, VCCS will (i) provide additional information regarding noncredit courses potentially "qualifying" for funding; (ii) prepare policy language addressing noncredit positions, facility use, space justification, and equipment; (iii) develop a proposed funding model converting noncredit efforts into a comparable FTE format, including cost estimates and priorities for any proposals; and (iv) identify solutions for enhancing labor force availability for industries targeted for development.

### Comparison with North Carolina

In comparing workforce training opportunities available through the North Carolina and Virginia community college systems, the president of Danville Community College noted that tuition for North Carolina's noncredit occupational extension and focused industrial training is \$35 per class; the occupational extension classes receive state funding at a rate equal to 75 percent of that for credit courses. In contrast to programs available through the Virginia Economic Development Partnership, North Carolina's training initiatives for new and expanding industry are offered at no cost to participating companies and are supported by an annual state appropriation of \$9 million. In the Commonwealth, similar state-supported training is available only to those expanding industries meeting certain size and investment thresholds. In addition, each of North Carolina's community colleges has a small-business development center, offering resource libraries and computer assistance labs at no cost to small businesses. North Carolina's community colleges are also encouraged to work with local economic development organizations to create business incubators.

Special state funding supports three full-time equivalent faculty positions (FTEF) in each North Carolina community college; institutions use part-time positions and may have as many as 20 business extension agents to address training and technical assistance needs. In Virginia, business extension positions are included within continuing education staff, with "modest funding."

The president of Piedmont Community College, in Roxboro, North Carolina, noted that the statutes creating the North Carolina community college system specify that the major purpose

of the community college is the "offering of vocational and technical education and training, and of basic, high school level, academic education." Consistent with this statutory purpose, the North Carolina State Board of Community Colleges adopted a mission statement that proclaims, in part, that the system is to provide education, training and retraining for the workforce and to support economic development through services to business and industry.

## Business Viewpoint

The corporate development manager for BGF Industries, an international textile company employing approximately 1,000 people in four Virginia facilities, stated that the "system of corporate and personal taxes supporting the public system of current and future workforce development is not showing a good return on investment." Contending that private and public employers are the primary customers of the educational process, he noted that these employers have not clearly identified "what employability is in light of current and future technology."

BGF offers three levels of workforce development training. The essential skills development system incorporates a work profiling system that identifies gaps between abilities and required skills; the creation of this system of skills development was supported by funds from the Departments of Education and

Business Assistance Services and BGF. The job skills system reflects the company's ISO 9001 registration, while the high-performance/team system focuses on interpersonal skills, team process, and process improvement training. BGF's workforce training efforts represent an investment of 5.8 percent of payroll.

The BGF official recommended a statewide assessment of employability and state Standards of Learning, supported by state funds and conducted by the Chamber of Commerce; increased collaboration among the community college system, the Department of Adult Education, and the Department of Business Assistance Services in providing funding and training for the current workforce; affordable rates for community college workforce training for smaller businesses; community college workforce training addressing essential skills and attributes, leadership development, regulatory issues, teamwork, technology changes, and other issues; and increased support for local and regional efforts to create "one-stop workforce development centers."

The Honorable Alan A. Diamonstein, *Chairman*  
Legislative Services contact: Kathleen G. Harris



## HJR 519

### Commission on the Future of Transportation in Virginia

*August 11, 1997, Richmond*

The major focus of the meeting was presentation to the full commission of the report of the Advisory Committee on Transportation Needs. The report showed that, in comparison to Virginia's highway and public transportation needs, the Commonwealth's needs for port and aviation programs through the first decade of the next century were in reasonable consonance with anticipated revenues over that same period. The needs of Virginia's ports are "economically driven," and present funding sources and levels allow them to be globally competitive and may not require additional state funding for the foreseeable future.

The major concern relating to Virginia's aviation program funding is the very considerable uncertainty of federal financial support, the single largest source of this program's funding. Unless federal support is substantially reduced, continued dedication of 2.4 percent of the state's Transportation Trust Fund should remain adequate to fund the state's share of its aviation program's costs.

## Rail and Public Transportation

Whatever satisfaction the commission may have taken from the comments relative to Virginia's port and aviation needs was dispelled by the report's observations relative to rail and public transportation and highway programs. Depending on whether one used a no-growth, moderate-growth, or aggressive-growth scenario, the advisory committee foresaw annual shortfalls of \$93.81 million, \$143.96 million, or \$251.35 million for the state's share of the costs of Virginia's public transportation and ride-sharing programs alone. Additional annual shortfalls of \$5.4 million, \$26.9 million, or \$60.8 million were predicted for the state's costs for rail passenger and freight service.

## Highways

The most troubling predictions, however, related to the Commonwealth's highway program, for which \$446.7 billion would be needed to fund a "moderate" program of highway improvements. Current VDOT revenues are adequate to meet only about one-third of current needs, and this is expected to get worse. By 2015, projected highway needs will be four times anticipated highway revenues. Annual shortfalls in the highway construction program alone are expected to rise from \$1.755 billion in fiscal year 1999 to \$3.105 billion by fiscal year 2015. The problem of underfunding, the report concluded, is "state-

wide and pervasive"; it is not geographically based phenomenon, nor is it only an urban or a rural problem.

## Virginians Who Do Not Drive

The commission also received the report of the Special Subcommittee Studying the Needs of Virginians Who Do Not Drive. The report stated that the provision of transportation services for rural residents, the disabled, the poor, and other Virginians who do not drive motor vehicles is funded by a patchwork of federal, state, and local sources that are insufficient to support the creation of new transportation services for these persons. Although the absence of readily available, detailed, and specific data on these needs have made it impossible for the special subcommittee fully to document these needs and recommend comprehensive statewide solutions within the time available, the panel recommended several specific smaller-scale legislative actions:

- Provide limited relief from liability for volunteer drivers who provide transportation to clients of organizations providing services to the aged, disabled, and other Virginians who do not drive.
- Provide funds, by way of items in the state budget rather than through a statewide funding mechanism, to specific social service organizations to replace high-mileage and unserviceable vans and other vehicles used by those organizations to provide transportation for the aged, disabled, and other Virginians who do not drive
- Require that organizations receiving state funds to purchase vans and other motor vehicles to provide transportation for persons who do not drive, as a condition of such funding, share these vehicles with other social service agencies whose clients do not drive.

## Public Transit

The director of the Department of Rail and Public Transportation briefed the commission on efforts to develop a performance-based formula for distributing state aid to public transit. Observing that the present system rewards inefficiency and penalizes cost-cutting and service improvements, the director nevertheless stated that this system is "not so bad as to scrap it." He reported that the department was working on a new system, supplemental to the existing one, that will be more closely keyed to transit improvements. The department's study will be completed in about 60 days.

*September 3, 1997, Richmond*

## Transportation Needs

The meeting began with a presentation by the former staff director of a 1986 transportation commission, who observed that the 1986 study had compiled what it considered a conservative list of the Commonwealth's transportation needs and that the present study showed how quickly Virginia had developed

needs unanticipated only a decade ago. Unless significant changes are made in land use planning and other aspects of government, he expected the same exercise would have to be repeated in another 10 to 15 years. He identified six factors "driving" the ever-increasing acceleration in transportation needs:

1. Growth in population;
2. Increase in vehicle miles traveled within Virginia;
3. Increase in vehicle miles traveled through Virginia (by traffic with neither an origin nor a destination within the state);
4. Land use changes (suburbanization resulting in inherently inefficient and automobile-dependent transportation);
5. Tendencies of local governments to "overzone" for business and offices and "underzone" for housing (because the gap between the taxes generated by residential property and demands for services generated by this property is greater than that between taxes generated by business and office property and the demands for service that such property generates); and
6. Increase in commuting between one suburb and another, rather than between suburbs and central cities.

Given these facts, he suggested that rather than building more highways, Virginia should be seeking to make more intensive use of existing transportation infrastructure and strengthening the planning ability of planning district commissions and metropolitan planning organizations. He concluded that Virginia should restrict growth in certain regions and channel the growth that occurs elsewhere, stating that it was "time that localities and not developers manage and control growth" and that "things are going to get worse, even if we do our best."

## Draft Report

The panel then turned to a discussion of staff's draft of the commission's report on transportation needs in Virginia, based on the work of the Advisory Committee on Transportation Needs. Virginia's transportation secretary raised several objections to elements of the draft, particularly:

- Inclusion of an inflation factor in estimating project costs,
- Several "errors in reading the data" submitted by VDOT, and
- "Short shrift" given to the impact of additional federal aid from the new federal highway program.

The Commission agreed to request staff to rewrite the draft, using "Scenario III" (aggressive-growth scenario) for the public transportation portion of the report, "to the maximum extent feasible." Following a far-ranging general discussion of the draft by the members, Delegate Dickinson directed staff to discuss the meeting's deliberations with the Chairman and Vice Chairman and prepare a revised draft report on transportation needs for discussion at the full panel's next meeting.

The Honorable William P. Robinson, Jr., *Chairman*  
Legislative Services contact: Alan B. Wambold



## Joint Subcommittee Studying Agricultural and Forestal Districts

September 10, 1997, Richmond

The joint subcommittee met for a second time to review the results of a survey that had been sent to localities that have districts and to receive suggestions from interested parties as to how the Agricultural and Forestal Districts Act might be improved.

### Survey

Survey responses were received from 19 of the 25 localities that, according to Department of Agriculture and Consumer Services records, have districts. Those responding included Accomack, Albemarle, Clarke, Culpeper, Fairfax, Fauquier, Frederick, Greene, Hanover, Isle of Wight, James City, Loudoun, Louisa, Montgomery, New Kent, Prince William, Rappahannock, and Warren. Tazewell County's response indicated that it no longer has any districts.

The survey responses, all but three of which were prepared by members of the counties' planning staffs, yielded the following information. Ten respondents answered that the opportunity to create agricultural and forestal districts is adequately utilized by local land owners. Four counties have encountered difficulties in following the statutorily prescribed process for creating districts or for adding land to an existing district, while 13 have not. Difficulties listed related to the multi-step notification and advertising process required and the time frame in which each step in the process is to take place. Four counties have encountered difficulties in following the process prescribed for reviewing districts, while 13 have not. One respondent mentioned difficulty in obtaining a quorum on the advisory committee, and another mentioned difficulty in obtaining responses from some of the landowners. Two counties have encountered difficulties in following the process prescribed for withdrawing land from or terminating districts, while 15 have not. Both of those indicating difficulties said that the "good and reasonable cause" standard for withdrawal set forth in the statute is vague and difficult to apply. Two counties indicated that they had experienced difficulties regarding the procedure to be followed when a state agency, other political subdivision or public service corporation plans to acquire land within the district. Eight indicated that this situation had never been encountered.

Every county but one indicated that its agricultural and forestal district advisory committee does not have a set meeting schedule, but meets as needed. Five counties' advisory committees usually meet more than once a year. One county indicated that routine matters are often handled by mailed ballot. Ten counties indicated that their advisory committees are quite active, while five said that the role taken by the advisory com-

mittee varies or is minimal. Four counties' advisory committees engage in other activities in addition to reviewing proposals related to districts. Fourteen of the counties have a designated advisory committee chairman, while four do not. One county indicated that the Board of Supervisors' representative serves as the informal chairman.

### Proposals for Changes

Some of the suggestions for changes were made as part of the survey responses, while others were made by persons who addressed the subcommittee at its meeting.

- There should be an annual date set in the statute by which applications for creating a district must be submitted to the locality.
- Localities should be notified at least 60 days before a state agency, other political subdivision or public service corporation plans to acquire land within the district.
- A detailed evaluation of such proposals should be prepared by the local government and the entity proposing to acquire the land. In deciding whether to approve the proposal, the locality should consider whether alternatives exist that would minimize or avoid any adverse impact on agriculture and forestry.
- Owners of district land should be required to meet annually.
- The law could be strengthened if membership in an agricultural and forestal district were required for agriculturally related benefits, such as cost-share grants for the implementation of best management practices.
- There are too many requirements that must be completed within 30-day increments. It would be easier for localities to complete the application review process within 180 days if the time devoted to each individual step in the process could be determined on a case-by-case basis.
- Owners of district land should have an increased role in the process of reviewing state acquisitions of land in districts.
- Localities should be able to enforce the conditions contained in the district ordinance, either by forcing compliance or terminating the district.
- The law should allow the district renewal process to be handled by the board of supervisors' designated agent.
- The procedure for adding land to an existing district should be simplified.
- The planning commission and advisory committee should be involved in the locality's final review of proposals by state agencies to acquire land within districts.

The subcommittee members were requested by the chairman to submit to staff a list of proposals that they would like to see in bill draft form at the subcommittee's final meeting. These drafts will be made available to persons requesting them at least two weeks prior to the meeting, which will probably be held in November.

The Honorable John J. Davies III, *Chairman*  
Legislative Services contact: Nicole R. Beyer



## Joint Subcommittee Studying Products Liability Law

*September 3, 1997, Richmond*

At the subcommittee's first meeting, members heard testimony regarding the current status of Virginia's products liability law, a comparative analysis of other states' laws, and a summary of recent trends in this area. Members focused much of their discussion and debate on the American Law Institute's recent adoption of Section 402A of the Third Restatement of Torts concerning products liability law.

### Overview of Products Liability Law

A University of Richmond law professor provided members of the joint subcommittee with an overview of products liability law. In most jurisdictions throughout the United States, a consumer who is injured by a defective product has a wide array of legal remedies from which to choose. The principal theories a consumer may rely on are negligence, breach of warranty actions under the Uniform Commercial Code, and strict liability.

Although Virginia law provides for product liability suits in negligence and breach of warranty, Virginia is one of five states that have not adopted some form of strict liability in tort remedy in products liability actions. Of the 45 states with a strict liability remedy, most have adopted some form of Section 402A (Second Restatement of Torts) on products liability, which was drafted in 1963 by the American Law Institute. Section 402A(2nd) imposes strict liability on manufacturers for product defects resulting from the manufacturing process regardless of the level of care used by the manufacturer. The professor noted that Section 402A(2nd) has been praised for advancing a number of important policies. Namely, strict liability promotes compensation and loss spreading. Serious losses among a small number of consumers injured by defective products can best be borne by all consumers who pay for these losses through increased prices or by manufacturers who obtain insurance. In addition, strict liability provides manufacturers with an incentive to develop and produce safe products.

Despite Section 402A(2nd)'s advancement of important public policies, many commentators have criticized the section's effectiveness because it focuses primarily on manufacturing defects and generally does not focus on two other crucial areas of products liability law: defective design and defective warnings. Others have criticized the section as being excessively pro-consumer, to the detriment of the manufacturing industry.

### Recent Developments in Products Liability Law

In response to criticism and difficulties associated with the original version of Section 402A(2nd), members of the Ameri-

can Law Institute have recently drafted Section 402A of the Third Restatement of Torts on products liability. The professor testified that the new version of Section 402A provides a reasonable and unified approach to products liability law by (i) addressing causes of action for defective manufacture, defective design, and defective warnings, and (ii) providing an objective framework of law that more fairly balances the interests of consumers and manufacturers.

The professor urged the joint subcommittee to recommend the adoption of Section 402A(3rd) for several reasons. First, due to the limited number of civil cases they adjudicate, the Virginia Supreme Court has not been able to keep pace with the rapidly evolving legal trends affecting Virginia consumers, manufacturers, and sellers. The adoption of 402A(3rd) would provide a uniform and predictable framework of law, thereby preventing conflicting interpretations by federal and state courts. Second, the Virginia consumer presently does not have the same legal rights afforded to citizens of other states, and consumers pursuing a negligence action often face insurmountable problems of proof in their cases, problems that could be avoided under the new restatement version. The professor also asserted that the adoption of Section 402A(3rd) will not hamper Virginia's competitiveness in the global marketplace nor unfairly target manufacturers for excessive personal injury awards.

### Business Perspective

Two members of the Virginia Manufacturer's Association Business Law Committee addressed the subcommittee on their perspective on the current status of products liability law in Virginia. VMA's first speaker, a partner at the law firm of Mays & Valentine and author of a book on Virginia products liability law, urged the subcommittee not to recommend the adoption of Section 402A(3rd). He contended that manufacturers throughout the country view Virginia's products liability law as fair and reasonable to both consumers and manufacturers and that subcommittee members should proceed cautiously in considering changes to a system of law that is in good working order. In addition, he noted that no consumer groups are urging revision of Virginia products liability law, and no studies indicate that plaintiffs in Virginia receive fewer product liability judgments or lower monetary awards. As a final note, the speaker recommended that the subcommittee consider the effects of federal legislation in this area and observe the experience of other states who may adopt Section 402A(3rd) before it reaches any final conclusions on this matter.

VMA's second speaker, the assistant general counsel for Reynolds Metals Company, likewise urged the subcommittee not to adopt the latest restatement section on products liability. He asserted that while Virginia's current system of products liability law is fair, the absence of procedural protections against frivolous lawsuits and the inability to seek summary judgment under some circumstances has tilted the balance in favor of the consumer in such actions. In addition, the speaker submitted that the adoption of the original restatement version on products liability in Texas and Alabama has resulted in serious abuses

and inequitable awards and that the adoption of Section 402A(3rd) in Virginia would have similar consequences.

## Future Activities

After hearing the presentations at the subcommittee's initial meeting, and following discussions with interested parties and subcommittee members, Chairman Bennett has decided that

there is insufficient reason for further action by the panel at this time. Accordingly, all future subcommittee meetings have been canceled.

The Honorable William W. Bennett, Jr., *Chairman*  
Legislative Services contact: Kenneth W. Gibson



## Special Joint Courts of Justice Subcommittees

*September 3, 1997, Richmond*

The special ad hoc subcommittee of the House and Senate Courts of Justice Committees held its second meeting to receive a staff report on the feasibility of conducting an economic impact analysis on the effects on of no-fault divorce, review a proposal by the Family Law Section of the Virginia State Bar to allow courts to award alimony for a limited period of time ("rehabilitative alimony") and revisit the issue of alternative means for encouraging participation in pro bono activities by lawyers.

## No-Fault Divorce

At the subcommittee's last meeting, staff was asked to examine the means by which available data on divorces could be analyzed to determine the effects that the proliferation of no-fault divorce has had on the economic well-being of the parties and their children. Staff reported back that there are currently no publicly available data sources from which the required information on no-fault divorces could be isolated and reviewed. Staff concluded that in order to perform such an analysis, a statistically valid sample would have to be obtained from a hand search of available court records and that interviews and surveys of the parties to those divorces would be required. Such a project would be labor intensive and expensive and would require at least one year to complete.

The subcommittee unanimously agreed that such a project could not be undertaken by legislative staff. The chief patron of the resolution that originally requested creation of the study agreed and suggested that he would pursue the matter further to try to determine if grant money would be available to fund such a study by a public or private university in the Commonwealth.

## "Rehabilitative Alimony"

House Bill 2131 was introduced during the 1997 Session, following a two-year study by the Virginia State Bar conducted on request of the General Assembly. At its last meeting, the subcommittee asked for a presentation on the rehabilitative ali-

mony bill, detailing the highlights and explaining the workings of the State Bar study group. The term "rehabilitative alimony" is a colloquial reference to the authority of a court to award periodic payments of spousal support for a specified duration. Currently, when a court awards periodic payments of support, the payments continue until the payee dies or remarries, or the court may terminate the payments if the payee cohabits in a relationship analogous to a marriage. The bill would apply prospectively only, to initial actions filed on or after the effective date, or to actions to modify an award entered in a case filed initially on or after that date.

In addition to authorizing an award of support for a fixed term, the bill also (i) makes the granting of a reservation of right to support permissive with the court rather than required if requested by a party and, in order to establish some finality, establishes a presumptive limit on the duration of the reservation; (ii) modernizes and expands the factors to be considered by the court in determining support issues; (iii) establishes rebuttable presumptions, based upon the duration of the marriage, to be used by the courts in determining whether to award permanent or fixed-term support; (iv) requires that written findings be made detailing the basis for determining the type and amount of support ordered; and (v) specifies that awards made for a defined duration may be modified only during the term of the award and then only if the court finds that a material change of circumstances has occurred that could not reasonably have been anticipated at the time the award was entered or that an anticipated event upon which the award was based has not occurred through no fault of the party seeking modification.

Representatives of the State Bar study group noted that Virginia and Louisiana are the only two states that do not currently allow for an award of rehabilitative alimony. The subcommittee had questions about the precise meaning of some of the language used in the bill, but found the examples included in the State Bar's report ( House Document No. 55 ) illuminating. All of the statewide family law organizations participated in the State Bar study and support the consensus represented by the bill as introduced. Representatives of the National Organization of Women and the Virginia League of Women Voters noted that they had not been included in the study group. Both representatives expressed opposition to the bill on the grounds that the need for and effects of the changes had not been empirically studied and that the rebuttable presumptions were not family-friendly and could in fact encourage parties to proceed

with a divorce in order to obtain the benefit of the presumptions at a particular time.

Following the review and discussion of the bill, the subcommittee recommended the bill on a 5-to-1 vote, with one member abstaining. A draft of the bill will be prepared for introduction in the 1998 session.

## Pro Bono Activities

After its last meeting, the subcommittee learned that two special committees of the Virginia State Bar had been looking at issues closely related to the work of the subcommittee. The Access to Justice Committee of the State Bar includes representatives of the Poverty Law Center, the Legal Services Corporation, the Virginia Trial Lawyers Association and the Virginia Women Attorneys Association. That committee is looking at alternative plans for facilitating and increasing participation in pro bono activities. Among the alternatives currently under consideration are (i) organizing planned pro bono programs by circuit, (ii) requiring out-of-state attorneys to pay a fee for the privilege of appearing in Virginia courts, with the money raised being used exclusively to fund pro bono activities, and (iii) institutionalizing a system whereby attorneys who cannot, for any reason, participate in pro bono programs would be allowed to make voluntary contributions to a special fund used to fund such programs.

The Committee to Revise the Code of Professional Responsibility has drafted recommended changes to current Canon 2, expanding on the American Bar Association's Model Rules of Professional Conduct. The proposed changes would continue to make the duty to provide pro bono services a goal rather than a requirement, but expand upon the ways in which the goal can

be met. For example, the proposed rule would allow for financial support of pro bono projects in lieu of a service requirement. The proposal will be presented to the State Bar for approval in October, but must still be approved by the Supreme Court.

The subcommittee was pleased to learn of these activities and voted to send a letter to the State Bar and recommend introduction of a resolution commending the Bar for its activities to date and encouraging further efforts to ensure that the burden of providing legal representation to all those who cannot pay for it is borne equitably by all who enjoy the privilege of practicing law.

Concern remains however, over the financial status of the Legal Services Corporation (LSC) of Virginia. The subcommittee noted that in recent years LSC has been forced to focus on plugging holes in its budget rather than expanding legal services for the poor. Although private attorney involvement in LSC projects has increased, so too has the demand, much of it in the area of domestic relations law. Following a 30 percent cut in federal funding two years ago, LSC is facing the possibility of an additional 50 percent cut in federal funding this year. Such a reduction would seriously undermine LSC's ability to provide services at the current reduced level. Although the subcommittee will not meet again, the members expressed concern over this situation and a desire to be kept informed on LSC's budget situation.

The Honorable James F. Almand, *Chairman*  
Legislative Services contact: Mary P. Devine



## Joint Subcommittee Studying Industrial Swine Production

*August 27, 1997, Danville*

### Regulatory Conditions

The subcommittee is charged with examining the private sector and governmental actions taken in Virginia to prevent environmental damage from swine production facilities. The primary environmental risk associated with animal agriculture is water quality degradation. Animal waste contains the nutrients nitrogen and phosphorus, excess levels of which in water are harmful to fish and other organisms and can make the water unfit for human consumption. Waste can enter surface water bodies if it spills out of a defective or overflowing impoundment structure or is applied to land in such a way that precipitation will wash it into a water body. It can also enter groundwater if a storage structure leaks.

Virginia has two statutes designed to prevent such environmental damage: the Virginia pollution abatement general permit for confined animal feeding operations and the Agricultural Stewardship Act. A third governmental action aimed at preventing agriculturally caused environmental damage is Virginia's Agricultural Best Management Practices Cost-Share Program. A fourth law, the Right to Farm Act, concerns the extent to which any action that affects swine production facilities can be taken by localities and private citizens.

### General Permit

In 1994, the General Assembly enacted legislation requiring the State Water Control Board to adopt a general permit for confined animal feeding operations. A general permit is applicable to a class or category of potential dischargers. That is, upon fulfillment of the requirements of the regulation governing the general permit, an operator is automatically covered by the permit. The more common type of environmental permit is the individual permit, which is issued to and designed specifically for a particular operation. Prior to 1994, confined animal feeding operations in Virginia were required to obtain individual pollution abatement permits. Pollution abatement permits are not discharge permits; they require that waste material be managed in such a way as to prevent discharge into state waters.

Under the general permit legislation, a "confined animal feeding operation" is an unvegetated lot or facility where animals are kept for at least 45 days in any 12-month period. An operation with 300 or more animal units (in the case of swine, 750 animals weighing more than 55 pounds each) that utilizes a liquid manure collection system must comply with the requirements of the general permit. To be covered by the general permit, an operator must file a registration statement with the Department of Environmental Quality (DEQ) and attach a letter of approval of the operation's nutrient management plan

from the Department of Conservation and Recreation (DCR), a notification from the locality in which the operation is located that the operation complies with zoning requirements, and a certification that the operator meets all requirements for the general permit.

The operation's liquid manure collection and storage system must be designed to prevent any discharge to state waters, except in the event of a 25-year, 24-hour or larger storm, and have the capacity to store waste when the ground is frozen or saturated and when the waste cannot be applied to land. One foot of freeboard must be maintained in the waste storage structure. Buffer zones must be maintained between areas where waste may be applied and wells, surface water, rock outcroppings, sinkholes and occupied dwellings. Monitoring must include annual waste monitoring and soil monitoring every three years. Records concerning waste application must be kept for two years after each application. New earthen waste storage facilities must have a synthetic liner at least 20 mils thick or a compacted soil liner at least one foot thick with a maximum permeability rating of 0.0014 inches per hour. The operator must comply with the nutrient management plan.

Permittees are required to report any noncompliance to DEQ and submit a new registration statement 30 days prior to any operational modification that will result in the management of new or increased pollutants. DEQ has a right of entry to inspect an operation and the records it is required to keep. Inspections must be performed at least every five years, but the agency's inspection strategy recommends annual inspections. In the fiscal year that ended June 30, 14 of the 46 operations covered by the general permit were inspected.

The general permit currently covers 25 swine operations, with a total of 255,000 hogs being raised. Eight of the 25 operations are listed as being owned by Smithfield Carroll's, and these operations account for 200,000 hogs. The general permit is effective for 10 years from November 16, 1994. Nutrient management plans, however, are normally effective for only three years, and therefore they are updated over the course of the permit. They address issues such as identification of the farm's soils, crop yield estimates, nutrient application rates for each crop, timing of manure and fertilizer applications, waste storage capacity requirements, population limits for livestock confined on the farm, crop harvest and utilization requirements, and soil conservation techniques.

### Agricultural Stewardship Act

The Agricultural Stewardship Act, enacted in 1996, provides another mechanism for addressing water quality problems created by agricultural operations. It applies to all agricultural operations except those confined animal feeding operations that are subject to the general permit. The act is complaint-driven: any person who believes that water pollution is being created by an agricultural operation may submit a complaint to the commissioner of agriculture. If an investigation confirms that the operation is creating or will create pollution,

then the owner or operator of the farm must within 60 days formulate a plan containing measures that will prevent or end the pollution. He has six months to begin implementing the plan and 18 months to completely implement the plan.

If the owner or operator fails to implement the plan, the commissioner must issue a corrective order requiring him to implement specified measures to correct the pollution. If he fails to obey a corrective order, the commissioner can obtain a court order requiring him to implement the measures contained in the order. The penalty for violating a corrective order or court order is \$5,000 per violation per day.

### Best Management Practices

The Agricultural Best Management Practices Cost-Share Program is administered by soil and water conservation districts. It provides funds to help farmers install conservation practices that protect water quality. In order to be eligible for cost-share funds, farmers must agree to implement a conservation plan, and the plan must be approved by the local district board. Practices, once installed, must be inspected before payments are made.

### Right to Farm

As enacted in 1981, the Right to Farm Act prevented agricultural operations from becoming public or private nuisances "by any changed conditions in or about the locality thereof" after the operation existed for one year. This exception to nuisance law did not apply if the nuisance resulted from improper operation or there was a significant change in the operation. Under the common law, a nuisance is the use of one's property in a way that interferes with another's use of his property (private nuisance) or in a way that endangers the public's health, safety or welfare (public nuisance). In 1994 the act's nuisance provisions were strengthened by replacing language regarding changed conditions in the locality and replaced the requirements that the operation be in operation for more than a year with no change in the operation itself with a requirement of compliance with best management practices and existing laws and regulations.

The 1994 amendments also added a restriction on local government power. As amended, the act prohibits counties from requiring special exceptions or special use permits "for any production agriculture or silviculture activity in an area that is zoned as an agricultural district or classification" and provides that "no county, city or town shall enact zoning ordinances which would unreasonably restrict or regulate farm structures or farming and forestry practices in an agricultural district or classification unless such restrictions bear a relationship to the health, safety and general welfare of its citizens." The act specifically allows counties, however, to "adopt setback requirements, minimum area requirements, and other requirements that apply to land on which agriculture and silviculture activity is occurring

within the locality that is zoned as an agricultural district or classification."

### Economic Conditions

Between 1980 and 1996, the number of farms with hogs in the United States dropped from 666,550 to 157,450. In Virginia, the number dropped from 23,500 to 2,200. During the same period, the number of sows in the nation dropped from 9.1 million to 7 million, while the number in Virginia dropped from 113,000 to 4,400. By comparison, the number of farms with hogs in North Carolina dropped from 41,000 to 6,000, while the number of sows rose from 340,000 to 1 million.

The costs of production change based on the number of sows on the farm and whether the farm falls in the category of "low tech" or "high tech." For a "low-tech" farm with 150 sows, the costs of production exceed the market price of the hogs. For a "high-tech" farm with 150 sows, the market price barely exceeds the costs of production. Profitability increases with the number of sows.

A 1993 study predicted the economic impact of a 5,000-sow increase in swine production in Halifax County. The study concluded that such an increase would provide 73 on-farm, support and indirect jobs (each of which would pay an average of \$16,677 per year), an increase in retail sales of \$1 million, an increase in the property tax base of \$13 million and an increase in the personal property tax base of \$1.5 million.

### Public Hearing

The subcommittee also held a public hearing in the evening of August 27 in Chatham. The subcommittee, along with several members of the General Assembly from Southside Virginia, heard almost four hours of testimony on the question of whether expansion of the hog industry in Virginia is desirable and whether any changes in the law are necessary to ensure that any such expansion, if it occurs, proceeds in an appropriate manner. Critics and supporters of the industry appeared in roughly equal numbers. Critics of the industry called for stricter regulation of the industry and amending the Right to Farm Act to allow localities to require special use permits for certain types of farms. Supporters of the industry told the subcommittee that the industry is sufficiently regulated and that Virginia agriculture needs the protection provided by the Right to Farm Act.

The subcommittee's second meeting will be held October 29th in Richmond.

The Honorable Mitchell Van Yahres, *Chairman*  
Legislative Services contact: Nicole R. Beyer



**HJR 628****Joint Subcommittee to Study Photo Enforcement of Toll Collections***August 14, 1997, Richmond***Photo Enforcement**

A consulting engineer explained that "photo enforcement" works by (i) photographing the license plates of vehicles that use toll facilities without payment of the toll and (ii) recovering the unpaid toll and/or a penalty from the registered owner of the vehicle. The key to the system is a presumption that the registered owner of the vehicle was the person driving the vehicle when the toll was not paid. Where such a presumption is provided for by law, collections of unpaid tolls and penalties can be pursued either administratively or through the courts; otherwise, toll facility operators are limited to not much more than sending nasty letters to offenders. Statutes providing for this form or presumption generally include a mechanism whereby the presumption may be overcome. In states where some form of photo enforcement is in operation (such as New York, New Jersey, and Florida), the details of the presumption, methods of overcoming it, and the form and amount of penalty vary considerably.

**VDOT**

Speaking on behalf of the Virginia Department of Transportation, the state traffic engineer pointed out that the department was already using automatic vehicle identification technology (AVT) to enable users of the Dulles Toll Road and the Coleman Bridge to establish prepaid accounts that are automatically debited each time their vehicle uses the facility. Use of AVT allows use of these facilities without stopping to pay tolls, thus reducing travel time and congestion while improv-

ing safety. Although the Coleman Bridge is equipped to use photo enforcement technology, the department has not asked for legislation required for its implementation.

**Staff Report**

Subcommittee staff reviewed for the members examples of existing Virginia law that contained a presumption that the owner of a vehicle was the operator of the vehicle when an offense was committed. Most familiar was the presumption that a vehicle's registered owner was responsible when the vehicle was illegally parked. While use of this presumption is infrequent in Virginia law, it is by no means unprecedented. Staff also alerted the subcommittee to other legal and legislative questions that the members should bear in mind in the course of future meetings and be prepared to consider if the panel should decide to recommend that the General Assembly enact legislation providing for the use of photo enforcement of toll collections.

**Future Activities**

It was agreed that at future meetings, the subcommittee would look into the administrative costs and possible burdens on the courts that use of photo enforcement might occasion and begin a more detailed examination of whether photo enforcement was necessary, desirable, or practical in Virginia and, if so, under what circumstances, given what conditions, and for what facilities. Specifically, staff was requested to request the participation of a representative of the Department of Motor Vehicles at future meetings and to invite a spokesperson for the City of Fairfax to discuss the city's experience with photo enforcement of traffic light signals under a pilot program authorized by the 1995 General Assembly.

The Honorable J. Randy Forbes, *Chairman*  
Legislative Services contact: Alan B. Wambold



## Filing Deadlines

By action of the 1995, 1996, and 1997 Sessions of the General Assembly, three categories of bills have been added to the list of legislation that must be filed by the first day of the General Assembly Session (unless requested by the Governor or "filed in accordance with the rules of the General Assembly").

### Local Fiscal Impact

(§ 30-19.03:1; Chapter 743, 1995 Acts of Assembly)

Any bill that mandates an additional expenditure by any county, city, or town must be filed on or before the first day of the session. A mandate has the effect of (i) requiring the performance of a new or expanded service or maintaining an existing service at a specific level, (ii) assuming administrative costs in support of state-related programs, or (iii) furnishing capital facilities for state-related activities.

### Prison Impact

(§§ 30-19.1:4 and 30-19.1:6; Chapter 462, 1995 Acts of Assembly and Chapter 972, 1996 Acts of Assembly)

All adult/juvenile corrections bills must have a statement of fiscal impact prepared and must be filed on or before the first day of the session. A fiscal impact statement is required for any bill that would result in a net increase in periods of imprison-

ment in state correctional facilities or periods of commitment to the custody of the Department of Juvenile Justice, including those bills that (i) add new crimes or increase the periods of imprisonment or commitment for existing crimes, (ii) impose minimum or mandatory terms of confinement, or (iii) modify the law governing release in such a way that the time served will increase.

### Virginia Retirement System

(Chapter 610, 1997 Acts of Assembly)

Any bill that amends, repeals, or modifies any provision of the Virginia Retirement System, the State Police Officers' Retirement System, or the Judicial Retirement System must be filed on or before the first day of the session. The Board of Trustees of the Virginia Retirement System shall submit to the Clerks' offices, the Commission of Local Government, the House Committee on Appropriations, and the Senate Committee on Finance a statement of (i) the financial impact of the proposed bill on the general fund and on the local governments that have opted to be part of VRS and (ii) the policy implications of the bill on the various systems administered by the Board of Trustees.

Other categories of legislation that must be filed by the first day include local charter and optional forms bills, personal relief (claims) bills, sales tax exemption bills, and property tax exemption bills. There is an exemption for bills requested by the Governor.

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# GENERAL NOTICES/ERRATA

## STATE CORPORATION COMMISSION

AT RICHMOND, SEPTEMBER 15, 1997

COMMONWEALTH OF VIRGINIA, ex rel.,  
STATE CORPORATION COMMISSION

CASE NO. PUC970135

Ex Parte, in re: Implementation  
of Requirements of § 214(e) of  
the Telecommunications Act of 1996

### ORDER FOR COMMENTS

Section 214(e) of the Telecommunications Act of 1996, 47 U.S.C. § 251 et seq., (the "Act") and associated Federal regulations<sup>1</sup> require the Commission to take actions to implement certain provisions of universal service. These actions include the designation of telecommunications carriers eligible to receive universal service support within a service area established by the Commission. The Act permits the Commission to designate carriers on its own motion or upon request.<sup>2</sup>

Under the Act, a carrier may be designated as eligible for universal service support by the Commission only upon a sufficient demonstration by the carrier that, throughout the designated service area, it:

(A) offer[s] the services that are supported by the Federal universal service support mechanisms under section 254(c) [of the Act], either using its own facilities or a combination of its own facilities and resale of another carrier's services (including the services offered by another eligible telecommunications carrier); and

(B) advertise[s] the availability of such services and the charges therefor using media of general distribution.<sup>3</sup>

The Act also requires the Commission to establish the service areas for universal service obligation and support purposes. In the case of an area served by a rural telephone company, the service area will be such company's study area unless and until changes in Federal regulations require further consideration. Timely action by the Commission is needed to ensure eligible carriers are able to continue receiving funding following changes to the federal universal service fund that will occur on January 1, 1998.

Therefore, the Commission is establishing this proceeding for the purpose of receiving comment from interested parties as to the method and criteria it should employ to determine whether a carrier meets the requirements set out above.<sup>4</sup>

<sup>1</sup> 47 C.F.R. § 54.201 - .207.

<sup>2</sup> The Virginia Telecommunications Industry Association has filed such a request on behalf of a number of local exchange telephone companies.

<sup>3</sup> 47 U.S.C. § 214 (e)(1)(A) and (B).

<sup>4</sup> The Commission has previously established another proceeding to deal with issues pertaining to universal service support for schools and libraries. See, Order Adopting Discounts, dated June 30, 1997, in Application of Commonwealth of Virginia, ex rel., State Corporation Commission, Ex Parte, in

The services that carriers must provide throughout the established service area are set out in the footnote.<sup>5</sup> The Commission seeks comment on how it should determine that these services are being provided by carriers seeking eligibility designation and on how to determine those carriers' advertisement of the availability of, and charges for, those services, as well as on the other questions set out below and on other matters deemed by the commenting party to be pertinent:

(1) Should the Commission adopt filing requirements for carriers requesting eligible carrier designation under § 214(e) of the Act?

(2) How should the Commission determine that carriers seeking eligibility status provide the required services?

(3) What public interest factors should the Commission consider in determining whether to designate additional eligible carriers in areas served by a (a) non-rural telephone company and (b) rural telephone company?

(4) What evidence should the Commission require to ensure that the carrier seeking eligibility is advertising the availability of, and charges for, the services eligible for support?

(5) Should incumbent local exchange carriers be allowed to self-certify their provision, and advertisement, of the required services? Should competitive local exchange carriers be allowed to self-certify?

(6) What service area should the Commission establish for areas not served by a rural telephone company?

(7) Should the Commission consider the use of existing study areas as the service areas for those areas not served by a rural telephone company for the period prior to January 1, 1999, when further changes to the federal fund are to become effective?

(8) What other action should the Commission take to comply with the requirements of § 214 (e) of the Act, or in implementing 47 C.F.R. § 54.201 - .207?

Accordingly, IT IS ORDERED that:

(1) This proceeding is established and assigned Case No. PUC970135.

(2) Comments or requests for hearing shall be filed in this proceeding on or before October 15, 1997. Any request for hearing should state with specificity the evidence the requesting party expects or intends to introduce at a hearing,

re: Establishing schools and libraries discounts, pursuant to the Telecommunications Act of 1996, Case No. PUC970063.

<sup>5</sup> These are: (1) voice grade access to the public switched network, (2) local usage, (3) dual tone multi-frequency signaling or its functional equivalent [i.e., touch-tone service], (4) single-party service or its functional equivalent, (5) access to emergency services, (6) access to operator services, (7) access to interexchange service, (8) access to directory assistance, and (9) toll limitation for qualifying low-income customers. 47 C.F.R. § 54.101 (a).

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## General Notices/Errata

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together with an explanation of why such evidence can not be adequately presented through comments.

(3) This matter is continued for further orders of the Commission.

AN ATTESTED COPY HEREOF shall be sent by the Clerk of the Commission to: all local exchange telephone companies certificated in Virginia as shown on Appendix A; all interexchange telephone companies certificated in Virginia as shown on Appendix B; Thomas B. Nicholson, Senior Assistant Attorney General, Division of Consumer Counsel, Office of Attorney General, 900 East Main Street, Richmond, Virginia 23219; Jean Ann Fox, Vice President, Virginia Citizens Consumer Council, 114 Coachman Drive, Yorktown, Virginia 23693; Dennis R. Bates, Esquire, Senior Assistant County Attorney, Fairfax County, 12000 Government Center Parkway, Suite 549, Fairfax, Virginia 22035-0064; Ralph L. Frye, Executive Director, Virginia Telecommunications Industry Association, 11 South 12th Street, Suite 310, Richmond, Virginia 23219; and the Commission's Divisions of Communications and Economics and Finance.

VA.R. Doc. No. R98-31; Filed September 19, 1997, 8:57 a.m.

### Bureau of Insurance

September 9, 1997

#### ADMINISTRATIVE LETTER 1997-9

TO: All Carriers Licensed to Write Life Insurance, Annuities, Accident and Sickness Insurance, Variable Annuities, or Variable Life Insurance in Virginia

RE: Application and Enrollment Forms

The Bureau of Insurance ("Bureau") has recently received a number of inquiries regarding filing and approval requirements applicable to application forms and enrollment forms. This letter serves to respond to a number of these inquiries, and to address additional issues which have come to our attention in recent months. All carriers are expected to revise and refile any forms which are in nonconformity with any of the requirements elaborated below.

#### 1. Group Enrollment Forms or Cards

§ 38.2-316 B of the Code of Virginia requires that application forms to be used with those policy forms and related documents specified in § 38.2-316 A must be filed with the Commission. As is further clarified in § 38.2-316 C 1, application forms used with applicable products delivered or issued for delivery in this Commonwealth must be approved in writing by the Commission prior to usage. The Bureau expects and requires that all enrollment forms or enrollment cards used with products delivered or issued for delivery in Virginia be submitted for review and approval prior to usage in Virginia. It should be noted that the Bureau does not consider a listing of covered or eligible individuals provided by a group policyholder (i.e., an employer) to an insurance carrier to be an enrollment form.

The Bureau is aware that many employers design and develop their own enrollment forms for selecting insurance coverage(s) as well as other types of benefits. Regardless of how and by whom the form is developed, it is the carrier's responsibility to ensure that the form has been appropriately filed with and approved by the Bureau prior to its usage in Virginia. Often these single case enrollment forms offer coverage through two or more carriers. Multi-company application or enrollment forms are addressed in item (5) in this administrative letter.

Because the Bureau is aware that many carriers assumed that enrollment forms or cards were not subject to filing and approval requirements, no disciplinary action will be taken against carriers currently using unapproved enrollment forms or cards, provided they are submitted to the Bureau within sixty (60) days of the date of this letter. Carriers using enrollment forms or cards in Virginia subsequent to this sixty-day period that have not been filed with and approved by the Commission will be considered to be in violation of § 38.2-316 of the Code of Virginia, and may be subject to disciplinary action, as set forth in § 38.2-218 of the Code of Virginia.

#### 2. Faxed Application Forms

A number of carriers have inquired as to whether it is permissible to transmit application forms to or from the agent and the carrier's home or administrative office via telecopy or fax. The Bureau considered this question, both from the perspective of faxing blank application forms to the agent for completion, as well as faxing completed, signed application forms from the agent to the carrier's home or administrative office. It has been determined that facsimile transmissions are permissible in either of these instances; however, the Bureau must be provided with copies of any form revisions made to accommodate faxing. Changes in pagination, i.e., duplex to simplex printing, must be submitted to the Bureau. Forms revised simply to accommodate faxing, with no material textual changes, will not be required to be assigned a new form number and will retain their original approval dates. If any material changes are made to the text, however, the revised form must be assigned a new form number and will be granted a new approval date.

#### 3. Fraud Warning Notices

The Bureau is aware that, due to requirements in other states, many companies are including "Insurance Fraud" disclaimers on many application and claim forms. "Insurance Fraud" is not a defined term under the Code of Virginia, and an individual therefore cannot be guilty of "Insurance Fraud" in Virginia. This being the case, a warning such as those required in other states would be misleading in Virginia. Carriers with application forms or other forms on file with the Bureau are expected and required to revise such forms by either removing or modifying any such notice, and must refile revised forms within sixty (60) days from the date of this letter to avoid disciplinary action. Revised forms will be granted a new approval date and must be assigned a new form number.

The Bureau will allow the inclusion of insurance fraud notices if it is clearly and prominently disclosed that the notice does not apply in Virginia or if there is a listing of the states in which the notice does apply and Virginia is not included among them. The Bureau will consider other modifications to the notice provided no reference is made to "Insurance Fraud." Carriers considering the use of alternative wording are encouraged to contact the Bureau with the proposed wording for this notice before submitting forms for approval.

#### 4. Disclosure Authorization Form, Notice of Information Practices

Many carriers include forms, notices and disclosures required by Chapter 6 of Title 38.2 of the Code of Virginia (§ 38.2-600 et seq.) directly in their application forms, although they are often perforated for removal so that they can be left with the applicant. Until recently, the Bureau's approval of application forms did not extend to these forms and notices. It had been the Bureau's position that these forms were placed with the application as a matter of convenience, but were not technically part of the application form itself, and that it was the carrier's responsibility to ensure compliance with any applicable requirements. Because of an increasing number of inconsistencies found during on-site examinations and through consumer complaints, however, the Bureau has begun reviewing all such notices included in application forms and disapproving those applications where the included notices are found to be in noncompliance with applicable requirements. Through the course of these recent reviews, it has become apparent that there are a substantial number of application forms currently being used in Virginia which include incorrect or incomplete forms or notices. Carriers are expected and required to review all application and enrollment forms as well as any other forms currently in use which include this information and to carefully review Chapter 6 of Title 38.2 of the Code of Virginia to ensure compliance with all requirements specified therein. Revised forms must be assigned a new form number and will be granted a new approval date. Notices which are separate and apart from the application form do not need to be filed and approved; however, compliance will be monitored through market conduct examinations and investigations involving consumer complaints.

#### 5. Multi-Company Application or Enrollment Forms

The Bureau has received a number of inquiries regarding the acceptability of application or enrollment forms used by two or more carriers who may or may not be affiliated. We will accept and approve multi-company forms provided the full and proper corporate name of each carrier is prominently disclosed on the form, and the form clearly discloses the type of coverage being provided by each carrier. Multi-company forms must be designed in such a way that the form clearly indicates, or can be marked by the agent or applicant to indicate the carrier to which the application is being made. Each carrier must independently submit the form for approval in accordance with the usual filing procedures. A carrier may not use a multi-company application or enrollment form in

Virginia until it has been approved in writing by the Commission, regardless of whether the form has been approved for another carrier.

Although each carrier must submit the form for approval in accordance with the guidelines prescribed in 14 VAC 5-100-10 et seq., the Bureau has no objection to the independent submissions being included in one package. In fact, we encourage carriers to identify identical submissions so as to ensure consistency and expedite our processing of the forms.

Any questions with regard to any of the above matters should be directed IN WRITING to:

Jacqueline K. Cunningham  
Supervisor, Forms and Rates Section  
Life and Health Division  
Bureau of Insurance  
P.O. Box 1157  
Richmond, Virginia 23218

/s/ Alfred W. Gross, Commissioner of Insurance

VA.R. Doc. No. R98-22; Filed September 12, 1997, 11:12 a.m.

### STATE WATER CONTROL BOARD

**Proposed Consent Special Orders**  
**Town of Appomattox Lagoon**  
**Briarwood Village Mobile Home Park**  
**Camp Branch Hills Subdivision**  
**Camp Fincastle**  
**City of Covington**  
**Faith Home**  
**Hester Coal and Oil Corporation**  
**Huntingwood Apartments**  
**Mrs. Aurelia D. Lovelace and Lovelace Petroleum**  
**Norfolk and Western Railway Company**  
**Rorrer's Oil Service**  
**Super 8 Motel**

### Proposed Amendments to Consent Special Orders

**City of Bedford**

The State Water Control Board and the Department of Environmental Quality propose to issue Consent Special Orders for:

1. Town of Appomattox Lagoon (VA0020257). This order requires the town to reduce inflow and infiltration and to upgrade and expand the sewage treatment plant by June 1, 2001. Interim loading limits for five-day biochemical oxygen demand and total suspended solids are provided.
2. Briarwood Village Mobile Home Park (VA0031194), a privately owned sewage treatment lagoon in Campbell County. This order requires the lagoon to be upgraded to meet all permit limits within five years or to close. A

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## General Notices/Errata

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\$5,000 civil charge is suspended, conditional on completion of all requirements in the order.

3. Camp Branch Hills Subdivision (VA0060518), a privately owned sewage treatment lagoon in Henry County. This order requires the lagoon to be upgraded, connected to the Henry County Public Service Authority, or closed within 30 months. A \$5,000 civil charge is suspended, conditional on completion of all requirements in the order.

4. Camp Fincastle (VA0089672), a sewage treatment plant in Botetourt County. This order provides a payment schedule for the permit fee.

5. City of Covington (VA0025541). This order requires payment of a civil charge of \$1,500 in settlement of a bypass that occurred at the City's Dry Run Pump Station on April 2, 1997.

6. Faith Home, Inc. (VA0074063), a sewage treatment plant in Pittsylvania County. This order requires connection to a public sewer as soon as available (estimated November 30, 1998) and allows the facility to operate under an administrative continuation of its present VPDES permit for five months.

7. Hester Coal & Oil Corporation (FC-02-0658 and PC 97-0642), a coal and aboveground petroleum storage tank facility. This order requires closure of the facility by May 1998, a site characterization, and clean up in partial settlement for past noncompliance with permitting and Oil Discharge Contingency Plan requirements. Hester Coal & Oil Corp. will also pay a \$2,000 civil penalty.

8. Huntingwood Apartments (VA0060992), a sewage treatment lagoon in the City of Lynchburg. This order, issued to the Langley Family Trust which owns the facility, allows five years for the facility to connect to public sewer or to be upgraded. A valid VPDES permit must be maintained throughout the compliance schedule. A \$5,000 civil charge is suspended, conditional on completion of all requirements in the order.

9. Mrs. Aurelia D. Lovelace & Lovelace Petroleum (FC-02-0520, FC-02-0659, PC 98-1013). This order requires completion of facility decommissioning by Lovelace Petroleum and site closure and administrative requirements by Mrs. Lovelace at 1810 James Street in Lynchburg. It also requires completion of all aboveground and underground storage tank requirements at 2127 Carroll Avenue, also in Lynchburg and the new location of Lovelace Petroleum.

10. Norfolk & Western Railway Company, spill remediation near Eggleston (PC 98-0518). This order requires payment of a civil charge of \$5,632.99 in settlement of an unintentional interference will the company's remediation of a diesel spill. The order also recognizes an intensive training program for track maintenance personnel in corporate environmental

obligations and procedures as a supplemental environmental project.

11. Rorrer's Oil Service (FC-02-0523), an aboveground petroleum storage tank facility in Henry County. This order provides a one-year extension of the completion of a complete, approvable Oil Discharge Contingency Plan, previous efforts having been complicated by terms of the site lease. Rorrer's will pay a \$1,000 civil charge.

12. Super 8 Motel (VA0027961), a privately owned sewage treatment plant serving a motel and restaurant in Amherst County. This order requires the motel to connect to Amherst County Public Service Authority or upgrade the sewage plant within three years. A \$5,000 civil charge is suspended, conditional on completion of all requirements in the order.

The State Water Control Board and the Department of Environmental Quality propose to amend Consent Special Orders for:

13. City of Bedford Sewage Treatment Plant (VA0022390). This amendment revises the compliance schedule for ammonia and whole effluent toxicity in the July 1996 order but does not significantly change the ultimate compliance date of September 30, 1999.

On behalf of the State Water Control Board, the Department of Environmental Quality will receive written comments relating to the proposed action until November 12, 1997. Comments should be addressed to James F. Smith, West Central Regional Office, Department of Environmental Quality, 3019 Peters Creek Road, NW, Roanoke, VA 24019, or FAX 540-562-6725, and should refer to the facility by name.

The proposed orders may be examined at the Department of Environmental Quality, Office of Enforcement, 629 East Main Street, Richmond, VA, or at the Department of Environmental Quality, West Central Regional Office, 3019 Peters Creek Road, NW, Roanoke, VA. Copies of the orders and amendments may be obtained in person or by mail from these offices.

### **Proposed Consent Special Order**

#### **Ms. Betty Li d/b/a/ Rose Garden Inn and Restaurant**

The State Water Control Board proposes to issue a Consent Special Order to Ms. Betty Li for the Rose Garden Inn & Restaurant wastewater treatment facilities located in Prince George County, south of Petersburg, Virginia. The proposed order requires Ms. Li to upgrade the wastewater treatment facilities in accordance with the approved plans and specifications. The upgrade must be completed by February 1998 and the VPDES Permit complied with by May 1998.

On behalf of the State Water Control Board, the Department of Environmental Quality will receive written comments relating to the proposed Consent Special Order until November 12, 1997. Comments should be addressed to Cynthia Akers, Department of Environmental Quality,

Piedmont Regional Office, 4949-A Cox Road, Glen Allen, Virginia 23060-6295. A copy of the order may be obtained in person or by mail from the above office.

### **Proposed Consent Special Order Lighthouse Motel and M.C. Patel**

The State Water Control Board proposes to issue a Consent Special Order to the Lighthouse Motel and M.C. Patel located on U.S. Rt. 58, west of Clarksville, Virginia. The proposed order requires Mr. Patel to bring the wastewater treatment facilities which serves the Lighthouse Motel and Cafe into compliance with the VPDES Permit. The order requires that the wastewater treatment facilities connect its discharge to the Town of Clarksville if a collection line is extended to the area in the near future; or construct an onsite disposal system if approved by the county; or upgrade the existing system if the other two options are not available. In addition, the order requires the payment of a \$5,000 civil charge for noncompliance with the VPDES Permit.

On behalf of the State Water Control Board, the Department of Environmental Quality will receive written comments relating to the proposed Consent Special Order until November 12, 1997. Comments should be addressed to Cynthia Akers, Department of Environmental Quality, Piedmont Regional Office, 4949-A Cox Road, Glen Allen, Virginia 23060-6295. A copy of the order may be obtained in person or by mail from the above office.

### **VIRGINIA CODE COMMISSION**

#### **Notice to Subscribers**

Beginning with Volume 14, Issue 1 of the Virginia Register (14:1 VA.R. September 29, 1997), the format of the Register changed slightly. Regulations and other information previously published in the State Corporation Commission, Marine Resources Commission, State Lottery Department, and Tax Bulletin sections will be merged into the Proposed Regulations, Final Regulations, Emergency Regulations, or General Notices sections as appropriate. In addition, regulations will appear in order by Virginia Administrative Code (VAC) title order to correspond with the VAC.

#### **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  
PROPOSED (Transmittal Sheet) - RR03  
FINAL (Transmittal Sheet) - RR04  
EMERGENCY (Transmittal Sheet) - RR05  
NOTICE of MEETING - RR06  
AGENCY RESPONSE TO LEGISLATIVE OBJECTIONS  
- RR08

## **ERRATA**

### **STATE BOARD OF HEALTH**

**Title of Regulation:** 12 VAC 5-585-10 et seq. Biosolids Use Regulations.

**Publication:** 13:26 VA.R. 3585-3625 September 15, 1997.

#### **Correction to Final Regulation:**

12 VAC 5-585-290 was inadvertently omitted indicating the proposed amendment. 12 VAC 5-585-290 reads as follows:

#### **12 VAC 5-585-290. Minimum operational testing and control program.**

A. Sampling and testing methods shall conform to current United States Environmental Protection Agency (EPA) guidelines establishing test procedures for analysis of pollutants or other EPA approved methods.

B. The information furnished with either the operation and maintenance manual, sludge management plan, or operational plan, should recommend and describe the control tests and their frequency that should be routinely conducted by the holder of the permit in order to monitor operations and verify the treatment classification achieved (Table 3). All special sampling methods should be identified. Biosolids use site sampling and testing frequencies should be in accordance with the requirements established by the instructions contained in the biosolids use operation and maintenance manual if provided.

C. Additional operational control information may be required on an individual basis by the division.

12 VAC 5-585-410, page 3596, Table 3, A 1 b, line 5, after "and" insert "[provide that]"

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## General Notices/Errata

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12 VAC 5-585-510, page 3609, below table, first paragraph, line 2, after "boundaries" strike ", surface waters,"

12 VAC 5-585-610, page 3621, column 1, in the title of Table 14A, before "COASTAL PLAINS SOILS" bracket and strike "THE LOWER"

### **COMMONWEALTH TRANSPORTATION BOARD**

Title of Regulation: 24 VAC 30-590-10 et seq. Policy and Procedure for Control of Residential and Nonresidential Cut-through Traffic.

Publication: 13:25 VA.R. 3377 September 1, 1997.

Correction to Final Regulation:

Page 3377, 24 VAC 30-590-10 et seq., change the name of the regulation to "Policy and Procedure for Control of Residential Cut-through Traffic."



**Statement of Ownership, Management, and Circulation**  
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# General Notices/Errata

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I certify that all information furnished on this form is true and complete. I understand that anyone who furnishes false or misleading information on this form or who omits material or information requested on the form may be subject to criminal sanctions (including fines and imprisonment) and/or civil sanctions (including multiple damages and civil penalties).			

## Instructions to Publishers

1. Complete and file one copy of this form with your postmaster annually on or before October 1. Keep a copy of the completed form for your records.
2. In cases where the stockholder or security holder is a trustee, include in items 10 and 11 the name of the person or corporation for whom the trustee is acting. Also include the names and addresses of individuals who are stockholders who own or hold 1 percent or more of the total amount of bonds, mortgages, or other securities of the publishing corporation. In item 11, if none, check the box. Use blank sheets if more space is required.
3. Be sure to furnish all circulation information called for in item 15. Free circulation must be shown in items 15d, e, and f.
4. If the publication had second-class authorization as a general or requester publication, this Statement of Ownership, Management, and Circulation must be published; it must be printed in any issue in October or, if the publication is not published during October, the first issue printed after October.
5. In item 16, indicate the date of the issue in which this Statement of Ownership will be published.
6. Item 17 must be signed.

*Failure to file or publish a statement of ownership may lead to suspension of second-class authorization.*

# 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 or Senate Information and Constituent Services at (804) 786-3838 or (804) 225-4749/TDD☎, or visit the General Assembly web site's Legislative Information System (<http://leg1.state.va.us/lis.htm>) and select "Meetings."

VIRGINIA CODE COMMISSION

## EXECUTIVE

### BOARD FOR ACCOUNTANCY

**October 20, 1997 - 10 a.m.** -- Open Meeting

**October 21, 1997 - 8 a.m.** -- Open Meeting

Department of Professional and Occupational Regulation,  
3600 West Broad Street, 4th Floor, Richmond, Virginia.♿

An open meeting to discuss regulatory review, request for proposals for privatization, committee reports, disciplinary cases and 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, Department for Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8590 or (804) 367-9753/TDD☎

### BOARD OF AGRICULTURE AND CONSUMER SERVICES

**December 11, 1997 - 1:30 p.m.** -- Public Hearing  
State Capitol, Capitol Square, House Room 4, Richmond, Virginia.

**October 20, 1997** -- Public comments may be submitted until 8:30 a.m. on this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Agriculture and Consumer Services intends to amend regulations

entitled: **2 VAC 5-180-10 et seq. Rules and Regulations Governing Pseudorabies in Virginia.** Pseudorabies is a disease that exacts a high death toll among the animals it infects, many of which are domesticated animals. Among the animals that can be infected with pseudorabies are cattle, sheep, dogs, cats, and notably, swine. There is no known evidence that humans can contract pseudorabies. Most kinds of animals infected with pseudorabies die before they can infect other animals (death usually occurs within 72 hours after infection). Swine are a different matter. Although pseudorabies can kill swine (the younger the swine, the higher the rate of mortality), they also can recover from the disease and spread it to other swine and to other kinds of animals. Virginia's regulations to eradicate pseudorabies from swine are part of a national program designed to rid the nation of pseudorabies.

This regulation provides rules to govern the program for the eradication of pseudorabies from swine in Virginia. The purpose of this action is to revise the regulation and increase its effectiveness, including but not limited to amending the regulation to allow Virginia to participate in the national program to eradicate pseudorabies at whatever stage its circumstance at a particular time would allow--whether Stage I or Stage V, or any stage in between.

**Statutory Authority:** §§ 3.1-724, 3.1-726 and 3.1-730 of the Code of Virginia.

Public comments may be submitted until 8:30 a.m. on October 20, 1997, to Dr. W. M. Sims, Jr., Division of Animal Industry Services, Department of Agriculture and Consumer Services, P.O. Box 1163, Richmond, VA 23218-1163.

**Contact:** Thomas R. Lee, Program Supervisor, Department of Agriculture and Consumer Services, Washington Bldg., 1100 Bank St., Suite 600, Richmond, VA 23219, telephone (804) 786-2483 or FAX (804) 371-2380.

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# Calendar of Events

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**December 11, 1997 - 1:30 p.m.** -- Public Hearing  
State Capitol, Capitol Square, House Room 4, Richmond,  
Virginia.

**October 20, 1997** -- Public comments may be submitted  
until 8:30 a.m. on this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of  
the Code of Virginia that the Board of Agriculture and  
Consumer Services intends to amend regulations  
entitled: **2 VAC 5-205-10 et seq. Rules and  
Regulations Pertaining to Shooting Enclosures.** This  
regulation provides rules to govern shooting enclosures  
in Virginia. The purpose of this action is to promulgate  
regulations providing for licensing shooting enclosures,  
establishing a licensing fee, and establishing criteria for  
the operation and management of the enclosures to  
include the health status of the animals held in the  
enclosure. The regulation also establishes which  
animals can be held in the shooting enclosures: goats,  
sheep and swine.

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

Public comments may be submitted until 8:30 a.m. on  
October 20, 1997, to Dr. W. M. Sims, Jr., Division of Animal  
Industry Services, Department of Agriculture and Consumer  
Services, P.O. Box 1163, Richmond, VA 23218-1163.

**Contact:** Thomas R. Lee, Program Supervisor, Department  
of Agriculture and Consumer Services, Washington Bldg.,  
1100 Bank St., Suite 600, Richmond, VA 23219, telephone  
(804) 786-2483 or FAX (804) 371-2380.

## DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

### Virginia State Apple Board

† **November 19, 1997 - 10 a.m.** -- Open Meeting  
Department of Agriculture and Consumer Services,  
Laboratory, 116 Reservoir Street, Harrisonburg, Virginia. ☒

A meeting to (i) review past minutes, (ii) review tax  
collections, (iii) discuss marketing plan for 1997-98 and  
(iv) consider the budget for the 1997-98 fiscal year. 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 Nancy L. Israel  
at least five days before the meeting date so that  
suitable arrangements can be made.

**Contact:** Nancy L. Israel, Program Director, Virginia State  
Apple Board, Washington Bldg., 1100 Bank St., Suite 1008,  
Richmond, VA 23219, telephone (804) 371-6104 or FAX  
(804) 371-7786.

### Virginia Horse Industry Board

† **November 18, 1997 - 10 a.m.** -- Open Meeting  
Virginia Cooperative Extension--Charlottesville/Albemarle  
Unit, 168 Spotnap Road, Lower Level Meeting Room,  
Charlottesville, Virginia. ☒

A meeting to discuss the status of proposed marketing  
plans and projects and to review proposed revisions to  
the grants guidelines. 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, Virginia Horse Industry Board,  
1100 Bank St., Room 906, Richmond, VA 23219, telephone  
(804) 786-5842 or (804) 371-7786.

### Virginia Marine Products Board

† **October 22, 1997 - 6 p.m.** -- Open Meeting  
Bill's Seafood House, Route 17 and Denbigh Boulevard,  
Grafton, 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, Virginia Marine  
Products Board, 554 Denbigh Boulevard, Suite B, Newport  
News, VA 23608, telephone (757) 874-3474 or FAX (757)  
886-0671.

### Pesticide Control Board

**October 16, 1997 - 9 a.m.** -- Open Meeting  
Washington Building, 1100 Bank Street, Board Room, Room  
204, Richmond, Virginia. ☒

Committee meetings and a general business meeting.  
Portions of the meeting may be held in closed session  
pursuant to § 2.1-344 of the Code of Virginia. The public  
will have an opportunity to comment on any matter not  
on the board's agenda beginning at 9 a.m. Any person  
who needs any accommodations in order to participate  
at the meeting should contact Dr. Marvin A. Lawson at  
least 10 days before the meeting date so that suitable  
arrangements can be made.

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

### Virginia Winegrowers Advisory Board

**October 29, 1997 - 9 a.m. -- Open Meeting**  
A. H. Smith Agricultural Center, 595 Laurel Grove Road, Winchester, Virginia.

A quarterly meeting to discuss committee reports and other regular 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 Mary E. Davis-Barton at least 10 days before the meeting date so that suitable arrangements can be made.

**Contact:** Mary E. Davis-Barton, Secretary, Virginia Winegrowers Advisory Board, Department of Agriculture and Consumer Services, 1100 Bank St., Room 1010, Richmond, VA 23219, telephone (804) 786-0481.

### ALCOHOLIC BEVERAGE CONTROL BOARD

**October 15, 1997 - 9:30 a.m. -- Open Meeting**  
**October 27, 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 of staff members. Other matters have not been determined.

**Contact:** W. Curtis Coleburn, Secretary to the Board, Department of Alcoholic Beverage Control, 2901 Hermitage Rd., P.O. Box 27491, Richmond, VA 23261, telephone (804) 213-4409 or FAX (804) 213-4442.

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

**October 16, 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 ☎

### VIRGINIA BOARD FOR ASBESTOS AND LEAD

**October 15, 1997 - 10 a.m. -- Open Meeting**  
Department of Professional and Occupational Regulation, 3600 West Broad Street, Conference Room 5 East, 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 ☎

### AUCTIONEERS BOARD

† **October 28, 1997 - 10 a.m. -- Open Meeting**  
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia. ☎

A meeting to conduct general board business. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact the department at least 10 days prior to the meeting so that suitable arrangements can be made. The department fully complies with the Americans with Disabilities Act.

**Contact:** Mark N. Courtney, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8514 or (804) 367-9753/TDD ☎

### BOARD OF AUDIOLOGY AND SPEECH-LANGUAGE PATHOLOGY

NOTE: CHANGE IN MEETING DATE

† **November 3, 1997 - 9 a.m. -- Public Hearing**  
Department of Health Professions, 6606 West Broad Street, 5th Floor, Richmond, Virginia.

**November 14, 1997 - Public comments may be submitted until this date.**

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## Calendar of Events

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Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Audiology and Speech-Language Pathology intends to consider amending regulations entitled: **18 VAC 30-20-10 et seq. Regulations Governing the Practice of Audiology and Speech-Language Pathology**. The purpose of the proposed amendments is to amend the regulations pursuant to Executive Order 15 (94) for simplification and clarification of requirements and to remove the language which is unnecessary or duplicative.

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

**Contact:** Elizabeth Young Tisdale, Executive Director, Board of Audiology and Speech-Language Pathology, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9907 or FAX (804) 662-9943.

### VIRGINIA AVIATION BOARD

**October 28, 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.

**Contact:** Cindy Waddell, Department of Aviation, 5702 Gulfstream Road, Richmond International Airport, VA 23250-2422, telephone (804) 236-3625 or (804) 236-3624/TDD

**October 29, 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, VA 23250-2422, telephone (804) 236-3625 or (804) 236-3624/TDD

### CHARITABLE GAMING COMMISSION

**October 17, 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 Charitable Gaming Commission intends to adopt regulations entitled: **11 VAC 15-12-10 et seq. Public Participation Guidelines**. The purpose of the proposed action is to promulgate public participation guidelines for the formulation of charitable gaming regulations.

Statutory Authority: §§ 9-6.14:7.1 and 18.2-340.18 of the Code of Virginia.

**Contact:** James Ingraham, Administration Manager, Charitable Gaming Commission, P.O. Box 756, Richmond, VA 23218, telephone (804) 786-0238 or FAX (804) 786-1079.

\*\*\*\*\*

**October 17, 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 Charitable Gaming Commission intends to adopt regulations entitled: **11 VAC 15-22-10 et seq. Charitable Gaming Regulations**. The purpose of the proposed action is to promulgate regulations for the operation of charitable gaming activities in Virginia.

Statutory Authority: §§ 18.2-340.15, 18.2-340.18, 18.2-340.19, and 18.2-340.30 of the Code of Virginia.

**Contact:** James Ingraham, Administration Manager, Charitable Gaming Commission, P.O. Box 756, Richmond, VA 23218, telephone (804) 786-0238 or FAX (804) 786-1079.

\*\*\*\*\*

**October 17, 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 Charitable Gaming Commission intends to adopt regulations entitled: **11 VAC 15-31-10 et seq. Supplier Regulations**. The purpose of the proposed action is to promulgate regulations for vendors selling charitable gaming equipment and supplies in Virginia.

Statutory Authority: §§ 18.2-340.15 and 18.2-340.18 of the Code of Virginia.

**Contact:** James Ingraham, Administration Manager, Charitable Gaming Commission, P.O. Box 756, Richmond, VA 23218, telephone (804) 786-0238 or FAX (804) 786-1079.

**† October 21 1997 - 10 a.m. -- Open Meeting**  
General Assembly Building, 910 Capitol Square, House Room C, Richmond, Virginia.

A business meeting.

**Contact:** Donna Pruden, Administrative Staff Assistant, Charitable Gaming Commission, James Monroe Bldg., 101 N. 14th St., 17th Floor, Richmond, VA 23219, telephone (804) 786-0238 or FAX (804) 786-1079.

**CHESAPEAKE BAY LOCAL ASSISTANCE BOARD**

**Northern Area Review Committee**

**October 14, 1997 - 10 a.m.** -- Open Meeting  
Chesapeake Bay Local Assistance Department, 805 East Broad Street, Suite 701, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A meeting to review Chesapeake Bay Preservation Area programs for the northern area. Persons interested in observing should call the Chesapeake Bay Local Assistance Department to verify meeting time, location and schedule. No comments from the public will be entertained at the meeting; however, written comments are welcome.

**Contact:** Carolyn J. Elliott, Executive Secretary, Chesapeake Bay Local Assistance Department, 805 E. Broad St., Suite 701, Richmond, VA 23219, telephone (804) 225-3440, FAX (804) 225-3447 or toll-free 1-800-243-7229/TDD

**Southern Area Review Committee**

**October 14, 1997 - 2 p.m.** -- Open Meeting  
Chesapeake Bay Local Assistance Department, 805 East Broad Street, Suite 701, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A meeting to review Chesapeake Bay Preservation Area programs for the southern area. Persons interested in observing should call the Chesapeake Bay Local Assistance Department to verify meeting time, location and schedule. No comments from the public will be entertained at the meeting; however, written comments are welcome.

**Contact:** Carolyn J. Elliott, Executive Secretary, Chesapeake Bay Local Assistance Department, 805 E. Broad St., Suite 701, Richmond, VA 23219, telephone (804) 225-3440, FAX (804) 225-3447 or toll-free 1-800-243-7229/TDD

**CHILD DAY-CARE COUNCIL**

**November 18, 1997 - 4 p.m.** -- Public Hearing  
Pennino Building, 12011 Government Center Parkway, Conference Room 230, Fairfax, Virginia.

**November 19, 1997 - 4 p.m.** -- Public Hearing  
Virginia Wesleyan University, 1584 Wesleyan Drive, Blocker Hall, Science Auditorium, Norfolk, Virginia.

**November 20, 1997 - 4 p.m.** -- Public Hearing  
General Assembly Building, 910 Capitol Street, 1st Floor, House Room D, Richmond, Virginia.

**November 24, 1997 - 4 p.m.** -- Public Hearing  
Roanoke City Council Chambers, Municipal Building, 215 Church Avenue, S.W., 4th Floor, Roanoke, Virginia.

**November 25, 1997 - 4 p.m.** -- Public Hearing  
Southwest Virginia 4-H Center, 25236 Hillman Highway, Ratcliff Hall, Abingdon, Virginia.

**November 29, 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 Child Day-Care Council intends to amend regulations entitled: **22 VAC 15-30-10 et seq. Minimum Standards for Licensed Child Day Centers.** This regulation lists the standards that child day centers serving children of preschool age or younger must meet to be licensed by the Department of Social Services. The school age requirements from 22 VAC 15-40-10 et seq. will be incorporated into this regulation.

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

Public comments may be submitted until November 29, 1997, to Sharon Jones, Chair, Child Day-Care Council, 730 East Broad Street, Richmond, VA 23219-1849.

**Contact:** Arlene Kasper, Program Development Supervisor, Division of Licensing Programs, Department of Social Services, 730 E. Broad St., Richmond, VA 23219-1849, telephone (804) 692-1791 or FAX (804) 692-2370.

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**November 29, 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 Child Day-Care Council intends to repeal regulations entitled: **22 VAC 15-40-10 et seq. Minimum Standards for Licensed Child Day Centers Serving School Age Children.** The purpose of the proposed action is to repeal this regulation and incorporate these standards into the regulation currently entitled "Minimum Standards for Licensed Child Day Centers Serving Children of Preschool Age or Younger" (22 VAC 15-30-10 et seq.).

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

Public comments may be submitted until November 29, 1997, to Sharon Jones, Chair, Child Day-Care Council, 730 East Broad Street, Richmond, VA 23219-1849.

**Contact:** Arlene Kasper, Program Development Supervisor, Division of Licensing Programs, Department of Social Services, 730 E. Broad St., Richmond, VA 23219-1849, telephone (804) 692-1791 or FAX (804) 692-2370.

**GOVERNOR'S COMMISSION ON COMMUNITY SERVICE AND VOLUNTEERISM**

† **October 24, 1997 - 1 p.m.** -- Open Meeting  
Department of Social Services, 730 East Broad Street, Lower Level 1, Richmond, Virginia.

A regular commission meeting.

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## Calendar of Events

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**Contact:** B. J. Northington, AmeriCorps Director, 730 E. Broad St., Richmond, VA 23219, telephone (804) 692-1952.

### BOARD OF CONSERVATION AND RECREATION

**October 22, 1997** - Public comments may be submitted until 5 p.m. on this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Conservation and Recreation intends to amend regulations entitled: **4 VAC 3-20-10 et seq. Stormwater Management Regulations.** The purpose of the proposed amendments is to protect life and property against the degradation of land and water resources in the form of water pollution, stream channel erosion, depletion of groundwater resources, and more frequent local flooding--impacts that adversely affect fish, aquatic life, recreation, shipping, property values and other uses of lands and waters. Amendments provide consistent criteria for state agency construction projects and greater flexibility for local government adoption of stormwater management ordinances.

Statutory Authority: § 10.1-603.4 of the Code of Virginia.

**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 ☎

### DEPARTMENT OF CONSERVATION AND RECREATION

#### Fall River Renaissance Committee

**October 15, 1997 - 10 a.m.** -- Open Meeting  
Department of Conservation and Recreation, 203 Governor Street, 2nd Floor, Richmond, Virginia. ☎ (Interpreter for the deaf provided upon request)

A meeting to plan the campaign for the second Fall River Renaissance to be held from September 20 to October 20, 1997. The campaign will promote and recognize voluntary acts of stewardship to improve and conserve water quality in Virginia.

**Contact:** Paddy Katzen, Special Assistant to the Secretary of Natural Resources, Department of Environmental Quality, 629 East Main St., Richmond, VA 23219, telephone (804) 698-4488.

#### Falls of the James Scenic River Advisory Board

**† November 6, 1997 - Noon** -- Open Meeting  
City Hall, 900 East Broad Street, 5th Floor, Planning Commission Conference Room, Richmond, Virginia. ☎ (Interpreter for the deaf provided upon request)

**† November 13, 1997 - Noon** -- Open Meeting  
City Hall, 900 East Broad Street, 4th Floor, Recreation and Parks Conference Room, Richmond, Virginia. ☎ (Interpreter for the deaf provided upon request)

A meeting to review river issues and programs. Requests for interpreter for the deaf must be made to Richard G. Gibbons by October 30 for the November 6 meeting and by November 6 for the November 13 meeting.

**Contact:** Richard G. Gibbons, Environmental Program Manager, Division of Planning and Recreation Resources, Department of Conservation and Recreation, 203 Governor St., Suite 326, Richmond, VA 23219, telephone (804) 786-4132, FAX (804) 371-7899, or (804) 786-2121/TDD ☎

#### Board on Conservation and Development of Public Beaches

**† October 17, 1997 - 9 a.m.** -- Open Meeting  
Marine Resources Commission, Meeting Room, Newport News, Virginia. ☎ (Interpreter for the deaf provided upon request)

A meeting of the Committee on the Value of Public Beaches to collect data and review the draft report for Senate Joint Resolution 338. The committee will accept public comments. Requests for interpreter for the deaf must be made to Carlton Lee Hill by October 10, 1997.

**Contact:** Carlton Lee Hill, Staff Advisor, Department of Conservation, 203 Governor St., Suite 206, Richmond, VA 23219, telephone (804) 786-3998 or FAX (804) 786-1798.

**† October 27, 1997 - 10 a.m.** -- Open Meeting  
Marine Resources Commission, Meeting Room, Newport News, Virginia. ☎ (Interpreter for the deaf provided upon request)

A meeting to (i) discuss proposals from localities requesting matching grant funds, (ii) review progress on Senate Joint Resolution 338 regarding the value of public beaches and (iii) receive comments about public beaches and the activities of the board. Requests for interpreter for the deaf must be made to Carlton Lee Hill by October 20, 1997.

**Contact:** Carlton Lee Hill, Staff Advisor, Department of Conservation, 203 Governor St., Suite 206, Richmond, VA 23219, telephone (804) 786-3998 or FAX (804) 786-1798.

#### Scenic River Advisory Board

**† October 25, 1997 - 10 a.m.** -- Open Meeting  
Virginia State University, Harris Hall, Colson Auditorium, Petersburg, Virginia. ☎ (Interpreter for the deaf provided upon request)

A workshop to discuss programs that support the conservation and use of Virginia's river resources and other Scenic River Advisory Board issues. Requests for

interpreter for the deaf must be made to Richard G. Gibbons by October 18, 1997.

**Contact:** Richard G. Gibbons, Environmental Program Manager, Division of Planning and Recreation Resources, Department of Conservation and Recreation, 203 Governor St., Suite 326, Richmond, VA 23219, telephone (804) 786-4132, FAX (804) 371-7899, or (804) 786-2121/TDD ☎

## BOARD FOR CONTRACTORS

### Disciplinary Committee

**October 22, 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:** Geralde W. Morgan, Senior Administrator, Board for Contractors, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-2785 or (804) 367-9753/TDD ☎

## BOARD OF CORRECTIONAL EDUCATION

**† October 17, 1997 - 10 a.m. -- Open Meeting**  
Department of Correctional Education, James Monroe Building, 101 North 14th Street, Richmond, Virginia. ☎  
(Interpreter for the deaf provided upon request)

A monthly meeting to discuss general business.

**Contact:** Patty Ennis, Board Clerk, Board of Correctional Education, James Monroe Bldg., 101 N. 14th St., 7th Floor, Richmond, VA 23219, telephone (804) 225-3314.

## BOARD OF CORRECTIONS

**† October 15, 1997 - 10 a.m. -- Open Meeting**  
Department of Corrections, 6900 Atmore Drive, Board Room, Richmond, Virginia. ☎

A meeting to discuss matters which may be presented to the board.

**Contact:** Barbara Fellows, Secretary to the Board, Board of Corrections, 6900 Atmore Dr., Richmond, VA 23225, telephone (804) 674-3235 or FAX (804) 674-3130.

## Administration Committee

**† October 15, 1997 - 8:30 a.m. -- Open Meeting**  
Department of Corrections, 6900 Atmore Drive, Richmond, Virginia. ☎

A meeting to discuss administrative matters which may be presented to the full board.

**Contact:** Barbara Fellows, Secretary to the Board, Board of Corrections, 6900 Atmore Dr., Richmond, VA 23225, telephone (804) 674-3235 or FAX (804) 674-3130.

## Correctional Services Committee

**† October 14, 1997 - 9:30 a.m. -- Open Meeting**  
Department of Corrections, 6900 Atmore Drive, Board Room, Richmond, Virginia. ☎

A meeting to discuss correctional services matters which may be presented to the full board.

**Contact:** Barbara Fellows, Secretary to the Board, Board of Corrections, 6900 Atmore Dr., Richmond, VA 23225, telephone (804) 674-3235 or FAX (804) 674-3130.

## BOARD FOR COSMETOLOGY

**November 24, 1997 - 10 a.m. -- Open Meeting**  
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia. ☎

A general business meeting. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact Karen W. O'Neal. The department fully complies with the Americans with Disabilities Act. Please notify the department of your request at least 10 days in advance.

**Contact:** Karen W. O'Neal, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-0500, FAX (804) 367-2475 or (804) 367-9753/TDD ☎

## CRIMINAL JUSTICE SERVICES BOARD

**October 14, 1997 - 10 a.m. -- Public Hearing**  
Virginia Military Institute, Jackson Memorial Hall, Lexington, Virginia.

**November 5, 1997 - 10 a.m. -- Public Hearing**  
General Assembly Building, 910 Capitol Square, House Room D, Richmond, Virginia. ☎

**November 1, 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 20-20-10 et seq. Rules Relating to Compulsory Minimum Training Standards for Law-Enforcement**

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## Calendar of Events

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**Officers.** The proposed amendments relate to approval authority for performance outcomes, hours, and categories of training by the Criminal Justice Services Board and the training objectives, criteria, and lesson plan guides by the Committee on Training of the Criminal Justice Services Board. Hours and categories of training are updated. Performance outcomes are incorporated by reference.

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

Public comments may be submitted until November 1, 1997, to Lex Eckenrode, Department of Criminal Justice Services, 805 East Broad Street, Richmond, VA 23219.

**Contact:** George Gotschalk, Section Chief, Standards and Certification, Department of Criminal Justice Services, 805 E. Broad St., Richmond, VA 23219, telephone (804) 786-8001 or FAX (804) 371-8981.

### DEPARTMENT FOR THE DEAF AND HARD-OF-HEARING

#### Advisory Board

**November 5, 1997 - 10 a.m.** -- Open Meeting  
Koger Center, 1602 Rolling Hills Drive, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A quarterly meeting of the advisory board. Public comment will be received with advance notice.

**Contact:** Beverly Dickinson, Executive Secretary, Department for the Deaf and Hard-of-Hearing, 1602 Rolling Hills Dr., Ratcliffe Bldg., Suite 203, Richmond, VA 23229-5012, telephone (804) 662-9705 (V/TTY) or toll-free 1-800-552-7917 (V/TTY).

### BOARD OF DENTISTRY

#### Special Conference Committee

† **October 23, 1997 - 10:30 a.m.** -- Open Meeting  
Department of Health Professions, 6606 West Broad Street, 5th Floor, Richmond, Virginia.

A meeting to hear disciplinary cases. This is a public meeting; however no public comment will be taken.

**Contact:** Marcia J. Miller, Executive Director, Department of Health Professions, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9906 or (804) 662-7197/TDD

### DISABILITY SERVICES COUNCIL

**October 14, 1997 - 11 a.m.** -- Open Meeting  
Department of Rehabilitative Services, 8004 Franklin Farms Drive, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A meeting to review the FY 1998 Rehabilitative Services Incentive Fund (RSIF) Competitive Proposals for approval and RSIF guidelines.

**Contact:** Kathryn Hayfield, Chief of Staff, Disability Services Council, 8004 Franklin Farms Dr., Richmond, VA 23288, telephone (804) 662-7134/Voice/TTY, toll-free 1-800-552-5019, 1-800-464-9950/TDD

### VIRGINIA ECONOMIC DEVELOPMENT PARTNERSHIP

#### Nominations Committee

† **October 27, 1997 - 10:30 a.m.** -- Open Meeting  
Department of Economic Development, 901 East Byrd Street, Riverfront Plaza, West Tower, 19th Floor, Green Conference Room, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A meeting to focus on the upcoming election of officers for 1998 for the Virginia Economic Development Partnership Board of Directors.

**Contact:** Kim Ellett, Administrative Assistant, Virginia Economic Development Partnership, P.O. Box 798, Richmond, VA 23218-0798, telephone (804) 371-8108, FAX (804) 371-8112 or (804) 371-0327/TDD

#### Virginia Tourism Corporation

**October 14, 1997 - 10 a.m.** -- Open Meeting  
Department of Economic Development, 901 East Byrd Street, Riverfront Plaza, West Tower, 19th Floor, Board Room, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A meeting of the board of directors to discuss strategic planning and budgets. Public comment will be taken at the beginning of the meeting.

**Contact:** Judy H. Bulls, Assistant to the President and CEO, Virginia Tourism Corporation, 901 E. Byrd St., Richmond, VA 23219, telephone (804) 371-8174, FAX (804) 786-1919 or (804) 371-0327/TDD

**October 14, 1997 - 2:30 p.m.** -- Open Meeting  
Department of Economic Development, 901 East Byrd Street, Riverfront Plaza, West Tower, 19th Floor, Board Room, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A meeting of the Welcome Center Task Force of the Virginia Tourism Corporation Board of Directors to

review welcome center operation. Public comment will be taken at the beginning of the meeting.

**Contact:** Judy H. Bulls, Assistant to the President and CEO, Virginia Tourism Corporation, 901 E. Byrd St., Richmond, VA 23219, telephone (804) 371-8174, FAX (804) 786-1919, or (804) 371-0327/TDD ☎

**BOARD OF EDUCATION**

**October 31, 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 Education intends to repeal regulations entitled: **8 VAC 20-20-10 et seq. Regulations Governing the Licensure of School Personnel** and adopt regulations entitled: **8 VAC 20-21-10 et seq. Licensure Regulations for School Personnel**. The purpose of the proposed regulation is to maintain standards of professional competence for teachers and other school personnel.

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

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

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**October 31, 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 Education intends to adopt regulations entitled: **8 VAC 20-25-10 et seq. Technology Standards for Instructional Personnel**. The purpose of the proposed regulation is to ensure that instructional personnel in Virginia have mastered and demonstrated competency in technology. The proposed regulation identifies eight standards based on Virginia's revised Standards of Learning.

Statutory Authority: § 22.1-16 of the Code of Virginia.

**Contact:** Thomas A. Elliott, Assistant Superintendent for Compliance, Department of Education, P.O. Box 2120, Richmond, VA 23218-2120, telephone (804) 225-2748, FAX (804) 225-3831, toll-free 1-800-292-3820 or 1-800-422-1098/TDD ☎

**November 17, 1997 - 2 p.m.** -- Public Hearing  
General Assembly Building, 910 Capitol Square, Senate Room B, Richmond, Virginia. ☎ (Interpreter for the deaf provided upon request)

A public hearing on the proposed guidelines on the recitation of the Pledge of Allegiance. A notice regarding the guidelines can be found on page 177 of the Virginia Register, Volume 14, Issue 1, September 29, 1997.

**Contact:** Dr. James E. Laws, Jr., Administrative Assistant for Board Relations, Department of Education, Monroe Bldg., 101 N. 14th St., P.O. Box 2120, Richmond, VA 23218-2120, telephone (804) 225-2540, FAX (804) 225-2424 or toll-free 1-800-292-3820.

**STATE BOARD OF ELECTIONS**

† **November 24, 1997 - 10 a.m.** -- Open Meeting  
State Capitol, House Room One, Richmond, Virginia. ☎

A meeting to certify election results for the November 4 general election.

**Contact:** M. Bruce Meadows, Secretary, State Board of Elections, 200 N. 9th St., Room 101, Richmond, VA 23219, telephone (804) 786-6551, FAX (804) 371-0194, toll-free 1-800-552-9745 or 1-800-260-3466/TDD ☎

**DEPARTMENT OF ENVIRONMENTAL QUALITY**

**October 14, 1997 - 9 a.m.** -- Open Meeting  
Department of Environmental Quality, 629 East Main Street, Room 110, Richmond, Virginia. ☎ (Interpreter for the deaf provided upon request)

A working meeting of the regulatory ad hoc group engaged in the development of regulation revision E97, Fuel Burning Equipment (9 VAC 5-40-880).

**Contact:** Karen G. Sabasteanski, Policy Analyst, 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 ☎

**October 29, 1997 - 5 p.m.** -- Open Meeting  
Department of Environmental Quality, Piedmont Regional Office, 4949-A Cox Road, Conference Room, Glen Allen, Virginia. ☎ (Interpreter for the deaf provided upon request)

**October 30, 1997 - 2 p.m.** -- Open Meeting  
Roanoke County Board of Supervisor's Room, 5204 Bernard Drive, Roanoke, Virginia. ☎ (Interpreter for the deaf provided upon request)

A meeting to discuss the proposal to repeal the existing water quality management plans (9 VAC 25-420-10 et seq. through 9 VAC 25-572-10 et seq.), and to invite comments related to the proposal, including the costs and benefits of the proposed action or alternatives the public may wish to provide.

**Contact:** Erlinda L. Patron, Environmental Engineer Consultant, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240-0009, telephone (804) 698-4047 or FAX (804) 698-4136.

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## Calendar of Events

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### Virginia Ground Water Protection Steering Committee

† **November 18, 1997 - 9 a.m.** -- Open Meeting  
Department of Environmental Quality, 629 East Main Street,  
Richmond, Virginia. ☎

A regularly scheduled meeting. Anyone interested in ground water protection issues is encouraged to attend. To obtain minutes and a meeting agenda contact Mary Ann Massie at (804) 698-4042.

**Contact:** Mary Ann Massie, Environmental Program Planner, Department of Environmental Quality, P. O. Box 10009, Richmond, VA 23240-0009, telephone (804) 698-4042 or FAX (804) 698-4032.

### VIRGINIA FIRE SERVICES BOARD

**October 24, 1997 - 9 a.m.** -- Open Meeting  
Massanutten, Harrisonburg, Virginia.

**December 5, 1997 - 9 a.m.** -- Open Meeting  
Virginia Beach Resort Hotel and Conference Center, 2800  
Shore Drive, Virginia Beach, Virginia.

A business meeting to discuss training and policies. The hearing 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

**October 23, 1997 - 1 p.m.** -- Open Meeting  
Massanutten, Harrisonburg, Virginia.

**December 4, 1997 - 1 p.m.** -- Open Meeting  
Virginia Beach Resort Hotel and Conference Center, 2800  
Shore Drive, Virginia Beach, Virginia.

A meeting to discuss fire training and policies. The meeting is open to the public for input and comments.

**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

**October 23, 1997 - 8:30 a.m.** -- Open Meeting  
Massanutten, Harrisonburg, Virginia.

**December 4, 1997 - 8:30 a.m.** -- Open Meeting  
Virginia Beach Resort Hotel and Conference Center, 2800  
Shore Drive, Virginia Beach, Virginia.

A meeting to discuss fire training and policies. The meeting is open to the public for input and comments.

**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

**October 23, 1997 - 10 a.m.** -- Open Meeting  
Massanutten, Harrisonburg, Virginia.

**December 4, 1997 - 10 a.m.** -- Open Meeting  
Virginia Beach Resort Hotel and Conference Center, 2800  
Shore Drive, Virginia Beach, 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/Code Change Committee

**December 3, 1997 - 2 p.m.** -- Open Meeting  
Virginia Beach Resort Hotel and Conference Center, 2800  
Shore Drive, Virginia Beach, Virginia.

A meeting to discuss residential sprinklers. The meeting is open to the public for comments and input.

**Contact:** Michael Cline, Acting Director, Department of Fire Programs, James Monroe Bldg., 101 N. 14th St., 18th Floor, Richmond, VA 23219, telephone (804) 371-0220.

### BOARD OF FORESTRY

**October 20, 1997 - 9:30 a.m.** -- Open Meeting

**October 21, 1997 - 8:30 a.m.** -- Open Meeting  
Holiday Inn Surfside Hotel and Suites, Oceanfront at 26th  
Street and Atlantic Avenue, Virginia Beach, Virginia. ☎  
(Interpreter for the deaf provided upon request)

On October 20 at 9:30 the group will meet at Union Camp for a tour of forest products facilities and proceed to the Norfolk International Terminals as guests of the VA Port Authority. On October 21 the board will conduct a general business meeting to hear committee reports, discuss issues and conduct any other appropriate business relating to forestry. Please notify the board five working days prior to the meeting for interpreter services.

**Contact:** Barbara A. Worrell, Administrative Staff Specialist, Department of Forestry, P.O. Box 3758, Charlottesville, VA 22903, telephone (804) 977-6555 or (804) 977-6555/TDD ☎

**BOARD OF FUNERAL DIRECTORS AND EMBALMERS**

**Examination Task Force**

† **November 19, 1997 - 9 a.m.** -- Open Meeting  
 Department of Health Professions, 6606 West Broad Street,  
 4th Floor, Richmond, Virginia. ☎

A meeting to discuss training procedures of the resident trainee program. 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 or (804) 662-7197/TDD ☎

**BOARD OF GAME AND INLAND FISHERIES**

**October 23, 1997 - 9 a.m.** -- Open Meeting  
**October 24, 1997 - 9 a.m.** -- Open Meeting  
 Department of Game and Inland Fisheries, 4000 West Broad Street, Richmond, Virginia. ☎ (Interpreter for the deaf provided upon request)

A meeting to address a regulation amendment proposed at the August 21, 1997, meeting to add tungsten-iron shot as a permissible nontoxic shot for use in waterfowl hunting if such shot is permissible under federal migratory waterfowl regulations. The board will solicit comments from the public during the public hearing portion of the meeting at which time any interested citizen present shall be heard, and the board will determine whether the proposed regulation amendment will be adopted as a final regulation. The board reserves the right to adopt final amendments which may be more liberal than, or more stringent than the regulations currently in effect or the regulation amendments proposed at the August 21, 1997, board meeting as necessary for the proper management of wildlife resources. The board will review proposals for legislation for the 1998 Session of the General Assembly. The board may also address permitting; staff may recommend and the board may propose regulations or amendments to regulations pertaining to permitting. The board may hold an executive session before the public session begins on October 23. If the board completes its entire agenda on October 23, it may not convene on October 24.

**Contact:** Phil Smith, Policy Analyst, Department of Game and Inland Fisheries, 4010 W. Broad St., Richmond, VA 23230, telephone (804) 367-8341 or FAX (804) 367-2427.

**DEPARTMENT OF GENERAL SERVICES**

**Design-Build/Construction Management Review Board**

**October 17, 1997 - 10 a.m.** -- Open Meeting  
**November 21, 1997 - 10 a.m.** -- Open Meeting  
 The Library of Virginia, 800 East Broad Street, Richmond, Virginia. ☎

A meeting to review any requests submitted for review by the board for the use of a Design-Build or Construction Management type of contract.

**Contact:** Nathan I. Broocke, Director, Division of Engineering and Buildings, Department of General Services, 805 E. Broad St., Room 101, Richmond, VA 23219, telephone (804) 786-3263 or (804) 786-6152/TDD ☎

**STATE BOARD OF HEALTH**

**October 20, 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 5-90-10 et seq. Regulations for Disease Reporting and Control.** The purpose of the proposed amendments is to mandate the testing of gamete donors for HIV and the rejection of donors who test HIV positive and to establish a standard protocol for HIV testing for gamete donors.

Statutory Authority: §§ 32.1-12, 32.1-45.3, and 54.1-2971.1 of the Code of Virginia.

**Contact:** Casey W. Riley, Director, Division of STD/AIDS, Department of Health, P.O. Box 2448, Room 112, Richmond, VA 23218, telephone (804) 786-6267 or FAX (804) 225-3517.

† **October 23, 1997 - 10 a.m.** -- Open Meeting  
 Lynchburg Hilton Hotel, 2900 Candler's Mountain Road, Lynchburg, Virginia. ☎ (Interpreter for the deaf provided upon request)

A worksession of the board.

**Contact:** Paul W. Matthias, Staff to Board of Health, Department of Health, 1500 E. Main St., Richmond, VA 23219, telephone (804) 371-2909 or FAX (804) 786-4616.

† **October 24, 1997 - 9 a.m.** -- Open Meeting  
 Lynchburg Hilton Hotel, 2900 Candler's Mountain Road, Lynchburg, Virginia. ☎ (Interpreter for the deaf provided upon request)

A business meeting.

**Contact:** Paul W. Matthias, Staff to Board of Health, Department of Health, 1500 E. Main St., Room 227, Richmond, VA 23219, telephone (804) 371-2909 or FAX (804) 786-4616.

# Calendar of Events

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**November 14, 1997** - Public comments may be submitted until 5 p.m. on this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Board of Health intends to amend regulations entitled: **12 VAC 5-220-10 et seq. Virginia Medical Care Facilities Certificate of Public Need Rules and Regulations**. The purpose of the proposed amendments is to conform to recent legislation enacted to decrease regulatory involvement with projects to improve or increase services through capital expenditures at medical care facilities.

Statutory Authority: §§ 32.1-12 and 32.1-102.2 of the Code of Virginia.

Public comments may be submitted until November 14, 1997, to Nancy R. Hofheimer, Director, Center for Quality Health Care Services, Department of Health, 3600 West Broad Street, Suite 216, Richmond, VA 23230.

**Contact:** Paul E. Parker, Director, Certificate of Public Need, Center for Quality Health Care Services, Department of Health, 3600 W. Broad St., Suite 216, Richmond, VA 23230, telephone (804) 367-2126 or FAX (804) 367-2149.

## Ryan White Comprehensive AIDS Resource Emergency Act of 1990

† **October 22, 1997 - 10 a.m.** -- Open Meeting  
Sheraton Inn, Richmond Airport, 4700 South Laburnum Avenue, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A Statewide Coordinated Statement of Need (SCSN) meeting. The Comprehensive AIDS Resource Emergency Act (CARE) was enacted in 1990 by Public Law 101-38 which amended Title XXVI of the Public Health Service (PHS) Act (42 USC 300). Reauthorization language as reflected in the CARE Act Amendment of 1996 (P.L. 104-146) required CARE Act grantees to conduct activities to enhance coordination across the Ryan White Titles and Part F and specifically, to participate in the development of SCSN. The purpose of the SCSN is to provide a mechanism to collaboratively identify and address significant HIV care issues related to the needs of people living with HIV/AIDS, and to maximize coordination, integration, and effective linkages across CARE Act titles related to such issues.

**Contact:** Kathryn A. Hafford, R.N., MS, Assistant Director for Health Care Services, Department of Health, Division of STD/AIDS, P.O. Box 2448, 1500 E. Main St., Room 112, Richmond, VA 23218, telephone (804) 225-4844, FAX (804) 768-3223, toll-free 1-800-533-4148/TDD

## DEPARTMENT OF HEALTH PROFESSIONS

### Ad Hoc Committee on Telehealth

† **October 15, 1997 - 9 a.m.** -- Open Meeting  
Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 4, Richmond, Virginia. (Interpreter for the deaf provided upon request)

The initial meeting of the newly appointed committee of the board to make recommendations regarding proper role, jurisdiction and operation of state regulations regarding telehealth or practice across state lines. The meeting will address background information and receive a presentation from the staff of the Council on Enforcement Regulation and Licensure Dealing with Telepractice. The committee will further develop its schedule of activities on this issue. Brief public comment will be received at the beginning of meeting.

**Contact:** Robert A. Nebiker, Deputy Director, Department of Health Professions, 6606 W. Broad St., Richmond, VA 23230, telephone (804) 662-9919 or (804) 662-7197/TDD

## STATE COUNCIL OF HIGHER EDUCATION FOR VIRGINIA

### Executive Committee

† **October 24, 1997 - 8:30 a.m.** -- Open Meeting  
† **December 19, 1997 - 8:30 a.m.** -- Open Meeting  
Piedmont Virginia Community College, Board Room, Charlottesville, Virginia. (Interpreter for the deaf provided upon request)

† **November 25, 1997 - 1 p.m.** -- Open Meeting  
State Council of Higher Education, James Monroe Building, 101 North 14th Street, Richmond, Virginia.

A regular meeting.

**Contact:** Pamela H. Landrum, Administrative Staff Assistant, State Council of Higher Education, James Monroe Bldg., 101 N. 14th St., 9th Floor, Richmond, VA 23219, telephone (804) 225-2602 or FAX (804) 371-7911.

### Resources Committee

† **October 24, 1997 - 1 p.m.** -- Open Meeting  
Piedmont Virginia Community College, Board Room, Charlottesville, Virginia. (Interpreter for the deaf provided upon request)

A business meeting.

**Contact:** Pamela H. Landrum, Administrative Staff Assistant, State Council of Higher Education, James Monroe Bldg., 101 N. 14th St., 9th Floor, Richmond, VA 23219, telephone (804) 225-2602 or FAX (804) 371-7911.

## Search Committee

† **October 24, 1997 - 11 a.m.** -- Open Meeting  
Piedmont Virginia Community College, Board Room,  
Charlottesville, Virginia. (Interpreter for the deaf provided  
upon request)

A regular meeting to review RFPs.

**Contact:** Pamela H. Landrum, Administrative Staff Assistant,  
State Council of Higher Education, James Monroe Bldg., 101  
N. 14th St., 9th Floor, Richmond, VA 23219, telephone (804)  
225-2602 or FAX (804) 371-7911.

## HOPEWELL INDUSTRIAL SAFETY COUNCIL

**November 4, 1997 - 9 a.m.** -- Open Meeting  
**December 2, 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 HOUSING DEVELOPMENT AUTHORITY

† **October 21, 1997 - 11 a.m.** -- Open Meeting  
Virginia Housing Development Authority, 601 South Belvidere  
Street, Richmond, Virginia.

A regular meeting of the Board of Commissioners to (i)  
review and, if appropriate, approve the minutes from the  
prior monthly meeting; (ii) consider for approval and  
ratification mortgage loan commitments under its various  
programs; (iii) review the authority's operations for the  
prior month; and (iv) consider such other matters and  
take such other actions as it may deem appropriate.  
Various committees of the Board of Commissioners may  
also meet before or after the regular meeting and  
consider matters within their purview. The planned  
agenda of the meeting will be available at the offices of  
the authority one week prior to the date of the meeting.

**Contact:** J. Judson McKellar, Jr., General Counsel, Virginia  
Housing Development Authority, 601 S. Belvidere Street,  
Richmond, VA 23220, telephone (804) 782-1986.

## STATEWIDE INDEPENDENT LIVING COUNCIL

**October 15, 1997 - 10 a.m.** -- Open Meeting  
Independence Resource Center, 815 Cherry Avenue,  
Charlottesville, Virginia. (Interpreter for the deaf provided  
upon request)

A meeting to conduct regular business.

**Contact:** Jim Rothrock, Statewide Independent Living  
Council Staff, 1802 Marriott Rd., Richmond, VA 23229,  
telephone (804) 673-0119, FAX (804) 282-7112, toll-free 1-  
800-552-5019/TDD and Voice, or e-mail  
jarothrock@aol.com.

## STATE BOARD OF JUVENILE JUSTICE

**November 12, 1997 - 9 a.m.** -- Open Meeting  
700 Centre, 700 East Franklin Street, 4th Floor, Richmond,  
Virginia.

The Secure Program Committee and the Nonsecure  
Program Committee will meet at 9 a.m. The full board  
will meet at 10 a.m. to consider certification issues,  
matters relating to regulations promulgated by the board,  
policy issues and other matters brought before it.

**Contact:** Donald R. Carignan, Policy Coordinator,  
Department of Juvenile Justice, 700 E. Franklin St., P.O. Box  
1110, Richmond, VA 23219, telephone (804) 371-0743 or  
FAX (804) 371-0773.

† **November 12, 1997 - 1 p.m.** -- Public Hearing  
700 Centre, 700 East Franklin Street, Board Room,  
Richmond, Virginia.

A public hearing to provide opportunity for additional  
comment on 6 VAC 35-140-10 et seq., Standards for  
Juvenile Residential Facilities.

**Contact:** Donald R. Carignan, Policy Coordinator,  
Department of Juvenile Justice, 700 E. Franklin St., P.O. Box  
1110, Richmond, VA 23218-1110, telephone (804) 371-0743  
or FAX (804) 371-0773.

## LIBRARY BOARD

† **November 3, 1997 - Time to be announced** -- Open  
Meeting  
The Library of Virginia, 800 East Broad Street, Richmond,  
Virginia.

A meeting to discuss matters pertaining to records  
management and The Library of Virginia.

**Contact:** Jean H. Taylor, Secretary to the State Librarian,  
The Library of Virginia, 800 E. Broad St., Richmond, VA  
23219-1905, telephone (804) 692-3535.

## Archival and Information Services Committee

† **November 3, 1997 - Time to be announced** -- Open  
Meeting  
The Library of Virginia, 800 East Broad Street, Richmond,  
Virginia.

A meeting to discuss archival and information services at  
The Library of Virginia.

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## Calendar of Events

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**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

† **November 3, 1997 - Time to be announced -- Open Meeting**  
The Library of Virginia, 800 East Broad Street, Richmond, Virginia. ♿

A meeting to discuss automation and networking matters of 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.

### Facilities Committee

† **November 3, 1997 - Time to be announced -- Open Meeting**  
The Library of Virginia, 800 East Broad Street, Richmond, Virginia. ♿

A meeting to discuss matters pertaining to the facilities of 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.

### Legislative and Finance Committee

† **November 3, 1997 - Time to be announced -- Open Meeting**  
The Library of Virginia, 800 East Broad Street, Richmond, Virginia. ♿

A meeting to discuss legislative issues and finances of 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.

### Publications and Educational Committee

† **November 3, 1997 - Time to be announced -- Open Meeting**  
The Library of Virginia, 800 East Broad Street, Richmond, Virginia. ♿

A meeting to discuss matters related to the publications and educational services of 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

† **November 3, 1997 - Time to be announced -- Open Meeting**  
The Library of Virginia, 800 East Broad Street, Richmond, Virginia. ♿

A meeting to discuss matters pertaining to public library development and The Library of Virginia.

**Contact:** Jean H. Taylor, Secretary to the State Librarian, The Library of Virginia, 800 E. Broad St., Richmond, VA 23219-1905, telephone (804) 692-3535.

### Records Management Committee

† **November 3, 1997 - Time to be announced -- Open Meeting**  
The Library of Virginia, 800 East Broad Street, Richmond, Virginia. ♿

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

† **October 21, 1997 - 10 a.m. -- Open Meeting**  
State Capitol, House Room 1, Richmond, Virginia. ♿  
(Interpreter for the deaf provided upon request)

A quarterly meeting to promote the control, prevention and elimination of litter from the Commonwealth and encourage recycling and to advise the Director of the Department of Environmental Quality on other litter control and recycling matters.

**Contact:** Paddy Katzen, Special Assistant to the Secretary of Natural Resources, Department of Environmental Quality, 629 E. Main St., Richmond, VA 23219, telephone (804) 698-4488.

### COMMISSION ON LOCAL GOVERNMENT

**November 17, 1997 - 10 a.m. -- Open Meeting**  
General Assembly Building, 910 Capitol Square, Third Floor West Conference Room, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

A regular meeting to consider such matters as may be presented. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact the commission.

**Contact:** Barbara Bingham, Administrative Assistant, Commission on Local Government, Eighth Street Office Bldg., 805 E. Broad St., Room 702, Richmond, VA 23219-

1924, telephone (804) 786-6508, FAX (804) 371-7999 or (804) 786-1860/TDD ☒

## LONGWOOD COLLEGE

### Board of Visitors

† **October 24 - 9 a.m.** -- Open Meeting  
Longwood College, Farmville, Virginia. ☒

A meeting to conduct routine business of the Executive Committee of the Longwood College Board of Visitors.

**Contact:** Patricia P. Cormier, President, Longwood College, 201 High St., Farmville, VA 23909, telephone (804) 395-2004 or FAX (804) 395-2821.

† **October 24, 1997 - 10:45 a.m.** -- Open Meeting  
Longwood College, Farmville, Virginia. ☒

A meeting of the Facilities and Services Committee to conduct routine business.

**Contact:** Patricia P. Cormier, President, Longwood College, 201 High St., Farmville, VA 23909, telephone (804) 395-2004 or FAX (804) 395-2821.

† **October 24, 1997 - 2:30 p.m.** -- Open Meeting  
Longwood College, Farmville, Virginia. ☒

A meeting of the Academic Affairs Committee to conduct routine business.

**Contact:** Patricia P. Cormier, President, Longwood College, 201 High St., Farmville, VA 23909, telephone (804) 395-2004 or FAX (804) 395-2821.

† **October 24, 1997 - 3:45 p.m.** -- Open Meeting  
Longwood College, Farmville, Virginia. ☒

A meeting of the Student Affairs Committee to conduct routine business.

**Contact:** Patricia P. Cormier, President, Longwood College, 201 High St., Farmville, VA 23909, telephone (804) 395-2004 or FAX (804) 395-2821.

† **October 25, 1997 - 9 a.m.** -- Open Meeting  
Longwood College, Lancaster Building, Room 215, Farmville, Virginia. ☒

A meeting to conduct routine business of the Board of Visitors.

**Contact:** Patricia P. Cormier, President, Longwood College, 201 High St., Farmville, VA 23909, telephone (804) 395-2004 or FAX (804) 395-2821.

## MARINE RESOURCES COMMISSION

**October 28, 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

**October 17, 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 30-50-10 et seq. Amount, Duration, and Scope of Medical and Remedial Care and Services and 12 VAC 30-60-10 et seq. Standards Established and Methods Used to Assure High Quality Care.** The purpose of the proposed amendments is to make permanent the agency's temporary requirements regarding the prior authorization of all inpatient hospital services.

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

Public comments may be submitted until October 17, 1997, to Cindy Tyler, Division of Client Services, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219.

**Contact:** Victoria P. Simmons or Roberta 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.

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## Calendar of Events

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**October 17, 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 30-50-10 et seq. Amount, Duration, and Scope of Medical and Remedial Care and Services, 12 VAC 30-60-10 et seq. Standards Established and Methods Used to Assure High Quality Care, 12 VAC 30-120-10 et seq. Waivered Services, and 12 VAC 30-130-10 et seq. Amount Duration and Scope of Selected Services.** The purpose of the proposed amendments is to recommend changes to the permanent regulations controlling rehabilitation services, specifically community mental retardation services. The expansion of these services creates a payment source for the local community service boards in support of a wider range of mental services to Medicaid eligible persons, which draws on federal funding.

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

Public comments may be submitted until October 17, 1997, to Ann Cook, 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 Jonas, Regulatory Coordinators, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 786-7959 or FAX (804) 371-4981.

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**October 17, 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 30-50-10 et seq. Amount, Duration, and Scope of Medical and Remedial Care and Services, 12 VAC 30-60-10 et seq. Standards Established and Methods Used to Assure High Quality Care, and 12 VAC 30-130-10 et seq. Amount, Duration and Scope of Selected Services.** The purpose of this proposal is to recommend changes to the permanent regulations controlling rehabilitation services, i.e., community mental health and mental retardation services. The expansion of these services creates a payment source for the local community services boards, in support of a wider range of mental health services to Medicaid eligible persons, which draws on federal funding thereby reducing the demand for General Fund and local dollars. The purpose of this proposed regulation is to make permanent the provisions of the emergency regulations while also addressing issues

raised by the Health Care Financing Administration in response to DMAS' State Plan amendment. A description of the expansion services follows:

1. Mental Health Intensive Community Treatment provides outpatient mental health services outside the traditional clinic setting. It is designed to bring services to individuals who will not or cannot be served in the clinic setting.
2. Mental Health Crisis Stabilization Services provide direct mental health care to individuals experiencing acute crisis of a psychiatric nature that may jeopardize their current community living situation. It will provide less medical mental health services independently of or in conjunction with Intensive Community Treatment.
3. Mental Health Support Services provide training and support services to enable individuals to achieve and maintain community stability and independence in the most appropriate, least restrictive environment.

Used singly or as a package, these services will provide comprehensive treatment and support services to persons with serious and persistent mental illness.

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

Public comments may be submitted until October 17, 1997, to Ann Cook, 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 Jonas, Regulatory Coordinators, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 786-7959 or FAX (804) 371-4981.

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**October 17, 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 30-50-10 et seq. Amount, Duration, and Scope of Medical and Remedial Care and Services, 12 VAC 30-60-10 et seq. Standards Established and Methods Used to Assure High Quality Care, and 12 VAC 30-80-10 et seq. Methods and Standards for Establishing Payment Rates; Other Types of Care.** The purpose of the proposed amendments is to establish policies for Medicaid coverage of licensed clinical psychologists, licensed clinical social workers and licensed professional counselors.

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

Public comments may be submitted until October 17, 1997, to Sally Rice, Program Operations, Department of Medical

Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219.

**Contact:** Victoria P. Simmons or Roberta 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.

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**October 17, 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 30-50-10 et seq. Amount, Duration, and Scope of Medical and Remedial Care and Services, 12 VAC 30-60-10 et seq. Standards Established and Methods Used to Assure High Quality Care, and 12 VAC 30-130-10 et seq. Amount, Duration and Scope of Selected Services.** The purpose of the proposed amendments is to provide for substance abuse treatment for pregnant women.

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

Public comments may be submitted until October 17, 1997, to Ann Cook, 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 Jonas, Regulatory Coordinators, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 786-7959 or FAX (804) 371-4981.

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**October 31, 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 30-130-10 et seq. Amount, Duration and Scope of Selected Services.** The purpose of the proposed amendments is to improve program operations through modification of the current regulations for the Client medical Management Program by restricting specific recipients and providers who have demonstrated habits of overutilization services at excessive costs to Medicaid.

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

**Contact:** Victoria P. Simmons or Roberta J. Jonas, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 371-8854 or FAX (804) 371-4981.

## Board of Medical Assistance Services

† **December 16, 1997 - 10 a.m.** -- Open Meeting  
Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, Virginia.

A meeting to discuss medical assistance services policy and to take action on issues pertinent to the board.

**Contact:** Cynthia K. Morton, 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.

## Drug Utilization Review Board

† **November 20, 1997 - 2 p.m.** -- Open Meeting  
Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Board Room, Richmond, Virginia. ☎

A meeting to conduct routine business.

**Contact:** Marianne R. Rollings, Registered Pharmacist, Pharmacy Services Unit, Division of Provider Operations, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 225-4268.

## BOARD OF MEDICINE

**October 16, 1997 - 8 a.m.** -- Open Meeting  
**October 17, 1997 - 8 a.m.** -- Open Meeting  
**October 18, 1997 - 8 a.m.** -- Open Meeting  
Department of Health Professions, 6606 West Broad Street, 5th Floor, Board Rooms 1, 2, 3; and 4, Richmond, Virginia. ☎  
(Interpreter for the deaf provided upon request)

On October 16, a meeting to conduct general board business, receive committee and board reports and discuss any other items which may come before the board. On October 16, 17, and 18 the board will review reports, interview licensees, conduct administrative proceedings, and make decisions on disciplinary matters. The board will also review any regulations that may come before it. The board will entertain public comments during the first 15 minutes on agenda items.

**Contact:** 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

**October 18, 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 and review medical

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## Calendar of Events

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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., Richmond, VA 23230-1717, telephone (804) 662-9960, FAX (804) 662-9943 or (804) 662-7197/TDD ☎

### Informal Conference Committee

† **November 6, 1997 - 10:30 a.m.** -- Open Meeting  
Roanoke Airport Marriott, 2801 Hershberger Road, N.W., Roanoke, Virginia.

† **November 14, 1997 - 9:30 a.m.** -- Open Meeting  
Williamsburg Hospitality House, 415 Richmond Road, Williamsburg, Virginia.

† **December 9, 1997 - 9:30 a.m.** -- Open Meeting  
Sheraton Inn, 2801 Plank Road, Fredericksburg, Virginia.

The Informal Conference Committee, composed of three members of the board, will inquire into allegations that certain practitioners may have violated laws and regulations governing the practice of medicine and other healing arts in Virginia. The committee will meet in open and closed sessions pursuant to § 2.1-344 A 7 and A 15 of the Code of Virginia. Public comment will not be received.

**Contact:** Karen W. Perrine, Deputy Executive Director, Board of Medicine, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-7693, FAX (804) 662-9517 or (804) 662-7197/TDD ☎

## DEPARTMENT OF MENTAL HEALTH, MENTAL RETARDATION AND SUBSTANCE ABUSE SERVICES

### Pilot Leadership Team

**November 6, 1997 - 10:30 a.m.** -- Open Meeting  
Location to be announced.

A meeting to hear reports from the Priority Populations/Case Rate Funding Subcommittee, the Performance Outcome Measurement System Subcommittee, and the Consumer/Family Participation Subcommittee.

**Contact:** An-Li Hoban, Administrative Assistant, Department of Mental Health, Mental Retardation and Substance Abuse Services, P.O. Box 1797, Richmond, VA 23214, telephone (804) 786-3921 or FAX (804) 371-0092.

## Performance Outcome Measurement System (POMS) Advisory Committee

† **November 18, 1997 - 10:30 a.m.** -- Open Meeting  
Hanover Community Services Board, Richmond, Virginia. ☎  
(Interpreter for the deaf provided upon request)

A meeting to discuss (i) the progress in the implementation of the POMS pilot project, (ii) the results of a telephone survey of other state agencies, (iii) the report development process, (iv) data release policies, and (v) project evaluation.

**Contact:** Randy Koch, Ph.D., Director of Research and Evaluation, Department of Mental Health, Mental Retardation and Substance Abuse Services, P.O. Box 1797, Richmond, VA 23214, telephone (804) 225-3394 or FAX (804) 786-9428.

## DEPARTMENT OF MINES, MINERALS AND ENERGY

**October 24, 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 Mines, Minerals and Energy intends to **amend** regulations entitled: **4 VAC 25-150-10 et seq. Virginia Gas and Oil Regulation**. The purpose of the proposed amendment is to oversee the permitting, operations, plugging, and site restoration of gas and oil exploration and development wells, gathering pipelines, and associated facilities.

Statutory Authority: §§ 45.1-361.27 and 45.1-161.3 of the Code of Virginia.

**Contact:** B. Thomas Fulmer, Division Director, Division of Gas and Oil, Department of Mines, Minerals and Energy, 230 Charwood Dr., P.O. Box 1416, Abingdon, VA 24212, telephone (540) 676-5423, FAX (540) 676-5459, or toll-free 1-800-828-1120 (VA Relay Center).

## BOARD OF NURSING

† **October 22, 1997 - 9 a.m.** -- Open Meeting  
Department of Social Services, Pembroke Office Park, Pembroke 4, Suite 505, Virginia Beach, Virginia. ☎  
(Interpreter for the deaf provided upon request)

A meeting to conduct a formal hearing with licensee. 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 ☎

**Special Conference Committee**

† **October 14, 1997 - 9 a.m.** -- Open Meeting  
† **October 21, 1997 - 9 a.m.** -- Open Meeting  
† **October 23, 1997 - 9 a.m.** -- Open Meeting  
† **October 27, 1997 - 9 a.m.** -- Open Meeting  
† **October 28 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)

The 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

**BOARDS OF NURSING AND MEDICINE**

**Special Conference Committee**

† **October 15, 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)

The Committee of the Joint Boards of Medicine and Nursing and the Board of Nursing will conduct informal conferences with licensees. 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 FOR OPTICIANS**

† **November 14, 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, disciplinary cases and other matters requiring board action. All meetings are subject to cancellation. The time of the meeting is subject to change. Call the board's office at least 24 hours in advance. 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 or (804) 367-9753/TDD

**Ad Hoc Committee**

**October 30, 1997 - 10 a.m.** -- Open Meeting  
Department of Professional and Occupational Regulation, 3600 West Broad Street, 5th Floor, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A meeting to discuss regulatory review. All meetings are subject to cancellation. The time of the meeting is subject to change. Call the board's office at least 24 hours in advance. 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 or (804) 367-9753/TDD

**BOARD OF PHARMACY**

**November 13, 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)

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.

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**November 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 Board of Pharmacy intends to consider amending regulations entitled: **18 VAC 110-20-10 et seq. Regulations Governing the Practice of Pharmacy.** The purpose of the proposed amendments is to amend the requirements on mechanical devices to accommodate the utilization of automated dispensing devices. Amendments address the loading, checking, recordkeeping, and administration of drugs from these devices and are intended to ensure drug safety and efficacy.

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## Calendar of Events

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Statutory Authority: § 54.1-2400 and Chapters 33 and 34 of Title 54.1 of the Code of Virginia.

**Contact:** Elizabeth Scott Russell, R.Ph., Executive Director, Board of Pharmacy, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9911 or FAX (804) 662-9943.

### GOVERNOR'S COMMISSION ON PHYSICAL FITNESS AND SPORTS

† **November 13, 1997 - 10 a.m.** -- Open Meeting  
Department of Social Services, 730 East Broad Street, Lower Level, Conference Room 3, Richmond, Virginia. (Interpreter for the deaf provided upon request)

The third meeting of the commission created by Governor's Executive Order No. 75(97).

**Contact:** Loretta Petty, Special Assistant for Community Affairs, Office of the Governor, State Capitol, 3<sup>rd</sup> Floor, Richmond, VA 23219, telephone (804) 786-2211, Ext. 504 or FAX (804) 371-2665.

### BOARD OF LICENSED PROFESSIONAL COUNSELORS, MARRIAGE AND FAMILY THERAPISTS AND SUBSTANCE ABUSE TREATMENT PROFESSIONALS

**November 21, 1997 - 10 a.m.** -- Open Meeting  
Department of Health Professions, 6606 West Broad Street, 5th Floor, Richmond, Virginia.

A regular meeting of the board to conduct general board business, consider committee reports, correspondence and any other matters under the jurisdiction of the board. Regulatory review will include the adoption of amendments to the Regulations Governing the Practice of Professional Counseling pursuant to Executive Order 15 (94). Public comments will be heard at the beginning of the meeting.

**Contact:** Evelyn Brown, Executive Director, or Joyce Williams, Administrative Assistant, Board of Licensed Professional Counselors, Marriage and Family Therapists and Substance Abuse Treatment Professionals, 6606 W. Broad St., 4th Floor, Richmond, VA 23230, telephone (804) 662-9912 or FAX (804) 662-9943.

### Credentials Committee

**November 21, 1997 - 8:30 a.m.** -- Open Meeting  
Department of Health Professions, 6606 West Broad Street, 5th Floor, Richmond, Virginia.

A meeting to review credentials. Public comments will not be heard.

**Contact:** Evelyn Brown, Executive Director, or Joyce Williams, Administrative Assistant, Board of Licensed

Professional Counselors, Marriage and Family Therapists and Substance Abuse Treatment Professionals, 6606 W. Broad St., 4th Floor, Richmond, VA 23230, telephone (804) 662-9912 or FAX (804) 662-9943.

### BOARD FOR PROFESSIONAL SOIL SCIENTISTS

**October 30, 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:** Geralde W. Morgan, Senior Administrator, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-2785 or (804) 367-9753/TDD.

### BOARD OF PSYCHOLOGY

† **October 21, 1997 - 10 a.m.** -- Open Meeting  
Department of Health Professions, 6606 West Broad Street, 5th Floor Conference Room 4, Richmond, Virginia.

A meeting to consider proposed amendments to the Regulations Governing the Practice of Psychology pursuant to Executive Order 15 (94). Public comment will be received at the beginning of the meeting.

**Contact:** M. 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.

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**October 23, 1997 - 10 a.m.** -- Public Hearing  
Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 2, Richmond, Virginia.

**November 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 Board of Psychology intends to consider amending regulations entitled: **18 VAC 125-20-10 et seq. Regulations Governing the Practice of Psychology.** The purpose of the proposed amendments is to increase fees for licensure renewal in compliance with § 54.1-113 of the Code of Virginia which

requires that the board collect fees sufficient to cover the expenses of administering the licensure program.

Statutory Authority: § 54.1-2400 and Chapter 36 of Title 54.1 of the Code of Virginia.

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

Credentials Committee

† November 7, 1997 - 11 a.m. -- Open Meeting Department of Health Professions, 6606 West Broad Street, 4th Floor, Richmond, Virginia.

A meeting to review applications for licensure by examination. Public comment will be received at the beginning of the meeting.

Contact: M. LaDonna Duncan, Administrative Assistant, Board of Psychology, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9913, FAX (804) 662-9943, or (804) 662-7197/TDD

VIRGINIA RACING COMMISSION

October 17, 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 10-130-10 et seq. Virginia Breeders Fund. The purpose of the amendment is to establish the operating procedures for the distribution of awards and incentives from the Virginia Breeders Fund to horse owners and breeders of racehorses.

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

Contact: William H. Anderson, Policy Analyst, Virginia Racing Commission, 10700 Horsemen's Rd., New Kent, VA 23124, telephone (804) 966-4200.

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† November 19, 1997 - 9:30 a.m. -- Public Hearing Tyler Building, 1300 East Main Street, Richmond, Virginia.

December 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 Virginia Racing Commission intends to amend regulations entitled: 11 VAC 10-70-10 et seq. Regulations Pertaining to Horse Racing with Pari-Mutuel Wagering: Stewards. The purpose of the proposed action is to establish procedures for stewards hearings and establishes a steward to oversee the operation of satellite facilities.

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

Contact: William H. Anderson, Policy, Analyst, Virginia Racing Commission, 10700 Horsemen's Rd., New Kent, VA 23124, telephone (804) 966-4200 or FAX (804) 966-8906.

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† November 19, 1997 - 9:30 a.m. -- Public Hearing Tyler Building, 1300 East Main Street, Richmond, Virginia.

December 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 Virginia Racing Commission intends to amend regulations entitled: 11 VAC 10-90-10 et seq. Regulations Pertaining to Horse Racing with Pari-Mutuel Wagering: Formal Hearings. The purpose of the proposed action is to establish procedures by which the Virginia Racing Commission may conduct reviews of decisions taken by the stewards.

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

Contact: William H. Anderson, Policy, Analyst, Virginia Racing Commission, 10700 Horsemen's Rd., New Kent, VA 23124, telephone (804) 966-4200 or FAX (804) 966-8906.

REAL ESTATE APPRAISER BOARD

November 18, 1997 - 10 a.m. -- Open Meeting Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia.

A general business meeting. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact the board at least 10 days prior to the meeting. The department fully complies with the Americans with Disabilities Act.

Contact: Karen W. O'Neal, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-0500, FAX (804) 367-2475, or (804) 367-9753/TDD

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November 18, 1997 - 2 p.m. -- Public Hearing Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Real Estate Appraiser Board intends to amend regulations entitled: 18 VAC 130-20-10 et seq. Real Estate Appraiser Board Regulations. The purpose of the proposed amendments is to comply with the federally mandated Appraiser Qualifications Board Qualification Criteria

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## Calendar of Events

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effective January 1, 1998, and to implement less burdensome alternatives.

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

**Contact:** Karen W. O'Neal, Assistant Director, Real Estate Appraiser Board, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-0500.

### VIRGINIA RESOURCES AUTHORITY

October 14, 1997 - 9:30 a.m. -- Open Meeting

November 11, 1997 - 9:30 a.m. -- Open Meeting

December 9, 1997 - 9:30 a.m. -- Open Meeting

The Mutual Building, 909 East Main Street, Suite 700, Richmond, Virginia.

A meeting to approve minutes of the meeting of the prior month, to review the authority's operations for the prior month, and to consider other matters and take other actions as the authority may deem appropriate. The planned agenda of the meeting will be available at the offices of the authority one week prior to the date of the meeting. Public comments will be received at the beginning of the meeting.

**Contact:** Shockley D. Gardner, Jr., Executive Director, Virginia Resources Authority, P.O. Box 1300, Richmond, VA 23218, telephone (804) 644-3100 or FAX (804) 644-3109.

### RICHMOND HOSPITAL AUTHORITY

#### Board of Commissioners

† October 23, 1997 - 5 p.m. -- Open Meeting

Richmond Nursing Home, 1900 Cool Lane, 2nd Floor, Classroom, Richmond, Virginia. ☎

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 23218-0548, telephone (804) 782-1938.

### VIRGINIA SMALL BUSINESS FINANCING AUTHORITY

#### Loan Committee

† October 28, 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. Meeting time is subject to change.

**Contact:** Cathleen Surface, Executive Director, Virginia Small Business Financing Authority, 901 E. Byrd St., 19th Floor, Richmond, VA 23219, telephone (804) 371-8254, FAX (804) 225-3384, or (804) 371-0327/TDD ☎

### STATE BOARD OF SOCIAL SERVICES

October 15, 1997 - 9 a.m. -- Open Meeting

October 16, 1997 - 9 a.m. -- Open Meeting (if necessary)

Department of Social Services, Western Regional Office, 190 Patton Street, Abingdon, Virginia. ☎

A work session and business meeting.

**Contact:** Pat Rengnerth, Administrative Staff Specialist, Department of Social Services, 730 E. Broad St., Richmond, VA 23219, telephone (804) 692-1826, FAX (804) 692-1949, toll-free 1-800-552-3431, or toll-free 1-800-552-7096/TDD ☎

### BOARD OF SOCIAL WORK

October 24, 1997 - 9 a.m. -- Open Meeting

Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 2, Richmond, Virginia. ☎

A regular business meeting to receive committee reports and adopt proposed amendments to the regulations pursuant to Executive Order 15 (94). 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 ☎

#### Regulatory/Legislative Committee

October 24, 1997 - 8:15 a.m. -- Open Meeting

Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 2, Richmond, Virginia. ☎

A meeting to discuss recommendations for amendments to definitions of practice in the statutes pertaining to social work and clinical social work practice. 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 ☎

## COMMONWEALTH TRANSPORTATION BOARD

**October 15, 1997 - 2 p.m.** -- Open Meeting  
Natural Bridge Hotel, Natural Bridge, 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 in another forum. Remarks will be limited to five minutes. Large groups are asked to select one individual to speak for the group. The board reserves the right to amend these conditions. Separate committee meetings may be held on call of the chairman. Contact Department of Transportation Public Affairs at (804) 786-2715 for schedule.

**Contact:** Robert E. Martinez, Secretary of Transportation, 1401 E. Broad St., Richmond, VA 23219, telephone (804) 786-8032.

## TRANSPORTATION SAFETY BOARD

**† November 14, 1997 - 9 a.m.** -- Open Meeting  
Department of Motor Vehicles, 2300 West Broad Street, Richmond, Virginia.☎ (Interpreter for the deaf provided upon request)

A meeting to review and discuss transportation safety issues in the Commonwealth.

**Contact:** Angelisa C. Jennings, Senior Management Analyst, Department of Motor Vehicles, 2300 W. Broad St., Richmond, VA 23261, telephone (804) 367-2026.

## TREASURY BOARD

**October 15, 1997 - 9 a.m.** -- Open Meeting  
James Monroe Building, 101 North 14th Street, Treasury Board Room, 3rd Floor, Richmond, Virginia.☎

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

**† November 4, 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 board meeting to approve consent orders, consider requests for licensure by endorsement and reinstatement of licenses, and to conduct a formal hearing, regulatory review and other board business as necessary. 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 ☎

**† November 5, 1997 - 9 a.m.** -- Open Meeting  
Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 4, Virginia.☎ (Interpreter for the deaf provided upon request)

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

## DEPARTMENT FOR THE VISUALLY HANDICAPPED (BOARD FOR)

**October 22, 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 ☎

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## Calendar of Events

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### Vocational Rehabilitation Advisory Council

† **November 15, 1997 - 10 a.m.** -- Open Meeting  
Department for the Visually Handicapped, Administrative  
Headquarters, 397 Azalea Avenue, Richmond, Virginia. ☎  
(Interpreter for the deaf provided upon request)

The council meets quarterly to advise the Department for  
the Visually Handicapped on matters related to  
vocational rehabilitation services for blind and visually  
impaired citizens of the Commonwealth.

**Contact:** James G. Taylor, Vocational Rehabilitation  
Program Director, Department for the Visually Handicapped,  
397 Azalea Ave., Richmond, VA 23227, telephone (804) 371-  
3111, toll-free 1-800-622-2155, or (804) 371-3140/TDD ☎

### VIRGINIA VOLUNTARY FORMULARY BOARD

† **November 17, 1997 - 10 a.m.** -- Public Hearing  
Washington Building, 1100 Bank Street, 2nd Floor, Board  
Room, Richmond, Virginia.

A public hearing to consider the proposed adoption and  
issuance of revisions to the Virginia Voluntary Formulary.  
The proposed revisions to the formulary add drugs and  
drug products to the formulary that became effective on  
January 15, 1996, and its most recent supplement.  
Copies of the proposed revisions to the formulary are  
available for inspection at the Department of Health,  
Bureau of Pharmacy Services, James Monroe Building,  
101 North 14th Street, Room S-45, P.O. Box 2448,  
Richmond, VA 23218. Written comments sent to the  
above address and received prior to 5 p.m. on November  
17, 1997, will be made part of the hearing record.

**Contact:** James K. Thomson, Director, Bureau of Pharmacy  
Services, Virginia Voluntary Formulary, James Monroe Bldg.,  
101 N. 14th St., Room S-45, Richmond, VA 23219, telephone  
(804) 786-4326.

† **December 4, 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.

### STATE WATER CONTROL BOARD

**October 17, 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 amend regulations entitled: **9 VAC 25-260-10  
et seq. Water Quality Standards.** The purpose of the  
proposed amendment is to establish a site-specific  
ammonia standard for Sandy Bottom Branch.

Statutory Authority: §§ 62.1-44.15(3a) and 62.1-44.15(10) of  
the Code of Virginia.

**Contact:** Alex Barron, Environmental Program Analyst,  
Department of Environmental Quality, P.O. Box 10009,  
Richmond, VA 23240, telephone (804) 698-4119 or FAX  
(804) 698-4522.

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**October 15, 1997 - 6 p.m.** -- Public Hearing  
James City County Board of Supervisors Room, 101-C  
Mounts Bay Road, Building C, Williamsburg, Virginia.

**October 16, 1997 - 6 p.m.** -- Public Hearing  
Roanoke County Administrative Center, 5404 Bernard Drive,  
Roanoke, Virginia.

**October 24, 1997 - 6 p.m.** -- Public Hearing  
James J. McCoart Administration Building, 1 County Complex  
Court, 4850 Davis Ford Road, Board Chambers, Prince  
William, Virginia.

**November 17, 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 consider **repealing** regulations entitled: **9  
VAC 25-90-10 et seq. Oil Discharge Contingency  
Plans and Administrative Fees for Approval, 9 VAC  
25-140-10 et seq. Aboveground Storage Tank  
Pollution Prevention Requirements, 9 VAC 25-130-10  
et seq. Facility and Aboveground Storage Tank  
Registration Requirements,** and adopting regulations  
entitled: **9 VAC 25-91-10 et seq. Facility and  
Aboveground Storage Tank (AST) Regulations.** The  
purpose of the proposed regulation is to replace three  
existing AST regulations. It has been drafted to  
eliminate duplicate inconsistencies and ambiguities  
between the three regulations and to provide additional  
information for regulated facilities in requesting  
regulatory variances.

Statutory Authority: §§ 62.1-44.2, 62.1-44.15 (10), 62.1-  
44.34:15, 62.1-44.34:15.1, and 62.1-44.34:19.1 of the Code  
of Virginia.

**Contact:** L. Samuel Lillard, AST Program Manager,  
Department of Environmental Quality, 629 E. Main St.,  
Richmond, VA 23219, telephone (804) 698-4276 or FAX  
(804) 698-4266.

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**October 15, 1997 - 6 p.m.** -- Public Hearing  
James City County Board of Supervisors Room, 101-C  
Mounts Bay Road, Building C, Williamsburg, Virginia.

**October 16, 1997 - 6 p.m.** -- Public Hearing  
Roanoke County Administrative Center, 5404 Bernard Drive,  
Roanoke, Virginia.

**October 24, 1997 - 6 p.m.** -- Public Hearing  
James J. McCoart Administration Building, 1 County Complex  
Court, 4850 Davis Ford Road, Board Chambers, Prince  
William, Virginia.

**November 17, 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 consider repealing regulations entitled: **9 VAC 25-100-10 et seq. Tank Vessel Financial Responsibility and Administrative Fees for Approval and adopting regulations entitled: 9 VAC 25-101-10 et seq. Tank Vessel Oil Discharge Contingency Plans and Financial Responsibility Regulation.** The purpose of the proposed action is to repeal this regulation and incorporate necessary provisions into a new regulation for tank vessels transferring or transporting oil upon state waters which combines the necessary requirements of two existing tank vessel regulations.

Statutory Authority: §§ 62.1-44.15 (10), 62.1-44.34:16 and 62.1-44.34:21 of the Code of Virginia.

**Contact:** Janet C. Queisser, Tank Vessel Program Manager, Department of Environmental Quality, 629 E. Main St., Richmond, VA 23219, telephone (804) 698-4268 or FAX (804) 698-4266.

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**October 21, 1997 - 2 p.m.** -- Public Hearing  
Department of Environmental Quality, 629 East Main Street,  
Richmond, Virginia.

**November 17, 1997** - Public comments may be submitted  
until 4 p.m. on this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Water Control Board intends to amend regulations entitled: **9 VAC 25-120-10 et seq. General Virginia Pollutant Discharge Elimination System (VPDES) Permit for Discharges from Petroleum Contaminated Sites.** The proposed general permit will regulate discharges of wastewaters from sites contaminated by petroleum products. This general permit will replace the Corrective Action Plan general permit, VAG000002, which expires February 24, 1998.

**Question and Answer Period:** A question and answer period will be held one half hour prior to the public hearing at the same location. Interested citizens will have an opportunity to ask questions pertaining to the proposal at that time.

**Request for Comments:** The board is seeking comments from interested persons on the proposed general permit regulation, as well as comments regarding the costs and benefits of the proposal or any other alternatives.

**Localities Affected:** The regulation will be applicable statewide and will not affect any one locality disproportionately.

**Comparison with Statutory Mandates:** The proposed general permit regulation does not exceed the specific minimum requirements of any legally binding state or federal mandate.

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

**Contact:** Richard Ayers, Technical Services Administrator, Department of Environmental Quality, P. O. Box 10009, Richmond, VA 23240, telephone (804) 698-4075 or FAX (804) 698-4032.

† **October 23, 1997 - 7:30 p.m.** -- Open Meeting  
Rockbridge County Courthouse Circuit Court, 2 South Main  
Street, Lexington, Virginia.

A meeting to receive comments on the proposed modification of a Virginia Pollutant Discharge Elimination System Permit for Lexington sewage treatment plant.

**Contact:** Keith Fowler, Department of Environment Quality, Valley Regional Office, P.O. Box 1129, Harrisonburg, VA 22801, telephone (540) 574-7800.

## INDEPENDENT

### STATE LOTTERY BOARD

† **October 22, 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) 692-7105 or FAX (804) 692-7775.

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# Calendar of Events

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## LEGISLATIVE

### ADMINISTRATIVE LAW ADVISORY COMMITTEE

**November 12, 1997 - 11 a.m.** -- Open Meeting  
State Capitol, Capitol Square, House Room 2, Richmond,  
Virginia. (Interpreter for the deaf provided upon request)

A general business meeting to discuss progress of the committee's studies.

**Contact:** Lyn Hammond Coughlin, Program Coordinator, Administrative Law Advisory Committee, General Assembly Bldg., 910 Capitol Square., Richmond, VA 23219, telephone (804) 786-3591 or FAX (804) 692-0625.

### JOINT SUBCOMMITTEE STUDYING THE STATUS AND NEEDS OF AFRICAN-AMERICAN MALES IN VIRGINIA - HJR 570

#### Criminal/Judicial System Task Force

† **November 5, 1997 - 10 a.m.** -- Open Meeting  
General Assembly Building, 910 Capitol Square, 5th Floor East Conference Room, Richmond, Virginia.

A regular meeting. Please submit all questions for Deputy Chief of Police John Kennedy regarding the profiling of African-American Males to Brenda Edwards or Micah Yarbrough, Division of Legislative Services, 910 Capitol Street, 2nd Floor, Richmond, VA 23219. If you are unable to attend or if have questions about scheduling, please contact Dawn Smith. Individuals requiring interpreter services or other special assistance should contact Committee Operations at least 10 days prior to the meeting.

**Contact:** Dawn B. Smith, Committee Operations, House of Delegates, State Capitol, Richmond, VA 23218, telephone (804) 786-7681 or (804) 786-2369/TDD

### SPECIAL AGRICULTURE SUBCOMMITTEE STUDYING THE IMPACT OF INDUSTRIAL SWINE PRODUCTION IN VIRGINIA - HJR 573

† **October 29, 1997 - 10 a.m.** -- Open Meeting  
General Assembly Building, 910 Capitol Square, House Room C, Richmond, Virginia.

A regular subcommittee meeting. Any questions concerning the agenda should be addressed to Nicole Beyer, Staff Attorney, Division of Legislative Services, (804) 786-3591. Individuals requiring interpreter services or other special assistance should contact Committee Operations at least 10 days prior to the meeting.

**Contact:** Kathleen Myers, Committee Operations, House of Delegates, State Capitol, P.O. Box 406, Richmond, VA 23218, telephone (804) 786-7681 or (804) 786-2369/TDD

### VIRGINIA CODE COMMISSION

**October 29, 1997 - 10 a.m.** -- Open Meeting  
**December 11, 1997 - 10 a.m.** -- Open Meeting  
General Assembly Building, 910 Capitol Square, 6th Floor, Speaker's Conference Room, Richmond, Virginia.

A meeting to review Titles 14.1 (Costs, Fees, Salaries and Allowances) and 17 (Courts of Record) of the Code of Virginia for recodification.

**Contact:** Jane D. Chaffin, Deputy Registrar, General Assembly Bldg., 2nd Floor, 910 Capitol Square, Richmond, VA 23219, telephone (804) 786-3591, FAX (804) 692-0625 or e-mail jchaffin@leg.state.va.us.

### JOINT LEGISLATIVE AUDIT AND REVIEW COMMISSION

**October 14, 1997 - 9:30 a.m.** -- Open Meeting  
General Assembly Building, 910 Capitol Square, Senate Room A, Richmond, Virginia.

Staff briefings on the Comprehensive Services Act, Nonsecurity Staffing Needs, and Year 2000 Compliance of State Computer Program.

**Contact:** Phillip A. Leone, Director, Joint Legislative Audit and Review Commission, General Assembly Building, 910 Capitol Square, Suite 1100, Richmond, VA 23219, telephone (804) 786-1258.

### JOINT SUBCOMMITTEE STUDYING NONCREDIT EDUCATION FOR WORKFORCE TRAINING IN VIRGINIA - HJR 622

† **November 10, 1997 - 10 a.m.** -- Open Meeting  
Center for Innovative Technology, 2214 Rock Hill Road, Herndon, Virginia.

A regular meeting of the committee.

**Contact:** Lois V. Johnson, House Committee Operations, P.O. Box 406, Richmond, VA 23218, telephone (804) 786-7681.

### COMMISSION ON THE COMMONWEALTH'S PLANNING AND BUDGETING PROCESS

**October 15, 1997 - 10 a.m.** -- Open Meeting  
General Assembly Building, 910 Capitol Square, Senate Room B, Richmond, Virginia.

A regular meeting (SJR 350, 1997). Individuals requiring interpreter services or other accommodations should telephone Senate Committee Operations or write to

Senate Committee Operations, P.O. Box 396, Richmond, VA 23218 at least 10 days prior to the meeting.

**Contact:** Patricia J. Lung, Senate Committee Operations, P.O. Box 396, Richmond, VA 23218, telephone (804) 786-4638 or (804) 225-4749/TDD ☎

**COMMISSION ON THE FUTURE OF PUBLIC EDUCATION AND ADVISORY TASK FORCE**

† **November 13, 1997 - 10 a.m.** -- Open Meeting  
 † **December 11, 1997 - 10 a.m.** -- Open Meeting  
 General Assembly Building, 910 Capitol Square, House Room D, Richmond, Virginia.

A regular meeting.

**Contact:** Helen G. Rolfe, Ph.D., Project Manager, Commission on the Future of Public Education, 919 W. Franklin St., P.O. Box 843061, Richmond, VA 23284-3061, telephone (804) 828-6252 or FAX (804) 786-3216.

**JOINT COMMISSION ON TECHNOLOGY AND SCIENCE**

† **October 14, 1997 - 1 p.m.** -- Open Meeting  
 General Assembly Building, 910 Capitol Square, Senate Room A, Richmond, Virginia. ☎

A regular meeting. Information about the meeting agenda can be obtained from the commission's website at <http://legis.state.va.us/agencies.htm>.

**Contact:** Diane Horvath, Director, Joint Commission on Technology and Science, General Assembly Bldg., 910 Capitol St., Richmond, VA 23219, telephone (804) 786-3591.

† **October 22, 1997 - 1:30 p.m.** -- Videoconference Meeting  
 Primary Videoconference Site:  
 Northern Virginia Community College, Alexandria Campus, 3001 North Beauregard Street, Visdorf Building, Room 337, Alexandria, Virginia.

Secondary Videoconference Sites:  
 Old Dominion University, Hampton Boulevard and Bolling Avenue, Spong Hall, Hampton, Virginia.

Longwood College, Pine and Franklin Street, Hull Building, Room 128, Farmville, Virginia.

South Boston Continuing Education Center, 3403 Old Halifax Road, Classroom C, South Boston, Virginia.

J. Sargeant Reynolds Community College, 1636 East Parham Road, North Run Facility Business Park, Room 108, Richmond, Virginia.

A meeting to discuss TVW, a statewide television network in the State of Washington, the sole purpose of which is to provide unedited coverage of state government deliberations and public policy events. Scheduled to be present at the videoconference are Delegates Plum, Lovelace and May; Senators Howell

and Ticer; and Denny Heck, President, TVW. To learn more about TVW, please visit <http://www.tvw.org> on the Internet.

**Contact:** Diane Horvath, Director, Joint Commission on Technology and Science, General Assembly Bldg., 910 Capitol Square, Richmond, VA 23219, telephone (804) 786-3591 or visit the commission's website at <http://legis.state.va.us/agencies.htm>.

**CHRONOLOGICAL LIST**

**OPEN MEETINGS**

**October 14**

- Chesapeake Bay Local Assistance Board
  - Northern Area Review Committee
  - Southern Area Review Committee
- † Corrections, Board of
  - Correctional Services Committee
- Disability Services Council
- Economic Development Partnership
  - Virginia Tourism Corporation
- Environmental Quality, Department of
- Legislative Audit and Review Commission, Joint
- † Nursing, Board of
- Resources Authority, Virginia
- † Technology and Science, Joint Commission on

**October 15**

- Alcoholic Beverage Control Board
- Asbestos and Lead, Virginia Board for
- Conservation and Recreation, Department of
  - Fall River Renaissance Committee
- † Corrections, Board of
  - Administration Committee
- † Health Professions, Board of
  - Ad Hoc Committee on Telehealth
- Independent Living Council, Statewide
- † Nursing and Medicine, Joint Boards of
- Planning and Budgeting Process, Commission on the Commonwealth's
- Social Services, State Board of
- † Transportation Board, Commonwealth
- Treasury Board

**October 16**

- Agriculture and Consumer Services, Department of
  - Pesticide Control Board
- Architects, Professional Engineers, Land Surveyors and Landscape Architects, Board of
- Medicine, Board of
- Social Services, State Board of

**October 17**

- † Conservation and Recreation, Department of
  - Board of Conservation and Development of Public Beaches
- † Correctional Education, Board of

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## Calendar of Events

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General Services, Department of  
- Design-Building/Construction Management Review Board  
Medicine, Board of

### October 18

Medicine, Board of  
- Credentials Committee

### October 20

Accountancy, Board for  
Forestry, Board of

### October 21

Accountancy, Board for  
† Charitable Gaming Commission  
Forestry, Board of  
† Housing Development Authority, Virginia  
† Litter Control and Recycling Fund Advisory Board  
† Nursing, Board of  
† Psychology, Board of

### October 22

† Agriculture and Consumer Services, Department of  
- Virginia Marine Products Board  
Contractors, Board for  
- Disciplinary Board  
† Health, Department of  
- Ryan White Comprehensive AIDS Resource Emergency Act of 1990  
† Lottery Board  
† Nursing, Board of  
† Technology and Science, Joint Commission on Visually Handicapped, Board for the

### October 23

† Dentistry, Board of  
Fire Services Board, Virginia  
- Fire Prevention and Control Committee  
- Fire/EMS Education and Training Committee  
- Legislative/Liaison Committee  
Game and Inland Fisheries, Board of  
† Health, State Board of  
† Nursing, Board of  
† Richmond Hospital Authority  
- Board of Commissioners  
† Water Control Board, State

### October 24

† Community Service and Volunteerism, Governor's Commission on  
Fire Services Board, Virginia  
Game and Inland Fisheries, Board of  
† Health, State Board of  
† Higher Education, State Council of  
- Executive Committee  
- Resources Committee  
- Search Committee  
† Longwood College  
- Board of Visitors  
Social Work, Board of  
- Regulatory/Legislative Committee

### October 25

† Conservation and Recreation, Department of  
- Scenic River Advisory Board  
† Longwood College  
- Board of Visitors

### October 27

Alcoholic Beverage Control Board  
† Conservation and Recreation, Department of  
- Board on Conservation and Development of Public Beaches  
† Economic Development Partnership, Virginia  
- Nominations Committee  
† Nursing, Board of

### October 28

† Auctioneers Board  
Aviation Board, Virginia  
Marine Resources Commission  
† Nursing, Board of  
† Small Business Financing Authority, Virginia  
- Loan Committee

### October 29

† Agricultural Subcommittee Studying the Impact of Industrial Swine Production in Virginia - HJR 573  
Agriculture and Consumer Services, Department of  
- Virginia Winegrowers Advisory Board  
Aviation Board, Virginia  
Code Commission, Virginia  
Environmental Quality, Department of

### October 30

Environmental Quality, Department of  
Opticians, Board for  
Soil Scientists, Board for Professional

### November 3

† Library Board  
- Archival and Information Services Committee  
- Automation and Networking Committee  
- Facilities Committee  
- Legislative and Finance Committee  
- Publications and Educational Services Committee  
- Public Library Development Committee  
- Records Management Committee

### November 4

Hopewell Industrial Safety Council  
† Veterinary Medicine, Board of

### November 5

Deaf and Hard-of-Hearing, Department for the  
- Advisory Board  
† Veterinary Medicine, Board of

### November 6

† Conservation and Recreation, Department of  
- Falls of the James Scenic River Advisory Board  
† Medicine, Board of  
Mental Health, Mental Retardation and Substance Abuse Services, Department of  
- Pilot Leadership Team

**November 7**

- † Psychology, Board of
- Credentials Committee

**November 11**

- Resources Authority, Virginia

**November 12**

- Administrative Law Advisory Committee
- † Juvenile Justice, State Board of

**November 13**

- † Conservation and Recreation, Department of
- Falls of the James Scenic River Advisory Board
- Pharmacy, Board of
- † Physical Fitness and Sports, Governor's Commission on
- † Public Education, Commission on the Future of

**November 14**

- † Medicine, Board of
- † Opticians, Board for
- † Transportation Safety Board

**November 15**

- † Visually Handicapped, Department for the
- Vocational Rehabilitation Advisory Council

**November 17**

- Local Government, Commission on

**November 18**

- † Agriculture and Consumer Services, Department of
- Virginia Horse Industry Board
- † Environmental Quality, Department of
- Virginia Groundwater Protection Steering Committee
- † Mental Health, Mental Retardation and Substance Abuse Services, Department of
- Performance Outcome Measurement System (POMS) Advisory Committee
- Real Estate Appraiser Board

**November 19**

- † Agriculture and Consumer Services, Department of
- Virginia State Apple Board
- † Funeral Directors and Embalmers, Board of
- Examination Task Force
- † Noncredit Education for Workforce Training in Virginia - HJR 622, Joint Subcommittee Studying

**November 20**

- † Medical Assistance Services, Department of
- Drug Utilization Review Board

**November 21**

- General Services, Department of
- Design-Build/Construction Management Review Board
- Professional Counselors, Marriage and Family Therapists and Substance Abuse Treatment Professionals, Board of Licensed

**November 24**

- Cosmetology, Board for

- † Elections, State Board of

**November 25**

- † Higher Education, State Council of
- Executive Committee

**December 2**

- Hopewell Industrial Safety Council

**December 3**

- Fire Services Board, Virginia
- Sprinkler Committee/Code Change Committee

**December 4**

- Fire Services Board, Virginia
- Fire Prevention and Control Committee
- Fire/EMS Education and Training Committee
- Legislative/Liaison Committee
- † Voluntary Formulary Board, Virginia

**December 5**

- Fire Services Board, Virginia

**December 9**

- † Medicine, Board of
- Resources Authority, Virginia

**December 11**

- Code Commission, Virginia
- † Public Education, Commission on the Future of

**December 16**

- † Medical Assistance Services, Board of

**December 19**

- † Higher Education, State Council of
- Executive Committee

## PUBLIC HEARINGS

**October 14**

- Criminal Justice Services Board

**October 15**

- State Water Control Board

**October 16**

- State Water Control Board

**October 21**

- State Water Control Board

**October 23**

- Psychology, Board of

**October 24**

- State Water Control Board

**November 3**

- Audiology and Speech-Language Pathology, Board of

**November 5**

- Criminal Justice Services Board

**November 17**

- Education, Board of

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## Calendar of Events

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† Voluntary Formulary Board, Virginia

**November 18**

Child Day-Care Council  
Real Estate Appraiser Board

**November 19**

Child Day-Care Council  
† Virginia Racing Commission

**November 20**

Child Day-Care Council

**November 24**

Child Day-Care Council

**November 25**

Child Day-Care Council

**December 11**

Agriculture and Consumer Services, Board of