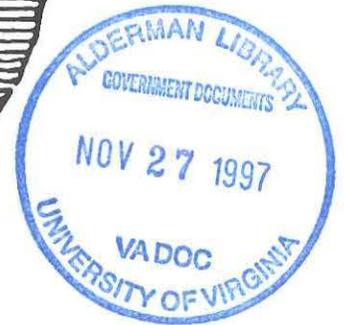
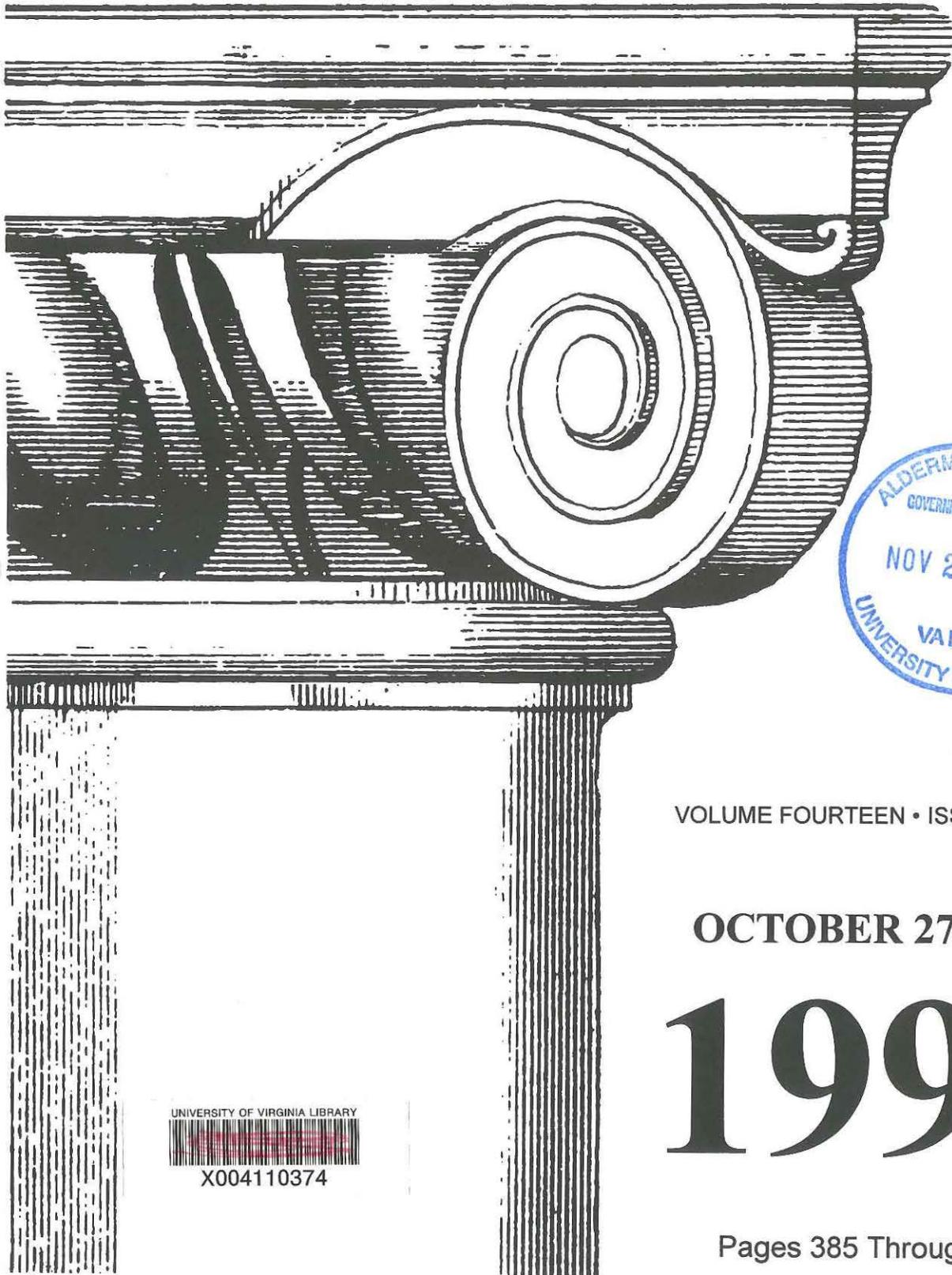


COD 5/R 26/
14-3 c.2

THE VIRGINIA REGISTER

VA
DOC

OF REGULATIONS



VOLUME FOURTEEN • ISSUE THREE

OCTOBER 27, 1997

1997

Pages 385 Through 542

UNIVERSITY OF VIRGINIA LIBRARY



X004110374

THE VIRGINIA REGISTER INFORMATION PAGE

THE VIRGINIA REGISTER is an official state publication issued every other week throughout the year. Indexes are published quarterly, and the last index of the year is cumulative. THE VIRGINIA REGISTER has several functions. The new and amended sections of regulations, both as proposed and as finally adopted, are required by law to be published in THE VIRGINIA REGISTER OF REGULATIONS. In addition, THE VIRGINIA REGISTER is a source of other information about state government, including all emergency regulations and executive orders issued by the Governor, the Virginia Tax Bulletin issued periodically by the Department of Taxation, and notices of public hearings and open meetings of state agencies.

ADOPTION, AMENDMENT, AND REPEAL OF REGULATIONS

An agency wishing to adopt, amend, or repeal regulations must first publish in the *Virginia Register* a notice of intended regulatory action; a basis, purpose, substance and issues statement; an economic impact analysis prepared by the Department of Planning and Budget; the agency's response to the economic impact analysis; a summary; a notice giving the public an opportunity to comment on the proposal; and the text of the proposed regulation.

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

The appropriate standing committee of each branch of the General Assembly may meet during the promulgation or final adoption process and file an objection with the Registrar and the promulgating agency. The objection will be published in the *Virginia Register*. Within 21 days after receipt by the agency of a legislative objection, the agency shall file a response with the Registrar, the objecting legislative committee, and the Governor.

When final action is taken, the agency again publishes the text of the regulation as adopted, highlighting all changes made to the proposed regulation and explaining any substantial changes made since publication of the proposal. A 30-day final adoption period begins upon final publication in the *Virginia Register*.

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

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

A regulation becomes effective at the conclusion of the 30-day final adoption period, or at any other later date specified by the promulgating agency, unless (i) a legislative objection has been filed, in which event the regulation, unless withdrawn, becomes effective on the date specified, which shall be after the expiration of the 21-day extension period; (ii) the Governor exercises his authority to require the agency to provide for additional public comment, in which event

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

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

EMERGENCY REGULATIONS

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

During the time the emergency status is in effect, the agency may proceed with the adoption of permanent regulations through the usual procedures. To begin promulgating the replacement regulation, the agency must (i) 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.

"THE VIRGINIA REGISTER OF REGULATIONS" (USPS-001831) is published bi-weekly, with quarterly cumulative indices published in January, April, July and October, for \$100 per year by the Virginia Code Commission, General Assembly Building, Capitol Square, Richmond, Virginia 23219. Telephone (804) 786-3591. Periodical Postage Rates Paid at Richmond, Virginia. POSTMASTER: Send address changes to THE VIRGINIA REGISTER OF REGULATIONS, 910 CAPITOL STREET, 2ND FLOOR, RICHMOND, VIRGINIA 23219.

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

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

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

PUBLICATION DEADLINES AND SCHEDULES

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

October 1997 through September 1998

Material Submitted By Noon Wednesday

Will Be Published On

Volume 14

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

INDEX 1 - Volume 14

January 1998

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

March 11, 1998

March 30, 1998

INDEX 2 - Volume 14

April 1998

March 25, 1998

April 13, 1998

April 8, 1998

April 27, 1998

April 22, 1998

May 11, 1998

May 6, 1998

May 25, 1998

May 20, 1998

June 8, 1998

June 3, 1998

June 22, 1998

INDEX 3 - Volume 14

July 1998

June 17, 1998

July 6, 1998

July 1, 1998

July 20, 1998

July 15, 1998

August 3, 1998

July 29, 1998

August 17, 1998

August 12, 1998

August 31, 1998

August 26, 1998

September 14, 1998

FINAL INDEX - Volume 14

October 1998

TABLE OF CONTENTS

Tables of contents for issues in Volumes 13 and 14 are available on the *Register's* internet home page
(<http://legis.state.va.us/codecomm/regindex.htm>).

NOTICES OF INTENDED REGULATORY ACTION

<u>TITLE 3. ALCOHOLIC BEVERAGES</u>	
Alcoholic Beverage Control Board.....	389
<u>TITLE 4. CONSERVATION AND NATURAL RESOURCES</u>	
Marine Resources Commission.....	389
Department of Mines, Minerals and Energy	390
Board of Coal Mining Examiners.....	392
<u>TITLE 8. EDUCATION</u>	
State Board of Education.....	392
<u>TITLE 9. ENVIRONMENT</u>	
State Air Pollution Control Board.....	392
State Water Control Board	397
<u>TITLE 11. GAMING</u>	
Virginia Racing Commission.....	398
<u>TITLE 12. HEALTH</u>	
Department of Medical Assistance Services	399
State Mental Health, Mental Retardation and Substance Abuse Services Board	399
<u>TITLE 13. HOUSING</u>	
Board of Housing and Community Development.....	401
<u>TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING</u>	
Board for Branch Pilots.....	401
Board for Hearing Aid Specialists.....	401
Real Estate Board	402
<u>TITLE 19. PUBLIC SAFETY</u>	
Department of State Police.....	402
<u>TITLE 22. SOCIAL SERVICES</u>	
Board of Social Services	402

PUBLIC COMMENT PERIODS - PROPOSED REGULATIONS

<u>TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING</u>	
Real Estate Board	403

PROPOSED REGULATIONS

<u>TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING</u>	
<u>REAL ESTATE BOARD</u>	
Virginia Real Estate Board Licensing Regulations (amending 18 VAC 135-20-10, 18 VAC 135-20-20, 18 VAC 135-20-30, 18 VAC 135-20-40, 18 VAC 135-20-50, 18 VAC 135-20-60, 18 VAC 135-20-80, 18 VAC 135-20-90, 18 VAC 135-20-100, 18 VAC 135-20-120, 18 VAC 135-20-160, 18 VAC 135-20-170, 18 VAC 135-20-180, 18 VAC 135-20-210, 18 VAC 135-20-220, 18 VAC 135-20-240, 18 VAC 135-20-260, 18 VAC 135-20-270, 18 VAC 135-20-280, 18 VAC 135-20-290, 18 VAC 135-20-300, 18 VAC 135-20-310, 18 VAC 135-20-350, 18 VAC 135-20-360, 18 VAC 135-20-370, 18 VAC 135-20-380, 18 VAC 135-20-390, and 18 VAC 135-20-410; adding 18 VAC 135-20-45; repealing 18 VAC 135-20-420, 18 VAC 135-20-430, and 18 VAC 135-20-440).....	404

FINAL REGULATIONS

<u>TITLE 4. CONSERVATION AND NATURAL RESOURCES</u>	
<u>MARINE RESOURCES COMMISSION</u>	
Pertaining to Grey Trout (Weakfish) (amending 4 VAC 20-380-60).....	420
Pertaining to the Taking of Bluefish (amending 4 VAC 20-450-20).....	420
Pertaining to Summer Flounder (amending 4 VAC 20-620-60).....	420
Pertaining to Restrictions on Oyster Harvests (amending 4 VAC 20-720-40, 4 VAC 20-720-50, 4 VAC 20-720-60, 4 VAC 20-720-70 and 4 VAC 20-720-80).....	421
Pertaining to Spadefish (amending 4 VAC 20-970-30).....	422

Table of Contents

TITLE 6. CRIMINAL JUSTICE AND CORRECTIONS

BOARD OF JUVENILE JUSTICE

Minimum Standards for Virginia Delinquency Prevention and Youth Development Act Grant Programs (amending 6 VAC 35-60-10, 6 VAC 35-60-20, 6 VAC 35-60-40, 6 VAC 35-60-50, 6 VAC 35-60-60, 6 VAC 35-60-170, 6 VAC 35-60-180, 6 VAC 35-60-190, 6 VAC 35-60-280, 6 VAC 35-60-290, 6 VAC 35-60-320, 6 VAC 35-60-330, 6 VAC 35-60-380, 6 VAC 35-60-390, 6 VAC 35-60-400, 6 VAC 35-60-410, 6 VAC 35-60-440, 6 VAC 35-60-450, 6 VAC 35-60-460, 6 VAC 35-60-480, 6 VAC 35-60-490, 6 VAC 35-60-500, 6 VAC 35-60-580, and 6 VAC 35-60-600; adding 6 VAC 35-60-71, 6 VAC 35-60-215, 6 VAC 35-60-235, 6 VAC 35-60-495, and 6 VAC 35-60-605; repealing 6 VAC 35-60-70 through 6 VAC 35-60-160, 6 VAC 35-60-200 through 6 VAC 35-60-270, 6 VAC 35-60-300, 6 VAC 35-60-310, 6 VAC 35-60-340 through 6 VAC 35-60-370, 6 VAC 35-60-420, 6 VAC 35-60-430, 6 VAC 35-60-470, 6 VAC 35-60-510 through 6 VAC 35-60-570, 6 VAC 35-60-590, and 6 VAC 35-60-610 through 6 VAC 35-60-670)..... 422

TITLE 9. ENVIRONMENT

STATE AIR POLLUTION CONTROL BOARD

Regulations for the Control and Abatement of Air Pollution: General Definitions (amending 9 VAC 5-10-10 and 9 VAC 5-10-20)..... 430

Regulations for the Control and Abatement of Air Pollution: General Provisions (amending 9 VAC 5-20-50; repealing 9 VAC 5-20-20, 9 VAC 5-20-30, 9 VAC 5-20-40, 9 VAC 5-20-60, 9 VAC 5-20-90 through 9 VAC 5-20-150, and 9 VAC 5-20-210 through 9 VAC 5-20-213)..... 430

Regulations for the Control of Motor Vehicle Emissions in the Northern Virginia Area (amending 9 VAC 5-91-10, 9 VAC 5-91-20, and 9 VAC 5-91-150; repealing 9 VAC 5-91-40, 9 VAC 5-91-60, 9 VAC 5-91-80, and 9 VAC 5-91-110; adding 9 VAC 5-91-41)..... 430

Regulation for the Control of Emissions from Fleet Vehicles (amending 9 VAC 5-121-10, 9 VAC 5-121-20, 9 VAC 5-121-80 and 9 VAC 5-121-260; repealing 9 VAC 5-121-40, 9 VAC 5-121-50, 9 VAC 5-121-60, and 9 VAC 5-121-90)..... 430

Regulation for Transportation Conformity (amending 9 VAC 5-150-10 and 9 VAC 5-150-20; repealing 9 VAC 5-150-50, 9 VAC 5-150-60, 9 VAC 5-150-70, 9 VAC 5-150-90, and 9 VAC 5-150-100)..... 431

Regulation for General Conformity (amending 9 VAC 5-160-10 and 9 VAC 5-160-20; repealing 9 VAC 5-160-50, 9 VAC 5-160-60, 9 VAC 5-160-70, 9 VAC 5-160-90, and 9 VAC 5-160-100)..... 431

Regulation for General Administration. (9 VAC 5-170-10 et seq.)..... 431

TITLE 14. INSURANCE

STATE CORPORATION COMMISSION

Bureau of Insurance

Rules Governing New Annuity Mortality Tables for Use in Determining Reserve Liabilities for Annuities (amending 14 VAC 5-50-10 through 14 VAC 5-50-40; adding 14 VAC 5-50-41)..... 484

TITLE 24. TRANSPORTATION AND MOTOR VEHICLES

COMMONWEALTH TRANSPORTATION BOARD

Disposal of Limited Access Control. (24 VAC 30-400-10)..... 486

EMERGENCY REGULATIONS

TITLE 12. HEALTH

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Health Insurance Program for Working Uninsured Individuals. State Programs (adding Part IV, 12 VAC 30-100-400 et seq.)..... 487

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF LICENSED PROFESSIONAL COUNSELORS, MARRIAGE AND FAMILY THERAPISTS AND SUBSTANCE ABUSE TREATMENT PROFESSIONALS

Regulations Governing the Certification of Rehabilitation Providers (amending 18 VAC 115-40-10, 18 VAC 115-40-20, 18 VAC 115-40-22, 18 VAC 115-40-25, 18 VAC 115-40-40 and 18 VAC 115-40-50; adding 18 VAC 115-40-26 and 18 VAC 115-40-27)..... 495

TITLE 22. SOCIAL SERVICES

BOARD OF SOCIAL SERVICES

Virginia Independence Program (amending 22 VAC 40-35-10; adding 22 VAC 40-35-125)..... 505

SCHEDULES FOR COMPREHENSIVE REVIEW OF REGULATIONS

DEPARTMENT OF SOCIAL SERVICES

Standards and Regulations for Licensed Child Day Center Systems. (22 VAC 15-60-10 et seq.)..... 508

Standards and Regulations for Licensed Child Day Center Systems. (22 VAC 40-92-10 et seq.)..... 508

GENERAL NOTICES/ERRATA

STATE WATER CONTROL BOARD

Proposed Consent Special Order - Allen Elliott t/a Clarksville Exxon.....509

Proposed Consent Special Order - Augusta County Service Authority and City of Staunton.....509

Proposed Amended Consent Special Order - Boy Scouts of America-Capitol Area Council/Lake Merriweather.....509

Proposed Consent Special Orders - Cardinal Concrete Company509

Proposed Amended Consent Special Order - Donald DeWitt and Shenandoah Mobile Home Court, Inc.510

Proposed Consent Special Order - Dubrook Concrete, Inc.510

Proposed Consent Special Order - Chip Edwards and Associates, Inc.510

Proposed Consent Special Order - King George County Board of Supervisors - Elementary and High School Sewage Treatment Plant.....510

Proposed Amended Consent Special Order - City of Lexington.....511

Proposed Consent Special Order - Miller Fuel Company, Inc.511

Proposed Consent Special Order - Nelson County School Board.....511

Proposed Consent Special Order - Ogden Aviation Fueling Company of Virginia511

Proposed Special Order - John W. Scott d/b/a Lakewood Trailer Park.....512

Proposed Consent Special Orders - Virginia Concrete Company, Inc.512

VIRGINIA CODE COMMISSION

Notice to Subscribers512

Notice to State Agencies512

Forms for Filing Material on Dates for Publication in *The Virginia Register of Regulations*512

ERRATA

TITLE 6. CRIMINAL JUSTICE AND CORRECTIONS

BOARD OF JUVENILE JUSTICE

Standards for Juvenile Residential Facilities. (6 VAC 35-140-10 et seq.).....513

CALENDAR OF EVENTS

EXECUTIVE

Open Meetings and Public Hearings.....514

INDEPENDENT

Open Meetings and Public Hearings.....535

LEGISLATIVE

Open Meetings and Public Hearings.....535

CHRONOLOGICAL LIST

Open Meetings539

Public Hearings541

Table of Contents

NOTICES OF INTENDED REGULATORY ACTION

Symbol Key

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

TITLE 3. ALCOHOLIC BEVERAGES

ALCOHOLIC BEVERAGE 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 Alcoholic Beverage Control Board intends to consider amending regulations entitled: **3 VAC 5-50-10 et seq. Retail Operations**. The purpose of the proposed action is to (i) simplify regulations on nonmember use of club facilities; (ii) simplify regulations establishing food inventory and sale qualifications for retail licensees; (iii) provide a process for the approval of employees with certain criminal convictions; (iv) clarify rules relating to lewd conduct; and (v) allow an exemption to happy hour regulations for educational tastings. The agency intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: § 4.1-111 of the Code of Virginia.

Public comments may be submitted until December 31, 1997.

Contact: W. Curtis Coleburn, Secretary, Department of Alcoholic Beverage Control, P.O. Box 27491, Richmond, VA 23261-9491, telephone (804) 213-4409 or FAX (804) 213-4411.

VA.R. Doc. No. R98-66; Filed October 8, 1997, 10:29 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 Alcoholic Beverage Control Board intends to consider amending regulations entitled: **3 VAC 5-70-10 et seq. Other Provisions**. The purpose of the proposed action is to (i) clarify storage requirements for alcoholic beverages used for culinary purposes; (ii) eliminate certain reporting requirements for industrial and hospital permittees; (iii) increase the record retention period for licensees from two to three years; (iv) permit the use of electronic data interchange programs; (v) allow wholesalers to offer different prices to on-premises and off-premises retailers; (vi) allow manufacturers to make gifts of alcoholic beverages for certain public events; and (vii) provide a schedule of penalties for first violations of certain statutes or regulations. The agency intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: § 4.1-111 of the Code of Virginia.

Public comments may be submitted until December 31, 1997.

Contact: W. Curtis Coleburn, Secretary, Department of Alcoholic Beverage Control, P.O. Box 27491, Richmond, VA

23261-9491, telephone (804) 213-4409 or FAX (804) 213-4411.

VA.R. Doc. No. R98-65; Filed October 8, 1997, 10:29 a.m.



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.

Notices of Intended Regulatory Action

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.

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.

Notices of Intended Regulatory Action

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. R98-26; 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.

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,

Notices of Intended Regulatory Action

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 8. EDUCATION

STATE BOARD OF EDUCATION

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Board of Education intends to consider amending regulations entitled: **8 VAC 20-100-10 et seq. Regulations Governing Literary Loan Applications in Virginia.** The purpose of the proposed action is to amend the regulation to conform the regulation to changes made by Chapters 372 and 384 of the 1997 Acts of the Assembly by (i) increasing the limit on a single Literary Fund loan from \$5 million to \$7.5 million and (ii) providing the board with the authority to make Literary Fund loans for purchasing and installing educational technology equipment and infrastructure. A third potential change to the regulations stems from a request from the Piedmont Regional Education Program (PREP) to permit Literary Fund loans to be issued for regional programs using a "Blended Interest Rate." The Board of Education has the authority to set annual interest rates for Literary Fund loans pursuant to § 22.1-150 of the

Code of Virginia, within the range of 2.0% and 6.0% per year. Current interest rates are established within this range by the board's regulations governing Literary Fund loans and are based on each school division's composite index. The agency intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: §§ 22.1-16, 22.1-146 and 22.1-147 of the Code of Virginia.

Public comments may be submitted until November 26, 1997.

Contact: Daniel S. Timberlake, Assistant Superintendent for Finance, Department of Education, P.O. Box 2120, Richmond, VA 23218, telephone (804) 225-2025 or FAX (804) 225-2300.

VA.R. Doc. No. R98-53; Filed September 25, 1997, 10:11 a.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 5-80-10 et seq. Regulations for the Control and Abatement 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 in 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 in 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.

Notices of Intended Regulatory Action

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.

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_x (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_x, 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.

Notices of Intended Regulatory Action

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.

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,

Notices of Intended Regulatory Action

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.

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

Notices of Intended Regulatory Action

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).
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 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

Notices of Intended Regulatory Action

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.

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.

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

Notices of Intended Regulatory Action

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.

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 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

Notices of Intended Regulatory Action

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 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. R98-42; 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.

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

Notices of Intended Regulatory Action

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.

TITLE 13. HOUSING

BOARD OF HOUSING AND COMMUNITY DEVELOPMENT

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Housing and Community Development intends to consider amending regulations entitled: **13 VAC 5-61-10 et seq. Virginia Uniform Statewide Building Code.** The purpose of the proposed action is to amend 13 VAC 5-61-440 by establishing standards for automatic sprinkler systems in certain dormitories at colleges and universities. The agency intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: § 36-99.3 of the Code of Virginia.

Public comments may be submitted until November 28, 1997.

Contact: George Rickman, Regulatory Coordinator, Department of Housing and Community Development, 501 N. 2nd St., Richmond, VA 23219, telephone (804) 371-7170 or FAX (804) 371-7092.

VA.R. Doc. No. R98-64; Filed October 6, 1997, 4:36 p.m.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

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.

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.

Notices of Intended Regulatory Action

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.

† 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 promulgating regulations entitled: **18 VAC 135-60-10 et seq. Common Interest Community Management Information Fund Regulations**. The purpose of the proposed regulation is to set fees and deadlines for filing common interest community annual reports with the Real Estate Board. The agency does not intend to hold a public hearing on the proposed regulation after publication.

Statutory Authority: §§ 54.1-2105.1, 55-79.93:1, 55-504.1, 55-516.1 and 55-530 of the Code of Virginia.

Public comments may be submitted until November 28, 1997.

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

VA.R. Doc. No. R98-54; Filed September 26, 1997, 11:50 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.

TITLE 22. SOCIAL SERVICES

BOARD OF SOCIAL 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 Board of Social Services intends to consider amending regulations entitled: **22 VAC 40-35-5 et seq. Virginia Independence Program**. The purpose of the proposed action is to amend the regulation to add the Virginia Targeted Grant Program. The agency does not intend to hold a public hearing on the proposed regulation after publication.

Statutory Authority: §§ 63.1-25 and 63.1-25.3 of the Code of Virginia.

Public comments may be submitted until November 27, 1997.

Contact: David Olds, Program Manager, Department of Social Services, 730 E. Broad St., Richmond, VA 23219, telephone (804) 692-2251.

VA.R. Doc. No. R98-55; Filed September 30, 1997, 3:04 p.m.

PUBLIC COMMENT PERIODS - PROPOSED REGULATIONS



PUBLIC COMMENT PERIODS REGARDING STATE AGENCY REGULATIONS

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

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

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

REAL ESTATE BOARD

December 10, 1997 - 2 p.m. – Public Hearing
Department of Professional and Occupational Regulation,
3600 West Broad Street, Richmond, Virginia.

December 27, 1997 – Public comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Real Estate Board intends to amend regulations entitled: **18 VAC 135-20-10 et seq. Virginia Real Estate Board Licensing Regulations**. The purpose of the proposed action is to replace emergency regulations governing the duties of real estate brokers and salespersons and to incorporate statutory changes effective July 1, 1995, and July 1, 1996.

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

Contact: Karen W. O'Neal, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8552.



PROPOSED REGULATIONS

For information concerning Proposed Regulations, see Information Page.

Symbol Key

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

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

REAL ESTATE BOARD

Title of Regulation: 18 VAC 135-20-10 et seq. Virginia Real Estate Board Licensing Regulations (amending 18 VAC 135-20-10, 18 VAC 135-20-20, 18 VAC 135-20-30, 18 VAC 135-20-40, 18 VAC 135-20-50, 18 VAC 135-20-60, 18 VAC 135-20-80, 18 VAC 135-20-90, 18 VAC 135-20-100, 18 VAC 135-20-120, 18 VAC 135-20-160, 18 VAC 135-20-170, 18 VAC 135-20-180, 18 VAC 135-20-210, 18 VAC 135-20-220, 18 VAC 135-20-240, 18 VAC 135-20-260, 18 VAC 135-20-270, 18 VAC 135-20-280, 18 VAC 135-20-290, 18 VAC 135-20-300, 18 VAC 135-20-310, 18 VAC 135-20-350, 18 VAC 135-20-360, 18 VAC 135-20-370, 18 VAC 135-20-380, 18 VAC 135-20-390, and 18 VAC 135-20-410; adding 18 VAC 135-20-45; repealing 18 VAC 135-20-420, 18 VAC 135-20-430, and 18 VAC 135-20-440).

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

Public Hearing Date: December 10, 1997 - 2 p.m.

Public comments may be submitted until December 27, 1997.

(See Calendar of Events section
for additional information)

Basis: Section 54.1-2105 of the Code of Virginia states that the board "may do all things necessary and convenient for carrying into effect the provisions of this chapter and may promulgate necessary regulations."

Purpose: The Real Estate Board is revising its existing regulations to replace emergency regulations governing the duties of real estate brokers and salespersons and to incorporate statutory changes effective July 1, 1995, and July 1, 1996. The 1995 statutory changes added agency law which provides additional protections to consumers by ensuring their knowledge of the relationship of all parties of a transaction to each other. The 1996 changes involved continuing education amendments that further ensure that all licensees maintain minimum competence and therefore practice in a manner which protects public health, safety and welfare.

Substance: The proposed amendments:

1. Add language consistent with §§ 54.1-2130 through 54.1-2144 of the Code of Virginia which became effective July 1, 1995. (The board had emergency regulations incorporating these changes in place from December 14, 1995, through December 15, 1996.)

2. Clarify requirements for firm licenses and allow limited liability companies to obtain a firm license.

3. Allow corporations to obtain a salesperson or associate broker license in accordance with statutory changes effective July 1, 1995.

4. Prohibit concurrent licensees from obtaining another concurrent license to avoid reinstatement requirements on an existing license. State that concurrent licenses will expire on the same date as the original license.

5. Require reciprocal applicants for licensure to pass the Virginia law and regulation portion of the licensing examination.

6. Require all applicants to follow rules established by the board with regard to conduct at the examination.

7. Delete requirement that applicants for a broker license by reciprocity meet broker educational requirements equivalent to those required in Virginia.

8. Add language regarding the examination fee to clarify that the fee is established through the procurement process specified in the Virginia Public Procurement Act.

9. Allow distance learning for prelicense and continuing education in accordance with statutory changes to § 54.1-2105 of the Code of Virginia. Specify that three of the required eight hours of continuing education must be in fair housing law and recent developments in state real estate laws and regulations and provide topics for the remaining five hours in accordance with § 54.1-2105. Allow individuals licensed in other states to submit continuing education taken in their "home" state to meet the five-hour requirement.

10. Require branch offices to post a roster of every salesperson and broker assigned to the branch office.

11. Add language stating that escrow accounts must be federally insured as well as being in a federally insured depository in Virginia.

12. Amend the definition of proprietary school to include a real estate professional association or related entity in accordance with changes to § 54.1-2105.

13. Set forth procedures for approval of continuing education courses.

14. Add application and renewal fees for certified instructors.

Issues: The Real Estate Board must promulgate regulations to replace emergency regulations which incorporated the "agency" law effective July 1, 1995, to incorporate changes regarding education made to § 54.1-2105 effective July 1,

1995, and July 1, 1996, and to incorporate the addition of § 54.1-2106.1 effective July 1, 1996, allowing salespersons to obtain licenses as corporations.

The advantages of implementation of the regulations are to further protect public health, safety and welfare. No disadvantages to the public have been identified.

No specific advantages or disadvantages to the agency have been identified.

Estimated Impact: The board's regulations apply to approximately 46,000 individuals and 5,500 businesses who will be affected by these regulatory changes. There are no localities, businesses, or other entities particularly affected by the proposed revisions. The proposed revisions are not expected to affect employment in any of the regulated professions, nor are they expected to impact the use and value of private property nor are they expected to add any additional costs to the regulated individuals and entities to implement or comply with the revisions.

Costs of implementation of the revisions are estimated to be limited to the cost of printing and mailing the proposed and the final regulations to those holding licenses and certifications and those on the public participation guidelines list. That total is \$56,235 (printing costs = 60,000 x \$0.71 = \$42,600; mailing costs = 50,500 x \$0.27 = \$13,635).

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. This proposal makes a number of changes to the rules governing the licensing of real estate agents. These changes include provisions that:

1. Clarify reciprocity requirements,
2. Allow limited liability companies to obtain a firm license,
3. Clarify that the examination fee is established through a procurement process,
4. Increase protection of escrowed funds,
5. Establish procedures for approving continuing education courses,

6. Allow distance learning for prelicense and continuing education courses, and

7. Provide for fees for certification of instructors.

Estimated economic impact. The proposed changes to these regulations can be divided into three groups: those that reduce the costs of obtaining a real estate license in Virginia, those that reduce the costs of providing brokerage services, and those that provide increased consumer protection. We will take these categories in turn.

The provisions clarifying reciprocity arrangements, allowing distance learning, and clarifying the procurement process for setting examination fees are all expected to reduce the cost of obtaining a broker's license. Reciprocity between states in licensing requirements recognizes the similarity in licensing requirements between those states and allows ready movement of those offering brokerage services between states. Reciprocity assures that the important minimum qualifications are met while lowering the costs of entering the state market for brokerage services. This proposal removes the explicit requirement that applicants for a license by reciprocity meet broker educational requirements equivalent to those in Virginia and adds that applicants by reciprocity must pass the Virginia law and regulation portion of the licensing examination. The combination of the reciprocity provisions with the required demonstration of competence in Virginia law and regulations ensures that those licensed will have the minimum skills necessary to act as real estate brokers.

The distance learning provision is mandated by § 54.1-2105 of the Code of Virginia. In light of recent advances in computer technology and the availability of information services on the Internet, it seems natural to allow distance learning as one of the options available. This will reduce the costs of obtaining and maintaining licenses, which will lower the costs to consumers and increase profits of brokerage firms. This amounts to a net gain to the Virginia economy.

Examinations are not given by the board. Instead, they are carried out by private contractors under standard state procurement rules. This procedure helps keep the costs of the examination as low as possible. The setting of the fees, then, is simply a reflection of the market price of providing the examination services.

Allowing limited liability companies to apply for firm licenses increases the organizational options available to brokerage firms. In this instance, it allows firms to take advantage of certain tax advantages available to limited liability companies. While allowing firms to use this tax advantage may or may not have a net positive impact, it will lower costs to consumers of brokerage services.

There are two explicit consumer protection provisions contained in these changes. First, in the past, licensees were required to deposit escrow funds in federally insured financial institutions but were not required to make sure that all of the escrowed funds were covered by the insurance. Since the federal insurance only covers a certain amount per

Proposed Regulations

account, significant amounts of escrowed funds were without federal insurance protection. There rules require that all escrowed funds be covered. While this will increase business costs a little, the change has significant value to consumers. We expect that the net impact of this change will be positive.

The second consumer protection provision is a requirement that branch offices post a roster of the sales persons and brokers assigned to each branch. Whatever the benefits of this provision, the costs are small and should have little economic consequence.

Businesses and entities affected. This proposed change will affect three groups: real estate brokerage firms, brokers, and individuals using the services of real estate brokers. Real estate firms will have somewhat greater operating flexibility and, hence, lower costs. The data is not available to determine the magnitude of these costs savings. Brokers licensed in other states will find it easier to satisfy the reciprocity requirements. Since licensing costs will be lower, more brokers may be expected to qualify for licenses. The impact that an increase in the number of licensed brokers would have on economic activity in Virginia is not known.

Consumers of brokerage services receive some increased protection of escrowed funds. The change does have some insurance value to consumers. It is not known how this benefit compares to the small increase in costs to firms of the change in the way escrow accounts are managed.

Localities particularly affected. No localities are likely to experience a disproportionate share of the costs and benefits of this regulation.

Projected impact on employment. This regulation will have no measurable impact on employment.

Effects on the use and value of private property. Any effects on the use and value of private property would be too small to measure.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The agency concurs.

Summary:

This proposal makes a number of changes to the rules governing the licensing of real estate agents. These changes include provisions that (i) clarify reciprocity requirements, (ii) allow limited liability companies to obtain a firm license, (iii) clarify that the examination fee is established through a procurement process, (iv) increase protection of escrowed funds, (v) establish procedures for approving continuing education courses, (vi) allow distance learning for prelicense and continuing education courses, and (vii) provide for fees for certification of instructors.

18 VAC 135-20-10. Definitions.

The following words and terms, when used in this chapter, unless a different meaning is provided or is plainly required by the context, shall have the following meanings:

"Actively engaged" means *active licensed* employment by or affiliation as an independent contractor with a licensed real estate firm or sole proprietorship in performing those activities as defined in §§ 54.1-2100 and 54.1-2101 of the Code of Virginia for an average of at least 20 40 hours per week.

"Associate broker" means any individual licensee of the board holding a broker's license other than one who has been designated as the principal broker.

"Client" means a person who has entered into a brokerage relationship with a licensee as defined by § 54.1-2130 of the Code of Virginia.

"Firm" means any *sole proprietorship (nonbroker owner), partnership, association, limited liability company, or corporation, other than a sole proprietorship (principal broker owner),* which is required by 18 VAC 135-20-20 B of this chapter C to obtain a separate brokerage firm license.

"Inactive status" refers to any broker or salesperson who is not under the supervision of a principal broker or supervising broker, who is not affiliated with a firm or sole proprietorship and who is not performing any of the activities defined in §§ 54.1-2100 and 54.1-2101 of the Code of Virginia.

"Independent contractor" means a licensee who acts for or represents a client other than as a standard agent and whose duties and obligations are governed by a written contract between the licensee and the client.

"Licensee" means any person, partnership, association, limited liability company, or corporation holding a license issued by the Real Estate Board to act as a real estate broker or real estate salesperson, as defined, respectively, in §§ 54.1-2100 and 54.1-2101 of the Code of Virginia.

~~*"Principal"* means a party who has engaged a real estate broker to perform real estate purchases, sales or rental services in a principal-agent relationship.~~

"Principal broker" means the individual broker who shall be designated by each firm to assure compliance with Title 54.1, Chapter 21 (§ 54.1-2400 et seq.) of Title 54.1 of the Code of Virginia, and this chapter, and to receive communications and notices from the board which may affect the firm or any licensee employed by or affiliated with the firm. In the case of a sole proprietorship, the licensed broker who is the sole proprietor shall have the responsibilities of the principal broker. The principal broker shall have responsibility for the activities of the firm and all its licensees.

"Principal to a transaction" means a party to a real estate transaction in the capacity of a seller, buyer, lessee or lessor.

"Sole proprietor" means any individual, not a corporation, who is trading under the individual's name, or under an assumed or fictitious name pursuant to the provisions of §-Chapter 5 (§ 59.1-69 through 59.1-76 et seq.) of Title 59.1 of the Code of Virginia.

"Standard agent" means a licensee who acts for or represents a client in an agency relationship. A standard agent

shall have the obligations as provided in Article 3 (§ 54.1-2130 et seq.) of Title 54.1 of the Code of Virginia.

"Supervising broker" means the individual associate broker who shall be designated by the firm to supervise the activities of any one of its offices.

18 VAC 135-20-20. Necessity for license or registration.

~~Refer to § 54.1-2106 of the Code of Virginia.~~ A. No partnership, association or corporation shall be granted a firm license unless every member and officer of such partnership, association or corporation who actively participates in its brokerage business holds a license as a real estate broker, and unless every employee and every independent contractor who acts as salesperson for such partnership, association or corporation holds a license as a real estate salesperson; provided, however, that a person who holds a license as a real estate broker may act as a salesperson for another real estate broker.

A. B. Sole proprietor (principal broker owner). A real estate broker's license shall not be issued to an individual trading under an assumed or fictitious name, that is, a name other than the individual's full name, until the individual signs and acknowledges a certificate provided by the board, setting forth the name under which the business is to be organized and conducted, the address of the individual's residence, and the address of the individual's place of business. Each certificate must be attested by the Clerk of Court of the county or jurisdiction wherein the business is to be conducted. The attention of all applicants and licensees is directed to §§ 59.1-69 through 59.1-76 of the Code of Virginia.

B. C. Sole proprietor (nonbroker owner), partnership, association, *limited liability company*, or corporation. Every sole proprietor (nonbroker owner), partnership, association, *limited liability company*, or corporation must secure a real estate license for its brokerage firm before transacting real estate business. Application for such license shall disclose, and the license shall be issued to, the name under which the applicant intends to do or does business and holds itself out to the public. This license is separate and distinct from the individual broker license required of each partner, associate, manager of a *limited liability company*, and officer of a corporation who is active in the brokerage business.

1. Sole proprietor (nonbroker owner). Each sole proprietor (nonbroker owner) acting as a real estate broker shall file with the board a certificate on a form provided by the board, which shall include the following information: the name, business address, and residential address of the owner; the name and style of the firm; and the address of the office of the real estate entity. Each change in the information contained on the certificate filed with the board must be evidenced by filing a new certificate with the board within 30 days after the change is effective.

2. Partnership. Each partnership acting as a real estate broker shall file with the board a certificate on a form

provided by the board, which shall include the following information: the name, business address, and residential address of each person composing the partnership; the name and style of the firm; the address of the Virginia office of the firm; and the length of time for which it is to continue. Every change in the partnership must be evidenced by filing a new certificate with the board within 30 days after the change is effective.

3. Association. Each association acting as a real estate broker shall file with the board a certificate on a form provided by the board, which shall include the following information: the name, business address, and residential address of each person composing the association; the name and style of the firm; the address of the Virginia office of the firm; and the length of time for which it is to continue. Every change in the association must be evidenced by filing a new certificate with the board within 30 days after the change is effective.

4. Corporation. Each corporation acting as a real estate broker shall file with the board a certificate on a form provided by the board, which shall include the following information: the name, business address, and residential address of each officer of the corporation; the name and style of the corporation; the address of the Virginia office of the firm; and the corporation's place of business.

a. Every change of officers must be evidenced by filing a new certificate with the board within 30 days after the change is effective.

b. The board will not consider the application of any corporation or its officers, employees, or associates until the corporation is authorized to do business in Virginia.

5. *Limited liability company*. Each *limited liability company* acting as a real estate broker shall file with the board a certificate on a form provided by the board, which shall include the following information: the name, business address, and residential address of each manager of the company; the name and style of the company; and the address of the Virginia office of the company.

a. Every change of officers must be evidenced by filing a new certificate with the board within 30 days after the change is effective.

b. The board will not consider the application of any *limited liability company* or its officers, employees, or associates until the *limited liability company* is authorized to do business in Virginia.

~~C. D.~~ Branch office license. If a real estate broker maintains more than one place of business within the state, a branch office license shall be issued for each branch office maintained. Application for the license shall be made on forms provided by the board and shall reveal the name of the firm, the location of the branch office, and the name of the supervising broker for that branch office. ~~Only~~ The branch

Proposed Regulations

office license shall be maintained at the branch office location.

18 VAC 135-20-30. Qualifications for licensure.

Every applicant to the Real Estate Board for a *an individual* salesperson's or broker's license shall have the following qualifications:

1. The applicant shall have a good reputation for honesty, truthfulness, and fair dealing, and be competent to transact the business of a real estate broker or a real estate salesperson in such a manner as to safeguard the interests of the public.
2. The applicant shall meet the current educational requirements by achieving a passing grade in all required courses of § 54.1-2105 of the Code of Virginia prior to the time the applicant sits for the licensing examination and applies for licensure.
3. The applicant shall be in good standing as a licensed real estate broker or salesperson in every jurisdiction where licensed and the applicant shall not have had a license as a real estate broker or real estate salesperson which was suspended, revoked or surrendered in connection with a disciplinary action or which has been the subject of discipline in any jurisdiction prior to applying for licensure in Virginia.
4. The applicant shall not have been convicted or found guilty regardless of adjudication in any jurisdiction of the United States of a misdemeanor involving moral turpitude, sexual offense, drug distribution or physical injury, or any felony, there being no appeal pending therefrom or the time for appeal having elapsed. Neither shall the applicant have been found to have violated the fair housing laws of any jurisdiction. Any plea of nolo contendere shall be considered a conviction for purposes of this paragraph subdivision. The record of a conviction authenticated in such form as to be admissible in evidence under the laws of the jurisdiction where convicted shall be admissible as prima facie evidence of such conviction or guilt.
5. The applicant shall be at least 18 years old.
6. The applicant, within 12 months prior to making application for a license, shall have passed a written examination provided by the board or by a testing service acting on behalf of the board. Complete applications must be received within the 12-month period.
7. The applicant shall follow all rules established by the board with regard to conduct at the examination. Such rules shall include any written instructions communicated prior to the examination date and any instructions communicated at the site, either written or oral, on the date of the examination. Failure to comply with all rules established by the board with regard to conduct at the examination shall be grounds for denial of application.

8. Applicants for licensure who do not meet the requirements set forth in subdivisions 3 and 4 of this section may be approved for licensure following consideration by the board.

18 VAC 135-20-40. Additional qualifications for brokers.

An applicant for a *an individual* license as a real estate broker shall meet the following requirements in addition to those set forth in 18 VAC 135-20-30 ~~of this chapter~~:

1. The applicant shall meet the current educational requirements of § 54.1-2105 of the Code of Virginia.
2. The applicant shall have been actively engaged as defined in 18 VAC 135-20-10 ~~of this chapter~~ as a real estate salesperson for a period of 36 of the 48 months immediately preceding application.

18 VAC 135-20-45. Additional qualifications for salesperson's or associate broker's license as a business entity.

An applicant for a salesperson's license as a business entity shall meet the following requirements in addition to those set forth in 18 VAC 135-20-30:

1. Every owner or officer who actively participates in the real estate business shall hold a license as a salesperson or associate broker.
2. The name of the business entity shall include the full legal name of every owner or officer.
3. Partnership. Each partnership shall file with the board a certificate on a form provided by the board, which shall include the following information: the name, business address, and residential address of each person composing the partnership; the name and style of the firm; the address of the Virginia office of the firm; and the length of time for which it is to continue. Every change in the partnership must be evidenced by filing a new certificate with the board within 30 days after the change is effective.
4. Association. Each association shall file with the board a certificate on a form provided by the board, which shall include the following information: the name, business address, and residential address of each person composing the association; the name and style of the firm; the address of the Virginia office of the firm; and the length of time for which it is to continue. Every change in the association must be evidenced by filing a new certificate with the board within 30 days after the change is effective.
5. Corporation. Each corporation shall file with the board a certificate on a form provided by the board, which shall include the following information: the name, business address, and residential address of each officer of the corporation; the name and style of the corporation; the address of the Virginia office of the firm; and the corporation's place of business.

a. Every change of officers must be evidenced by filing a new certificate with the board within 30 days after the change is effective.

b. The board will not consider the application of any corporation or its officers, employees, or associates until the corporation is authorized to do business in Virginia.

6. Limited liability company. Each limited liability company shall file with the board a certificate on a form provided by the board, which shall include the following information: the name, business address, and residential address of each manager of the company; the name and style of the company; and the address of the Virginia office of the company.

a. Every change of officers must be evidenced by filing a new certificate with the board within 30 days after the change is effective.

b. The board will not consider the application of any limited liability company or its officers, employees, or associates until the limited liability company is authorized to do business in Virginia.

18 VAC 135-20-50. Concurrent licenses.

Concurrent licenses shall be issued by the board to brokers active in more than one separate legal entity upon receipt of a concurrent license form and written affidavits stating that written notice of the applicant's concurrent licensure status has been provided to the principal broker of each firm with which the applicant is and will be associated. Payment is required for each license. A concurrent license will not be issued to an individual applying to be associated with a firm if that individual has an expired license associated with the same firm and the expired license may be reinstated.

18 VAC 135-20-60. Qualifications for licensure by reciprocity.

A. Every applicant to the Real Estate Board for a license by reciprocity shall have the following qualifications provided in subsection B of this section, except that ~~18 VAC 135-20-50 A-5 subdivision B 6 of this section~~ shall only be applicable for salesperson applicants.

A. B. An individual who is currently licensed as a real estate salesperson or broker in another jurisdiction may obtain a Virginia real estate license without taking the Virginia written licensing examination by meeting the following requirements:

1. The applicant shall be at least 18 years of age.
2. The applicant shall have received the salesperson or broker's license by virtue of having passed in the jurisdiction of licensure a written examination deemed to be substantially equivalent to the Virginia examination.
3. The applicant, within 12 months prior to making application for a license, shall sign, as part of the application, an affidavit certifying that the applicant has

~~read and understands the~~ have passed a written examination provided by the board or a testing service acting on behalf of the board covering Virginia real estate license law and the regulations of the Real Estate Board. Complete applications must be received within the 12-month period.

4. The applicant shall follow all rules established by the board with regard to conduct at the examination. Such rules shall include any written instructions communicated prior to the examination date and any instructions communicated at the site, either written or oral, on the date of the examination. Failure to comply with all rules established by the board with regard to conduct at the examination shall be grounds for denial of application.

4. 5. The applicant shall be in good standing as a licensed real estate broker or salesperson in every jurisdiction where licensed and the applicant shall not have had a license as a real estate broker or real estate salesperson which was suspended, revoked, or surrendered in connection with a disciplinary action or which has been the subject of discipline in any jurisdiction prior to applying for licensure in Virginia.

5. 6. At the time of application for a salesperson's license, the applicant must have been actively engaged in real estate for 12 of the preceding 36 months or have met educational requirements that are substantially equivalent to those required in Virginia.

6. 7. The applicant shall have a good reputation for honesty, truthfulness, and fair dealing, and be competent to transact the business of a real estate salesperson or broker in such a manner as to safeguard the interests of the public.

7. 8. The applicant shall not have been convicted or found guilty regardless of adjudication in any jurisdiction of a misdemeanor involving moral turpitude, sexual offense, drug distribution or physical injury, or any felony there being no appeal pending therefrom or the time for appeal having elapsed. Neither shall the applicant have been found to have violated the fair housing laws of any jurisdiction. Any plea of nolo contendere shall be considered a conviction for purposes of this ~~paragraph~~ subdivision. The record of a conviction authenticated in such form as to be admissible in evidence under the laws of the jurisdiction where convicted shall be admissible as prima facie evidence of such conviction or guilt.

9. Applicants for licensure who do not meet the requirements set forth in subdivisions 5 and 8 of this subsection may be approved for licensure following consideration by the board.

B. C. Additional qualifications for reciprocal licensure as a broker. An individual who is currently licensed as a real estate broker in another jurisdiction may obtain a Virginia real estate broker's license ~~without taking a written examination~~ by meeting the following requirements requirement set out in

Proposed Regulations

~~subsection D of this section~~ in addition to those set forth in ~~48 VAC 135-20-60 A 1 through A 4, A 6 and A 7 subdivisions B 1 through B 5 and B 7 through B 9 of this section.~~

~~4. D.~~ The applicant shall have been licensed as a real estate broker and actively engaged as a real estate broker or salesperson for at least 36 of the 48 months immediately prior to making application in Virginia. (See 18 VAC 135-20-10 of this chapter for the definition of "actively engaged.")

~~2. The applicant meets broker educational requirements substantially equivalent to those required in Virginia.~~

18 VAC 135-20-80. Application fees.

A. All application fees for licenses are nonrefundable and the date of receipt by the board or its agent is the date which will be used to determine whether it is on time.

B. Application fees for original licenses are as follows:

Salesperson by education and examination	\$ 100
Salesperson by reciprocity	\$ 125
Individual license - business entity	\$ 100
Broker by education and examination	\$ 115
Broker by reciprocity	\$ 150
Broker concurrent license	\$ 100
Firm license	\$ 150
Branch office license	\$ 75
Transfer application	\$ 50
Activate application	\$ 50
Bad check penalty	\$ 25

C. Examination fees are as follows:

Registration for sales and brokers	\$68.50
Additional fee for phone or "fax" registrations	\$ 5

C. The fee for examination or reexamination is subject to contracted charges to the board by an outside vendor. These contracts are competitively negotiated and bargained for in compliance with the Virginia Public Procurement Act (§ 11-35 et seq. of the Code of Virginia). Fees may be adjusted and charged to the candidate in accordance with these contracts. The fee shall not exceed \$90 per candidate.

18 VAC 135-20-90. Renewal required.

Licenses issued under this chapter for salespersons, brokers, and firms shall expire two years from the last day of the month in which they were issued, as indicated on the license, except concurrent broker licenses which shall expire on the same date as the original broker license.

18 VAC 135-20-100. Qualification for renewal; continuing education requirements.

A. Continuing education requirements. As a condition of renewal, and pursuant to § 54.1-2105 of the Code of Virginia, all active brokers and salespersons, resident or nonresident, except those called to active duty in the Armed Forces of the United States, shall be required to satisfactorily complete a course or courses of not less than a total of eight classroom, correspondence, or other distance learning instruction hours during each licensing term. Active licensees called to active

duty in the Armed Forces of the United States may complete this course within six months of their release from active duty. Inactive brokers and salespersons are not required to complete the continuing education course as a condition of renewal (see 18 VAC 135-20-70, Activation of license).

~~1. Schools and instructors Providers shall be those as required under § 54.1-2105 of the Code of Virginia, and 48 VAC 135-20-380 of this chapter defined in 18 VAC 135-20-350.~~

~~2. The specific course content and curriculum shall be prescribed and approved by the board. The course curriculum shall be provided to each school in final form prior to the course offering and updated periodically to reflect recent developments in federal, state, and local real estate law, regulations and case decisions.~~

~~a. Continuing education courses offered in other jurisdictions must meet Virginia's statutory requirements and must conform to the board's specifically prescribed course content and curriculum as described in § 54.1-2105(2) of the Code of Virginia. Such courses must be approved in advance of offering to be certified for course credit for licensees.~~

~~b. Correspondence courses will not be approved for credit for continuing education.~~

2. Three of the eight required hours shall cover the subjects of fair housing laws and recent developments in state real estate laws and regulations. If the licensee submits a notarized affidavit to the board which certifies that he does not practice residential real estate and shall not do so during the licensing term, training in fair housing shall not be required; instead such licensee shall receive training in other applicable federal and state discrimination laws and regulations. The remaining five hours shall be on subjects from the following list:

- a. Property rights;
- b. Contracts;
- c. Deeds;
- d. Mortgages and deeds of trust;
- e. Types of mortgages;
- f. Leases;
- g. Liens;
- h. Real property and title insurance;
- i. Investment;
- j. Taxes in real estate;
- k. Real estate financing;
- l. Brokerage and agency contract responsibilities;
- m. Real property management;
- n. Search, examination and registration of title;

- o. Title closing;
- p. Appraisal of real property;
- q. Planning subdivision developments and condominiums;
- r. Regulatory statutes;
- s. Housing legislation;
- t. Fair housing;
- u. Real Estate Board regulations;
- v. Land use;
- w. Business law;
- x. Real estate economics;
- y. Real estate investments;
- z. Federal real estate law;
- aa. Commercial real estate;
- bb. Americans With Disabilities Act;
- cc. Environmental issues impacting real estate;
- dd. Building codes and design;
- ee. Local laws and zoning;
- ff. Escrow requirements; and
- gg. Standards of conduct.

3. Licensees holding licenses in other jurisdictions must complete a three-hour course covering fair housing laws and recent developments in federal, state and local real estate law and may substitute education completed in their jurisdiction for the remaining five hours required by subdivision 2 of this subsection.

4. The board may approve additional subjects at its discretion and in accordance with § 54.1-2105 of the Code of Virginia.

~~3-~~ 5. Credit for continuing education course completion is given ~~only for attendance in its entirety for each class hour/clock hour as defined in 18 VAC 135-20-350.~~

~~4. It is the responsibility of the licensee to provide~~ 6. Licensees are responsible for retaining for three years and providing proof of continuing education ~~course completion certification.~~ Proof of course completion shall be made on a form prescribed by the board. Failure to provide course completion certification as directed by the board will result in the license not being renewed and/or disciplinary action pursuant to this chapter.

~~5-~~ 7. Instructors who are also licensees of the board may earn continuing education credit for teaching continuing education courses. ~~Verification of instructor compliance with the continuing education course required must be verified by the director or dean of the school at which the course was taught.~~

B. Applicants for renewal of a license shall meet the standards for entry as set forth in 18 VAC 135-20-30 1, 3, and 4 ~~of this chapter.~~

C. The board may deny renewal of a license if the applicant has not fully paid monetary penalties, satisfied sanctions and paid costs imposed by the board, plus any accrued interest.

18 VAC 135-20-120. Fees for renewal.

A. All fees for renewals are nonrefundable, and the date of receipt by the board or its agent is the date which will be used to determine whether ~~or not~~ it is on time, ~~and~~.

B. Renewal fees are as follows:

Salesperson	\$ 100
Individual license - business entity	\$ 100
Broker	\$ 115
Concurrent broker	\$ 115
Firm	\$ 150
Branch office	\$ 75

18 VAC 135-20-160. Place of business.

A. Within the meaning and intent of § 54.1-2110 of the Code of Virginia, a place of business shall be an office where:

1. The principal broker, either through his own efforts or through the efforts of his employees or associates, regularly transacts the business of a real estate broker as defined in § 54.1-2100 of the Code of Virginia; and

2. The principal broker and his employees or associates can receive business calls and direct business calls to be made.

B. No place of business shall be in a residence unless it is separate and distinct from the living quarters of the residence and is accessible by the public.

C. Each place of business and each branch office shall be supervised and personally managed by an on-premises real estate broker who shall supervise only that office.

D. Every individual, partnership, association, *limited liability company*, or corporation acting as a real estate broker may display signage on the outside of each place of business maintained in the Commonwealth for the purpose of transacting business as a real estate broker. If displayed, the sign shall state the name of such individual, partnership, association, *limited liability company*, or corporation, as set forth in the license issued by the board, and contain the words "real estate," "realty" or other words or phrases designating a member of a generally recognized association or organization of real estate brokers, whichever is applicable.

E. Every principal broker shall have readily available in the main place of business the firm license, the principal broker license and the license of every salesperson and broker associated with or employed by the entity or firm. The licenses shall be displayed together, not individually, in such

Proposed Regulations

a manner that the public can readily determine the names of the licensees. The branch office license *and a roster of every salesperson and broker assigned to the branch office* shall be displayed in the branch office location.

F. Notice in writing, accompanied by all the current licenses, shall be given to the board in the event of any change of business name or location. Such notice shall be mailed to the board within 10 *calendar* days of the change of name or location, whereupon the board shall reissue the licenses for the unexpired period.

18 VAC 135-20-170. Maintenance of licenses.

A. Salespersons and individual brokers shall at all times keep the board informed of their current home address and changes of address must be reported to the board in writing with 10 *calendar* days of such change. The board shall not be responsible for the licensee's failure to receive notices, communications and correspondence caused by the licensee's failure to promptly notify the board of any change of address. A licensee shall notify the board in a written form acceptable to the board within 10 *calendar* days of any change in the licensee's legal name. A licensee may use a professional name other than a legal name if that professional name is filed with the board prior to its use.

B. Salespersons and brokers shall only be issued a license to the place of business of the sole proprietorship or firm with which the salesperson or broker is affiliated or at which such licensee is employed. The license shall be issued after the sole proprietor or principal broker files a written request on a form supplied by the board.

C. Salespersons and brokers on inactive status shall receive written acknowledgment of payment from the board at the time they renew their license, but no license shall be issued since they are not affiliated with a sole proprietorship or firm.

D. When any salesperson or broker is discharged or in any way terminates his employment or affiliation or changes status as a principal or associate broker with a sole proprietorship or firm, it shall be the duty of the sole proprietor or principal broker to return the license by certified mail to the board so that it is received within 10 *calendar* days of the date of termination or status change. The sole proprietor or principal broker shall indicate on the license the date of termination, and shall sign the license before returning it.

E. The board, upon receipt of a transfer application or request for placement of a license on inactive status from a salesperson or associate broker, will notify the former principal broker of the licensee's change of affiliation or status at the firm's address of record. If the license has not been received by the board by the date on which above notification is issued, then it shall be the duty of the former principal broker to return the license by certified mail to the board so that it is received within 10 *calendar* days of the date of the above notification.

F. All certificates of licensure in any form are the property of the Real Estate Board. Upon termination of a licensee, closing of a firm, death of a licensee, change of license status, change of licensee name or address or both, such licenses must be returned with proper instruction to the board within 10 *calendar* days.

18 VAC 135-20-180. Maintenance and management of escrow accounts and financial records.

A. Maintenance of escrow accounts.

1. If money is to be held in escrow, each firm or sole proprietorship shall maintain in the name by which it is licensed one or more *federally insured* separate escrow accounts in a federally insured depository in Virginia into which all down payments, earnest money deposits, money received upon final settlement, rental payments, rental security deposits, money advanced by a buyer or seller for the payment of expenses in connection with the closing of real estate transactions, money advanced by the broker's ~~principal client~~ or expended on behalf of the ~~principal client~~, or other escrow funds received by him or his associates on behalf of his ~~principal client~~ or any other person shall be deposited unless all principals to the transaction have agreed otherwise in writing. The principal broker shall be held responsible for these accounts. The supervising broker and any other licensee with escrow account authority may be held responsible for these accounts. All such accounts, checks and bank statements shall be labeled "escrow" and the account(s) shall be designated as "escrow" accounts with the financial institution where such accounts are established.

2. Funds to be deposited in the escrow account will necessarily include moneys which shall ultimately belong to the licensee, but such moneys shall be separately identified in the escrow account records and shall be paid to the firm by a check drawn on the escrow account when the funds become due to the licensee. The fact that an escrow account contains money which may ultimately belong to the licensee does not constitute "commingling of funds" as set forth by 18 VAC 135-20-320 5 ~~of this chapter~~, provided that there are periodic withdrawals of said funds at intervals of not more than six months, and that the licensee can at all times accurately identify the total funds in that account which belong to the licensee and the firm.

3. If escrow funds are used to purchase a certificate of deposit, the pledging or hypothecation of such certificate, or the absence of the original certificate from the direct control of the principal or supervising broker, shall constitute commingling as prohibited by 18 VAC 135-20-320 5 ~~of this chapter~~.

B. Disbursement of funds from escrow accounts.

1. a. Purchase transactions. Upon acceptance of a contract (ratification), earnest money deposits and down payments received by the principal or

supervising broker or his associates shall be placed in an escrow account and shall remain in that account until the transaction has been consummated or terminated. In the event the transaction is not consummated, the principal or supervising broker shall hold such funds in escrow until (i) all principals to the transaction have agreed in writing as to their disposition, or (ii) a court of competent jurisdiction orders such disbursement of the funds, or (iii) the broker can pay the funds to the principal to the transaction who is entitled to receive them in accordance with the clear and explicit terms of the contract which established the deposit. In the latter event, prior to disbursement, the broker shall give written notice to each principal to the transaction by either (i) hand delivery receipted for by the addressee, or (ii) by regular and certified mail, that this payment will be made unless a written protest from that principal to the transaction is received by the broker within 30 days of the delivery or mailing, as appropriate, of that notice. A broker who has carried out the above procedure shall be construed to have fulfilled the requirements of this chapter.

b. Lease transactions: security deposits. Any security deposit held by a broker shall be placed in an escrow account. Each such security deposit shall be treated in accordance with the provisions of ~~§ 55-248.11 of the Code of Virginia, generally known as the Virginia Residential Landlord and Tenant Act~~ security deposit provisions of the *Virginia Residential Landlord and Tenant Act, Chapter 13.2 (§ 55-248.2 et seq.) of Title 55 of the Code of Virginia*, unless exempted therefrom, in which case the terms of the lease or other applicable law shall control.

c. Lease transactions: rents and escrow fund advances. Unless otherwise agreed in writing by all principals to the transaction, all rents and other money paid to the licensee in connection with the lease shall be placed in an escrow account and remain in that account until paid in accordance with the terms of the lease and the property management agreement, as applicable.

2. a. Purchase transactions. Unless otherwise agreed in writing by all principals to the transaction, a licensee shall not be entitled to any part of the earnest money deposit or to any other money paid to the licensee in connection with any real estate transaction as part of the licensee's commission until the transaction has been consummated.

b. Lease transactions. Unless otherwise agreed in writing by the principals to the lease and property management agreement, as applicable, a licensee shall not be entitled to any part of the security deposit or to any other money paid to the licensee in connection with any real estate lease as part of the licensee's commission until the terms of the lease have been met.

3. On funds placed in an account bearing interest, written disclosure in the contract of sale or lease at the time of contract or lease writing shall be made to the principals ~~involved in~~ to the transaction regarding the disbursement of interest.

4. A licensee shall not disburse or cause to be disbursed moneys from an escrow or property management escrow account unless sufficient money is on deposit in that account to the credit of the individual client or property involved.

5. Unless otherwise agreed in writing by all principals to the transaction, expenses incidental to closing a transaction, e.g., fees for appraisal, insurance, credit report, etc., shall not be deducted from a deposit or down payment.

C. Maintenance of financial records.

1. A complete record of financial transactions conducted under authority of the principal broker's Virginia license shall be maintained in the principal broker's place of business, or in a designated branch office. When the principal broker's office is located outside of Virginia and the firm has a branch office in Virginia, these records shall be maintained in the Virginia office. These records shall show, in addition to any other requirements of the regulations, the following information: from whom money was received; the date of receipt; the place of deposit; the date of deposit; and, after the transaction has been completed, the final disposition of the funds.

2. The principal broker shall maintain a bookkeeping system which shall accurately and clearly disclose full compliance with the requirements outlined in this section. Accounting records which are in sufficient detail to provide necessary information to determine such compliance shall be maintained.

18 VAC 135-20-210. Disclosure of interest.

A. If a licensee knows or should have known that he, any member of his family, his firm, any member of his firm, or any entity in which he has an ownership interest, is acquiring or attempting to acquire real property through purchase or lease and the licensee is a party to the transaction, the licensee must disclose that information to the owner in writing in the offer to purchase or lease.

B. A licensee selling or leasing property in which he has any *ownership* interest must disclose that he is a real estate licensee and he has an interest in the property to any purchaser or lessee in the written offer to purchase, the application, the offer to lease, or the lease, whichever occurs first.

18 VAC 135-20-220. Disclosure of agency relationships.

A. ~~Before the licensee has substantive discussions about specific property(ies) with a principal or prospective principal to a sale or option transaction, the licensee shall disclose to the principal or prospective principal the person(s) whom the~~

Proposed Regulations

~~licensee represents in a principal agency relationship. This disclosure shall be made in writing at the earliest practical time, but in any case not later than the time when specific real estate assistance is first provided. This written disclosure shall be acknowledged by the principals.~~
Purchase transactions.

1. *Unless disclosure has been previously made by a licensee, a licensee shall disclose to an actual or prospective buyer or seller who is not the client of the licensee and who is not represented by another licensee and with whom the licensee has substantive discussions about a specific property or properties, the person whom the licensee represents in a brokerage relationship, as that term is defined in § 54.1-2130 of the Code of Virginia.*

2. *Except as otherwise provided in subdivision 3 of this subsection, such disclosure shall be made in writing at the earliest practical time, but in no event later than the time specific real estate assistance is first provided. Any disclosure complying with the provisions of § 54.1-2138 A of the Code of Virginia shall be deemed in compliance with this disclosure requirement.*

3. *A licensee acting as a dual or designated representative shall obtain the written consent of all clients to the transaction at the earliest practical time. Such consent shall be presumed to have been given by a client who signs a disclosure complying with the provisions of § 54.1-2139 of the Code of Virginia. Such disclosure shall be given to, and consent obtained from, (i) the buyer or tenant not later than the time an offer to purchase or to lease is presented to the licensee and (ii) the seller or landlord not later than the time the offer to purchase or to lease is presented to the seller or landlord.*

4. *Any disclosure required by this subsection may be given in combination with other disclosures or information, but, if so, the disclosure must be conspicuous, printed in bold lettering, all capitals, underlined, or within a separate box.*

5. *Any such disclosure shall advise a prospective buyer, seller, landlord, or tenant, who is not the client of the licensee of the duties of real estate brokers and salespersons under Virginia law and that there may be other relevant information concerning the transaction which may be obtained from other sources.*

~~B. All licensees shall promptly disclose their agency relationships to all actual and prospective lessors and lessees. A disclosure statement shall be included in writing in all applications for lease or in the lease itself, whichever occurs first.~~
Lease transactions.

1. *Unless disclosure has been previously made by a licensee, a licensee shall disclose to an actual or prospective landlord or tenant who is not the client of the licensee and who is not represented by another licensee, that the licensee has a brokerage relationship with*

another party or parties to the transaction. Such disclosure shall be in writing and included in the application for lease or the lease itself, whichever occurs first. If the terms of the lease do not provide for such disclosure, the disclosure shall be made in writing not later than the signing of the lease.

~~The~~ 2. *This disclosure requirement shall not apply to lessors and or lessees in single or multi-family residential units on leases for lease terms of less than two months.*

18 VAC 135-20-240. Provision of records to the board.

A licensee of the Real Estate Board shall upon request demand produce to the board or any of its agents any document, book, or record concerning any real estate transaction in which the licensee was involved, or for which the licensee is required to maintain records for inspection and copying by the board or its agents.

18 VAC 135-20-260. Unworthiness and incompetence.

Actions constituting unworthy and incompetent conduct include:

1. Obtaining a license by false or fraudulent representation;
2. Holding more than one license as a real estate broker or salesperson in Virginia except as provided in this chapter;
3. As a currently licensed real estate salesperson, sitting for the licensing examination for a salesperson's license;
4. As a currently licensed real estate broker, sitting for a real estate licensing examination;
5. Having been convicted or found guilty regardless of adjudication in any jurisdiction of the United States of a misdemeanor involving moral turpitude, sexual offense, drug distribution or physical injury, or any felony, or any fair housing violation, there being no appeal pending therefrom or the time for appeal having elapsed. Any plea of nolo contendere shall be considered a conviction for the purposes of this paragraph subdivision. The record of a conviction certified or authenticated in such form as to be admissible in evidence of the laws of the jurisdiction where convicted shall be admissible as prima facie evidence of such guilt;
6. Failing to inform the board in writing within 30 days of pleading guilty or nolo contendere or being convicted or found guilty regardless of adjudication of any felony or of a misdemeanor involving moral turpitude, sexual offense, drug distribution or physical injury;
7. Having been found in a court or an administrative body of competent jurisdiction to have violated the Virginia Fair Housing Act, the Fair Housing Laws of any jurisdiction of the United States including without limitation Title VIII of the Civil Rights Act of 1968 (82 Stat. 73), or the Civil Rights Act of 1866 (14 Stat. 27),

there being no appeal therefrom or the time for appeal having elapsed; and

8. Failing to act as a real estate broker or salesperson in such a manner as to safeguard the interests of the public, or otherwise; and

9. Engaging in improper, fraudulent, or dishonest conduct.

18 VAC 135-20-270. Conflict of interest.

Actions constituting a conflict of interest include:

1. Being employed by, affiliated with or receiving compensation from a real estate broker other than the licensee's principal broker, without the written consent of the principal broker;

2. Acting for more than one ~~party~~ *client* in a transaction without *first obtaining* the written consent of all ~~principals for whom the licensee acts~~ *clients as provided by § 54.1-2139 of the Code of Virginia*;

3. Acting as an ~~agent for any principal in a real estate transaction~~ *standard agent or independent contractor for any client* outside the licensee's brokerage firm(s) or sole proprietorship(s).

18 VAC 135-20-280. Improper brokerage commission.

Actions resulting in an improper brokerage commission include:

1. Offering to pay or paying a commission or other valuable consideration to any person for acts or services performed in violation of ~~Title 54.1, Chapter 21 (§ 54.1-2400 et seq.) of Title 54.1~~ of the Code of Virginia, or this chapter; provided, however, that referral fees and shared commissions may be paid to any real estate entity licensed in this or another jurisdiction, or to any referral entity in the United States, the members of which are brokers licensed in this or another jurisdiction and which only disburses commissions or referral fees to its licensed member brokers;

2. Accepting a commission or other valuable consideration, as a real estate salesperson or associate broker, for the performance of any of the acts specified in ~~Title 54.1, Chapter 21 (§ 54.1-2400 et seq.) of Title 54.1~~ of the Code of Virginia or the regulations of the board, from any person except the licensee's principal broker at the time of the transaction;

3. Receiving a fee or portion thereof including a referral fee or a commission or other valuable consideration for services required by the terms of the real estate contract when such costs are to be paid by either one or both principals to the transaction unless such fact is revealed in writing to the principal(s) prior to the time of ordering or contracting for the services;

4. Offering or paying any money or other valuable consideration for services required by the terms of the real estate contract to any party other than the principals

to a transaction which results in a fee being paid to the licensee; without such fact being revealed in writing to the principal(s) prior to the time of ordering or contracting for the services;

5. Making a listing contract or lease which provides for a "net" return to the seller/lessor, leaving the licensee free to sell or lease the property at any price he can obtain in excess of the "net" price named by the seller/lessor; and

6. Charging money or other valuable consideration to or accepting or receiving money or other valuable consideration from any person or entity other than the licensee's ~~principal~~ *client* for expenditures made on behalf of that ~~principal~~ *client* without the written consent of the ~~principal~~ *client*.

18 VAC 135-20-290. Improper dealing.

Actions constituting improper dealing include:

1. ~~Making an exclusive agency contract or an exclusive right to sell contract which does not have~~ *Entering a brokerage relationship that does not specify a definite termination date*;

2. Offering real property for sale or for lease without the knowledge and consent of the owner or the owner's authorized ~~agent~~ *representative*, or on any terms other than those authorized by the owner or the owner's authorized ~~agent~~ *representative*;

3. Placing a sign on any property without the consent of the owner of the property or the owner's authorized agent;

4. Causing any advertisement for sale, rent, or lease to appear in any newspaper, periodical, or sign without including in the advertisement the name of the firm or sole proprietorship; and

5. Acting in the capacity of settlement agent in a real estate closing by a salesperson, except:

a. When the salesperson is under the direct supervision of the principal/supervising broker;

b. When the salesperson is under the direct supervision of a licensed officer of the corporation or a licensed partner of the partnership under which the salesperson is licensed;

c. When the settlement agent is a member of the Virginia State Bar or a law firm, the members of which are members of the Virginia State Bar; or

d. When the settlement agent is a title insurance company or an agency thereof or a firm regularly engaged in the business of closing real estate transactions.

18 VAC 135-20-300. Misrepresentation/omission.

Actions constituting misrepresentation or omission, or both, include:

Proposed Regulations

1. Using "bait and switch" tactics by advertising or offering real property for sale or rent with the intent not to sell or rent at the price or terms advertised, unless the advertisement or offer clearly states that the property advertised is limited in specific quantity and the licensee or registrant did in fact have at least that quantity for sale or rent;

~~2. Failing to disclose any material information in a timely manner to a prospective purchaser/lessee, or seller/lessor, related to the property, the physical condition of the property, or the transaction reasonably available to the licensee.~~

2. Failure by a licensee representing a seller or landlord as a standard agent to disclose in a timely manner to a prospective purchaser or tenant all material adverse facts pertaining to the physical condition of the property which are actually known by the licensee;

3. Failing as a licensee to tender promptly to the buyer and seller every written offer, every written counteroffer, and every written rejection to purchase, option or lease obtained on the property involved;

4. Failure by a licensee acting as a standard agent to disclose in a timely manner to the licensee's client all material facts related to the property or concerning the transaction which are reasonably available to the licensee;

5. Notwithstanding the provisions of subdivision 4 of this section, a licensee acting as a dual representative shall not disclose to one client represented in the dual representation confidential information relating to the transaction obtained during the representation of another client in the same dual representation unless otherwise provided by law;

4. 6. Failing to include the complete terms and conditions of the real estate transaction in any lease or offer to purchase;

5. 7. Failing to include in any application, lease, or offer to purchase identification of all those holding any deposits;

6. 8. Knowingly making any false statement or report, or willfully misstating the value of any land, property, or security for the purpose of influencing in any way the action of any lender upon:

a. Applications, advance discounts, purchase agreements, repurchase agreements, commitments or loans;

b. Changes in terms or extensions of time for any of the items listed in this subdivision 6 8 whether by renewal, deferment of action, or other means without the prior written consent of the principals to the transaction;

c. Acceptance, release, or substitution of security for any of the items listed in subdivision 6 8 a of this

section without the prior written consent of the principals to the transaction.

~~7. 9. Making any misrepresentation; and~~

8. 10. Making a false promise through agents, salespersons, advertising, or other means.

18 VAC 135-20-310. Delivery of instruments.

Actions constituting improper delivery of instruments include:

1. Failing to make prompt delivery to each principal to a transaction, complete and legible copies of any written disclosures required by §§ 54.1-2138 and 54.1-2139 of the Code of Virginia, listings, lease, offers to purchase, counteroffers, addenda and ratified agreements, and other documentation required by the agreement;

2. Failing to provide in a timely manner to all principals to the transaction written notice of any material changes to the transaction;

3. Failing to deliver to the seller and buyer, at the time a real estate transaction is completed, a complete and accurate statement of receipts and disbursements of moneys received by the licensee, duly signed and certified by the principal or supervising broker or his authorized agent; provided, however, if the transaction is closed by a settlement agent other than the licensee or his broker, and if the disbursement of moneys received by the licensee is disclosed on the applicable settlement statement, the licensee shall not be required to provide the separate statement of receipts and disbursements; and

4. Refusing or failing without just cause to surrender to the rightful owner, upon demand, any document or instrument which the licensee possesses.

18 VAC 135-20-350. Definitions.

~~As used in this chapter, unless a different meaning is plainly required by the context: The following words and terms, when used in this part, unless a different meaning is provided or is plainly required by the context, shall have the following meanings:~~

~~"Accredited colleges, universities and university, college, community colleges, college, or other school or educational institution," as used in § 54.1-2105 2 B 1 a of the Code of Virginia, means those accredited institutions of higher learning approved by the Virginia Council of Higher Education or listed in the Transfer Credit Practices of Designated Educational Institutions, published by the American Association of Collegiate Registrars and Admissions Officers.~~

~~"Classroom Class hour/clock hour" means 50 minutes.~~

~~"Equivalent course" means any course encompassing the basic educational curriculum of Virginia courses and approved by the board.~~

"Proprietary school" means (i) a privately owned school, (ii) a real estate professional association, or (iii) a related entity, which is not under the authority of the Department of Education, but approved by the Real Estate Board to teach real estate courses.

"Provider" means an accredited university, college, community college, high school offering adult distributive education courses, or a proprietary school.

18 VAC 135-20-360. Proprietary school standards: ~~educational environment; instructor qualifications; courses and course requirements.~~

A. Every applicant to the Real Estate Board for a proprietary school certificate shall meet the standards provided in ~~this section~~ § 54.1-2105 of the Code of Virginia.

~~B. All schools must be in a building conducive to academic purposes. Facilities must meet necessary building code standards, fire safety standards, and sanitation standards.~~

~~C. B.~~ Every applicant to the Real Estate Board for approval as an instructor shall have one of the following qualifications:

- ~~1. Baccalaureate degree in real estate, or in business with a concentration in real estate or a closely related field;~~
- ~~2. Baccalaureate degree, a Virginia real estate license, and two years of discipline-free active real estate experience within the past five years;~~
- ~~3. Seven Five years of discipline-free active experience acquired in the real estate field in the past 40 seven years and an active Virginia broker's license; or~~
- ~~4. Qualified experts in a specific field of real estate who will teach only in the area of their expertise. For example, a licensed real estate appraiser, with at least five years of active appraisal experience in Virginia, may be approved to teach Real Estate Appraisals. Such applicants will be required to furnish proof of their expertise including, but not limited to, educational transcripts, professional certificates and letters of reference which will verify the applicant's expertise.~~

~~D. All real estate C.~~ Prelicense courses must be acceptable to the board and are required to have a monitored, final written examination.

- ~~1. Prelicensing courses may be completed by correspondence if such courses are not available in a reasonable proximity to the applicant's residence or business location in the Commonwealth. Students seeking board approval to take prelicensing correspondence courses must make a written request to the board in which they specify that the classroom course(s) are not available in a reasonable geographical proximity to the applicant's residence or business location.~~

~~2.~~ Those schools which propose to offer prelicensing ~~correspondence~~ courses (Principles and Practices of Real Estate, Real Estate Brokerage, Real Estate Finance, Real Estate Law or Real Estate Appraisal, etc.) must submit a request, in writing, to the board prior to offering the course(s) and supply the following information:

- ~~a. 1.~~ Course content. All Principles and Practices of Real Estate courses must include the 25 topic areas specified in 18 VAC 135-20-400. All requests to offer broker courses must include a ~~comparable course syllabus from an accredited university, college or community college to establish equivalency.~~ acceptable to the board;
 - ~~b. 2.~~ Name of the course's text and any research materials used for study assignments;
 - ~~c. 3.~~ Description of any research assignments;
 - ~~d. 4.~~ Copies of test or quizzes;
 - ~~e. 5.~~ Information explaining how the "Principles" course will require 60 hours of study, or how each broker related course will require 45 hours of study, in compliance with § 54.1-2105 of the Code of Virginia; and
 - ~~f. 6.~~ Information about recordkeeping for ~~this~~ the type of course delivery.
- ~~3. Correspondence courses must have a final, monitored written examination which is administered at the school's main, or branch, site.~~

~~D.~~ Providers of continuing education courses shall submit all subjects to the board for approval prior to initially offering the course. Correspondence and other distance learning courses offered by an approved provider must include appropriate testing procedures to verify completion of the course.

E. All schools must establish and maintain a record for each student. The record shall include: the student's name and address, the course name and clock hours attended, the course syllabus or outline, the name or names of the instructor, and the date of successful completion. Records shall be available for inspection during normal business hours by authorized representatives of the board. Schools must maintain all student and class records for a minimum of five years.

~~F.~~ All schools must provide each student with a certificate of course completion or other document that the student may use as proof of course completion. The certificate or other document shall contain the hours of credit completed.

18 VAC 135-20-370. Fees.

A. The application fee for an original certificate for a proprietary school shall be \$150.

B. The renewal fee for proprietary school certificates expiring ~~annually~~ biennially on June 30 shall be \$150.

C. If the requirements for renewal of a proprietary school certificate, including receipt of the fee by the board, are not

Proposed Regulations

completed within 30 days of the expiration date noted on the certificate, a reinstatement fee of \$250 is required. A certificate may be reinstated for up to one year following the expiration date with payment of the reinstatement fee. After one year, the certificate may not be reinstated under any circumstances and the applicant must meet all requirements and apply as a new applicant.

D. The application for an original instructor certificate shall be \$115.

E. The renewal fee for an instructor certificate expiring biennially on June 30 shall be \$115.

F. If the requirements for renewal of an instructor certificate, including receipt of the fee by the board are not completed within 30 days of the expiration date on the certificate, a reinstatement fee of \$250 is required. A certificate may be reinstated for up to one year following the expiration date with payment of the reinstatement fee. After one year, the certificate may not be reinstated under any circumstances and the applicant must meet all requirements and apply as a new applicant.

G. The board in its discretion may deny renewal of a certificate. Upon such denial, the certificate holder may request that a hearing be held.

18 VAC 135-20-380. Posting school certificate of approval and registration instructor certificates.

School certificates of approval and registration, and instructor certificates must be displayed in each approved school facility in a conspicuous place readily accessible to the public.

18 VAC 135-20-390. Withdrawal of approval.

The board may withdraw approval of any school or instructor for the following reasons:

1. The school, instructors, or courses, or subjects no longer meet the standards established by the board.
2. The school or instructor solicits information from any person for the purpose of discovering past examination questions or questions which may be used in future examinations.
3. The school or instructor distributes to any person copies of examination questions, or otherwise communicates to any person examination questions, without receiving the prior written approval of the copyright owner to distribute or communicate those questions.
4. The school, through an agent or otherwise, advertises its services in a fraudulent, deceptive or misrepresentative manner.
5. Officials, instructors or designees of the school sit for a real estate licensing examination for any purpose other than to obtain a license as a broker or salesperson.

18 VAC 135-20-410. ~~Related subjects Broker courses.~~

A. ~~Brokerage shall be a required specific course with three semester hours or six quarter hours constituting a complete course.~~

B. "Related subjects," as referred to in § 54.1-2105 of the Code of Virginia, shall be real estate related and shall include, but are not limited to, courses in property management, land planning and land use, business law, real estate economics, and real estate investments.

C. ~~No more than three semester hours or four quarter hours of broker-related courses shall be accepted in lieu of specific broker courses.~~

D. ~~Schools intending to offer equivalent broker courses must submit to the board for approval a copy of the syllabus of the particular course with a cover letter requesting approval.~~

18 VAC 135-20-420. ~~Required specific course.~~ (Repealed.)

~~Brokerage shall be a required specific course with three semester hours or six quarter hours constituting a complete course.~~

18 VAC 135-20-430. ~~Credit for broker-related courses.~~ (Repealed.)

~~No more than three semester hours or four quarter hours of broker-related courses shall be accepted in lieu of specific broker courses.~~

18 VAC 135-20-440. ~~Broker-related course approval procedure.~~ (Repealed.)

~~Schools intending to offer equivalent broker courses must submit to the board for approval a copy of the syllabus of the particular course with a cover letter requesting approval.~~

NOTICE: The forms used in administering 18 VAC 135-20-10 et seq., Virginia Real Estate Board Licensing Regulations, are not being published due to the large number; however, the name of each form is listed below. The forms are available for public inspection at the Real Estate Board, Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia, telephone (804) 367-8552 or at the office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia.

FORMS

Real Estate Application, VREB/Fm 2 (12/93).

Real Estate Salesperson Application.

~~Real Estate Concurrent Broker Application.~~

~~Real Estate Business License Application.~~

~~Real Estate Branch Office Application.~~

~~Real Estate Transfer Application, VREB Fm 1 (Apr 05).~~

~~Real Estate Activate Application, VREB Fm 2 (Apr 05).~~

Concurrent Broker Acknowledgment Form (6/97).

Experience Verification Form (5/97).

Activate/Transfer/Concurrent Application (6/97).

Salesperson License by Reciprocity Application (3/97).

Broker License by Reciprocity Application (3/97).

Branch Office License Application (2/97).

Supervising Broker Appointment/Change Form (3/97).

Firm Principal Broker/Officer Change Form (3/97).

Firm Name/Address Change Form (3/97).

Firm License Application (3/97).

VA.R. Doc. No. R96-373; Filed September 26, 1997, 11:53 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 4. CONSERVATION AND NATURAL RESOURCES

MARINE RESOURCES COMMISSION

REGISTRAR'S NOTICE: Effective July 1, 1984, the Marine Resources Commission was exempted from the Administrative Process Act for the purpose of promulgating certain regulations. However, the commission is required to publish the full text of final regulations.

Title of Regulation: 4 VAC 20-380-10 et seq. Pertaining to Grey Trout (Weakfish) (amending 4 VAC 20-380-60).

Statutory Authority: § 28.2-201 of the Code of Virginia.

Effective Date: October 7, 1997.

Preamble:

This regulation establishes limitations on the commercial and recreational harvest of grey trout in order to reduce the fishing mortality rate and to rebuild the severely depleted stock of grey trout. The limitations include minimum size limits, gear restrictions and season limits for the commercial fishery and minimum size and possession limits for the recreational fishery.

Agency Contact: Copies of the regulation may be obtained from Deborah Cawthon, Regulatory Coordinator, Marine Resources Commission, P.O. Box 756, Newport News, VA 23607, telephone (757) 247-2248.

4 VAC 20-380-60. Possession limit.

It shall be unlawful for any person fishing with *recreational* hook and line, rod and reel or hand line to possess more than four grey trout. When fishing from a boat or vessel where the entire catch is held in a common hold or container, the possession limit shall be for the boat or vessel and shall be equal to the number of persons on board legally eligible to fish multiplied by four. The captain or operator of the boat or vessel shall be responsible for any boat or vessel possession limit. Any grey trout taken after the possession limit has been reached shall be returned to the water immediately.

VA.R. Doc. No. R98-67; Filed October 7, 1997, 3:57 p.m.

Title of Regulation: 4 VAC 20-450-10 et seq. Pertaining to the Taking of Bluefish (amending 4 VAC 20-450-20).

Statutory Authority: § 28.2-201 of the Code of Virginia.

Effective Date: October 1, 1997.

Preamble:

This regulation establishes a possession limit of bluefish for recreational fishermen and commercial hook-and-line fishermen and a commercial harvest annual quota.

Agency Contact: Copies of the regulation may be obtained from Deborah Cawthon, Regulatory Coordinator, Marine Resources Commission, P.O. Box 756, Newport News, VA 23607, telephone (757) 247-2248.

4 VAC 20-450-20. Bluefish possession limit.

A. It shall be unlawful for any person fishing with *recreational* hook and line, rod and reel, spear, gig, or other recreational gear, ~~or licensed for commercial hook and line fishing,~~ to possess more than 10 bluefish. Any bluefish taken after the possession limit of 10 fish has been reached shall be returned to the water immediately.

B. When fishing from a boat or vessel where the entire catch is held in a common hold or container, the possession limit shall be for the boat or vessel and shall be equal to the number of persons on board legally eligible to fish multiplied by 10. The captain or operator of the boat or vessel shall be responsible for any boat or vessel possession limit.

VA.R. Doc. No. R98-61; Filed October 1, 1997, 11:32 a.m.

Title of Regulation: 4 VAC 20-620-10 et seq. Pertaining to Summer Flounder (amending 4 VAC 20-620-60).

Statutory Authority: § 28.2-201 of the Code of Virginia.

Effective Date: October 1, 1997.

Preamble:

This regulation establishes limitations on the commercial and recreational harvest of Summer Flounder in order to reduce the fishing mortality rate and to rebuild the severely depleted stock of Summer Flounder. The limitations include a commercial harvest quota and possession limits, minimum size limits, and a recreational possession and season limit.

Agency Contact: Copies of the regulation may be obtained from Deborah Cawthon, Regulatory Coordinator, Marine Resources Commission, P.O. Box 756, Newport News, VA 23607, telephone (757) 247-2248.

4 VAC 20-620-60. Possession limit.

A. It shall be unlawful for any person fishing with *recreational* hook and line, rod and reel, spear, gig or other recreational gear, ~~or with commercial hook and line,~~ to possess more than 10 Summer Flounder. When fishing is

from a boat or vessel where the entire catch is held in a common hold or container, the possession limit shall be for the boat or vessel and shall be equal to the number of persons on board legally eligible to fish multiplied by 10. The captain or operator of the boat or vessel shall be responsible for any boat or vessel possession limit. Any Summer Flounder taken after the possession limit has been reached shall be returned to the water immediately.

B. Possession of any quantity of Summer Flounder which exceeds the possession limit described in subsection A of this section shall be presumed to be for commercial purposes.

VA.R. Doc. No. R98-63; Filed October 1, 1997, 11:33 a.m.

Title of Regulation: 4 VAC 20-720-10 et seq. Pertaining to Restrictions on Oyster Harvests (amending 4 VAC 20-720-40, 4 VAC 20-720-50, 4 VAC 20-720-60, 4 VAC 20-720-70 and 4 VAC 20-720-80).

Statutory Authority: §§ 28.2-201 and 28.2-507 of the Code of Virginia.

Effective Date: October 1, 1997.

Preamble:

This regulation sets times of closure and other restrictions on the harvest of oysters from all oyster grounds in the Chesapeake Bay and its tributaries and on the Seaside of Eastern Shore.

Agency Contact: Copies of the regulation may be obtained from Katherine V. Leonard, Marine Resources Commission, P.O. Box 756, Newport News, VA 23607, telephone (757) 247-2120.

4 VAC 20-720-40. Open season and areas.

The lawful seasons and areas for the harvest of oysters from the public oyster grounds and unassigned grounds are as follows:

1. James River Seed Area: October 1, 1996 1997, through April 30, 1997 1998.
2. James River Jail Island and Point of Shoals Clean Cull Areas: October 1, 1996 1997, through April 30, 1997 1998.
3. Seaside of Eastern Shore: for clean cull oysters only, November 1, 1996 1997, through January 31, 1997 1998.
4. *The area of the Rappahannock River west of the Route 3 bridge, including the Corrotoman River: November 1, 1997, through January 31, 1998.*
5. *That area of the Nomini and Lower Machodoc Rivers to the Virginia-Maryland State Line (Nomini-PRV6A to PRV6B; Lower Machodoc PRV5A to PRV5C): November 1, 1997, through January 31, 1998.*

4 VAC 20-720-50. Closed harvest season and areas.

It shall be unlawful for any person to harvest oysters from the following areas during the specified periods:

1. All public oyster grounds and unassigned grounds in the Chesapeake Bay and its tributaries, including the tributaries of the Potomac River, except *that area of the Rappahannock River west of the Route 3 bridge, including the Corrotoman River, and that area of the Nomini and Lower Machodoc Rivers to the Virginia-Maryland State Line (Nomini-PRV6A to PRV6B; Lower Machodoc PRV5A to PRV5C)*, the James River Seed Area and the James River Jail Island and Point of Shoals Clean Cull Areas: October 1, 1996, 1997, through September 30, 1997 1998.

2. James River Seed Area and James River Jail Island and Point of Shoals Clean Cull Areas: May 1, 1997 1998, through September 30, 1997 1998.

3. All public oyster grounds and unassigned grounds on the Seaside of Eastern Shore: for clean cull oysters, October 1 through October 31, 1996 1997, and February 1, 1997 1998, through September 30, 1997 1998; and for seed oysters, all year. Oyster harvest from leased oyster ground and fee simple oyster ground shall require a permit from the Marine Resources Commission as set forth in 4 VAC 20-720-90.

4. *That area of the Rappahannock River west of the Route 3 bridge, including the Corrotoman River, and that area of the Nomini and Lower Machodoc Rivers to the Virginia-Maryland State Line (Nomini-PRV6A to PRV6B; Lower Machodoc PRV5A to PRV5C): October 1 through October 31, 1997, and February 1, 1998, through September 30, 1998.*

4 VAC 20-720-60. Day and time limit.

A. It shall be unlawful to take, catch or harvest oysters on Saturday and Sunday from the public oyster grounds or unassigned grounds in the waters of the Commonwealth of Virginia, except that this provision shall not apply to any person harvesting no more than one bushel per day by hand for household use only during the season when the public oyster grounds or unassigned grounds are legally open for harvest. The presence of any gear normally associated with the harvesting of oysters on board the boat or other vehicle used during any harvesting under this exception shall be prima facie evidence of violation of this chapter.

B. Harvest on the public oyster grounds in *that area of the Rappahannock River west of the Route 3 bridge, including the Corrotoman River, and that area of the Nomini and Lower Machodoc Rivers to the Virginia-Maryland State Line (Nomini-PRV6A to PRV6B; Lower Machodoc PRV5A to PRV5C)*, the James River Seed Area and the James River Jail Island and Point of Shoals Clean Cull Areas shall be from sunrise to 2 p.m. daily. It shall be unlawful for any person to harvest oysters from the public grounds in *that area of the Rappahannock River west of the Route 3 bridge, including the Corrotoman River, and that area of the Nomini and Lower*

Final Regulations

Machodoc Rivers to the Virginia-Maryland State Line (Nomini-PRV6A to PRV6B; Lower Machodoc PRV5A to PRV5C), the James River Seed Area or the Jail Island and Point of Shoals Clean Cull Areas prior to sunrise or after 2 p.m., daily.

C. The Commissioner of Marine Resources is hereby authorized to issue permits to applicants to dredge for oysters where permitted by the Code of Virginia and Marine Resources Commission regulation or order, provided the applicant is eligible under all applicable laws and regulations, and further provided that such permit shall be granted only upon the condition that the boat not leave the dock until one-half hour before sunrise and be back at dock before sunset.

4 VAC 20-720-70. Gear restrictions.

It shall be unlawful for any person to harvest oysters from public oyster grounds or unassigned grounds in the James River, *that area of the Rappahannock River west of the Route 3 bridge, including the Corrotoman River, and that area of the Nomini and Lower Machodoc Rivers to the Virginia-Maryland State Line (Nomini-PRV6A to PRV6B; Lower Machodoc PRV5A to PRV5C) with shaft tongs longer than 18 feet in total overall length, except shaft tongs may exceed 18 feet in total overall length from Morattico Bar to the Route 3 bridge in the Rappahannock River.*

4 VAC 20-720-80. Quotas and catch limits.

A. In the James River Seed Areas there shall be an oyster harvest quota of 80,000 bushels of seed oysters. It shall be unlawful for any person to harvest seed oysters from the James River Seed Area after the 80,000 bushel quota has been reached.

~~B. In the James River Clean Cull areas there shall be an oyster harvest quota of 10,000 bushels of clean cull oysters. It shall be unlawful for any person to harvest clean cull oysters from the James River Clean Cull areas after the 10,000 bushel quota has been reached Rappahannock River west of the Route 3 bridge, including the Corrotoman River, there shall be a six-bushel per person daily limit of clean cull oysters. It shall be unlawful to possess more than six bushels of clean cull oysters per person in the Rappahannock River west of the Route 3 bridge including the Corrotoman River.~~

VA.R. Doc. No. R98-52; Filed September 29, 1997, 2:36 p.m.

Title of Regulation: 4 VAC 20-970-10 et seq. Pertaining to Spadefish (amending 4 VAC 20-970-30).

Statutory Authority: § 28.2-201 of the Code of Virginia.

Effective Date: October 1, 1997.

Preamble:

This regulation establishes a possession limit on spadefish harvested by commercial hook and line or any recreational gear. This regulation is promulgated

pursuant to the authority contained in § 28.2-201 of the Code of Virginia.

Agency Contact: Copies of the regulation may be obtained from Deborah Cawthon, Regulatory Coordinator, Marine Resources Commission, P.O. Box 756, Newport News, VA 23607, telephone (757) 247-2248.

4 VAC 20-970-30. Spadefish possession limit.

A. It shall be unlawful for any person fishing with *recreational* hook and line, rod and reel, hand line, spear, jig or other recreational gear to possess more than six spadefish. Any spadefish taken after the possession limit of six fish has been reached shall be returned to the water immediately.

B. When fishing from a boat or vessel where the entire catch is held in a common hold or container, the possession limit shall be for the boat or vessel and shall be equal to the number of persons on board legally eligible to fish multiplied by six. The captain or operator of the boat or vessel shall be responsible for any boat or vessel possession limit.

~~C. During the period July 1, 1997, through October 1, 1997,~~ It shall be unlawful for any person fishing with a licensed commercial hook and line to possess more than six spadefish. Any spadefish taken by a licensed commercial hook-and-line fisherman after the possession limit of six fish has been reached shall be returned to the water immediately.

VA.R. Doc. No. R98-62; Filed October 1, 1997, 11:32 a.m.

TITLE 6. CRIMINAL JUSTICE AND CORRECTIONS

BOARD OF JUVENILE JUSTICE

Title of Regulation: 6 VAC 35-60-10 et seq. Minimum Standards for Virginia Delinquency Prevention and Youth Development Act Grant Programs (amending 6 VAC 35-60-10, 6 VAC 35-60-20, 6 VAC 35-60-40, 6 VAC 35-60-50, 6 VAC 35-60-60, 6 VAC 35-60-170, 6 VAC 35-60-180, 6 VAC 35-60-190, 6 VAC 35-60-280, 6 VAC 35-60-290, 6 VAC 35-60-320, 6 VAC 35-60-330, 6 VAC 35-60-380, 6 VAC 35-60-390, 6 VAC 35-60-400, 6 VAC 35-60-410, 6 VAC 35-60-440, 6 VAC 35-60-450, 6 VAC 35-60-460, 6 VAC 35-60-480, 6 VAC 35-60-490, 6 VAC 35-60-500, 6 VAC 35-60-580, and 6 VAC 35-60-600; adding 6 VAC 35-60-71, 6 VAC 35-60-215, 6 VAC 35-60-235, 6 VAC 35-60-495, and 6 VAC 35-60-605; repealing [6-VAC-35-60-30,] 6 VAC 35-60-70 through 6 VAC 35-60-160, 6 VAC 35-60-200 through 6 VAC 35-60-270, 6 VAC 35-60-300, 6 VAC 35-60-310, 6 VAC 35-60-340 through 6 VAC 35-60-370, 6 VAC 35-60-420, 6 VAC 35-60-430, 6 VAC 35-60-470, 6 VAC 35-60-510 through 6 VAC 35-60-570, 6 VAC 35-60-590, and 6 VAC 35-60-610 through 6 VAC 35-60-670).

Statutory Authority: §§ 66-10, 66-27 and 66-28 of the Code of Virginia.

Effective Date: November 26, 1997.

Summary:

This regulation addresses the administration and responsibilities of Youth Services Citizen Boards including the powers, appointment and qualification of board members. The regulation also sets minimum standards for the administration of offices on youth, addressing goals and objectives, personnel and operations, staff training and development, fiscal management, and monitoring and evaluation, leaving it to the local governing body to decide what is the appropriate level of participation on the board and delivery of services. The regulation establishes minimum standards for programs and services provided by offices on youth, including the development of a delinquency prevention and youth development plan, a biennial operating plan and direct service programs. The final regulation reinstates 6 VAC 35-60-30, which was proposed to have been repealed. The reinstated standard addresses the appointment of Youth Services Citizen Board members by the local governing body or bodies and requires that a majority of the board be citizens who are not employed by government or service agencies nor be elected officials. The final regulation also restores the original substance of 6 VAC 35-60-40 regarding Youth Citizen Board members' terms of office and clarifies that board members may be reappointed.

Summary of Public Comment and Agency Response: A summary of comments made by the public and the agency's response may be obtained from the promulgating agency or viewed at the office of the Registrar of Regulations.

Agency Contact: Copies of the regulation may be obtained from Donald R. Carignan, Regulatory Coordinator, Department of Juvenile Justice, P.O. Box 1110, Richmond, VA 23218-1110, telephone (804) 371-0743.

Preface:

In 1970, the Delinquency Prevention Service was established in recognition of the need to reduce the number of institutionalized children by preventing their contact with the Virginia Juvenile Justice System. The program was founded on several assumptions:

- 1. While individuals are responsible for their decisions and behaviors, factors contributing to juvenile delinquency are to be found, in large part, in conditions and situations that exist in every community.*
- 2. If these conditions and situations are to be changed, there must be a coordinated and systematic effort by each community to identify those which need to be modified.*
- 3. The involvement of citizens as well as professionals in this process will help assure that each locality will*

make maximum utilization of existing services before new programs are developed.

- 4. The goal should be to create an environment which will provide for the positive and wholesome development of youth.*

In 1974, the Virginia General Assembly enacted legislation officially delegating the responsibility for a delinquency prevention and youth development program to the Department of Corrections. This was followed in 1979 by the Delinquency Prevention and Youth Development Act which provided funds for the operation of community-based delinquency prevention programs. The Department of Youth Services became responsible for this program July 1, 1990, when Youth Services was separated from the Department of Corrections. Although these standards must be met by those receiving Act funds, they can also be used by other communities as guidelines for developing a delinquency prevention and youth development program. Within the minimum requirements of these standards, each community is free to develop new and innovative approaches to delinquency prevention.

A program's Youth Services Citizen Board derives its authority from its city council or board of supervisors. Therefore, city councils or boards of supervisors are to define the relationship of the Youth Services Citizen Board to its staff, the Office on Youth. Local governing bodies are not limited in their discretion in determining what form of Youth Services Citizen Board is appropriate for their locality.

The Code of Virginia is the foundation for the development of Minimum Standards for Delinquency Prevention Programs. Section 66-28 of the Code of Virginia directs the State Board of Juvenile Justice to prescribe policies governing applications for grants and standards for the operation of programs developed and implemented under Delinquency Prevention and Youth Development Act grants. The State Board of Juvenile Justice is authorized to monitor the activities of the department and its effectiveness in implementing the policies of the board as specified by § 66-10 of the Code of Virginia.

The Board of Juvenile Justice will certify all Virginia Delinquency Prevention and Youth Development Act grant programs in accordance with the certification process adopted by the Board of Juvenile Justice.

Final Regulations

CHAPTER 60.

MINIMUM STANDARDS FOR VIRGINIA DELINQUENCY PREVENTION AND YOUTH DEVELOPMENT ACT GRANT PROGRAMS.

PART I.

INTRODUCTION: GENERAL PROVISIONS.

6 VAC 35-60-10. Definitions.

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

~~"Administrative Manual" means a written document which contains policies, procedures, rules and regulations, or other operating instructions for a Youth Services Citizen Board or Office on Youth.~~

~~"Biennial Operating Plan" means a written plan, covering two fiscal years, setting forth measurable goals and objectives for a two-year period (two fiscal years) which will accomplish the goal of for developing, coordinating, and evaluating youth services. The Biennial Operating Plan is to be based primarily on the six-year Delinquency Prevention and Youth Development Needs Assessment and Plan.~~

~~"Community" means the particular city or county or combination thereof which a Youth Services Citizen Board serves.~~

~~"Counseling Plan" means a written statement of objectives and goals, services to be rendered, identification of service provider, and timetable for the accomplishment of the objectives and goals.~~

~~"Delinquency Prevention and Youth Development Needs Assessment and Plan" means a document, developed every six years, which analyzes the problems, opportunities and conditions of youth and concludes with a plan of action to meet identified needs.~~

~~"Direct service" means Office on Youth staff or assigned Youth Services Citizen Board members or both providing substantial person-to-person contact with youth or families or both for purposes of instructional or skills development training.~~

~~"Direct services counseling" means a one to one or group relationship involving a trained counselor and focusing on some aspects of a client's adjustment, developmental, or decision-making needs.~~

~~"Functional Working Agreement" means a written document indicating an intent on the part of an agency or organization or individual to support, coordinate and cooperate with, refer to, receive referrals from, provide a resource or service, serve on a task force or committee, etc.~~

~~"Generally accepted accounting principles" means the conventions, rules, procedures, or principles necessary to define accepted accounting practice at a particular time.~~

~~"Government agencies" means an administrative division of state or local government.~~

~~"Knowledge, skills, and abilities qualifications" means the criteria which set forth the expectations of a position (formerly a correlative to education or experience qualifications or both).~~

~~"Local governing body" means the a city council or county board of supervisors, respectively. Many governmental services in Virginia are regionalized to serve more than one governmental jurisdiction. Any Youth Services Citizen Board and Office on Youth designed to provide regionalized that provides services to more than one governmental jurisdiction must have the endorsement and support of all affected governing bodies.~~

~~"Locality" means the city, county or combination thereof served by a Youth Services Citizen Board.~~

~~"Office on Youth" means the staff and the place of business of the staff of the Youth Services Citizen Board.~~

~~"On-site status report" means the semi-annual written report completed by the department's regional office staff based on a visit to the office on youth to review progress on the office's Biennial Operating Plan.~~

~~"Personnel Policy Manual" means a written document which contains the conditions of employment including policies, procedures, responsibilities and benefits for employees of an Office on Youth.~~

~~"Primary prevention" means the active process of creating conditions that promote the well being of people. It encompasses activities which impact systems which address causes rather than symptoms. Primary prevention promotes positive youth development before delinquency occurs. Service options of primary prevention include community assessment, planning, community organization, community education, organizational development, consultation, training, parent education, advocacy for changes in conditions, employment development, legislation development.~~

~~"Principal administrative officer" means the individual (i.e., city manager or county administrator) who is appointed and paid by a local governing body to implement its decisions.~~

~~"Program of public education" means a planned overall approach to provide information to the public related to the needs of youth. Program does not mean a single activity, but multiple types of activities.~~

~~"Self-evaluation" means the assessment that a Youth Services Citizen Board performs at least once a fiscal year of its performance and program. Some factors to include in the self-evaluation are the relevancy of the Youth Services Citizens Board/Office on Youth Program; the performance of the Youth Services Citizen Board's/Office on Youth's program; the performance of the staff; the funding of the Youth Services Citizen Board/Office on Youth and its program; the organization, responsibilities, and functioning of the Youth Services Citizen Board, and the Youth Services Citizen Board and Office on Youth relationships and delegated responsibilities.~~

~~"Service agency" means a public or private human service or juvenile justice organization or agency which primarily addresses the needs of youth and families.~~

~~"Youth Services Citizen Board" means an organization of citizens created by legislative action of the local governing body or bodies to be responsible for planning and coordination and other functions relative to the system of youth services in the community.~~

~~"Sponsoring locality" means the locality that is the fiscal agent or administrator of the grant.~~

PART II.

YOUTH SERVICES CITIZEN BOARD ADMINISTRATION.

[Article 1.

~~Powers, Appointment, and Qualifications of Members.]~~

~~6 VAC 35-60-20. Establishment of Youth Services Citizen Board. Ordinance required.~~

~~The Youth Services Citizen Board shall be established by an ordinance or resolution of the local governing body or bodies of a one or more [locality localities] in accordance with §§ 66-29 and 66-34 of the Code of Virginia, and shall derive its authority from, and be administered by the local governing body or bodies. The ordinance or resolution shall be in accordance with §§ 66-29 through 66-35 of the Code of Virginia.~~

~~6 VAC 35-60-30. [Appointment of Youth Services Citizen Board member. (Repealed.)]~~

~~[The members of the Youth Services Citizen Board, a majority of whom shall be citizens who are not employed by government or service agencies and who are not elected government officials, shall be appointed by the local governing body or bodies. At least one member shall be below the age of 18 years.]~~

~~6 VAC 35-60-40. Length of appointment. Terms.~~

~~[Terms of] Youth Services Citizen Board members shall be [appointed for a term of no less than three years and not more than five years and may be reappointed; appointments shall be] staggered [, as determined by the participating locality or localities, and provide] for continuity. [Youth members shall serve one-year terms and may be reappointed as eligible.]~~

~~6 VAC 35-60-50. Prohibitions on appointment. Restrictions.~~

~~No title, position or agency shall be appointed to the Youth Services Citizen Board.~~

~~6 VAC 35-60-60. Election Officers and bylaws.~~

~~The Youth Services Citizen Board shall elect its own officers and establish its own bylaws.~~

[Article 2.

~~Responsibilities of Youth Services Citizen Boards] : Policy-Making Boards.~~

~~6 VAC 35-60-70. Responsibilities of Youth Services Citizen Board. (Repealed.)~~

~~The Youth Services Citizen Board shall be responsible for supervision and administration of the Office on Youth.~~

~~6 VAC 35-60-71. Youth Services Citizen Board responsibilities.~~

~~The responsibilities of the Youth Services Citizen Board shall be delineated in writing in a form approved by the local governing body.~~

~~6 VAC 35-60-80. Board approval. (Repealed.)~~

~~The Youth Services Citizen Board shall hire the administrator for the Office on Youth and shall approve the following:~~

- ~~1. The number of staff for the Office on Youth;~~
- ~~2. Written job descriptions; and~~
- ~~3. Written minimum knowledge, skills, and abilities qualifications.~~

~~6 VAC 35-60-90. Hiring of staff. (Repealed.)~~

~~The Youth Services Citizen Board shall delegate, in writing to the administrator of the Office on Youth, authority for the hiring of staff.~~

~~6 VAC 35-60-100. Administrative manual. (Repealed.)~~

~~The Youth Services Citizen Board shall be responsible for developing or adopting and maintaining a written administrative manual which shall include policies, procedures, and guidelines for the Office on Youth. This manual shall be available to all Office on Youth staff.~~

~~6 VAC 35-60-110. Delegation of administrative authority. (Repealed.)~~

~~The Youth Services Citizen Board shall establish or adopt written policies, for the Office on Youth administrator, relating to delegation of administrative authority.~~

~~6 VAC 35-60-120. Conflict of interest. (Repealed.)~~

~~The Youth Services Citizen Board shall establish or adopt written policy which prohibits Youth Services Citizen Board members and Office on Youth staff from using their official position to secure privileges for themselves or others and from engaging in activities that constitute conflict of interest.~~

Final Regulations

~~Article 3.~~

~~Responsibilities of Youth Services Citizen Boards; Advisory Boards.~~

~~6 VAC 35-60-130. Supervision and administration. (Repealed.)~~

~~The Youth Services Citizen Board shall assist the principal administrative officer in the supervision and administration of the Office on Youth.~~

~~6 VAC 35-60-140. Establishment of staff qualifications. (Repealed.)~~

~~The Youth Services Citizen Board shall assist the principal administrative officer in establishing for the Office on Youth the following:~~

- ~~1. The number of staff;~~
- ~~2. Written job descriptions; and~~
- ~~3. Written minimum knowledge, skills, and abilities qualifications.~~

~~6 VAC 35-60-150. Hiring of Office on Youth administrator. (Repealed.)~~

~~The Youth Services Citizen Board shall participate in the hiring of the administrator of the Office on Youth.~~

~~6 VAC 35-60-160. Policies, procedures, and guidelines. (Repealed.)~~

~~The principal administrative officer shall be responsible for developing and maintaining a written administrative manual which shall include policies, procedures, and guidelines for the Office on Youth. This manual shall be available to all Office on Youth staff.~~

PART III.

OFFICE ON YOUTH ADMINISTRATION.

Article 1.

Goals and Objectives.

~~6 VAC 35-60-170. Implementation of strategies.~~

~~The Office on Youth shall implement the strategies to accomplish the goals and objectives as established and authorized in the Youth Services Citizen Board Biennial Operating Plan.~~

Article 2.

Personnel and Operations.

~~6 VAC 35-60-180. Full-time administrator, Director.~~

~~The Office on Youth shall have one paid full-time administrator director.~~

~~6 VAC 35-60-190. Administrative capability, Support services.~~

~~The Office on Youth shall possess an administrative capability including have access to clerical and other support services.~~

~~6 VAC 35-60-200. Job descriptions. (Repealed.)~~

~~A written job description with minimum knowledge, skills, and abilities qualifications shall exist for each Office on Youth staff position.~~

~~6 VAC 35-60-210. Minimum qualifications. (Repealed.)~~

~~Job descriptions and minimum knowledge, skills, and abilities qualifications for the Office on Youth administrator staff position shall include, but not be limited to the following:~~

- ~~1. Ability to conduct studies, analyze findings, identify problems, and formulate solutions;~~
- ~~2. Ability to research and develop informational materials;~~
- ~~3. Ability to provide technical assistance and consultation;~~
- ~~4. Ability to establish effective working relationships with agency management and employees, with citizen groups, and with state, local and private organizations; and~~
- ~~5. Ability to communicate orally and in writing.~~

~~6 VAC 35-60-215. Personnel qualifications.~~

~~The Youth Services Citizen Board, if a policy making board, or the city manager or county administrator, with the advice of the Youth Services Citizen Board if an advisory board, shall establish (i) the number of staff; (ii) a written job description for each position; and (iii) the minimum knowledge, skills and abilities required for each position.~~

~~6 VAC 35-60-220. Staff requirements. (Repealed.)~~

~~All Office on Youth staff members shall meet the minimum knowledge, skills, and abilities qualifications established for their respective positions.~~

~~6 VAC 35-60-230. Salary and benefits. (Repealed.)~~

~~Salary levels and employee benefits for all Office on Youth personnel shall be equitable with comparable occupational groups within the sponsoring locality.~~

~~6 VAC 35-60-235. Personnel policies.~~

~~Staff of the Office on Youth shall be governed by, and have ready access to, written personnel policies and procedures.~~

~~6 VAC 35-60-240. Sponsoring locality policy. (Repealed.)~~

~~An Office on Youth shall be governed by the written personnel policy manual of the sponsoring locality when operated under an advisory Youth Services Citizen Board. If no sponsoring locality manual exists, one shall be developed for the Office on Youth.~~

~~6 VAC 35-60-250. Personnel policy manual. (Repealed.)~~

~~Policy-making Youth Services Citizen Boards shall develop and approve a written personnel policy manual for Office on Youth employees or adopt the sponsoring locality's.~~

~~6 VAC 35-60-260. Operation under a policy making board. (Repealed.)~~

~~When the Office on Youth is operated under a policy-making board, the Office on Youth personnel policy manual shall include, but not be limited to, policies concerning:~~

- ~~1. Recruitment and selection;~~
- ~~2. Grievance and appeal;~~
- ~~3. Annual employee evaluation;~~
- ~~4. Confidentiality of employee personnel records;~~
- ~~5. Equal employment opportunity;~~
- ~~6. Leave and benefits;~~
- ~~7. Resignations and termination;~~
- ~~8. Promotion, demotion and transfer;~~
- ~~9. Probationary period; and~~
- ~~10. Compensation.~~

~~6 VAC 35-60-270. Availability of policy manual. (Repealed.)~~

~~A copy of the personnel policy manual shall be made available to each Office on Youth employee by the administrator of the Office on Youth.~~

~~6 VAC 35-60-280. Statewide procedures and guidelines.~~

~~A copy of the statewide procedures and guidelines manual developed by the Department of Youth Services Juvenile Justice shall be made available to each Youth Services Citizen Board member and Office on Youth employee by the administrator of the maintained in each Office on Youth and shall be followed by the Office on Youth when applicable procedures and policies are not provided by the local governing body or developed and approved by the Youth Services Citizen Board. Local procedures shall not be in conflict with the statewide procedures and guidelines manual.~~

Article 3.

Staff Training and Development.

~~6 VAC 35-60-290. Training program.~~

~~A program of training with defined objectives relating to the job description, the Biennial Operating Plan and the Delinquency Prevention and Youth Development Needs Assessment and Plan shall be written annually for each position established for the Office on Youth.~~

~~6 VAC 35-60-300. Full-time staff training. (Repealed.)~~

~~All full-time staff members of the Office on Youth shall have a minimum of 40 hours of training per year based on the written training program.~~

~~6 VAC 35-60-310. Part-time staff training. (Repealed.)~~

~~All part-time staff members of the Office on Youth working 20 hours or more per week shall have a minimum of 20 hours of training per year based on the written training program.~~

Article 4.
Fiscal Management.

~~6 VAC 35-60-320. Annual operating budget. Budget review.~~

~~The Youth Services Citizen Board shall review and comment on the proposed annual operating budget of the Youth Services Citizen Board and the Office on Youth shall be approved by the Youth Services Citizen Board prior to submission to the locality's principal administrative officer or officers and governing body or bodies.~~

~~6 VAC 35-60-330. Revenue and projected expenses. Budget submission.~~

~~The sponsoring locality shall submit annually to the Department of Corrections Juvenile Justice the approved operating budget for the Youth Services Citizen Board and Office on Youth showing appropriated revenue and projected expenses for the coming year.~~

~~6 VAC 35-60-340. Financial record-keeping. (Repealed.)~~

~~There shall be a system of financial record-keeping for the Youth Services Citizen Board/Office on Youth that is consistent with generally accepted accounting principles.~~

~~6 VAC 35-60-350. Separation of accounts. (Repealed.)~~

~~There shall be a system of financial record-keeping that shows a separation of the Youth Services Citizen Board/Office on Youth accounts from all other records.~~

~~6 VAC 35-60-360. Bond requirements. (Repealed.)~~

~~Those members of the Youth Services Citizen Board and Office on Youth staff who have been authorized the responsibility of handling funds of the program shall be bonded.~~

~~6 VAC 35-60-370. Compliance audits. (Repealed.)~~

~~A compliance audit by an independent Certified Public Accountant shall be conducted annually on the financial records of the Youth Services Citizen Board/Office on Youth programs in accordance with local and state regulations.~~

~~6 VAC 35-60-380. Purchasing policies and procedures.~~

~~The sponsoring locality's purchasing policies and procedures shall govern purchasing of supplies, materials, equipment and services.~~

~~6 VAC 35-60-390. Review of income and disbursements. Quarterly review.~~

~~The Youth Services Citizen Board shall review, on at least a quarterly basis, income received and disbursements made by of the Youth Services Citizen Board and Office on Youth.~~

Final Regulations

Article 5.
Monitoring and Evaluation.

6 VAC 35-60-400. ~~Biennial operating plan. Semi-annual documentation.~~

The ~~administrator~~ *director* of the Office on Youth shall provide the Department of [~~Youth Services~~] *Juvenile Justice*, at least semi-annually, documentation to evaluate the accomplishment of the Biennial Operating Plan.

6 VAC 35-60-410. On-site status report.

The ~~administrator~~ *director* of the Office on Youth shall circulate or distribute copies of the on-site status report received from the ~~department's~~ regional *Juvenile Delinquency Prevention Specialist program manager* to all members of the Youth Services Citizen Board and the ~~principal administrative officer~~ *city manager or county administrator* within 45 calendar days of its receipt.

6 VAC 35-60-420. Self-evaluation. (Repealed.)

~~The Youth Services Citizen Board shall conduct a self evaluation at least once a year regarding the board's functioning. The self evaluation shall include, but not be limited to, the following factors: the relevancy of the Youth Services Citizen Board/Office on Youth program; the performance of the Youth Services Citizen Board's/Office on Youth's program; the performance of the staff; the funding of the Youth Services Citizen Board/Office on Youth and its program; the organization, responsibilities, and functioning of the Youth Services Citizen Board; and the Youth Services Citizen Board and Office on Youth relationships and delegated responsibilities.~~

6 VAC 35-60-430. Retention of self evaluation. (Repealed.)

~~The administrator of the Office on Youth shall keep a signed, dated copy of the annual Youth Services Citizen Board's self evaluation in the office files.~~

PART IV.
PROGRAMS AND SERVICES.

Article 1.
Delinquency Prevention and Youth Development Needs
Assessment and Plan.

6 VAC 35-60-440. ~~Youth assessment. Needs assessment every six years.~~

The Office on Youth shall ~~conduct an assessment of~~ assess the needs of youth ~~within their~~ *in the* jurisdiction at least every six years after the initial assessment, which shall be completed within the first two years of operation.

6 VAC 35-60-450. ~~Assessment criteria. Needs assessment contents.~~

The assessment of the needs of youth shall include but not be limited to:

1. A detailed compilation of the problems, needs, opportunities and conditions of youth ~~based on:~~ *in the community that is received by the regional office; and*

- ~~a. Youth service agencies' opinions;~~
- ~~b. A survey of public opinion;~~
- ~~c. A survey of youth; and~~
- ~~d. An analysis of available archival data.~~

2. A comprehensive inventory of current programs and resources impacting on youth, including:

- a. Identifying information;
- b. Program descriptions;
- c. Clientele served; and
- d. Fee requirements.

6 VAC 35-60-460. ~~Delinquency prevention and youth development needs assessment plan. Plan based on needs assessment.~~

The Youth Services Citizen Board and the Office on Youth, in conjunction with other youth-serving agencies, *including the court service unit*, shall develop and approve the *plan for their locality or localities based upon the written Delinquency Prevention and Youth Development Needs Assessment and Plan for their community or communities.*

6 VAC 35-60-470. ~~Criteria of assessment plan. (Repealed.)~~

~~The Delinquency Prevention and Youth Development Needs Assessment and Plan.~~

The plan shall include, but not be limited to:

- ~~1. An analysis of the needs assessment;~~
- ~~2. Recommendations concerning youth service needs of the community; and~~
- ~~3. A plan of action to meet the identified needs.~~

6 VAC 35-60-480. ~~Submission of plan. Distribution of needs assessment and plan.~~

The Youth Services Citizen Board shall submit a signed copy of *both* the written six-year Delinquency Prevention and Youth Development Needs Assessment and *the resulting* plan to the local governing body or bodies and the Virginia Department of ~~Youth Services~~ *Juvenile Justice* within 60 days of Youth Services Citizen Board approval.

Article 2.
Biennial Operating Plan.

6 VAC 35-60-490. ~~Biennial operating plan. Focus of plan.~~

The Youth Services Citizen Board and the Office on Youth shall develop a written Biennial Operating Plan with 75% of the objectives based on the Delinquency Prevention and Youth Development Needs Assessment and Plan, *which and a majority of the objectives based on the needs of juveniles*

as identified by the court service unit. The Biennial Operating Plan shall set forth goals, objectives and strategies for the Youth Services Citizen Board and Office on Youth.

6 VAC 35-60-495. Service population.

A majority of the services provided through the Biennial Operating Plan objectives shall address the needs of juveniles who are eligible to receive services through the juvenile court service unit.

6 VAC 35-60-500. ~~Written progress reports. Annual reports.~~

Annually, the Youth Services Citizen Board shall submit a written report to the local governing body[7] and ~~send copies to the regional office of the Virginia Department of Youth Services Juvenile Justice, the director of the court service unit, and the juvenile judges,~~ regarding progress toward ~~accomplishment of accomplishing the Delinquency Prevention and Youth Development Needs Assessment and Plan [7] and the Biennial Operating Plan.~~

6 VAC 35-60-510. ~~Areas to be adressed. (Repealed.)~~

~~The Biennial Operating Plan shall address at least three of the youth needs areas identified by the Department of Youth Services.~~

6 VAC 35-60-520. ~~Public education. (Repealed.)~~

~~The Biennial Operating Plan shall include a program of public education to be conducted related to the needs of youth as identified in the Delinquency Prevention and Youth Development Needs Assessment and Plan.~~

~~Article 3.
Community Involvement.~~

6 VAC 35-60-530. ~~Improvement of community conditions. (Repealed.)~~

~~The Youth Services Citizen Board shall document attempts to add, delete or change laws, policies, and procedures that will improve community conditions for youth development.~~

6 VAC 35-60-540. ~~Referral system. (Repealed.)~~

~~It shall be the responsibility of the Youth Services Citizen Board, through the Office on Youth, to assure that a mechanism exists for all youth and their families to be linked to appropriate services through a 40 hour or more per week referral system in the community. Exceptions to the 40 hours or more per week referral system can be made for locally approved holidays as specified in the sponsoring governing body's personnel policy manual.~~

6 VAC 35-60-550. ~~Working agreements. (Repealed.)~~

~~The Office on Youth shall document efforts to promote collaboration among and between other youth serving agencies through the development and updating of functional working agreements with and among other youth service agencies.~~

6 VAC 35-60-560. ~~Letters of agreement. (Repealed.)~~

~~Letters of understanding, cooperation or agreement outlining expectations of all parties shall be established between the Youth Services Citizen Board/Office on Youth and other agencies identified as primary participants in the accomplishment of the Biennial Operating Plan.~~

6 VAC 35-60-570. ~~Public accessibility. (Repealed.)~~

~~Consistent with the applicable personnel policies, the Office on Youth shall be accessible to the public by phone or walk in 40 hours per week.~~

~~Article 4. 3.
Direct Service Programs.~~

6 VAC 35-60-580. ~~Direct service programs. Documented need required.~~

The need for the Office on Youth to operate a direct service program shall be documented and ~~be included in the Delinquency Prevention and Youth Development Needs Assessment and Plan, and Biennial Operating Plan. If there is a documented need for the Office on Youth to operate a direct service program, the Biennial Operating Plan shall specify:~~

1. ~~The range of services to be provided, which may include individual, group or family counseling; immediate, intensive, problem specific, in-home interventions to children and their families; parenting skills training; and other services;~~
2. ~~How these services will be made available to juveniles and their families including eligibility criteria, methods to be used, the number and type of contacts anticipated, and the factors to be considered in determining or adjusting the appropriate level and number of contacts;~~
3. ~~Who will provide the service;~~
4. ~~Documentation and record management requirements; and~~
5. ~~That the service cannot be provided by existing agencies.~~

6 VAC 35-60-590. ~~Letters of assurance. (Repealed.)~~

~~In order for the Office on Youth to operate a direct service program, documentation shall be submitted for approval to the Department of Youth Services with the Biennial Operating Plan to include letters of assurance from the Youth Services Citizen Board and the administrator of the appropriate agency or organization. The letters shall state that the service cannot be provided by existing agencies.~~

6 VAC 35-60-600. ~~Case record Records management.~~

~~When a program provides direct counseling services, the administrator *director* of the Office on Youth shall develop written policy and procedure governing counseling case record management to include, but not be limited to ensure that:~~

Final Regulations

- ~~1. Confidentiality. Juveniles' records are kept confidential;~~
- ~~2. Release of Information is released only in conformity with law; and~~
- ~~3. Destruction of Records: are destroyed as prescribed in regulations issued by the Virginia State Library Board; and~~
- ~~4. All services are provided by individuals who are appropriately licensed or certified to provide the service.~~

~~6 VAC 35-60-605. Approval of direct services.~~

~~Direct services provided by the Office on Youth shall:~~

- ~~1. Be certified under applicable regulations; or~~
- ~~2. In the absence of applicable regulations, be individually approved by the department's regional office to operate on a provisional basis for not more than two years, pending promulgation of appropriate regulations by the board.~~

~~6 VAC 35-60-610. Uniformity of case record. (Repealed.)~~

~~Direct counseling services case records shall be basically uniform as to content and arrangement of content.~~

~~6 VAC 35-60-620. Contents of case files. (Repealed.)~~

~~The direct counseling services case files shall include, but not be limited to, the following:~~

- ~~1. Face sheet;~~
- ~~2. Reason for referral;~~
- ~~3. Assessment or evaluation, or both;~~
- ~~4. Case narrative;~~
- ~~5. Correspondence;~~
- ~~6. Counseling service plan; and~~
- ~~7. Reason for termination and date.~~

~~6 VAC 35-60-630. Face sheet information. (Repealed.)~~

~~The direct counseling services face sheet shall contain the following client information:~~

- ~~1. Name;~~
- ~~2. Sex;~~
- ~~3. Race;~~
- ~~4. Date of birth;~~
- ~~5. Name of parents or legal guardian or guardians;~~
- ~~6. Address of child, parent or legal guardian or guardians;~~
- ~~7. Telephone number;~~
- ~~8. Referral source; and~~
- ~~9. Date of initial contact.~~

~~6 VAC 35-60-640. Review of direct counseling services. (Repealed.)~~

~~Each direct counseling services case shall be reviewed and evaluated by the administrator of the Office on Youth at least once every 90 days to determine the appropriateness of the counseling plan and continued service delivery.~~

~~6 VAC 35-60-650. Discussion with client. (Repealed.)~~

~~The direct counseling services plan shall be discussed with the client (juvenile or family) within the initial 30 days and at least every 90 days thereafter.~~

~~6 VAC 35-60-660. Review of service plan. (Repealed.)~~

~~The written direct counseling service plan shall be reviewed by the administrator of the Office on Youth before being implemented.~~

~~6 VAC 35-60-670. Counselor training. (Repealed.)~~

~~Counselors or existing staff assigned to provide direct counseling services shall receive, at a minimum, 40 hours of annual training. At least 20 of these hours shall be in counseling theory and techniques.~~

V.A.R. Doc. No. R97-414; Filed October 7, 1997, 2:57 p.m.

TITLE 9. ENVIRONMENT

STATE AIR POLLUTION CONTROL BOARD

Title of Regulations: 9 VAC 5-10-10 et seq. Regulations for the Control and Abatement of Air Pollution: General Definitions (amending [9 VAC 5-10-10 and] 9 VAC 5-10-20 [; repealing Appendix E and Appendix F of 9 VAC 5-40-20]).

9 VAC 5-20-10 et seq. Regulations for the Control and Abatement of Air Pollution: General Provisions (amending 9 VAC 5-20-50; repealing 9 VAC 5-20-20, 9 VAC 5-20-30, 9 VAC 5-20-40, 9 VAC 5-20-60, 9 VAC 5-20-90 through 9 VAC 5-20-150 [, and 9 VAC 5-20-210 through 9 VAC 5-20-213]).

9 VAC 5-91-10 et seq. Regulations for the Control of Motor Vehicle Emissions in the Northern Virginia Area (amending [9 VAC 5-91-10,] 9 VAC 5-91-20 [, and 9 VAC 5-91-150] ; repealing 9 VAC 5-91-40, 9 VAC 5-91-60, 9 VAC 5-91-80, [9 VAC 5-91-100,] and 9 VAC 5-91-110 [; adding 9 VAC 5-91-41]).

[~~9 VAC 5-120-40~~ 9 VAC 5-121-10] et seq. Regulation for the Control of Emissions from Fleet Vehicles (amending [~~9 VAC 5-120-20~~] 9 VAC 5-121-10, 9 VAC 5-121-20, 9 VAC 5-121-80 and 9 VAC 5-121-260] ; repealing [~~9 VAC 5-120-40, 9 VAC 5-120-50, 9 VAC 5-120-60, 9 VAC 5-120-90 and 9 VAC 5-120-120~~] 9 VAC 5-121-40, 9 VAC 5-121-50, 9 VAC 5-121-60, and 9 VAC 5-121-90]).

9 VAC 5-150-10 et seq. Regulation for Transportation Conformity (amending [9 VAC 5-150-10 and] 9 VAC 5-150-20; repealing 9 VAC 5-150-50, 9 VAC 5-150-60, 9 VAC 5-150-70, 9 VAC 5-150-90, and 9 VAC 5-150-100).

9 VAC 5-160-10 et seq. Regulation for General Conformity (amending [9 VAC 5-160-10 and] 9 VAC 5-160-20; repealing 9 VAC 5-160-50, 9 VAC 5-160-60, 9 VAC 5-160-70, 9 VAC 5-160-90, and 9 VAC 5-160-100).

9 VAC 5-170-10 et seq. Regulation for General Administration.

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

Effective Date: January 1, 1998.

Summary:

The regulation contains provisions covering general administration, specifically the applicability, establishment and enforcement of regulations and orders; the administration of associated hearings and proceedings; the approval of local ordinances; the appeal of board decisions; the right of entry upon public and private property; the approval of items with conditions; the availability of procedural information and guidance; the approval of certain items requiring specific considerations; the availability of information to the public; the delegation of authority; and public participation in regulation development.

Because the provisions of the regulation are intended to replace similar provisions in existing regulations, those similar provisions will be repealed or amended. The affected provisions are in Regulations for the Control and Abatement of Air Pollution (9 VAC 5 Chapters 10 and 20), Regulations for the Control of Motor Vehicle Emissions in the Northern Virginia Area (9 VAC 5 Chapter 91), Regulation for the Control of Emissions from Fleet Vehicles (9 VAC 5 Chapter 121), Regulation for Transportation Conformity (9 VAC 5 Chapter 150), and Regulation for General Conformity (9 VAC 5 Chapter 160).

Below is a brief summary of the substantive changes the board made to the proposed regulation.

1. The definition of "case decision" was clarified to include and exclude specific actions.
2. The option of requesting an electronic recording of a public hearing or informal fact finding was added to the courses of action available to the public.
3. The option of publishing a notice of the hearing and comment period in any newspaper was added to the courses of action available to the department.
4. The applicability of the appeal procedures to various actions of the board was clarified.

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 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.

[9 VAC 5-10-10. General.

A. For the purpose of ~~these regulations~~ the Regulations for the Control and Abatement of Air Pollution and subsequent amendments or any orders issued by the board, the words or terms shall have the meanings given them in 9 VAC 5-10-20.

B. Unless specifically defined in the Virginia Air Pollution Control Law or in ~~these regulations~~ the Regulations for the Control and Abatement of Air Pollution, terms used shall have the meanings ~~commonly ascribed to them by recognized authorities~~ given them by 9 VAC 5-170-20 (definitions, Regulation for General Administration), or commonly ascribed to them by recognized authorities, in that order of priority.

C. In addition to the definitions given in this ~~part~~ chapter, some other major divisions (i.e., chapters, parts, rules articles, etc.) of ~~these regulations~~ the Regulations for the Control and Abatement of Air Pollution have within them definitions for use with that specific major division.]

9 VAC 5-10-20. Terms defined.

"Actual emissions rate" means the actual rate of emissions of a pollutant from an emissions unit. In general actual emissions shall equal the average rate, in tons per year, at which the unit actually emitted the pollutant during the most recent two-year period or some other two-year period which is representative of normal source operation. If the board determines that no two-year period is representative of normal source operation, the board shall allow the use of an alternative period of time upon a determination by the board that it is more representative of normal source operation. Actual emissions shall be calculated using the unit's actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period.

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

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

"Affected facility" means, with reference to a stationary source, any part, equipment, facility, installation, apparatus, process or operation to which an emission standard is applicable or any other facility so designated.

"Air pollution" means the presence in the outdoor atmosphere of one or more substances which are or may be harmful or injurious to human health, welfare or safety; to

Final Regulations

animal or plant life; or to property; or which unreasonably interfere with the enjoyment by the people of life or property.

"Air quality" means the specific measurement in the ambient air of a particular air pollutant at any given time.

"Air quality control region" means any area designated as such in [~~9 VAC 5-10-20, Appendix B 9 VAC 5-20-200~~].

"Air quality maintenance area" means any area which, due to current air quality or projected growth rate or both, may have the potential for exceeding any ambient air quality standard set forth in [9 VAC 5 Chapter 30 () 9 VAC 5-30-10 et seq.()] within a subsequent 10-year period and designated as such in [~~9 VAC 5-10-20, Appendix H 9 VAC 5-20-203~~].

"Alternative method" means any method of sampling and analyzing for an air pollutant which is not a reference or equivalent method, but which has been demonstrated to the satisfaction of the board, in specific cases, to produce results adequate for its determination of compliance.

"Ambient air" means that portion of the atmosphere, external to buildings, to which the general public has access.

"Ambient air quality standard" means any primary or secondary standard designated as such in [9 VAC 5 Chapter 30 () 9 VAC 5-30-10 et seq. ()].

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

"Class I area" means any prevention of significant deterioration area (i) in which virtually any deterioration of existing air quality is considered significant and (ii) designated as such in ~~9 VAC 5-10-20, Appendix L 9 VAC 5-20-205~~.

"Class II area" means any prevention of significant deterioration area (i) in which any deterioration of existing air quality beyond that normally accompanying well-controlled growth is considered significant and (ii) designated as such in ~~9 VAC 5-10-20, Appendix L 9 VAC 5-20-205~~.

"Class III area" means any prevention of significant deterioration area (i) in which deterioration of existing air quality to the levels of the ambient air quality standards is permitted and (ii) designated as such in ~~9 VAC 5-10-20, Appendix L 9 VAC 5-20-205~~.

~~"Confidential information" means secret formulae, secret processes, 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 these regulations, by mutual agreement of the owner or any other person and the board.~~

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

"Continuous monitoring system" means the total equipment used to sample and condition (if applicable), to analyze, and to provide a permanent continuous record of emissions or process parameters.

"Control program" means a plan formulated by the owner of a stationary source to establish pollution abatement goals, including a compliance schedule to achieve such goals. The plan may be submitted voluntarily, or upon request or by order of the board, to ensure compliance by the owner with standards, policies and regulations adopted by the board. The plan shall include system and equipment information and operating performance projections as required by the board for evaluating the probability of achievement. A control program shall contain the following increments of progress:

1. The date by which contracts for emission control system or process modifications are to be awarded, or the date by which orders are to be issued for the purchase of component parts to accomplish emission control or process modification.
2. The date by which the on-site construction or installation of emission control equipment or process change is to be initiated.
3. The date by which the on-site construction or installation of emission control equipment or process modification is to be completed.
4. The date by which final compliance is to be achieved.

"Criteria pollutant" means any pollutant for which an ambient air quality standard is established under [9 VAC 5 Chapter 30 () 9 VAC 5-30-10 et seq. ()]

"Day" means a 24-hour period beginning at midnight.

"Delayed compliance order" means any order of the board issued after an appropriate hearing to an owner which postpones the date by which a stationary source is required to comply with any requirement contained in the applicable State Implementation Plan.

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

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

"Dispersion technique"

1. Means any technique which attempts to affect the concentration of a pollutant in the ambient air by:
 - a. Using that portion of a stack which exceeds good engineering practice stack height;
 - b. Varying the rate of emission of a pollutant according to atmospheric conditions or ambient concentrations of that pollutant; or
 - c. Increasing final exhaust gas plume rise by manipulating source process parameters, exhaust gas parameters, stack parameters, or combining exhaust gases from several existing stacks into one stack; or other selective handling of exhaust gas streams so as to increase the exhaust gas plume rise.
2. The preceding sentence does not include:
 - a. The reheating of a gas stream, following use of a pollution control system, for the purpose of returning the gas to the temperature at which it was originally discharged from the facility generating the gas stream;
 - b. The merging of exhaust gas streams where:
 - (1) The owner demonstrates that the facility was originally designed and constructed with such merged gas streams;
 - (2) After July 8, 1985, such merging is part of a change in operation at the facility that includes the installation of pollution controls and is accompanied by a net reduction in the allowable emissions of a pollutant. This exclusion from the definition of "dispersion techniques" shall apply only to the emission limitation for the pollutant affected by such change in operation; or
 - (3) Before July 8, 1985, such merging was part of a change in operation at the facility that included the installation of emissions control equipment or was carried out for sound economic or engineering reasons. Where there was an increase in the emission limitation or, in the event that no emission limitation was in existence prior to the merging, an increase in the quantity of pollutants actually emitted prior to the merging, the board shall presume that merging was significantly motivated by an intent to gain emissions credit for greater dispersion. Absent a demonstration by the owner that merging was not significantly motivated by such intent, the board shall deny credit for the effects of such merging in calculating the allowable emissions for the source;
 - c. Smoke management in agricultural or silvicultural prescribed burning programs;
 - d. Episodic restrictions on residential woodburning and open burning; or
 - e. Techniques under subdivision 1 c of this definition which increase final exhaust gas plume rise where the

resulting allowable emissions of sulfur dioxide from the facility do not exceed 5,000 tons per year.

"Emergency" means a situation that immediately and unreasonably affects, or has the potential to immediately and unreasonably affect, public health, safety or welfare; the health of animal or plant life; or property, whether used for recreational, commercial, industrial, agricultural or other reasonable use.

~~"Emergency special order" means any order of the board issued under the provisions of § 10.1-1309-B of the Code of Virginia, after declaring a state of emergency and without a hearing, to owners who are permitting or causing air pollution, to cease such pollution. Such orders shall become invalid if an appropriate hearing is not held within 10 days after the effective date.~~

"Emission limitation" means any requirement established by the board which limits the quantity, rate, or concentration of continuous emissions of air pollutants, including any requirements which limit the level of opacity, prescribe equipment, set fuel specifications, or prescribe operation or maintenance procedures to assure continuous emission reduction.

"Emission standard" means any provision 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. ()] which prescribes an emission limitation, or other requirements that control air pollution emissions.

"Emissions unit" means any part of a stationary source which emits or would have the potential to emit any air pollutant.

"Equivalent method" means any method of sampling and analyzing for an air pollutant which has been demonstrated to the satisfaction of the board to have a consistent and quantitative relationship to the reference method under specified conditions.

"Excess emissions" means emissions of air pollutant in excess of an emission standard.

"Excessive concentration" is defined for the purpose of determining good engineering practice (GEP) stack height under subdivision 3 of the GEP definition and means:

1. For sources seeking credit for stack height exceeding that established under subdivision 2 of the GEP definition, a maximum ground-level concentration due to emissions from a stack due in whole or part to downwash, wakes, and eddy effects produced by nearby structures or nearby terrain features which individually is at least 40% in excess of the maximum concentration experienced in the absence of such downwash, wakes, or eddy effects and which contributes to a total concentration due to emissions from all sources that is greater than an ambient air quality standard. For sources subject to the provisions of 9 VAC 5-80-20, an excessive concentration alternatively means a maximum

Final Regulations

ground-level concentration due to emissions from a stack due in whole or part to downwash, wakes, or eddy effects produced by nearby structures or nearby terrain features which individually is at least 40% in excess of the maximum concentration experienced in the absence of the maximum concentration experienced in the absence of such downwash, wakes, or eddy effects and greater than a prevention of significant deterioration increment. The allowable emission rate to be used in making demonstrations under this provision shall be prescribed by the new source performance standard that is applicable to the source category unless the owner demonstrates that this emission rate is infeasible. Where such demonstrations are approved by the board, an alternative emission rate shall be established in consultation with the owner;

2. For sources seeking credit after October 11, 1983, for increases in existing stack heights up to the heights established under subdivision 2 of the GEP definition, either (i) a maximum ground-level concentration due in whole or part to downwash, wakes or eddy effects as provided in subdivision 1 of this definition, except that the emission rate specified by any applicable state implementation plan (or, in the absence of such a limit, the actual emission rate) shall be used, or (ii) the actual presence of a local nuisance caused by the existing stack, as determined by the board; and

3. For sources seeking credit after January 12, 1979, for a stack height determined under subdivision 2 of the GEP definition where the board requires the use of a field study or fluid model to verify GEP stack height, for sources seeking stack height credit after November 9, 1984, based on the aerodynamic influence of cooling towers, and for sources seeking stack height credit after December 31, 1970, based on the aerodynamic influence of structures not adequately represented by the equations in subdivision 2 of the GEP definition, a maximum ground-level concentration due in whole or part to downwash, wakes or eddy effects that is at least 40% in excess of the maximum concentration experienced in the absence of such downwash, wakes, or eddy effects.

"Existing source" means any stationary source other than a new source or modified source.

"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., 91 Stat 685.

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

1. Any requirement approved by the administrator pursuant to the provisions of § 111 or § 112 of the federal Clean Air Act;
2. Any applicable source-specific or source-category emission limit or requirement in an implementation plan;
3. Any permit requirements established pursuant to [9 VAC 5 Chapter 80 () 9 VAC 5-80-10 et seq. ()], with the exception of terms and conditions established to address applicable state requirements; and
4. Any other applicable federal requirement.

~~*"Formal hearing"* means board processes other than those informational or factual inquiries of an informal nature provided in §§ 0-6.14:7-1 and 0-6.14:11 of the Administrative Process Act and includes only (i) opportunity for private parties to submit factual proofs in formal proceedings as provided in § 0-6.14:8 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 § 0-6.14:12 of the Administrative Process Act in connection with case decisions.~~

"Good engineering practice" (GEP) stack height or "GEP," with reference to the height of the stack,] means the greater of:

1. 65 meters, measured from the ground-level elevation at the base of the stack;
2. a. For stacks in existence on January 12, 1979, and for which the owner had obtained all applicable permits or approvals required under [9 VAC 5 Chapter 80 () 9 VAC 5-80-10 et seq. ()],

$$H_g = 2.5H,$$

provided the owner produces evidence that this equation was actually relied on in establishing an emission limitation;

- b. For all other stacks,

$$H_g = H + 1.5L,$$

where:

H_g = good engineering practice stack height, measured from the ground-level elevation at the base of the stack,

H = height of nearby structure(s) measured from the ground-level elevation at the base of the stack,

L = lesser dimension, height or projected width, of nearby structure(s) provided that the board may require the use of a field study or fluid model to verify GEP stack height for the source; or

3. The height demonstrated by a fluid model or a field study approved by the board, which ensures that the emissions from a stack do not result in excessive concentrations of any air pollutant as a result of atmospheric downwash, wakes, or eddy effects created

by the source itself, nearby structures or nearby terrain features.

"*Hazardous air pollutant*" means an air pollutant to which no ambient air quality standard is applicable and which in the judgment of the administrator causes, or contributes to, air pollution which may reasonably be anticipated to result in an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness.

"*Implementation plan*" means the portion or portions of the state implementation plan, or the most recent revision thereof, which has been approved under § 110 of the federal Clean Air Act, or promulgated under § 110(c) of the federal Clean Air Act, or promulgated or approved 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.

"*Isokinetic sampling*" means sampling in which the linear velocity of the gas entering the sampling nozzle is equal to that of the undisturbed gas stream at the sample point.

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

"*Malfunction*" means any sudden failure of air pollution control equipment, of process equipment, or of a process to operate in a normal or usual manner, which failure is not due to intentional misconduct or negligent conduct on the part of the owner or other person.

"*Metropolitan statistical area*" means any area designated as such in [~~9 VAC 5-10-20, Appendix G~~ 9 VAC 5-20-202].

"*Monitoring device*" means the total equipment used to measure and record (if applicable) process parameters.

"*Nearby*" as used in the definition of good engineering practice (GEP) is defined for a specific structure or terrain feature and

1. For purposes of applying the formulae provided in subdivision 2 of the GEP definition means that distance up to five times the lesser of the height or the width dimension of a structure, but not greater than 0.8 km (1/2 mile), and
2. For conducting demonstrations under subdivision 3 of the GEP definition means not greater than 0.8 km (1/2 mile), except that the portion of a terrain feature may be considered to be nearby which falls within a distance of up to 10 times the maximum height (Ht) of the feature, not to exceed 2 miles if such feature achieves a height (Ht) 0.8 km from the stack that is at least 40% of the GEP stack height determined by the formulae provided in subdivision 2 b of the GEP definition or 26 meters, whichever is greater, as measured from the ground-level elevation at the base of the stack. The height of the structure or terrain feature is measured from the ground-level elevation at the base of the stack.

"*Nitrogen oxides*" means all oxides of nitrogen except nitrous oxide, as measured by test methods set forth in 40 CFR Part 60.

"*Nonattainment area*" means any area which is shown by air quality monitoring data or, where such data are not available, which is calculated by air quality modeling (or other methods determined by the board to be reliable) to exceed the levels allowed by the ambient air quality standard for a given pollutant including, but not limited to, areas designated as such in ~~9 VAC 5-10-20, Appendix K~~ 9 VAC 5-20-204.

"*One hour*" means any period of 60 consecutive minutes.

"*One-hour period*" means any period of 60 consecutive minutes commencing on the hour.

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

"*Organic compound*" means any chemical compound of carbon excluding carbon monoxide, carbon dioxide, carbonic disulfide, carbonic acid, metallic carbides, metallic carbonates and ammonium carbonate.

"*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 source.

"*Particulate matter*" means any airborne finely divided solid or liquid material with an aerodynamic diameter smaller than 100 micrometers.

"*Particulate matter emissions*" means all finely divided solid or liquid material, other than uncombined water, emitted to the ambient air as measured by the applicable reference method, or an equivalent or alternative method.

~~"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.~~

"*PM₁₀*" 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.

"*PM₁₀ emissions*" means finely divided solid or liquid material, with an aerodynamic diameter less than or equal to a nominal 10 micrometers emitted to the ambient air as measured by the applicable reference method, or an equivalent or alternative method.

"*Performance test*" means a test for determining emissions from new or modified sources.

Final Regulations

"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.

"Potential to emit" means the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a 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 only if the limitation or its effect on emissions is state and federally enforceable.

"Prevention of significant deterioration area" means any area not designated as a nonattainment area in ~~9 VAC 5-10-20, Appendix K 9 VAC 5-20-204~~ for a particular pollutant and designated as such in ~~9 VAC 5-10-20, Appendix L 9 VAC 5-20-205~~.

"Proportional sampling" means sampling at a rate that produces a constant ratio of sampling rate to stack gas flow rate.

"Public hearing" means, unless indicated otherwise, 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.

"Reference method" means any method of sampling and analyzing for an air pollutant as described in the following EPA regulations:

1. For ambient air quality standards in [9 VAC 5 Chapter 30 () 9 VAC 5-30-10 et seq.]]: The applicable appendix of 40 CFR Part 50 or any method that has been designated as a reference method in accordance with 40 CFR Part 53, except that it does not include a method for which a reference designation has been canceled in accordance with 40 CFR 53.11 or 40 CFR 53.16.
2. For emission standards in [9 VAC 5 Chapter 40 () 9 VAC 5-40-10 et seq.]] and [9 VAC 5 Chapter 50 () 9 VAC 5-50-10 et seq.]]: Appendix A of 40 CFR Part 60.
3. For emission standards in [9 VAC 5 Chapter 60 () 9 VAC 5-60-10 et seq.]]: Appendix B of 40 CFR Part 61.

"Regional director" means the regional director of an administrative region of the Department of Environmental Quality or a designated representative.

["Regulation of the board" means any regulation adopted by the State Air Pollution Control Board under any provision of the Code of Virginia.

"Regulations for the Control and Abatement of Air Pollution" means 9 VAC 5 Chapters 10 (9 VAC 5-10-10 et seq.) through 80 (9 VAC 5-80-10 et seq.).]

"Reid vapor pressure" means the absolute vapor pressure of volatile crude oil and volatile nonviscous petroleum liquids except liquefied petroleum gases as determined by American Society for Testing and Materials, Standard D323-82, Test Method for Vapor Pressure of Petroleum Products (Reid Method) (see ~~9 VAC 5-10-20, Appendix M 9 VAC 5-10-21~~).

"Run" means the net period of time during which an emission sampling is collected. Unless otherwise specified, a run may be either intermittent or continuous within the limits of good engineering practice.

"Shutdown" means the cessation of operation of an affected facility for any purpose.

"Source" means any one or combination of the following: buildings, structures, facilities, installations, articles, machines, equipment, landcraft, watercraft, aircraft or other contrivances which contribute, or may contribute, either directly or indirectly to air pollution. Any activity by any person that contributes, or may contribute, either directly or indirectly to air pollution, including, but not limited to, open burning, generation of fugitive dust or emissions, and cleaning with abrasives or chemicals.

"Special order" means any order of the board issued:

~~1. Under the provisions of § 10.1-1300 of the Code of Virginia:~~

~~a. To owners who are permitting or causing air pollution to cease and desist from such pollution;~~

~~b. To owners who have failed to construct facilities in accordance with or have failed to comply with plans for the control of air pollution submitted by them to, and approved by the board, to construct such facilities in accordance with or otherwise comply with such approved plan;~~

~~c. To owners who have violated or failed to comply with the terms and provisions of any order or directive issued by the board to comply with such terms and provisions;~~

~~d. To owners who have contravened duly adopted and promulgated air quality standards and policies to cease and desist from such contravention and to comply with such air quality standards and policies; and~~

~~e. To require any owner to comply with the provisions of this chapter and any decision of the board; or~~

~~2. Under the provisions of § 10.1-1300.1 of the Code of Virginia requiring that an owner file with the board a plan to abate, control, prevent, remove, or contain any substantial and imminent threat to public health or the environment that is reasonably likely to occur if such source ceases operations.~~

"Stack" means any point in a source designed to emit solids, liquids or gases into the air, including a pipe or duct, but not including flares.

"Stack in existence" means that the owner had:

1. Begun, or caused to begin, a continuous program of physical on site construction of the stack; or
2. Entered into binding agreements or contractual obligations, which could not be canceled or modified without substantial loss to the owner, to undertake a program of construction of the stack to be completed in a reasonable time.

"Standard conditions" means a temperature of 20°C (68°F) and a pressure of 760 mm of H_g (29.92 ~~in.~~ inches of H_g).

"Standard of performance" means any provision of [9 VAC 5 Chapter 50 () 9 VAC 5-50-10 et seq.()] which prescribes an emission limitation or other requirements that control air pollution emissions.

"Startup" means the setting in operation of an affected facility for any purpose.

"State enforceable" means all limitations and conditions which are enforceable by the board or department, including, but not limited to, those requirements developed pursuant to 9 VAC 5-20-110; requirements within any applicable regulation, order, consent agreement or variance; and any permit requirements established pursuant to [9 VAC 5 Chapter 80 () 9 VAC 5-80-10 et seq.()]

"State Implementation Plan" means the plan, including the most recent revision thereof, which has been approved or promulgated by the administrator, U.S. Environmental Protection Agency, under § 110 of the federal Clean Air Act, and which implements the requirements of § 110.

"Stationary source" means any building, structure, facility or installation which emits or may emit any 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) except the activities of any vessel. 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 9 VAC 5-10-20, Appendix M 9 VAC 5-10-21).

["These regulations" means 9 VAC 5 Chapters 10 (9 VAC 5-10-10 et seq.) through 80 (9 VAC 5-80-10 et seq.)]

"Total suspended particulate (TSP)" means particulate matter as measured by the reference method described in Appendix B of 40 CFR Part 50.

"True vapor pressure" means the equilibrium partial pressure exerted by a petroleum liquid as determined in accordance with methods described in American Petroleum Institute (API) Publication 2517, Evaporation Loss from

External Floating-Roof Tanks (see 9 VAC 5-10-20, Appendix M 9 VAC 5-10-21). The API procedure may not be applicable to some high viscosity or high pour crudes. Available estimates of true vapor pressure may be used in special cases such as these.

"Urban area" means any area consisting of a core city with a population of 50,000 or more plus any surrounding localities with a population density of 80 persons per square mile and designated as such in [9 VAC 5-10-20, Appendix C 9 VAC 5-20-201].

"Vapor pressure," except where specific test methods are specified, means true vapor pressure, whether measured directly, or determined from Reid vapor pressure by use of the applicable nomograph in API Publication 2517, Evaporation Loss from External Floating-Roof Tanks (see 9 VAC 5-10-20, Appendix M 9 VAC 5-10-21).

~~"Variance" means the temporary exemption of an owner or other person from these regulations, or a temporary change in these regulations as they apply to an owner or other person.~~

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

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

"Volatile organic compound" means any compound of carbon, excluding carbon monoxide, carbon dioxide, carbonic acid, metallic carbides or carbonates, and ammonium carbonate, which participates in atmospheric photochemical reactions.

1. This includes any such organic compounds which have been determined to have negligible photochemical reactivity other than the following:

- a. Methane;
- b. Ethane;
- c. Methylene chloride (dichloromethane);
- d. 1,1,1-trichloroethane (methyl chloroform);
- e. 1,1,1-trichloro-2,2,2-trifluoroethane (CFC-113);
- f. Trichlorofluoromethane (CFC-11);
- g. Dichlorodifluoromethane (CFC-12);
- h. Chlorodifluoromethane ([H] CFC-22);
- i. Trifluoromethane ([H] FC-23);
- j. 1,2-dichloro 1,1,2,2,-tetrafluoroethane (CFC-114);
- k. Chloropentafluoroethane (CFC-115);
- l. 1,1,1-trifluoro 2,2-dichloroethane (HCFC-123);
- m. 1,1,1,2-tetrafluoroethane (HFC-134a);
- n. 1,1-dichloro 1-fluoroethane (HCFC-141b);
- o. 1-chloro 1,1-difluoroethane (HCFC-142b);

Final Regulations

- p. 2-chloro-1,1,1,2-tetrafluoroethane (HCFC-124);
- q. Pentafluoroethane (HFC-125);
- r. 1,1,2,2-tetrafluoroethane (HFC-134);
- s. 1,1,1-trifluoroethane (HFC-143a);
- t. 1,1-difluoroethane (HFC-152a);
- u. Parachlorobenzotrifluoride (PCBTF);
- v. Cyclic, branched, or linear completely methylated siloxanes;
- w. Acetone; [and]
- x. *Perchloroethylene (tetrachloroethylene; and]*

[x y] Perfluorocarbon compounds which fall into these classes:

- (1) Cyclic, branched, or linear, completely fluorinated alkanes;
- (2) Cyclic, branched, or linear, completely fluorinated ethers with no unsaturations;
- (3) Cyclic, branched, or linear, completely fluorinated tertiary amines with no unsaturations; and
- (4) Sulfur containing perfluorocarbons with no unsaturations and with sulfur bonds only to carbon and fluorine.

2. For purposes of determining compliance with emissions standards, volatile organic compounds shall be measured by the appropriate reference method in accordance with the provisions of 9 VAC 5-40-30 or 9 VAC 5-50-30, as applicable. Where such a method also measures compounds with negligible photochemical reactivity, these negligibly-reactive compounds may be excluded as a volatile organic compound if the amount of such compounds is accurately quantified, and such exclusion is approved by the board.

3. As a precondition to excluding these compounds as volatile organic compounds or at any time thereafter, the board may require an owner to provide monitoring or testing methods and results demonstrating, to the satisfaction of the board, the amount of negligibly-reactive compounds in the emissions of the source.

4. Exclusion of the above compounds in this definition in effect exempts such compounds from the provisions of emission standards for volatile organic compounds. The compounds are exempted on the basis of being so inactive that they will not contribute significantly to the formation of ozone in the troposphere. However, this exemption does not extend to other properties of the exempted compounds which, at some future date, may require regulation and limitation of their use in accordance with requirements of the federal Clean Air Act.

"Welfare" means that language referring to effects on welfare includes, but is not limited to, effects on soils, water, crops, vegetation, man-made materials, animals, wildlife, weather, visibility and climate, damage to and deterioration of property, and hazards to transportation, as well as effects on economic values and on personal comfort and well-being.

NOTE: In the proposed regulation published on April 28, 1997, Appendices E and F were included at this point with all language stricken. Pursuant to the publication of the conversion of the appendices to sections (Volume 13, Issue 18 of the Virginia Register, May 26, 1997), these two appendices were converted to sections and moved to the appropriate places in the regulation: Part III (9 VAC 5-20-210 et seq.) of 9 VAC 5 Chapter 20 (old Appendix E) and 9 VAC 5-20-130 (old Appendix F). No changes have been made since the proposal was published; Appendices E and F are still to be repealed.

9 VAC 5-20-20. Establishment of regulations and orders. (Repealed.)

~~A. Regulations for the control and abatement of air pollution are established to implement the provisions of the Virginia Air Pollution Control Law and the federal Clean Air Act.~~

~~B. Regulations for the control and abatement of air pollution shall be adopted, amended or repealed in accordance with the provisions of § 10.1-1308 of the Virginia Air Pollution Control Law, Articles 1 and 2 of the Administrative Process Act and the Public Participation Procedures in 9 VAC 5-10-20, Appendix E.~~

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

~~D. If necessary in an emergency situation, the board may adopt, amend or stay a regulation as an exclusion under § 9-6.14:4.1 of the Administrative Process Act, but such regulation shall remain effective no longer than 60 days one year unless readopted following the requirements of subsection B of this section. The provisions of this subsection are not applicable to emergency special orders; such orders are subject to the provisions of subsection F of this section.~~

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

- 1. United States Code;
- 2. Code of Virginia;

- 3. Code of Federal Regulations;
- 4. Federal Register; and
- 5. Technical and scientific reference documents.

Additional information on the specific documents incorporated and their availability may be found in 9 VAC 5-10-20, Appendix M.

~~F. Orders, special orders and emergency special orders may be issued pursuant to § 10.1-1307 D or § 10.1-1309 of the Virginia Air Pollution Control Law.~~

9 VAC 5-20-30. Enforcement of regulations, permits and orders. (Repealed.)

~~A. Whenever the executive director or his designated representative has reason to believe that a violation of any provision of these regulations or any permit or order has occurred, notice shall be served on the alleged violator or violators, citing the applicable provision of these regulations or the permit or order or both involved and the facts on which the violation is based. The executive director or his designated representative may act as the agent of the board to obtain compliance through one of the following enforcement proceedings:~~

- 1. ~~Administrative proceedings. The executive director or his designated representative may negotiate to obtain compliance through administrative means. Such means may be a variance, control program, consent agreement or any other mechanism that requires compliance by a specific date. The means and the associated date shall be determined on a case by case basis and shall not allow an unreasonable delay in compliance. 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 these regulations, the administrative means shall be approved by the board.~~
- 2. ~~Judicial proceedings. The executive director or his designated representative may obtain compliance through legal means pursuant to § 10.1-1316 or § 10.1-1320 of the Virginia Air Pollution Control Law.~~

~~B. Nothing in this section shall prevent the executive director or his designated representative from making efforts to obtain voluntary compliance through conference, warning or other appropriate means.~~

~~C. Orders, consent orders, delayed compliance orders, special orders and emergency special 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 executive director or his designated representative under subsection A of this section.~~

~~D. Any enforcement proceeding under this section may be used as a mechanism to ensure that the compliance status of any source is reasonably maintained by the owner.~~

~~E. Case decisions regarding the enforcement of regulations, orders and permits shall be made by the executive director or board. Case decisions of the executive director that are made pursuant to a formal hearing (i) may be regarded as a final decision of the board and appealed pursuant to subsection C of 9 VAC 5-20-90; or (ii) may be directly considered by the board as provided in Section 1B of 9 VAC 5-10-20, Appendix F, with the review being on the record and not de novo with opportunity for oral argument. Case decisions of the executive director that are made pursuant to an informal proceeding (i) may be appealed to the board pursuant to subsection A of 9 VAC 5-20-90 or (ii) may be directly considered by the board according to Section 1B of 9 VAC 5-10-20, Appendix F.~~

9 VAC 5-20-40. Hearings and proceedings. (Repealed.)

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

- 1. ~~The public hearing and informational proceeding required before considering regulations, in accordance with § 10.1-1308 of the Virginia Air Pollution Control Law. The procedure for a public hearing and informational proceeding shall conform to § 9-6.14:7.1 of the Administrative Process Act, except as modified by §§ 10.1-1307 F and 10.1-1308 of the Virginia Air Pollution Control Law, and to the Public Participation Procedures in Appendix E;~~
- 2. ~~The public hearing required before considering variances and amendments to and revocation of variances, in accordance with § 10.1-1307 C of the Virginia Air Pollution Control Law. The procedure for a public hearing shall conform to § 10.1-1307 C of the Virginia Air Pollution Control Law and to the provisions of 9 VAC 5-20-50;~~
- 3. ~~The informal proceeding used to make case decisions. The procedure for an informal proceeding shall conform to § 9-6.14:11 of the Administrative Process Act;~~
- 4. ~~The formal hearing for the enforcement or review of orders and permits and for the enforcement of regulations, in accordance with §§ 10.1-1307 D and F and 10.1-1322 A of the Virginia Air Pollution Control Law. The procedure for a formal hearing shall conform to § 9-6.14:12 of the Administrative Process Act, except as modified by § 10.1-1307 D and F of the Virginia Air Pollution Control Law;~~
- 5. ~~The special order hearing or emergency special order hearing for the enforcement or review of orders and permits and for the enforcement of regulations, in accordance with § 10.1-1309 of the Virginia Air Pollution Control Law. The procedures for the special order hearing or emergency special order hearing shall conform to § 9-6.14:12 of the Administrative Process Act, except as modified by §§ 10.1-1307 F and 10.1-1309 of the Virginia Air Pollution Control Law.~~

Final Regulations

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

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

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

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

~~3. Formal hearings and hearings for the issuance of special orders or emergency special orders will be recorded by a court reporter, or electronically recorded for transcription to written form.~~

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

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

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

~~3. Any person desiring a copy of the transcript of a special order, emergency special order or 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 5-20-50. Variances.

A. General.

~~1. Pursuant to § 10.1-1307 C of the Virginia Air Pollution Control Law, the board may in its discretion grant local variances to any provision of these regulations after an investigation and public hearing. If a local variance is appropriate, the board shall issue an order to this effect. Such order shall be subject to amendment or revocation at any time.~~

~~2. 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 affected air quality control region of the subject, date, time and place of the public hearing at least 30 days prior to the scheduled hearing. The hearing shall be~~

~~conducted to give the public an opportunity to comment on the variance and the hearing record shall remain open for a minimum of 10 days after the hearing.~~

B. A. Fuel variance.

1. Regardless of any other provision of this section, the executive director may issue an order granting a fuel variance for fuel burning equipment from applicable provisions of these regulations if, after a thorough investigation and public hearing, he finds that:

a. The owner, in good faith and prior to the request for the fuel variance, has attempted to comply with applicable provisions of these regulations;

b. The owner has substantial cause to believe he will be unable to obtain the fuel to operate the equipment in compliance with applicable provisions of these regulations;

c. The maximum particulate and sulfur dioxide emissions from fuels permitted in the fuel variance would be the lowest that the available fuels will permit;

d. The need for the requested fuel variance could not have been avoided by the owner; and

e. The period of the fuel variance will not exceed the reasonably predicted shortage of fuel which would allow compliance with these regulations, or 180 days, whichever is less.

2. The owner requesting the fuel variance shall submit the following, where appropriate, to the executive director:

a. The requested commencement and termination dates of the fuel variance;

b. The type and quantity of fuel to be used under the requested fuel variance, along with the maximum ash and sulfur content, if any;

c. An affidavit stating why the owner is unable to, or has substantial cause to believe that he will be unable to, obtain fuel which would allow compliance with applicable provisions of these regulations;

d. An estimate of the amount of fuel to be conserved;

e. An estimate of the increased air pollutants that might cause violations of the ambient air quality standards;

f. An estimate, with reasons given, of the duration of the shortage of fuel which would allow compliance with applicable provisions of these regulations; and

g. Such other information as the executive director may require to make his findings as provided in subdivision B 1 of this section *subsection*.

3. Notice of public hearings on applications for fuel variances shall be advertised at least 10 days prior to the date of the hearing, in at least one major newspaper of

general circulation in the air quality control region in which the affected source is located. The notice shall contain the subject, date, time and place of the public hearing. The public hearing shall be conducted to give the public an opportunity to comment on the variance.

4. Fuel variances may be granted only for individual sources, and not for categories or classes.

5. No fuel variance shall be granted for more than 180 days. Any request for a variance for a period beyond 180 days shall be governed by the provisions of subsection A of this section 9 VAC 5-170-140, except that the board, where appropriate, may require compliance with any of the conditions and requirements here.

6. Fuel variances may be amended or revoked in the manner provided for in 9 VAC 5-20-50-A 9 VAC 5-170-140 except that only a 10-day notice shall be required.

~~C. B.~~ Nothing in this section shall be construed to limit, alter or otherwise affect the obligation of any person to comply with any provision of these regulations not specifically affected by this section.

9 VAC 5-20-60. Local ordinances. (Repealed.)

A. Establishment/approval:

~~1. Any local governing body proposing to adopt or amend an ordinance, relating to air pollution shall first obtain the approval of the board as to the provisions of the ordinance or amendment. The board in approving local ordinances will consider, but will not be limited to, the following criteria:~~

~~a. The local ordinance shall provide for intergovernmental cooperation and exchange of information.~~

~~b. Adequate local resources will be committed to enforcing the proposed local ordinance.~~

~~c. The provisions of the local ordinance shall be as strict as state regulations, except as provided for leaf burning in § 10.1-1308 of the Virginia Air Pollution Control Law.~~

~~2. Approval of any local ordinance shall be withdrawn if the board determines that the local ordinance is less strict than state regulations, or if the locality fails to enforce the ordinance.~~

~~3. If a local ordinance must be amended to conform to an amendment to state regulations, such local amendment will be made within six months.~~

~~B. Reports. Local ordinances shall provide for reporting such information as may be required by the board to fulfill its responsibilities under the Virginia Air Pollution Control Law and the federal Clean Air Act. Such reports shall include, but are not limited to: monitoring data, surveillance programs, procedures for investigation of complaints, variance hearings and status of control programs and permits.~~

~~C. Relationship to state regulations. Local ordinances are a supplement to state regulations. Any provisions of local ordinances which have been approved by the board and are more strict than state regulations shall take precedence over state regulations within the respective locality. It is the intention of the board to coordinate activities among the enforcement officers of the various localities in the enforcement of local ordinances and state regulations. The board will also provide technical and other assistance to local authorities in the development of ambient air quality or emission standards, in the investigation and study of air pollution problems, and in the enforcement of local ordinances and state regulations. The board emphasizes its intention to assist in the local enforcement of local ordinances. If a locality fails to enforce its own ordinance, the board reserves the right to enforce state regulations.~~

~~D. Variances. A local governing body may grant a variance to any provision of its air pollution control ordinances provided that:~~

~~1. A public hearing is held prior to granting the variance;~~

~~2. The public is notified of the application for a variance by advertisement in at least one major newspaper of general circulation in the affected locality at least 30 days prior to the date of the hearing; and~~

~~3. The variance does not permit any owner or other person to take action that would result in a violation of any provision of state regulations unless a variance is granted by the board. The public hearings required for the variances to the local ordinance and state regulations may be conducted jointly as one proceeding.~~

9 VAC 5-20-90. Appeals. (Repealed.)

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

~~B. Prior to any formal hearing, an informal fact finding shall be held pursuant to § 9-6.14:11 of the Administrative Process Act, unless waived by the board.~~

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

~~D. Judicial review of a final decision of the board shall be afforded in accordance with § 10.1-1318 of the Virginia Air Pollution Control Law and § 9-6.14:16 of the Administrative Process Act.~~

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

Final Regulations

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

9 VAC 5-20-100. Right of entry. (Repealed.)

~~Whenever it is necessary for the purposes of these regulations, the board may at reasonable times enter any establishment or upon any property, public or private, for the purpose of obtaining information or conducting surveys or investigation as authorized by § 10.1-1315 of the Virginia Air Pollution Control Law.~~

9 VAC 5-20-110. Conditions on approvals. (Repealed.)

~~A. The board may impose conditions upon permits and other approvals which may be necessary to carry out the policy of the Virginia Air Pollution Control Law, and which are consistent with these regulations. Except as specified herein, nothing in these regulations shall be understood to limit the power of the board in this regard. If the owner or other person fails to adhere to such conditions, the board may automatically cancel such permit or approvals. Without limiting the generality of this section, this section shall apply to: approval of variances, approval of control programs, granting of new or modified source permits and granting of open burning permits.~~

~~B. An owner may consider any condition imposed by the board as a denial of the requested approval or permit, which shall entitle the applicant to appeal the decision of the board pursuant to 9 VAC 5-20-90.~~

9 VAC 5-20-120. Policy and procedural information and guidance. (Repealed.)

~~A. The board may adopt detailed policies and procedures which:~~

- ~~1. Require data and information in addition to and in amplification of the provisions of these regulations;~~
- ~~2. Specify the methods and means to determine compliance with applicable provisions of these regulations;~~
- ~~3. Set forth the format by which all data and information shall be submitted; and~~
- ~~4. Set forth how the regulatory programs shall be implemented.~~

~~B. In cases where these regulations specify that procedures or methods shall be approved by, acceptable to or determined by the board or other similar phrasing, the owner may request information and guidance concerning the proper procedures and methods and the board shall furnish in writing such information on a case-by-case basis.~~

9 VAC 5-20-130. Delegation of authority. (Repealed.)

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

9 VAC 5-20-140. Considerations for approval actions. (Repealed.)

~~Pursuant to the provisions of § 10.1-1307 E of the Virginia Air Pollution Control Law, the board, in making regulations and in approving variances, control programs, or permits, shall consider facts and circumstances relevant to the reasonableness of the activity involved and the regulations proposed to control it, including:~~

- ~~1. The character and degree of injury to, or interference with safety, health or the reasonable use of property which is caused or threatened to be caused;~~
- ~~2. The social and economic value of the activity involved;~~
- ~~3. The suitability of the activity to the area in which it is located; and~~
- ~~4. The scientific and economic practicality of reducing or eliminating the discharge resulting from such activity.~~

9 VAC 5-20-150. Availability of information. (Repealed.)

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

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

~~The board shall consider such records, reports or information, or particular part of them, confidential in accordance with §§ 10.1-1314 and 10.1-1314.1 of the Virginia Air Pollution Control Law upon a showing satisfactory to the board by any owner that such records, reports or information, or particular part of them, meet the criteria in subsection C of this section and the owner provides a certification to that effect signed by a responsible party for the 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 Air Pollution Control Law and the federal Clean Air Act.~~

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

- ~~1. Information for which the 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 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;~~
- ~~3. Information which is not publicly available from sources other than the owner; and~~

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

~~D. The board shall have the right to substitute information which is not confidential for information claimed as confidential and to inquire as to the basis of the confidentiality claim. Upon approval of the board, an owner may substitute information which is not confidential for information claimed as confidential. Information substituted shall be limited to that which would have the same substantive effect in analyses conducted by the board as the information for which the inquiry is made.~~

~~E. Any responsible party for an owner who files information as confidential which does not meet the criteria in subsection C of this section shall be in violation of the Virginia Air Pollution Control Law.~~

~~[PART III.
PUBLIC PARTICIPATION IN REGULATION
DEVELOPMENT.~~

~~9 VAC 5-20-210. Definitions. (Repealed.)~~

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

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

~~C. Terms defined.~~

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

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

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

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

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

~~9 VAC 5-20-211. General. (Repealed.)~~

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

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

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

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

~~The board shall provide a written response to such petition within 180 days from the date the petition was received.~~

~~9 VAC 5-20-212. Public participation procedures. (Repealed.)~~

~~A. The department shall establish and maintain a list consisting of persons expressing an interest in the adoption, amendment or repeal of regulations. Any person wishing to be placed on any list may do so by writing the department. In addition, the department, at its discretion, may add to any list any person, organization or publication it believes will be interested in participating in the promulgation of regulations. Individuals and organizations may be periodically requested to indicate their desire to continue to receive documents or be deleted from a list. Individuals and organizations may be deleted from any list at the request of the individual and organization, or at the discretion of the department when mail is returned as undeliverable.~~

~~B. Whenever the board so directs or upon its own initiative, the department may commence the regulation adoption process and proceed to draft a proposal according to these procedures.~~

Final Regulations

~~C. The department shall use the participatory approach to assist in the development of the proposal or use one of the following alternatives:~~

~~1. Proceed without using the participatory approach if the board specifically authorizes the department to proceed without using the participatory approach.~~

~~2. Include in the Notice of Intended Regulatory Action a statement inviting comment on whether the department should use the participatory approach to assist the department in the development of the proposal. If the department receives written responses from at least five persons during the associated comment period indicating that the department should use the participatory approach, the department will use the participatory approach requested. Should different approaches be requested, the director shall determine the specific approach to be utilized.~~

~~D. The department shall issue a Notice of Intended Regulatory Action whenever it considers the adoption, amendment or repeal of any regulation.~~

~~1. The Notice of Intended Regulatory Action shall include at least the following:~~

~~a. A description of the subject matter of the planned regulation.~~

~~b. A description of the intent of the planned regulation.~~

~~c. A brief statement as to the need for regulatory action.~~

~~d. A brief description of alternatives available, if any, to meet the need.~~

~~e. A request for comments on the intended regulatory action, to include any ideas to assist the department in the development of any proposal.~~

~~f. A request for comments on the costs and benefits of the stated alternatives or other alternatives.~~

~~g. A statement of the department's intent to hold at least one public hearing on the proposed regulation after it is published in The Virginia Register of Regulations.~~

~~h. A statement inviting comment on whether the department should use the participatory approach to assist the department in the development of any proposal. Including this statement shall only be required when the department makes a decision to pursue the alternative provided in subdivision C-2 of this section.~~

~~2. The department shall hold at least one public meeting whenever it considers the adoption, amendment or repeal of any regulation unless the board specifically authorizes the department to proceed without holding a public meeting.~~

~~In these cases where public meetings will be held, the Notice of Intended Regulatory Action shall also include the date, not to be less than 30 days after publication in The Virginia Register of Regulations, time and place of the public meetings.~~

~~3. The public comment period for Notices of Intended Regulatory Action under this section shall be no less than 30 days after publication of the notice of intended regulatory action in The Virginia Register of Regulations.~~

~~E. The department shall disseminate the Notice of Intended Regulatory Action to the public via the following:~~

~~1. Distribution to the Registrar of Regulations for publication in The Virginia Register of Regulations.~~

~~2. Distribution by mail to persons on the list established under subsection A of this section.~~

~~F. After consideration of public input, the department may complete the draft proposed regulation and any supporting documentation required for review. If the participatory approach is being used, the draft proposed regulation shall be developed in consultation with the participants. A summary or copies of the comments received in response to the Notice of Intended Regulatory Action shall be distributed to the participants during the development of the draft proposed regulation. This summary or copies of the comments received in response to the Notice of Intended Regulatory Action shall also be distributed to the board.~~

~~G. Upon approval of the draft proposed regulation by the board, the department shall publish a Notice of Public Comment and the proposal for public comment.~~

~~H. The Notice of Public Comment shall include at least the following:~~

~~1. The notice of the opportunity to comment on the proposed regulation, location where copies of the proposal may be obtained, and the name, address, and telephone number of the individual to contact for further information about the proposed regulation.~~

~~2. A request for comments on the costs and benefits of the proposal.~~

~~3. The identity of any locality particularly affected by the proposed regulation.~~

~~4. A statement that an analysis of the following has been conducted by the department and is available to the public upon request:~~

~~a. A statement of purpose: the rationale or justification for the new provisions of the regulation, from the standpoint of the public's health, safety or welfare.~~

~~b. A statement of estimated impact:~~

~~(1) Projected number and types of regulated entities or persons affected.~~

~~(2) Projected cost, expressed as a dollar figure or range, to regulated entities (and to the public, if applicable) for implementation and compliance. In those instances where the department is unable to quantify projected costs, it shall offer qualitative data, if possible, to help define the impact of the regulation. Such qualitative data shall include, if possible, an example or examples of the impact of the proposed regulation on a typical member or members of the regulated community.~~

~~(3) Projected cost to the department for implementation and enforcement.~~

~~(4) Beneficial impact the regulation is designed to produce.~~

~~e. An explanation of need for the proposed regulation and potential consequences that may result in the absence of the regulation.~~

~~d. An estimate of the impact of the proposed regulation upon small businesses, as defined in § 9-199 of the Code of Virginia, or organizations in Virginia.~~

~~e. A description of provisions of the proposed regulation which are more restrictive than applicable federal requirements, together with the reason why the more restrictive provisions are needed.~~

~~f. A discussion of alternative approaches that were considered to meet the need the proposed regulation addresses, and a statement as to whether the department believes that the proposed regulation is the least burdensome alternative to the regulated entities that fully meets the stated purpose of the proposed regulation.~~

~~g. A schedule setting forth when, after the effective date of the regulation, the department will evaluate it for effectiveness and continued need.~~

~~5. The date, time and place of at least one public hearing held in accordance with § 9-6.14.7.1 of the Administrative Process Act to receive comments on the proposed regulation. The public hearings may be held at any time during the public comment period and, whenever practicable, no less than 15 days prior to the close of the public comment period. The public hearings may be held in such locations as the department determines will best facilitate input from interested persons. In those cases in which the department elects to conduct a formal hearing, the notice shall indicate that the formal hearing will be held in accordance with § 9-6.14.8 of the Administrative Process Act.~~

~~I. The public comment period shall close no less than 60 days after publication of the Notice of Public Comment in The Virginia Register of Regulations.~~

~~J. The department shall disseminate the Notice of Public Comment to the public via the following:~~

~~1. Distribution to the Registrar of Regulations for:~~

~~a. Publication in The Virginia Register of Regulations.~~

~~b. Publication in a newspaper of general circulation published at the state capital and such other newspapers as the department may deem appropriate.~~

~~2. Distribution by mail to persons on the list established under subsection A of this section.~~

~~K. The department shall prepare a summary of comments received in response to the Notice of Public Comment and the department's response to the comments received. The department shall send a draft of the summary of comments to all public commenters on the proposed regulation at least five days before final adoption of the regulation. The department shall submit the summary and the department response and, if requested, submit the full comments to the board. The summary, the department response, and the comments shall become a part of the department file and after final action on the regulation by the board, made available, upon request, to interested persons.~~

~~L. If the department determines that the process to adopt, amend or repeal any regulation should be terminated after approval of the draft proposed regulation by the board, the department shall present to the board for its consideration a recommendation and rationale for the withdrawal of the proposed regulation.~~

~~M. Completion of the remaining steps in the adoption process shall be carried out in accordance with the Administrative Process Act.~~

9 VAC 5-20-213. Transition. (Repealed.)

~~A. All regulatory actions for which a Notice of Intended Regulatory Action has been published in The Virginia Register of Regulations prior to May 16, 1994, shall be processed in accordance with Appendix E of VR 120-01 as revised by the emergency amendments in effect from June 29, 1993, to June 28, 1994, unless sooner modified or superseded by permanent regulations.~~

~~B. This part shall supersede and repeal Appendix E of VR 120-01 as revised by the emergency amendments which became effective on June 29, 1993. All regulatory actions for which a Notice of Intended Regulatory Action has not been published in The Virginia Register of Regulations prior to May 16, 1994, shall be processed in accordance with this part.]~~

[9 VAC 5-91-10. 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 5-91-20.~~

~~B. Unless specifically defined in the Virginia Motor Vehicle Emissions Control Law (§ 46.2-1176 et seq. of the Code of Virginia) or in this chapter, terms used shall have the meanings given them by 9 VAC 5-170-20 (definitions, Regulation for General Administration) or commonly ascribed to them by recognized authorities, in that order of priority.]~~

Final Regulations

9 VAC 5-91-20. Terms defined.

"Access code" means the security phrase or number which allows emissions inspectors, the department, and analyzer service technicians to perform specific assigned functions using the certified analyzer system, as determined by the department.

"Actual gross weight" means the weight of a motor vehicle as registered with the Department of Motor Vehicles and which may encompass the empty weight (EW), motorist-declared gross weight (GW), or gross vehicle weight rating (GVWR). For the purpose of determining applicability of emissions test procedures and standards, the GVWR shall be used, if available. If GVWR is unavailable, the GW shall be used. If neither is available, the EW shall be used.

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

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

"Affected motor vehicle" means any motor vehicle which:

1. Was manufactured for the 1968 model year or a more recent model year including the most recent model year;
2. Is designed for the transportation of persons or property;
3. Is powered by an internal combustion engine; and
4. For the Northern Virginia Emissions Inspection Program, has an actual gross weight of 10,000 pounds or less.

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

1. Vehicle powered by a clean special fuel as defined in § 58.1-2101 of the Code of Virginia, provided the federal Clean Air Act (42 USC § 4701 et seq.) permits such exemptions for vehicles powered by clean special fuels;
2. Motorcycle;
3. Vehicle which, at the time of its manufacture, was not designed to meet emissions standards set or approved by the federal government;
4. Any antique motor vehicle as defined in § 46.2-100 of the Code of Virginia and licensed pursuant to § 46.2-730 of the Code of Virginia;
5. Firefighting equipment, rescue vehicle, or ambulance; or
6. Vehicle for which no testing standards have been adopted by the board.

"Air intake systems" means those systems which allow for the induction of ambient air (to include preheated air) into the engine combustion chamber for the purpose of mixing with a fuel for combustion.

"Air pollution" means the presence in the outdoor atmosphere of one or more substances which are or may be harmful or injurious to human health, welfare or safety; to animal or plant life; or to property; or which unreasonably interfere with the enjoyment by the people of life or property.

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

"Air system" means a system for providing supplementary air into a vehicle's exhaust system to promote further oxidation of hydrocarbons and carbon monoxide gases and to assist catalytic reaction.

"Alternative fuel" means an internal combustion engine fuel other than (i) gasoline, (ii) diesel, or (iii) fuel mixtures containing more than 15% volume of gasoline.

"Alternative evaporative system purge and pressure test" means a method and equipment, as approved by the administrator or the department, which performs evaporative system purge testing and evaporative system pressure testing by pressurizing and testing the evaporative system by means of introducing gases to the system at the fuel filler inlet, and detecting pressure integrity and exhaust gas concentrations, and by testing the integrity of the fuel filler cap.

"ASM" means Acceleration Simulation Mode testing which is a dynamometer-based emissions test performed in one or more, discreet, simulated road speed and engine load modes, and equipment which can be used to perform any such test.

"Basic engine systems" means those parts or assemblies which provide for the efficient conversion of a compressed air and fuel charge into useful power to include but not limited to valve train mechanisms, cylinder head to block integrity, piston-ring-cylinder sealing integrity and post-combustion emissions control device integrity.

"Bi-fuel" means any motor vehicle capable of operating on one of two different fuels, usually gasoline and an alternative fuel, but not a mixture of the fuels. That is, only one fuel at a time.

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

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

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

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

"Catalytic converter" means a post combustion device which oxidizes hydrocarbons, carbon monoxide gases, and may also reduce oxides of nitrogen.

"*Certified enhanced analyzer system*" or "*analyzer system*" means the complete system which samples and reads concentrations of hydrocarbon, carbon dioxide, nitrogen oxides and carbon monoxide gases and which is approved by the department for use in the Enhanced Emissions Inspection Program in accordance with Part X (9 VAC 5-91-640 et seq.). The system includes the exhaust gas handling system, the exhaust gas analyzer, evaporative system pressure and purge test equipment, associated automation hardware and software, data media, the analyzer system cabinet, the dynamometer and appurtenant devices, vehicle identification equipment, and associated cooling and exhaust fans and gas cylinders.

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

"*Chargeable inspection*" means an initial inspection, or a reinspection that occurs 15 days or later after the initial inspection, on an affected motor vehicle, for which the station owner is entitled to collect an inspection fee. No fee shall be paid for (i) inspections for which a vehicle emissions inspection report has not been issued, (ii) inspections that are conducted by the department for referee purposes, (iii) inspections which were ordered due to on-road test failures but which do not result in a failure at an inspection station, or (iv) the first reinspection done at the same station that performed the initial inspection within 14 days.

~~"Confidential information" means secret formulae, secret processes, 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 order*" means a mutual agreement between the department and any owner, operator, emissions inspector, or emissions repair technician that such owner or 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. A consent order may include agreed upon civil charges. Such orders may be issued without a formal hearing.

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

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

"*Data medium*" or "*data media*" means the medium contained in the certified analyzer system and used to electronically record test data.

"*Day*" means a 24-hour period beginning at midnight.

"*Dedicated-fuel vehicle*" means a vehicle which was designed and manufactured to operate and operates on one specific fuel.

"*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*" means a vehicle which operates on a combination of fuels, usually gasoline or diesel and an alternative fuel, at the same time. That is, the mixed fuels are introduced into the combustion chamber of the engine.

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

"*Emissions inspection*" means an emissions inspection of a motor vehicle performed by an emissions inspector employed by or working at an emissions inspection station or fleet emissions inspection station, using the tests, procedures, and provisions set forth in this chapter.

"*Emissions inspection station*" means a facility or portion of a facility which has obtained an emissions inspection station permit from the director authorizing the facility to perform emissions inspections in accordance with the provisions of this chapter.

"*Emissions inspector*" means a person licensed by the department to perform inspections of vehicles required under the Virginia Motor Vehicle Emissions Control Law and is qualified in accordance with this chapter.

"*Emissions repair facility*" means a facility, or portion of a facility, which has obtained a certification in accordance with Part VII (9 VAC 5-91-500 et seq.) to perform emissions related repairs on motor vehicles.

"*Emissions repair technician*" or "*emissions repair mechanic*" means a person who has obtained a certification in accordance with Part VIII (9 VAC 5-91-550 et seq.) to perform emissions related repairs on motor vehicles.

Final Regulations

"*Emissions standard*" means any provision of Part III (9 VAC 5-91-160 et seq.) or Part XIV (9 VAC 5-91-790 et seq.) which prescribes an emission limitation, or other emission control requirements for motor vehicle air pollution.

"*Empty weight (EW)*" means that weight stated as the EW on a Virginia motor vehicle registration or derived from the motor vehicle title or manufacturer's certificate of origin. The EW may be used to determine emissions inspection standards.

"*Enhanced emissions inspection program*" means a motor vehicle emissions inspection including procedures, emissions standards, and equipment required by 40 CFR Part 51, Subpart S or equivalent and consistent with applicable requirements of the federal Clean Air Act. The director shall administer the enhanced emissions inspection program. Such program shall require biennial inspections at official emissions inspection stations, which may be test and repair facilities, in accordance with this chapter. Nothing in this program shall bar enhanced emissions inspection stations or facilities from also performing vehicle repairs.

"*Equivalent test weight (ETW)*" means the weight of a motor vehicle as automatically determined by the emissions analyzer system based on vehicle make, model, body, style, model year, engine size, permanently installed equipment, and other manufacturer and aftermarket supplied information, and used for the purpose of assigning dynamometer resistance and exhaust emissions standards for the conduct of an exhaust emissions inspection.

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

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

"*Exhaust gas analyzer*" means an instrument which is capable of measuring the concentrations of certain air pollutants in the exhaust gas from a motor vehicle.

"*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, 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 United States government agency, including parking areas provided to federal employees at the facility.

"*Fleet*" means 20 or more motor vehicles which are owned, operated, leased or rented for use by a common owner.

"*Fleet emissions inspection station*" means any inspection facility operated under a permit issued to a qualified fleet owner or lessee as determined by the director.

"*Flexible-fuel vehicle*" means any motor vehicle having a single fuel tank and capable of operating on two or more fuels, either one at a time or any mixture of two or more different fuels.

"*Formal hearing*" means a board or department process which provides for the right of private parties to submit factual proofs as provided in § 9-6.14:12 of the Administrative Process Act in connection with case decisions. Formal hearings do not include the factual inquiries of an informal nature provided in § 9-6.14:11 of the Administrative Process Act.

"*Fuel control systems*" means those mechanical, electro-mechanical, galvanic or electronic parts or assemblies which regulate the air-to-fuel ratio in an engine for the purpose of providing a combustible charge.

"*Fuel filler cap pressure test*" or "*fuel filler cap test*" or "*gas cap test*" means a test of the ability of the fuel filler cap to prevent the release of fuel vapors from the fuel tank under normal operating conditions.

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

"*Gas span check*" means a procedure using known concentrations of gases to verify the gas span adjustment of an analyzer.

"*Gross vehicle weight rating (GVWR)*" means the maximum recommended combined weight of the motor vehicle and its load as prescribed by the manufacturer and is (i) expressed on a permanent identification label affixed to the motor vehicle; (ii) stated on the manufacturer's certificate of origin; or (iii) coded in the vehicle identification number.

"*Gross weight (GW)*" means the weight stated as GW on a Virginia motor vehicle registration and has been declared by the customer at the time of registration, based on the empty weight and the maximum weight the vehicle may legally carry under such registration.

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

"*Idle mode*" means a condition where the vehicle engine is warm and running at the rate specified by the manufacturer's curb idle, where the engine is not propelling the vehicle, and where the throttle is in the closed or idle stop position.

"*Ignition systems*" means those parts or assemblies which are designed to cause and time the ignition of a compressed air and fuel charge.

"*Informal fact finding*" means an informal conference or consultation proceeding used to ascertain the fact basis for case decisions as provided in § 9-6.14:11 of the Administrative Process Act.

"*Inspection area*" means the area that is occupied by the certified analyzer system and the vehicle being inspected.

"*Inspector access code*" means the security phrase or number issued by the department to an emissions inspector.

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

"*Inspector number*" means the alpha or numeric identifier issued by the department to every emissions inspector at the time of licensing.

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

1. Designed primarily for purposes of transportation of property or is a derivation of such a vehicle.
2. Designed primarily for transportation of persons and has a capacity of more than 12 persons.
3. Equipped with special features enabling off-street or off-highway operation and use.

"*Light duty truck 1*" or "*LDT1*" means any affected motor vehicle which meets the criteria above and is rated at 6,000 pounds GVWR or less. LDT1 is a subset of light duty trucks.

"*Light duty truck 2*" or "*LDT2*" means any affected motor vehicle which meets the criteria above and is rated at greater than 6,000 pounds GVWR. LDT2 is a subset of light duty trucks.

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

"*Loaded vehicle weight (LVW)*" or "*curb weight*" means the weight of a vehicle and its standard equipment; i.e., the empty weight as recorded on the vehicle's registration or the base shipping weight as recorded in the vehicle identification number, whichever is greater; plus the weight of any permanent attachments, the weight of a nominally filled fuel tank, plus 300 pounds.

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

"*Mobile fleet emissions inspection station*" means a facility or entity which provides emissions inspection equipment or services to a fleet emissions inspection station on a temporary basis. Such equipment is not permanently installed at the fleet facility but is temporarily located at the fleet facility for the sole purpose of testing vehicles owned, operated, leased or rented for use by a common owner.

"*Model year*" means, except as may be otherwise defined in this chapter, the motor vehicle manufacturer's annual production period which includes the time period from January 1 of the calendar year prior to the stated model year to December 31 of the calendar year of the stated model year; provided that, if the manufacturer has no annual production period, the term "model year" shall mean the calendar year of manufacture. For the purpose of this definition, model year is applied to the vehicle chassis, irrespective of the year of manufacture of the vehicle engine.

"*Motor vehicle*" means any motor vehicle as defined in § 46.2-100 of the Code of Virginia as a motor vehicle and which:

1. Was manufactured for the 1968 model year or more recent model year;
2. Is designed for the transportation of persons or property; and
3. Is powered by an internal combustion engine.

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

"*Motor vehicle inspection report*" or "*vehicle inspection report*" means a report of the results of an emissions inspection, indicating whether the motor vehicle has (i) passed, (ii) failed, (iii) been rejected, or (iv) obtained an emissions inspection waiver. The report shall accurately identify the motor vehicle and shall include inspection results, recall information, warranty and repair information, and a unique identification number.

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

"*Normal business hours*" for emissions inspection stations, means a daily eight-hour period Monday through Friday, between the hours of 8 a.m. and 6 p.m., with the exception of national holidays, temporary closures noticed to the department and closures due to the inability to meet the requirements of this chapter. Nothing in this chapter shall prevent stations from performing inspections at other times in addition to the "*normal business hours*."

"*Northern Virginia emissions inspection program*" means the emissions inspection program required by this chapter in the Northern Virginia program area.

Final Regulations

"Northern Virginia program area" or "program area" means the territorial area encompassed by the boundaries of the following localities: the counties of Arlington, Fairfax, [Fauquier,] Loudoun, Prince William, and Stafford; and the cities of Alexandria, Fairfax, Falls Church, Manassas, and Manassas Park.

"On-road testing" means tests of motor vehicle emissions or emissions control devices by means of roadside pullovers or remote sensing devices.

"Operated primarily" means the area within which the affected motor vehicle is primarily driven. A vehicle is primarily driven in the program area if the vehicle is operated in the program area for an amount of annual mileage equal to or greater than (i) 50% of its annual mileage or (ii) 6,000 miles, whichever is greater, or routinely driven into or within the program area as determined by recordation of travel in the program area more than three times in a two-week period by remote sensing or on-road testing.

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

"Original condition" means the condition of the vehicle, parts, and components as installed by the manufacturer but not necessarily to the original level of effectiveness.

"Original Equipment Manufacturer (OEM) dedicated fuel vehicle" means a vehicle which was configured by the vehicle manufacturer to operate only on one specific fuel other than (i) gasoline, (ii) diesel, or (iii) fuel mixtures containing more than 15% by volume of gasoline.

"Owner" means any person who owns, leases, operates, controls or supervises a facility or motor vehicle.

"Party" means any person who actively participates in the administrative proceeding or offers comments through the public participation process and is named in the administrative record. 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.

~~"Public hearing" means unless indicated otherwise 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.~~

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

"Reinspection" means a type of inspection selected by the department or the emissions inspector when a request for an inspection is accompanied by a completed motor vehicle inspection report indicating a previous failure.

"Remote sensing" means the observation, measurement, and recordation of motor vehicle exhaust emissions from motor vehicles while travelling on roadways or in specified areas by equipment which is not connected to the vehicle. Such equipment may use light sensing and electronic stimuli in conjunction with devices, including videographic and digitized images, to detect and record vehicle identification information, such as registration or other identification numbers.

"Span gas" means gases of known concentration used as references to adjust or verify the accuracy of an exhaust gas analyzer that are approved by the department and are so labeled.

"Standard conditions" means a temperature of 20°C (68°F) and a pressure of 760 mm of H_g (29.92 ~~in~~ inches of H_g).

"Standardized instruments" means laboratory instruments calibrated with precision gases traceable to the National Institute of Standards and Technology and accepted by the department as the standards to be used for comparison purposes. All candidate instruments are compared in performance to the standardized instruments.

"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, 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.

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

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

"Test" means an emissions inspection of a vehicle, or any portion thereof, performed by an emissions inspector at an emissions inspection station, using the procedures and provisions set forth in this chapter.

"*Test and repair*" means motor vehicle emissions inspection stations which perform emissions inspections and may also perform vehicle repairs. No provision of this chapter shall bar emissions inspection stations from also performing vehicle repairs.

"*Thermometer, certified*" means a laboratory grade ambient temperature measuring device with a range of at least 20°F through 120°F, and an attested accuracy of at least ± 1°F with increments of 1°, with protective shielding.

"*Thermostatic air cleaner*" means a system that supplies warm air to the air intake during cold engine operation and is active during cold engine warm-up only.

"*Tier 1*" means new gaseous and particulate tail pipe emission standards for use in certifying new light duty vehicles and light duty trucks which began to be phased in with the 1994 model year and are completely phased-in during the 1996 model year, as promulgated by the U.S. Environmental Protection Agency at 40 CFR Part 86, as amended in the Federal Register, Volume 56, Number 108, page 25724, on June 5, 1991.

"*True concentration*" means the concentration of the gases of interest as measured by a standardized instrument which has been calibrated with 1.0% precision gases traceable to the National Bureau of Standards.

"*Two speed idle test*" means a vehicle exhaust emissions test, performed in accordance with paragraph (II) of 40 CFR Part 51, Appendix B to Subpart S, which measures the concentrations of pollutants in the exhaust gases of an engine (i) while the motor vehicle transmission is not propelling the vehicle and (ii) while the engine is operated at both curb idle and at a nominal engine speed of 2,500 rpm.

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

"*Virginia Motor Vehicle Emissions Control Program*" means the program for the inspection and control of motor vehicle emissions established by Virginia Motor Vehicle Emissions Control Law.

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

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

"*Zero gas*" means a gas, usually air or nitrogen, which is used as a reference for establishing or verifying the zero point of an exhaust gas analyzer.

9 VAC 5-91-40. Establishment of regulations. (Repealed.)

~~A. This chapter is established to implement the provisions of the Virginia Motor Vehicle Emissions Control Law and the federal Clean Air Act.~~

~~B. This chapter shall be adopted, amended or repealed in accordance with the provisions of the Air Pollution Control Law, Virginia Motor Vehicle Emissions Control Law, Articles 1 and 2 of the Administrative Process Act, and the Public Participation Procedures in Appendix E of 9 VAC 5-10-10.~~

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

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

~~E. Within three years after the effective date of this chapter (January 24, 1997), the department shall perform an analysis on this chapter and provide the board with a report on the results. The analysis shall include (i) the purpose and need for the chapter; (ii) alternatives which would achieve the stated purpose of this chapter in a less burdensome and less intrusive manner; (iii) an assessment of the effectiveness of this chapter; (iv) the results of a review of current state and federal statutory and regulatory requirements, including the identification and justification of requirements of this chapter which are more stringent than federal requirements; and (v) the results of a review as to whether this chapter is clearly written and easily understandable by affected entities.~~

~~F. Upon review of the department's analysis, the board shall confirm the need to (i) continue this chapter without amendment; (ii) repeal this chapter; or (iii) amend this chapter. If the board's decision is to repeal or amend this chapter, the board shall authorize the department to initiate the applicable regulatory process to carry out the decision of the board.~~

[9 VAC 5-91-41. Review and evaluation of chapter.

A. By January 24, 2000, the department shall perform an analysis of this chapter and provide the board with a report on the results. The analysis shall include (i) the purpose and need for the chapter; (ii) alternatives which would achieve the stated purpose of this chapter in a less burdensome and less intrusive manner; (iii) an assessment of the effectiveness of this chapter; (iv) the results of a review of current state and federal statutory and regulatory requirements, including the identification and justification of requirements of this chapter which are more stringent than federal requirements; and (v) the results of a review as to whether this chapter is clearly written and easily understandable by affected entities.

B. Upon review of the department's analysis, the board shall confirm the need to (i) continue this chapter without amendment, (ii) repeal this chapter or (iii) amend this chapter. If the board's decision is to repeal or amend this chapter, the board shall authorize the department to initiate the applicable regulatory process to carry out the decision of the board.]

Final Regulations

9 VAC 5-91-60. Hearings and proceedings. (Repealed.)

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

- ~~1. For public hearing and informational proceeding required before considering regulations, authorized under § 46.2-1180 of the Virginia Motor Vehicle Emissions Control Law, the procedure for public hearings or informational proceedings shall conform to (i) § 9-6.14:7.1 of the Administrative Process Act and (ii) the Public Participation Procedures in Appendix E of 9 VAC 5-10-10.~~
- ~~2. For the public hearing required before considering variances and amendments to and revocation of variances, the procedure for a public hearing shall conform to the provisions of 9 VAC 5-91-80.~~
- ~~3. For the informal fact finding used to make case decisions, the procedure for an informal fact finding shall conform to § 9-6.14:11 of the Administrative Process Act.~~
- ~~4. For the formal hearing for the enforcement or review of orders, licenses, permits and certifications and for the enforcement of regulations, the procedure for a formal hearing shall conform to § 9-6.14:12 of the Administrative Process Act and § 10.1-1307 D and F of the Air Pollution Control Law.~~

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

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

- ~~1. Oral statements or testimony at any public hearing or informational proceeding will be stenographically or electronically recorded, and may be transcribed to written form.~~
- ~~2. Oral statements or testimony at any informal fact finding will be stenographically or electronically recorded, and may be transcribed to written form.~~
- ~~3. Formal hearings will be recorded by a court reporter, or electronically recorded for transcription to written form.~~

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

- ~~1. A copy of the transcript of a public hearing or informational proceeding, if transcribed, will be provided within a reasonable time to any person upon receipt of a written request and payment of the cost; if not transcribed, the additional cost of preparation will be paid by the person making the request.~~
- ~~2. A copy of the transcript of an informal fact finding, 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 5-91-80. Variances. (Repealed.)

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 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 Northern Virginia program area of the subject, date, time and place of the public hearing at least 30 days prior to the scheduled hearing. The public hearing shall be conducted to give the public an opportunity to comment on the variance and the public hearing record shall remain open for a minimum of 15 days after the hearing for the purpose of receiving additional public comment.~~

[9 VAC 5-91-100. Conditions on approvals. (Repealed.)

A. ~~The director may impose conditions upon permits, licenses, certifications and other approvals issued pursuant to this chapter, (i) which may be necessary to carry out the Virginia Motor Vehicle Emissions Control 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 department in this regard.~~

B. ~~A license, permit, or certification applicant may consider any condition imposed by the director as a denial of the requested permit, license, certification or other approval, which shall entitle the applicant to appeal the decision pursuant to 9 VAC 5-91-70.~~

C. ~~The existence of a permit, license or certification under this chapter shall not constitute a defense to a violation of the Virginia Air Pollution Control Law, the Virginia Motor Vehicle Emissions Control Law or this chapter and shall not relieve any owner of the responsibility to comply with any applicable regulations, laws, ordinances and orders of any governmental entities having jurisdiction.]~~

9 VAC 5-91-110. Procedural information and guidance. (Repealed.)

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 director or the department, the owner, emissions inspector, emissions repair technician, 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 5-91-150. Availability of information. (Repealed.)

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

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

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

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

1. Information for which the station owner has been taking and will continue to take measures to protect confidentiality;
2. Information that has not been and is not presently reasonably obtainable without the consent of the station owner or motor vehicle owner by private citizens or other firms through legitimate means other than discovery based on a showing of special need in a judicial or quasi-judicial proceeding;
3. Information which is not publicly available from sources other than the station owner; and
4. Information the disclosure of which would cause substantial harm to the station owner.]

[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 given them by 9 VAC 5-170-20 (definitions, Regulation for General Administration) or commonly ascribed to them by recognized authorities, in that order of priority.

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

Final Regulations

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:

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.

Final Regulations

"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 §§ 0-6.14:7.1 and 0-6.14:11 of the Administrative Process Act and includes only (i) opportunity for private parties to submit factual proofs in formal proceedings as provided in § 0-6.14:8 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 § 0-6.14:12 of the Administrative Process Act in connection with case decisions.~~

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

"Heavy-duty vehicle (HDV)" means any affected motor vehicle (i) which is rated at more than 8,500 pounds GVWR or (ii) which has a vehicle curb weight of more than 6,000

pounds and has a basic frontal area in excess of 45 square feet.

"Light HDV" means any affected motor vehicle weighing more than 8,500 pounds and less than or equal to 19,500 pounds GVWR.

"Medium HDV" means any affected motor vehicle weighing more than 19,500 pounds and less than or equal to 26,000 pounds GVWR.

"Heavy HDV" means any affected motor vehicle weighing more than 26,000 pounds.

"Held for lease or rental to the general public" means, in reference to a motor vehicle, that it is owned or controlled primarily for the purpose of short-term rental or extended-term leasing (with or without maintenance), without a driver, pursuant to a contract.

"Implementation plan" means the plan, including any revision thereof, which has been submitted by the Commonwealth and approved in Subpart VV of 40 CFR Part 52 by the administrator under § 110 of the federal Clean Air Act, or promulgated in Subpart VV of 40 CFR Part 52 by the administrator under § 110(c) of the federal Clean Air Act, or promulgated or approved by the administrator pursuant to regulations promulgated under § 301(d) of the federal Clean Air Act and which implements the relevant requirements of the federal Clean Air Act.

"Inherently low emissions vehicle (ILEV)" means a LEV meeting ULEV NO_x standards and having negligible evaporative emissions, as defined in 40 CFR 88.311-93. No dual-fuel or flexible-fuel vehicle shall be considered an ILEV unless it is certified to the applicable standard on all fuel types for which it is designed to operate.

"Law-enforcement vehicle" means any vehicle (i) which is primarily operated by a civilian or military police officer or sheriff, or by personnel of the Federal Bureau of Investigation, the Drug Enforcement Administration, or other agencies of the federal government, or by state highway patrols, or other similar law-enforcement agencies, and (ii) which is used for the purpose of law-enforcement activities including, but not limited to, chase, apprehension, surveillance, or patrol of people engaged in or potentially engaged in unlawful activities. For federal law-enforcement vehicles, the definition contained in Executive Order 12759, Section 11: Alternative Fueled Vehicle for the Federal Fleet, Guidance Document for Federal Agencies (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 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 or engines, such terms mean a motor vehicle and engine, respectively, manufactured after the effective date of a regulation issued under § 202 of the federal Clean Air Act which is applicable to such vehicle or engine (or which would be applicable to such vehicle or engine had it been manufactured for importation into the United States).

"NMHC" means nonmethane hydrocarbons contained in a gas sample, including all oxygenated organic gases containing five or fewer carbon atoms; aldehydes, ketones, alcohols, ethers, and all known alkanes, alkenes, alkynes and aromatics containing 12 or fewer carbon atoms.

"NMOG" means the total mass of nonmethane organic gas in the emissions of a vehicle including oxygenated and nonoxygenated hydrocarbon emissions.

"Nonattainment area" means, for any air pollutant, an area which is designated "nonattainment" with respect to that pollutant under the provisions of § 107(d) of the federal Clean Air Act.

"Noncovered fleet" means nine or less motor vehicles which are owned, operated, leased or rented for use by a common owner or have been consigned for maintenance to a common facility.

"Noncovered vehicle" means any vehicle that is exempt from this chapter.

"Nonexempt fleet vehicle" means a 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

Final Regulations

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 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.

9 VAC 5-121-40. Hearings and proceedings. (Repealed.)

~~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.~~

Final Regulations

~~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. (Repealed.)

~~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. (Repealed.)

~~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 5-121-80. 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 entitle the applicant to appeal the decision pursuant to ~~9 VAC 5-121-50 Part VIII (9 VAC 5-170-190 et seq.) of 9 VAC 5 Chapter 170.~~

9 VAC 5-121-90. Procedural information and guidance. (Repealed.)

~~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 5-121-120. 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.

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-G~~ Part VIII (9 VAC 5-170-190 et seq.) of 9 VAC 5 Chapter 170 or (ii) may be appealed to the board pursuant to ~~9 VAC 5-121-50-A~~ Part VIII (9 VAC 5-170-190 et seq.) of 9 VAC 5 Chapter 170.]

[9 VAC 5-150-10. 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 5-150-20.

B. Unless specifically defined in the Virginia Air Pollution Control Law or in this regulation chapter, terms used shall have the meaning meanings given them by the federal Clean Air Act, Titles 23 and 49 USC of the United States Code, other U.S. Environmental Protection Agency regulations, other USDOT regulations, 9 VAC 5-170-20 (definitions, Regulation for General Administration), or commonly ascribed to them by recognized authorities, in that order of priority.]

9 VAC 5-150-20. Terms defined.

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

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

"Ambient air" means that portion of the atmosphere, external to buildings, to which the general public has access.

"Applicable implementation plan" means the portion or portions of the state implementation plan, or the most recent revision thereof, which has been approved under § 110 of the federal Clean Air Act, or promulgated under § 110(c) of the federal Clean Air Act, or promulgated or approved 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.

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

"Cause or contribute to a new violation" means, with respect to a project:

1. To cause or contribute to a new violation of a standard in the area substantially affected by the project or over a region which would otherwise not be in violation of the standard during the future period in question, if the project were not implemented; or

Final Regulations

2. To contribute to a new violation in a manner that would increase the frequency or severity of a new violation of a standard in the area.

~~"Confidential Information" means secret formulae, secret processes, 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 DEQ.~~

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

~~"Control strategy implementation plan revision" means the applicable state implementation plan which contains specific strategies for controlling the emissions of and reducing ambient levels of pollutants in order to satisfy federal Clean Air Act requirements for demonstrations of reasonable further progress and attainment (§§ 182(b)(1), 182(c)(2)(A), 182(c)(2)(B), 187(a)(7), 189(a)(1)(B), and 189(b)(1)(A); and §§ 192(a) and 192(b) for nitrogen dioxide of the federal Clean Air Act).~~

~~"Control strategy period" means, with respect to particulate matter (PM₁₀), carbon monoxide (CO), nitrogen dioxide (NO₂), or any combination of the preceding, ozone precursors (volatile organic compounds and oxides of nitrogen), that period of time after EPA approves control strategy implementation plan revisions containing strategies for controlling PM₁₀, NO₂, CO, ozone, or any combination of the preceding as appropriate. This period ends when a state submits and EPA approves a request under § 107(d) of the federal Clean Air Act for redesignation to an attainment area.~~

~~"Criteria pollutant" means any pollutant for which a national ambient air quality standard is established in 40 CFR Part 50.~~

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

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

~~"Design concept" means the type of facility identified by the project, e.g., freeway, expressway, arterial highway, grade-~~

~~separated highway, reserved right-of-way rail transit, mixed-traffic rail transit, exclusive busway, etc.~~

~~"Design scope" means the design aspects which will affect the proposed facility's impact on regional emissions, usually as they relate to vehicle or person carrying capacity and control, e.g., number of lanes or tracks to be constructed or added, length of project, signalization, access control including approximate number and location of interchanges, preferential treatment for high-occupancy vehicles, etc.~~

~~"Emergency" means a situation that immediately and unreasonably affects, or has the potential to immediately and unreasonably affect, public health, safety, or welfare; the health of animal or plant life; or property, whether used for recreational, commercial, industrial, agricultural, or other reasonable use.~~

~~"Emergency special order" means any order of the board issued under the provisions of § 10.1-1300 B of the Code of Virginia, after declaring a state of emergency and without a hearing, to owners who are permitting or causing air pollution, to cease the pollution. The orders shall become invalid if an appropriate hearing is not held within 10 days after the effective date.~~

~~"EPA" means the U.S. Environmental Protection Agency.~~

~~"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.~~

~~"FHWA" means the Federal Highway Administration of U.S. Department of Transportation (USDOT).~~

~~"FHWA/FTA project" means any highway or transit project which is proposed to receive funding assistance and approval through the Federal-Aid Highway Program or the Federal Mass Transit Program, or requires Federal Highway Administration (FHWA) or Federal Transit Administration (FTA) approval for some aspect of the project, such as connection to an interstate highway or deviation from applicable design standards on the interstate system.~~

~~"FTA" means the Federal Transit Administration of USDOT.~~

~~"Forecast period" means, with respect to a transportation plan, the period covered by the transportation plan pursuant to 23 CFR Part 450.~~

~~"Formal hearing" means board processes other than those informational or factual inquiries of an informal nature provided in §§ 9-6.14:7.1 and 9-6.14:11 of the Administrative Process Act and includes only (i) opportunity for private parties to submit factual proofs in formal proceedings as provided in § 9-6.14:8 of the Administrative Process Act in connection with the making of regulations, or (ii) a similar right of private parties or requirement of public agencies as~~

provided in § 9-6-14-12 of the Administrative Process Act in connection with case decisions.

"Highway project" means an undertaking to implement or modify a highway facility or highway-related program. Such an undertaking consists of all required phases necessary for implementation. For analytical purposes, it shall be defined sufficiently to:

1. Connect logical termini and be of sufficient length to address environmental matters on a broad scope;
2. Have independent utility or significance, i.e., be usable and be a reasonable expenditure even if no additional transportation improvements in the area are made; and
3. Not restrict consideration of alternatives for other reasonably foreseeable transportation improvements.

"Horizon year" means a year for which the transportation plan describes the envisioned transportation system according to 9 VAC 5-150-40.

"Hot-spot analysis" means an estimation of likely future localized CO and PM₁₀ pollutant concentrations and a comparison of those concentrations to the national ambient air quality standards. Pollutant concentrations to be estimated should be based on the total emissions burden which may result from the implementation of a single, specific project, summed together with future background concentrations (which can be estimated using the ratio of future to current traffic multiplied by the ratio of future to current emission factors) expected in the area. The total concentration shall be estimated and analyzed at appropriate receptor locations in the area substantially affected by the project. Hot-spot analysis assesses impacts on a scale smaller than the entire nonattainment or maintenance area, including, for example, congested roadway intersections and highways or transit terminals, and uses an air quality dispersion model to determine the effects of emissions on air quality.

"Incomplete data area" means any ozone nonattainment area which the U.S. Environmental Protection Agency has classified, in 40 CFR Part 81, as an incomplete data area.

"Increase the frequency or severity" means to cause a location or region to exceed a standard more often or to cause a violation at a greater concentration than previously existed or would otherwise exist, or both, during the future period in question, if the project were not implemented.

"ISTEA" means the Intermodal Surface Transportation Efficiency Act of 1991 (Public Law 102-240).

"LPO" or "Lead Planning Organization" means the organization certified by the state as being responsible for the preparation of control strategy implementation plan revisions for nonattainment areas under § 174 of the federal Clean Air Act. The organization includes elected officials of local governments in the affected nonattainment area, and representatives of DEQ, VDOT, the MPO(s) for the affected

area, and other agencies and organizations that have responsibilities for developing, submitting or implementing any of the plan revisions. It is the forum for cooperative air quality planning decision-making.

"Maintenance area" means any geographic region of the United States previously designated nonattainment under § 107 of the federal Clean Air Act and subsequently redesignated to attainment subject to the requirement to develop a maintenance plan.

"Maintenance period" means, with respect to a pollutant or pollutant precursor, that period of time beginning when the state submits and the U.S. Environmental Protection Agency approves a request under § 107(d) of the federal Clean Air Act for redesignation to an attainment area, and lasting for 20 years, unless the applicable implementation plan specifies that the maintenance period shall last for more than 20 years.

"Maintenance plan" means a revision to the applicable implementation plan, meeting the requirements of § 175A of the federal Clean Air Act.

"MPO" or "Metropolitan Planning Organization" means the organization designated as being responsible, together with the state, for conducting the continuing, cooperative, and comprehensive planning process under 23 USC § 134 and 49 USC § 1607. It is the forum for cooperative transportation decision-making.

"Milestone" means as defined in §§ 182(g) and 189(c)(1) of the federal Clean Air Act. A milestone consists of an emissions level and the date on which it is required to be achieved.

"Motor vehicle emissions budget" means that portion of the total allowable emissions defined in a revision to the applicable implementation plan (or in an implementation plan revision which was endorsed by the Governor or a designee, subject to a public hearing, and submitted to the U.S. Environmental Protection Agency, but not yet approved by the U.S. Environmental Protection Agency) for a certain date for the purpose of meeting reasonable further progress milestones or attainment or maintenance demonstrations, for any criteria pollutant or its precursors, allocated by the applicable implementation plan to highway and transit vehicles. The applicable implementation plan for an ozone nonattainment area may also designate a motor vehicle emissions budget for nitrogen oxides for a reasonable further progress milestone year if the applicable implementation plan demonstrates that this nitrogen oxides budget will be achieved with measures in the implementation plan (as an implementation plan must do for volatile organic compound milestone requirements). The applicable implementation plan for an ozone nonattainment area includes a nitrogen oxides budget if nitrogen oxide reduction are being substituted for reductions in volatile organic compounds in milestone years required for reasonable further progress.

"National ambient air quality standards (NAAQS)" means those standards established pursuant to § 109 of the federal Clean Air Act.

Final Regulations

"NEPA" means the National Environmental Policy Act of 1969 as amended (42 USC § 4321 et seq.)

"NEPA process completion" means, with respect to FHWA or FTA, the point at which there is a specific action to make a determination that a project is categorically excluded, to make a Finding of No Significant Impact, or to issue a record of decision on a Final Environmental Impact Statement under NEPA.

"Nonattainment area" means any geographic region of the United States which has been designated as nonattainment under § 107 of the federal Clean Air Act for any pollutant for which a national ambient air quality standard exists.

"Not-classified area" means any carbon monoxide nonattainment area which the U.S. Environmental Protection Agency has not classified as either moderate or serious.

~~"Order" means any decision or directive of the board, including special orders, emergency special orders and orders of all types, rendered for the purpose 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 hearing.~~

"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 source or facility.

~~"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 DEQ.~~

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

"Phase II of the interim period" means, with respect to a pollutant or pollutant precursor, that period of time after December 27, 1993, lasting until the earlier of the following:

1. Submission to the U.S. Environmental Protection Agency of the relevant control strategy implementation plan revisions which have been endorsed by the Governor or a designee and have been subject to a public hearing, or
2. The date that the federal Clean Air Act requires relevant control strategy implementation plans to be submitted to the U.S. Environmental Protection Agency, provided the U.S. Environmental Protection Agency has notified the state, MPO, and USDOT of the state's failure to submit any such plans. The precise end of Phase II of the interim period is defined in 9 VAC 5-150-360.

"PM₁₀" 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.

"Project" means a highway project or a transit project.

"Protective finding" means a determination by the EPA that the control strategy contained in a submitted control strategy implementation plan revision would have been considered approvable with respect to requirements for emissions reductions if all committed measures had been submitted in enforceable form as required by § 110(a)(2)(A) of the federal Clean Air Act.

~~"Public hearing" means, unless indicated otherwise, 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.~~

"Recipient of funds designated under Title 23 USC or the Federal Transit Act" means any agency at any level of state, county, city, or regional government that routinely receives Title 23 USC or Federal Transit Act funds to construct FHWA/FTA projects, operate FHWA/FTA projects or equipment, purchase equipment, or undertake other services or operations via contracts or agreements. This definition does not include private landowners or developers, or contractors or entities that are only paid for services or products created by their own employees.

"Regionally significant project" means a transportation project (other than an exempt project) that is on a facility which serves regional transportation needs (such as access to and from the area outside of the region, major activity centers in the region, major planned developments such as new retail malls, sports complexes, etc., or transportation terminals as well as most terminals themselves) and would normally be included in the modeling of a metropolitan area's transportation network, including at a minimum all principal arterial highways and all fixed guideway transit facilities that offer an alternative to regional highway travel.

"Rural transport ozone nonattainment area" means an ozone nonattainment area that does not include, and is not adjacent to, any part of a Metropolitan Statistical Area or, where one exists, a Consolidated Metropolitan Statistical Area (as defined by the United States Bureau of the Census) and is classified under § 182(h) of the federal Clean Air Act as a rural transport area.

"Source" means any one or combination of the following: buildings, structures, facilities, installations, articles, machines, equipment, landcraft, watercraft, aircraft, or other contrivances which contribute, or may contribute, either directly or indirectly to air pollution. Any activity by any person that contributes, or may contribute, either directly or indirectly to air pollution, including, but not limited to, open burning, generation of fugitive dust or emissions, and cleaning with abrasives or chemicals.

~~"Special order" means any order of the board issued:~~

- ~~1. Under the provisions of § 10.1-1300 of the Code of Virginia;~~

~~a. To owners who are permitting or causing air pollution to cease and desist from the pollution;~~

~~b. To owners who have failed to construct facilities in accordance with or have failed to comply with plans for the control of air pollution submitted by them to, and approved by the board, to construct the facilities in accordance with or otherwise comply with the approved plan;~~

~~c. To owners who have violated or failed to comply with the terms and provisions of any order or directive issued by the board to comply with the terms and provisions;~~

~~d. To owners who have contravened duly adopted and promulgated air quality standards and policies to cease and desist from the contravention and to comply with the air quality standards and policies; and~~

~~e. To require any owner to comply with the provisions of this chapter and any decision of the board; or~~

~~2. Under the provisions of § 10.1-1300.1 of the Code of Virginia requiring that an owner file with the board a plan to abate, control, prevent, remove, or contain any substantial and imminent threat to public health or the environment that is reasonably likely to occur if the source ceases operations.~~

"Standard" means a national ambient air quality standard.

"State Implementation Plan" means the plan, including the most recent revision thereof, which has been approved or promulgated by the administrator, U.S. Environmental Protection Agency, under § 110 of the federal Clean Air Act, and which implements the requirements of § 110.

"Submarginal area" means any ozone nonattainment area which the U.S. Environmental Protection Agency has classified as submarginal in 40 CFR Part 81.

"Transit" is mass transportation by bus, rail, or other conveyance which provides general or special service to the public on a regular and continuing basis. It does not include school buses or charter or sightseeing services.

"Transit project" means an undertaking to implement or modify a transit facility or transit-related program; purchase transit vehicles or equipment; or provide financial assistance for transit operations. It does not include actions that are solely within the jurisdiction of local transit agencies, such as changes in routes, schedules, or fares. It may consist of several phases. For analytical purposes, it shall be defined inclusively enough to:

1. Connect logical termini and be of sufficient length to address environmental matters on a broad scope;
2. Have independent utility or independent significance, i.e., be a reasonable expenditure even if no additional transportation improvements in the area are made; and
3. Not restrict consideration of alternatives for other reasonably foreseeable transportation improvements.

"Transitional area" means any ozone nonattainment area which the U.S. Environmental Protection Agency has classified as transitional in 40 CFR Part 81.

"Transitional period" means, with respect to a pollutant or pollutant precursor, that period of time which begins after submission to the U.S. Environmental Protection Agency of the relevant control strategy implementation plan revision which has been endorsed by the Governor or a designee and has been subject to a public hearing. The transitional period lasts until the U.S. Environmental Protection Agency takes final approval or disapproval action on the control strategy implementation plan submission or finds it to be incomplete. The precise beginning and end of the transitional period is defined in 9 VAC 5-150-360.

"Transportation control measure (TCM)" means any measure that is specifically identified and committed to in the applicable state implementation plan that is either one of the types listed in § 108 of the federal Clean Air Act, or any other measure for the purpose of reducing emissions or concentrations of air pollutants from transportation sources by reducing vehicle use or changing traffic flow or congestion conditions. Notwithstanding the above, vehicle technology-based, fuel-based, and maintenance-based measures which control the emissions from vehicles under fixed traffic conditions are not transportation control measures.

"Transportation improvement program (TIP)" means a staged, multiyear, intermodal program of transportation projects covering a metropolitan planning area which is consistent with the metropolitan transportation plan, and developed pursuant to 23 CFR Part 450.

"Transportation plan" means the official intermodal metropolitan transportation plan that is developed through the metropolitan planning process for the metropolitan planning area, developed pursuant to 23 CFR Part 450.

"Transportation project" means a highway project or a transit project.

"USDOT" means the U.S. Department of Transportation.

~~"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.~~

"VDOT" means the Virginia Department of Transportation.

"VDRPT" means the Virginia Department of Rail and Public Transportation.

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

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

"Welfare" means that language referring to effects on welfare includes, but is not limited to, effects on soils, water, crops, vegetation, man-made materials, animals, wildlife, weather, visibility and climate, damage to and deterioration of

Final Regulations

property, and hazards to transportation, as well as effects on economic values and on personal comfort and well being.

~~9 VAC 5-150-50. Establishment of regulations and orders. (Repealed.)~~

~~A. This chapter is established to implement the provisions of the Virginia Air Pollution Control Law and the federal Clean Air Act.~~

~~B. This chapter shall be adopted, amended, or repealed in accordance with the provisions of § 10.1-1308 of the Virginia Air Pollution Control Law, Articles 1 and 2 of the Administrative Process Act and the Public Participation Procedures in Appendix E of Chapter 10 (9 VAC 5-10-10 et seq.).~~

~~C. Regulations, amendments and repeals shall become effective as provided in § 9-6.14:0.3 of the Administrative Process Act, except in no case shall the effective date be less than 60 days after adoption by the board.~~

~~D. If necessary in an emergency situation, the board may adopt, amend, or stay a chapter as an exclusion under § 9-6.14:4.1 of the Administrative Process Act, but the chapter shall remain effective no longer than one year unless readopted following the requirements of subsection B of this section. The provisions of this subsection are not applicable to emergency special orders; the orders are subject to the provisions of subsection F of this section.~~

~~E. 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.~~
- ~~5. Technical and scientific reference documents.~~

~~F. Orders, special orders and emergency special orders may be issued pursuant to § 10.1-1307 D or § 10.1-1309 of the Virginia Air Pollution Control Law.~~

~~9 VAC 5-150-60. Enforcement of regulations and orders. (Repealed.)~~

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

- ~~1. The DEQ may negotiate to obtain compliance through administrative means. The means may be a variance, control program, consent agreement or any other mechanism that requires compliance by a specific date.~~

~~The means and the associated date shall be determined on a case-by-case basis and shall not allow an unreasonable delay in compliance. 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.~~

~~2. The DEQ may obtain compliance through legal means pursuant to § 10.1-1316 or § 10.1-1320 of the Virginia Air Pollution Control Law.~~

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

~~C. Orders, consent orders, special orders, and emergency special orders are considered administrative means and the board reserves the right to use these means in lieu of or to provide a legal basis for the enforcement of any administrative means negotiated or approved by the DEQ under subsection A of this section.~~

~~D. Any enforcement proceeding under this section may be used as a mechanism to ensure that the compliance status of any facility is reasonably maintained by the owner.~~

~~E. Case decisions regarding the enforcement of regulations and orders shall be made by the DEQ or board. Case decisions of the DEQ that are made pursuant to a formal hearing (i) may be regarded as a final decision of the board and appealed pursuant to subsection C of 9 VAC 5-150-90; or (ii) may be directly considered by the board as provided in subsection F of this section, with the review being on the record and not de novo with opportunity for oral argument. Case decisions of the DEQ that are made pursuant to an informal proceeding (i) may be appealed to the board pursuant to subsection A of 9 VAC 5-150-90, or (ii) may be directly considered by the board according to subsection F of this section.~~

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

~~G. The submittal of the request under subsection F of this section by itself shall not constitute a stay of decision. A stay of decision shall be sought through appropriate legal channels.~~

~~9 VAC 5-150-70. Hearings and proceedings. (Repealed.)~~

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

- ~~1. The public hearing and informational proceeding required before considering regulations, in accordance with § 10.1-1308 of the Virginia Air Pollution Control Law. The procedure for a public hearing and informational proceeding shall conform to § 9-6.14:7.1 of the~~

~~Administrative Process Act, except as modified by §§ 10.1-1307 F and 10.1-1308 of the Virginia Air Pollution Control Law, and to the Public Participation Procedures in Appendix E of Chapter 10 (9 VAC 5-10-10 et seq.).~~

~~2. The public hearing required before considering variances and amendments to and revocation of variances, in accordance with § 10.1-1307 C of the Virginia Air Pollution Control Law. The procedure for a public hearing shall conform to § 10.1-1307 C of the Virginia Air Pollution Control Law and to the provisions of 9 VAC 5-150-80.~~

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

~~4. The formal hearing for the enforcement or review of orders and for the enforcement of regulations, in accordance with §§ 10.1-1307 D and 10.1-1322 A of the Virginia Air Pollution Control Law. The procedure for a formal hearing shall conform to § 9-6.14:12 of the Administrative Process Act, except as modified by § 10.1-1307 D and F of the Virginia Air Pollution Control Law.~~

~~5. The special order hearing or emergency special order hearing for the enforcement or review of orders and for the enforcement of regulations, in accordance with § 10.1-1309 of the Virginia Pollution Control Law. The procedures for the special order hearing or emergency special order hearing shall conform to § 9-6.14:12 of the Administrative Process Act, except as modified by §§ 10.1-1307 F and 10.1-1309 of the Virginia Air Pollution Control Law.~~

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

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

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

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

~~3. Formal hearings and hearings for the issuance of special orders or emergency special orders shall be recorded by a court reporter, or electronically recorded for transcription to written form.~~

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

~~1. A copy of the transcript of a public hearing or informational proceeding, if transcribed, shall 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 shall be paid by the person making the request.~~

~~2. A copy of the transcript of an informal proceeding, if transcribed, shall 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 shall be paid by the person making the request.~~

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

9 VAC 5-150-90. Appeals. (Repealed.)

~~A. Any 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 the hearing is filed with the board. In cases involving actions of the board, the petition shall be filed within 30 days after notice of the action is mailed or delivered to the owner or party requesting notification of the action.~~

~~B. Prior to any formal hearing, an informal fact finding shall be held pursuant to § 9-6.14:11 of the Administrative Process Act, unless waived by the board.~~

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

~~D. Judicial review of a final decision of the board shall be afforded in accordance with § 10.1-1318 of the Virginia Air Pollution Control Law and § 9-6.14:16 of the Administrative Process Act.~~

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

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

9 VAC 5-150-100. Availability of information. (Repealed.)

~~A. Emission data in the possession of the board or DEQ shall be available to the public without exception.~~

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

~~The board or DEQ shall consider the records, reports or information, or particular part thereof, confidential in accordance with §§ 10.1-1314 and 10.1-1314.1 of the Virginia Air Pollution Control Law upon a showing satisfactory to the board or DEQ by any owner that the records, reports or information, or particular part thereof, meet the criteria in~~

Final Regulations

~~subsection C of this section and the owner provides a certification to that effect signed by a responsible party for the owner. The 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 Air Pollution Control Law and the federal Clean Air Act.~~

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

- ~~1. Information for which the owner has been taking and shall continue to take measures to protect confidentiality;~~
- ~~2. 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;~~
- ~~3. Information which is not publicly available from sources other than the owner; and~~
- ~~4. Information the disclosure of which would cause substantial harm to the owner.~~

~~D. The board or DEQ shall have the right to substitute information which is not confidential for information claimed as confidential and to inquire as to the basis of the confidentiality claim. Upon approval of the board or DEQ, an owner may substitute information which is not confidential for information claimed as confidential. Information substituted shall be limited to that which would have the same substantive effect in analyses conducted by the board or DEQ as the information for which the inquiry is made.~~

~~E. Any responsible party for an owner who files information as confidential which does not meet the criteria in subsection C of this section shall be in violation of the Virginia Air Pollution Control Law.~~

[9 VAC 5-160-10. 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 5-160-20.

B. Unless specifically defined in the Virginia Air Pollution Control Law or in this chapter, terms used shall have the meaning meanings given them by the federal Clean Air Act, other U.S. Environmental Protection Agency (EPA) regulations, 9 VAC 50-170-20 (*definitions, Regulation for General Administration*) or commonly ascribed to them by recognized authorities, in that order of priority.]

9 VAC 5-160-20. Terms defined.

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

~~"Administrator" means the Administrator of EPA or an authorized representative.~~

~~"Affected federal land manager" means the federal agency or the federal official charged with direct responsibility for management of an area designated as class I under the federal Clean Air Act, and located within 100 kilometers of the proposed federal action.~~

~~"Ambient air" means that portion of the atmosphere, external to buildings, to which the general public has access.~~

~~"Applicable implementation plan" means the portion or portions of the state implementation plan, or the most recent revision thereof, which has been approved under § 110 of the federal Clean Air Act, or promulgated under § 110(c) of the federal Clean Air Act, or promulgated or approved 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.~~

~~"Areawide air quality modeling analysis" means an assessment on a scale that includes the entire nonattainment area or maintenance area which uses an air quality dispersion model to determine the effects of emissions on air quality.~~

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

~~"Cause or contribute to a new violation" means a federal action that:~~

- ~~1. Causes a new violation of a national ambient air quality standard at a location in a nonattainment or maintenance area which would otherwise not be in violation of the standard during the future period in question if the federal action were not taken; or~~
- ~~2. Contributes, in conjunction with other reasonably foreseeable actions, to a new violation of a national ambient air quality standard at a location in a nonattainment or maintenance area in a manner that would increase the frequency or severity of the new violation.~~

~~"Caused by" means, as used in the terms "direct emissions" and "indirect emissions," emissions that would not otherwise occur in the absence of the federal action.~~

~~"Confidential information" means secret formulae, secret processes, secret methods, or other trade secrets which are proprietary information certified by the signature of the responsible person for the federal agency to meet the following criteria: (i) information for which the federal agency 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 federal agency'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~~

federal agency; and (iv) information the disclosure of which would cause substantial harm to the federal agency.

"Consent agreement" means an agreement that the federal agency or any other person will perform specific actions for the purpose of diminishing or abating the causes of air pollution or for the purpose of coming into compliance with this regulation, by mutual agreement of the federal agency or any other person and the board.

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

"Consultation" means that one party confers with another identified party, provides all information to that party needed for meaningful input, and, prior to taking any action, considers the views of that party and responds to those views in a timely, substantive, written manner prior to any final decision on the action. The views and written response shall be made part of the record of any decision or action.

"Control" means the ability to regulate the emissions from the action. The ability to regulate may be demonstrated directly, such as through the use of emission control equipment, or indirectly, such as through the implementation of regulations or conditions on the nature of the activity that may be established in permits or approvals or by the design of the action. An example of control includes the ability of a federal agency to control the level of vehicle emissions by controlling the size of a parking facility and setting requirements for employee trip reductions.

"Criteria pollutant" means any pollutant for which there is established a national ambient air quality standard in 40 CFR Part 50.

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

"Direct emissions" means those emissions of a criteria pollutant or its precursors that are caused or initiated by the federal action and occur at the same time and place as the action.

"Director" means the Director of the Virginia Department of Environmental Quality.

"Emergency" means, in the context of 9 VAC 5-160-30, a situation where extremely quick action on the part of federal agencies involved is needed and where the timing of the federal activities makes it impractical to meet the requirements of this regulation, such as natural disasters like hurricanes or earthquakes, civil disturbances such as terrorist acts, and military mobilizations.

"Emergency" means, in the context of 9 VAC 5-160-40 and 9 VAC 5-160-50, a situation that immediately and unreasonably affects, or has the potential to immediately and unreasonably affect, public health, safety or welfare; the health of animal or plant life; or property, whether used for recreational, commercial, industrial, agricultural or other reasonable use.

"Emergency special order" means any order of the board issued under the provisions of § 10.1-1309 B of the Code of Virginia, after declaring a state of emergency and without a hearing, to federal agencies who are permitting or causing air pollution, to cease the pollution. The orders shall become invalid if an appropriate hearing is not held within 10 days after the effective date.

"Emissions budgets" are those portions of the total allowable emissions defined in the applicable implementation plan for a certain date for the purpose of meeting reasonable further progress milestones or attainment or maintenance demonstrations, for any criteria pollutant or its precursors, specifically allocated by the applicable implementation plan to mobile sources, to any stationary source or class of stationary sources, to any federal action or any class of action, to any class of area sources, or to any subcategory of the emissions inventory. The allocation system shall be specific enough to assure meeting the criteria of § 176(c)(1)(B) of the federal Clean Air Act. An emissions budget may be expressed in terms of an annual period, a daily period, or other period established in the applicable implementation plan.

"Emissions offsets" means, for the purposes of 9 VAC 5-160-160, emissions reductions which are quantifiable, consistent with the applicable implementation plan attainment and reasonable future progress demonstrations, surplus to reductions required by, and credited to, other applicable implementation plan provisions, enforceable under both state and federal law, and permanent within the timeframe specified by that program. Emissions reductions intended to be achieved as emissions offsets under this regulation shall be monitored and enforced in a manner equivalent to that under the new source review program.

"Emissions that a federal agency has a continuing program responsibility for" means emissions that are specifically caused by an agency carrying out its authorities, and does not include emissions that occur due to subsequent activities, unless the activities are required by the federal agency. Where an agency, in performing its normal program responsibilities, takes actions itself or imposes conditions that result in air pollutant emissions by a nonfederal entity taking subsequent actions, the emissions are covered by the meaning of a continuing program responsibility.

"EPA" means the United States Environmental Protection Agency.

"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 action" means any activity engaged in by a federal agency, or any activity that a federal agency supports in any way, provides financial assistance for, licenses, permits, or approves, other than activities related to transportation plans, programs, and projects developed,

Final Regulations

funded, or approved under Title 23 USC or the Federal Transit Act (49 USC § 1601 et seq.). Where the federal action is a permit, license, or other approval for some aspect of a nonfederal undertaking, the relevant action is the part, portion, or phase that the nonfederal undertaking that requires the federal permit, license, or approval.

"Federal agency" means a department, agency, or instrumentality of the federal government.

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

~~"Formal hearing" means board processes other than those informational or factual inquiries of an informal nature provided in §§ 9-6.14:7.1 and 9-6.14:11 of the Administrative Process Act and includes only:~~

- ~~1. 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~~
- ~~2. 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.~~

"Increase the frequency or severity of any existing violation of any standard in any area" means to cause a nonattainment area to exceed a standard more often, or to cause a violation at a greater concentration than previously existed or would otherwise exist during the future period in question, if the project were not implemented.

"Indirect emissions" means those emissions of a criteria pollutant or its precursors that:

1. Are caused by the federal action, but may occur later in time, or may be farther removed in distance from the action itself but are still reasonably foreseeable; and
2. The federal agency can practicably control and will maintain control over due to a continuing program responsibility of the federal agency, including, but not limited to:
 - a. Traffic on or to, or stimulated or accommodated by, a proposed facility which is related to increases or other changes in the scale or timing of operations of the facility;
 - b. Emissions related to the activities of employees of contractors or federal employees;
 - c. Emissions related to employee commutation and similar programs to increase average vehicle occupancy imposed on all employers of a certain size in the locality; and
 - d. Emissions related to the activities of contractors or leaseholders that may be addressed by provisions that are usual and customary for contracts or leases or within the scope of contractual protection of the interests of the United States.

"Lead planning organization" means the organization certified by the state as being responsible for the preparation of control strategy implementation plan revisions for nonattainment areas under § 174 of the federal Clean Air Act. The organization includes elected officials of local governments in the affected nonattainment area, and representatives of the department, the Virginia Department of Transportation, the metropolitan planning organizations for the affected area, and other agencies and organizations that have responsibilities for developing, submitting or implementing any of the plan revisions. It is the forum for cooperative air quality planning decision-making.

"Local air quality modeling analysis" means assessment of localized impacts on a scale smaller than the entire nonattainment or maintenance area, including, for example, congested roadway intersections and highways or transit terminals, which uses an air quality dispersion model to determine the effects of emissions on air quality.

"Maintenance area" means any geographic region of the United States previously designated as a nonattainment area and subsequently redesignated to attainment subject to the requirement to develop a maintenance plan.

"Maintenance plan" means a revision to the applicable implementation plan, meeting the requirements of § 175A of the federal Clean Air Act.

"Metropolitan planning organization" means the organization designated as being responsible, together with the Commonwealth of Virginia, for conducting the continuing, cooperative, and comprehensive planning process under 23 USC 134 and 49 USC 1607.

"Milestone" means as defined in §§ 182(g) and 189(c)(1) of the federal Clean Air Act. A milestone consists of an emissions level and the date on which it is required to be achieved.

"National ambient air quality standards" means those standards established pursuant to § 109 of the federal Clean Air Act.

"NEPA" means the National Environmental Policy Act of 1969 as amended (42 USC § 4321 et seq.)

"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 regulations 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.

"Nonattainment area" means any geographic region of the United States which has been designated as nonattainment under § 107 of the federal Clean Air Act for any pollutant for which a national ambient air quality standard exists.

~~"Order" means any decision or directive of the board, including special orders, emergency special orders and orders of all types, rendered for the purpose 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 hearing.~~

~~"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.~~

~~"PM₁₀" 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.~~

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

~~"Precursors of a criteria pollutant" means:~~

- ~~1. For ozone,
 - a. Nitrogen oxides, unless an area is exempted from nitrogen oxides requirements under § 182(f) of the federal Clean Air Act, and
 - b. Volatile organic compounds; and~~
- ~~2. For PM₁₀, those pollutants described in the PM₁₀ nonattainment area applicable implementation plan as significant contributors to the particulate matter levels.~~

~~"Public hearing" means, unless indicated otherwise, 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.~~

~~"Reasonably foreseeable emissions" are projected future indirect emissions that are identified at the time the conformity determination is made; the location of the emissions is known to the extent adequate to determine the impact of the emissions; and the emissions are quantifiable, as described and documented by the federal agency based on its own information and after reviewing any information presented to the federal agency.~~

~~"Regional water or wastewater projects" means construction, operation, and maintenance of water or wastewater conveyances, water or wastewater treatment facilities, and water storage reservoirs which affect a large portion of a nonattainment or maintenance area.~~

~~"Regionally significant action" means a federal action for which the direct and indirect emissions of any pollutant represent 10% or more of a nonattainment or maintenance area's emissions inventory for that pollutant.~~

~~"Source" means any one or combination of the following: buildings, structures, facilities, installations, articles, machines, equipment, landcraft, watercraft, aircraft, or other contrivances which contribute, or may contribute, either directly or indirectly to air pollution. Any activity by any person that contributes, or may contribute, either directly or indirectly to air pollution, including, but not limited to, open~~

~~burning, generation of fugitive dust or emissions, and cleaning with abrasives or chemicals.~~

~~"Special order" means any order of the board issued:~~

- ~~1. Under the provisions of § 10.1-1300 of the Code of Virginia:~~

~~a. To federal agencies who are permitting or causing air pollution to cease and desist from the pollution;~~

~~b. To federal agencies who have failed to construct facilities in accordance with or have failed to comply with plans for the control of air pollution submitted by them to, and approved by the board, to construct the facilities in accordance with or otherwise comply with the approved plan;~~

~~c. To federal agencies who have violated or failed to comply with the terms and provisions of any order or directive issued by the board to comply with the terms and provisions;~~

~~d. To federal agencies who have contravened duly adopted and promulgated air quality standards and policies to cease and desist from the contravention and to comply with the air quality standards and policies; and~~

~~e. To require any federal agency to comply with the provisions of this chapter and any decision of the board; or~~

- ~~2. Under the provisions of § 10.1-1300.1 of the Code of Virginia requiring that a federal agency file with the board a plan to abate, control, prevent, remove, or contain any substantial and imminent threat to public health or the environment that is reasonably likely to occur if the source ceases operations.~~

~~"Total of direct and indirect emissions" means the sum of direct and indirect emissions increases and decreases caused by the federal action, that is, the "net" emissions considering all direct and indirect emissions. Any emissions decreases used to reduce the total shall have already occurred or shall be enforceable under state and federal law. The portion of emissions which are exempt or presumed to conform under 9 VAC 5-160-30 are not included in the "total of direct and indirect emissions," except as provided in 9 VAC 5-160-30 M. The "total of direct and indirect emissions" includes emissions of criteria pollutants and emissions of precursors of criteria pollutants. Segmentation of projects for conformity analyses when emissions are reasonably foreseeable is prohibited.~~

~~"Variance" means the temporary exemption of a federal agency from this chapter, or a temporary change in this chapter as it applies to a federal agency.~~

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

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

Final Regulations

"Welfare" means that language referring to effects on welfare includes, but is not limited to, effects on soils, water, crops, vegetation, human-made materials, animals, wildlife, weather, visibility and climate, damage to and deterioration of property, and hazards to transportation, as well as effects on economic values and on personal comfort and well-being.

9 VAC 5-160-50. ~~Establishment of regulations and orders. (Repealed.)~~

~~A. This chapter is established to implement the provisions of the Virginia Air Pollution Control Law and the federal Clean Air Act.~~

~~B. This chapter shall be adopted, amended, or repealed in accordance with the provisions of § 10.1-1308 of the Virginia Air Pollution Control Law, Articles 1 and 2 of the Administrative Process Act and the Public Participation Procedures in Appendix E of Chapter 10 (9 VAC 5-10-10 et seq.).~~

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

~~D. If necessary in an emergency situation, the board may adopt, amend, or stay a regulation as an exclusion under § 9-6.14-4.1 of the Administrative Process Act, but the chapter shall remain effective no longer than one year unless readopted following the requirements of subsection B of this section. The provisions of this subsection are not applicable to emergency special orders; the orders are subject to the provisions of subsection F of this section.~~

~~E. 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.~~
- ~~5. Technical and scientific reference documents.~~

~~F. Orders, special orders and emergency special orders may be issued pursuant to § 10.1-1307 D or § 10.1-1309 of the Virginia Air Pollution Control Law.~~

9 VAC 5-160-60. ~~Enforcement of regulations and orders. (Repealed.)~~

~~A. Whenever the department has reason to believe that a violation of any provision of this chapter or order has occurred, notice shall be served on the alleged violator or violators, citing the applicable provision of this chapter or the order or both involved and the facts on which the violation is based. The department may act as the agent of the board to~~

~~obtain compliance through one of the following enforcement proceedings:~~

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

~~2. The department may obtain compliance through legal means pursuant to § 10.1-1316 or § 10.1-1320 of the Virginia Air Pollution Control Law.~~

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

~~C. Orders, consent orders, special orders, and emergency special orders are considered administrative means and the board reserves the right to use these 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 status of any facility is reasonably maintained by the federal agency.~~

~~E. Case decisions regarding the enforcement of regulations and orders shall be made by the department or board. Case decisions of the department that are made pursuant to a formal hearing may be (i) regarded as a final decision of the board and appealed pursuant to 9 VAC 5-160-90 C; or (ii) may be directly considered by the board as provided in subsection F of this section, with the review being on the record and not de novo with opportunity for oral argument. Case decisions of the department that are made pursuant to an informal proceeding may be (i) appealed to the board pursuant to 9 VAC 5-160-90 A, or (ii) may be directly considered by the board according to subsection F of this section.~~

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

~~G. The submittal of the request under subsection F of this section by itself shall not constitute a stay of decision. A stay of decision shall be sought through appropriate legal channels.~~

9 VAC 5-160-70. Hearings and proceedings. (Repealed.)

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

1. The public hearing and informational proceeding required before considering regulations, in accordance with § 10.1-1308 of the Virginia Air Pollution Control Law. The procedure for a public hearing and informational proceeding shall conform to § 9-6.14:7.1 of the Administrative Process Act, except as modified by §§ 10.1-1307 F and 10.1-1308 of the Virginia Air Pollution Control Law, and to the Public Participation Procedures in Appendix E of Chapter 10 (9 VAC 5-10-10 et seq.).

2. The public hearing required before considering variances and amendments to and revocation of variances, in accordance with § 10.1-1307 C of the Virginia Air Pollution Control Law. The procedure for a public hearing shall conform to § 10.1-1307 C of the Virginia Air Pollution Control Law and to the provisions of 9 VAC 5-160-80.

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

4. The formal hearing for the enforcement or review of orders and for the enforcement of regulations, in accordance with §§ 10.1-1307 D and 10.1-1322 A of the Virginia Air Pollution Control Law. The procedure for a formal hearing shall conform to § 9-6.14:12 of the Administrative Process Act, except as modified by § 10.1-1307 D and F of the Virginia Air Pollution Control Law.

5. The special order hearing or emergency special order hearing for the enforcement or review of orders and for the enforcement of regulations, in accordance with § 10.1-1309 of the Virginia Pollution Control Law. The procedures for the special order hearing or emergency special order hearing shall conform to § 9-6.14:12 of the Administrative Process Act, except as modified by §§ 10.1-1307 F and 10.1-1309 of the Virginia Air Pollution Control Law.

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

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

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

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

3. Formal hearings and hearings for the issuance of special orders or emergency special orders will be recorded by a court reporter, or electronically recorded for transcription to written form.

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

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

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

3. Any person desiring a copy of the transcript of a special order, emergency special order or 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 5-160-90. Appeals. (Repealed.)

A. Any federal agency 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 the hearing is filed with the board. In cases involving actions of the board, the petition shall be filed within 30 days after notice of the action is mailed or delivered to the federal agency or party requesting notification of the action.

B. Prior to any formal hearing, an informal fact finding shall be held pursuant to § 9-6.14:11 of the Administrative Process Act, unless waived by the board.

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

D. Judicial review of a final decision of the board shall be afforded in accordance with § 10.1-1318 of the Virginia Air Pollution Control Law and § 9-6.14:16 of the Administrative Process Act.

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

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

Final Regulations

9 VAC 5-160-100. Availability of information. (Repealed.)

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

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

~~The board or department shall consider the records, reports or information, or particular part thereof, confidential in accordance with §§ 10.1-1314 and 10.1-1314.1 of the Virginia Air Pollution Control Law upon a showing satisfactory to the board or department by any federal agency that the records, reports or information, or particular part thereof, meet the criteria in subsection C of this section and the federal agency provides a certification to that effect signed by a responsible party for the federal agency. The 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 EPA concerned with carrying out the provisions of the Virginia Air Pollution Control Law and the federal Clean Air Act.~~

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

- ~~1. Information for which the federal agency 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 federal agency'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;~~
- ~~3. Information which is not publicly available from sources other than the federal agency; and~~
- ~~4. Information the disclosure of which would cause substantial harm to the federal agency.~~

~~D. The board or department shall have the right to substitute information which is not confidential for information claimed as confidential and to inquire as to the basis of the confidentiality claim. Upon approval of the board or department, a federal agency may substitute information which is not confidential for information claimed as confidential. Information substituted shall be limited to that which would have the same substantive effect in analyses conducted by the board or department as the information for which the inquiry is made.~~

~~E. Any responsible party for a federal agency who files information as confidential which does not meet the criteria in subsection C of this section shall be in violation of the Virginia Air Pollution Control Law.~~

CHAPTER 170. REGULATION FOR GENERAL ADMINISTRATION.

PART I. DEFINITIONS.

9 VAC 5-170-10. Use of terms.

A. For the purpose of this chapter and subsequent amendments to it, of regulations of the board, or of orders issued by the board, the words or terms shall have the meanings given them in 9 VAC 5-170-20.

B. Unless specifically defined in the Virginia Air Pollution Control Law or in the regulations of the board, terms used shall have the meanings commonly ascribed to them by recognized authorities.

9 VAC 5-170-20. Terms defined.

"Administrative proceeding" means an informal fact finding or formal hearing.

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

"Air pollution" means the presence in the outdoor atmosphere of one or more substances which are or may be harmful or injurious to human health, welfare or safety; to animal or plant life; or to property; or which unreasonably interfere with the enjoyment by the people of life or property.

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

"Case decision" means any determination that a named party as a matter of past or present fact, or as a matter of threatened or contemplated private action, either is or is not, or may or may not be (i) in violation of any law or regulations, or (ii) in compliance with any existing requirement for obtaining or retaining a permit or other right or benefit. [This phrase does not include notices of violations or inspection reports. Case decisions include, but are not limited to, consent orders, consent agreements, orders, special orders, emergency special orders, permits, waivers, and licenses. Case decisions do not include notices of violations, variances, regulations, or inspection reports.]

"Confidential information" means secret formulae, secret processes, 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 another 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 the regulations of the board, by mutual agreement of the owner or another person and the board.

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

"Department" means an 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.

"Emergency" means a situation that immediately and unreasonably affects, or has the potential to immediately and unreasonably affect, public health, safety or welfare; the health of animal or plant life; or property, whether used for recreational, commercial, industrial, agricultural, or other reasonable use.

"Emergency special order" means an order of the board issued under the provisions of § 10.1-1309 B of the Code of Virginia, after declaring a state of emergency and without a formal hearing, to owners who are permitting or causing air pollution to cease the pollution. These orders shall become invalid if a formal hearing is not held within 10 days after the effective date.

"Enabling law" or "enabling laws" means provisions of the Constitution and statutes of the Commonwealth of Virginia authorizing the board to make regulations or decide cases or containing procedural requirements therefor, including, but not limited to, the (i) Virginia Air Pollution Control Law and (ii) the Virginia Motor Vehicle Emissions Control Law.

"Evidentiary hearing" means a formal proceeding which provides opportunity for [~~private parties~~ interested persons] 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. Evidentiary hearings do not include the informational inquiries of an informal nature provided in § 9-6.14:7.1 of the Administrative Process Act.

"Federal Clean Air Act" means 42 USC 7401 et seq., 91 Stat 685.

"Formal hearing" means a formal proceeding which provides for the right of private parties to submit factual proofs as provided in § 9-6.14:12 of the Administrative Process Act in connection with case decisions. Formal hearings do not include the factual inquiries of an informal nature provided in § 9-6.14:11 of the Administrative Process Act.

"Informal fact finding" means an informal conference or consultation proceeding used to ascertain the fact basis for case decisions as provided in § 9-6.14:11 of the Administrative Process Act.

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

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

"Order" means a decision or directive of the board, including special orders, emergency special orders, and other orders of all types, rendered for the purpose of diminishing or abating the causes of air pollution or enforcement of the regulations of the board. Unless specified otherwise in the Virginia Air Pollution Control Law or in the regulations of the board, orders shall be issued only after the appropriate administrative proceeding.

"Owner" means a 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 source.

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

"Party" means, for the purposes of Part VIII (9 VAC 5-170-190 et seq.) of this chapter, a 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 another legal entity.

"Pollutant" means a 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.

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

"Public meeting" means an informal proceeding conducted by the department in conjunction with the notice of intended regulatory action to afford people an opportunity to submit comments relative to intended regulatory actions.

"Public participation process" means any element of a board or department decision making process that involves

Final Regulations

the use of a public meeting, public hearing or evidentiary hearing.

"Regulations of the board" means regulations adopted by the State Air Pollution Control Board under a provision of the Code of Virginia.

"Source" means one or combination of the following: buildings, structures, facilities, installations, articles, machines, equipment, landcraft, watercraft, aircraft or other contrivances which contribute, or may contribute, either directly or indirectly to air pollution. An activity by a person that contributes, or may contribute, either directly or indirectly to air pollution, including, but not limited to, open burning, generation of fugitive dust or emissions, and cleaning with abrasives or chemicals.

"Special order" means an order of the board issued:

1. Under the provisions of § 10.1-1309 of the Code of Virginia:

a. To owners who are permitting or causing air pollution to cease and desist from the pollution;

b. To owners who have failed to construct facilities in accordance with or have failed to comply with plans for the control of air pollution submitted by them to, and approved by the board, to construct facilities in accordance with or otherwise comply with the approved plan;

c. To owners who have violated or failed to comply with the terms and provisions of an order or directive issued by the board to comply with the terms and provisions;

d. To owners who have contravened duly adopted and promulgated air quality standards and policies to cease and desist from the contravention and to comply with the air quality standards and policies; and

e. To require an owner to comply with the provisions of the Virginia Air Pollution Control Law and a decision of the board; or

2. Under the provisions of § 10.1-1309.1 of the Code of Virginia, which require that an owner file with the board a plan to abate, control, prevent, remove, or contain a substantial and imminent threat to public health or the environment that is reasonably likely to occur if the source ceases operations.

"Variance" means the temporary exemption of an owner or other person from the regulations of the board, or a temporary change in the regulations of the board as they apply to an owner or other person.

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

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

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

PART II. GENERAL PROVISIONS.

9 VAC 5-170-30. Applicability.

A. The provisions of this chapter, unless specified otherwise, shall apply throughout the Commonwealth of Virginia.

B. The provisions of this chapter, unless specified otherwise, shall apply in the administration of all regulations of the board to the extent not covered in a specific regulation of the board. In cases where the provisions of this chapter conflict with another regulation of the board, the provisions of the other regulation shall apply.

C. No provision of this chapter shall limit the power of the board to take appropriate action as necessary to control and abate air pollution in emergency situations.

D. By the adoption of this chapter, the board confers upon the department the administrative, enforcement, and decision-making authority articulated in this chapter except as restricted in 9 VAC 5-170-220.

9 VAC 5-170-40. Hearings and proceedings.

A. [~~The primary hearings and proceedings are as follows:~~ Four types of proceedings are used in the administration of the board's regulatory program.]

1. [~~The A~~] public hearing [is held in each of two situations, as explained below.

a. A public hearing is] required before considering regulations in accordance with § 10.1-1308 of the Virginia Air Pollution Control Law. The procedure for a public hearing shall conform to § 9-6.14:7.1 of the Administrative Process Act, except as modified by §§ 10.1-1307 F and 10.1-1308 of the Virginia Air Pollution Control Law, and to Part IV (9 VAC 5-170-90 et seq.) of this chapter.

[~~2.—The public hearing~~ b. A public hearing is] required before considering variances and amendments to and revocation of variances in accordance with § 10.1-1307 C of the Virginia Air Pollution Control Law. The procedure for a public hearing shall conform to § 10.1-1307 C of the Virginia Air Pollution Control Law and to the provisions of 9 VAC 5-170-140.

[~~3.—The 2.~~ An] informal fact finding [is] used to negotiate [~~consent agreements and consent orders~~] and to make case decisions. The procedure for an informal fact finding shall conform to § 9-6.14:11 of the Administrative Process Act.

[~~4.—The 3.~~ A] formal hearing [is held in each of two situations.

a. A formal hearing is held] for the enforcement or review of orders and permits and for the enforcement of regulations in accordance with § 10.1-1307 D and § 10.1-1322 A of the Virginia Air Pollution Control Law. The procedures for this type of hearing shall conform to § 9-6.14:12 of the Administrative Process Act, except as modified by § 10.1-1307 D and F of the Virginia Air Pollution Control Law.

[~~5. The formal hearing~~ b. A formal hearing is held] for special orders or emergency special orders for the enforcement or review of orders and permits and for the enforcement of regulations in accordance with § 10.1-1309 of the Virginia Pollution Control Law. The procedures for this type of hearing shall conform to § 9-6.14:12 of the Administrative Process Act, except as modified by §§ 10.1-1307 F and 10.1-1309 of the Virginia Air Pollution Control Law.

[~~6. The~~ 4. An] evidentiary hearing [may be held] for the making of regulations. The procedure for this type of hearing shall conform to § 9-6.14:8 of the Administrative Process Act.

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

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

1. Oral statements or testimony at a public hearing will be stenographically or electronically recorded, and may be transcribed to written form.
2. Oral statements or testimony at an informal fact finding will be stenographically or electronically recorded, and may be transcribed to written form.
3. Formal hearings and evidentiary hearings will be recorded by a court reporter or electronically recorded for transcription to written form.

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

1. A copy of the [electronic recording or the] transcript of a public hearing, if transcribed, will be provided within a reasonable time to anyone 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 [electronic recording or the] transcript of an informal fact finding, if transcribed, will be provided within a reasonable time to anyone 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. Anyone desiring a copy of the transcript of a formal hearing or evidentiary 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 5-170-50. Policy and procedural information and guidance.

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

1. Request data and information in addition to and in amplification of the provisions of the regulations of the board;
2. Specify the methods and means that may be used to determine compliance with applicable provisions of the regulations of the board;
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 the regulations of the board specify that procedures or methods shall be approved by, acceptable to or determined by the board or other similar phrasing, the owner may request information and guidance concerning the proper procedures and methods, and the director shall furnish in writing such information on a case-by-case basis.

9 VAC 5-170-60. Availability of information.

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

B. Other records, reports, or information in the possession of the board shall be available to the public with the following exception. The board shall consider records, reports, or information confidential in accordance with §§ 10.1-1314 and 10.1-1314.1 of the Virginia Air Pollution Control Law upon a showing satisfactory to the board by an owner that records, reports, or information meet the criteria in subsection C of this section and the owner provides a certification to that effect signed by a responsible [~~party for~~ representative of] the owner. Records, reports or information 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 Air Pollution Control Law and the federal Clean Air Act.

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

1. Information for which the 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 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;

Final Regulations

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

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

D. The board shall have the right to substitute information which is not confidential for information claimed as confidential and to inquire as to the basis of the confidentiality claim. Upon approval of the board, an owner may substitute information which is not confidential for information claimed as confidential. Information substituted shall be limited to that which would have the same substantive effect in analyses conducted by the board as the information for which the inquiry is made.

E. [~~A responsible party for an~~ The responsible representative of the] owner who certifies information as confidential which does not meet the criteria in subsection C of this section shall be in violation of the Virginia Air Pollution Control Law.

9 VAC 5-170-70. Evaluation of regulation.

A. Prior to [~~three years after effective date of regulation~~ January 1, 2001], the department shall perform an analysis on this chapter and provide the board with a report on the results. The analysis shall include (i) the purpose and need for the chapter, (ii) alternatives which would achieve the stated purpose of this chapter in a less burdensome and less intrusive manner, (iii) an assessment of the effectiveness of this chapter, (iv) the results of a review of current state and federal statutory and regulatory requirements, including identification and justification of requirements of this chapter which are more stringent than federal requirements, and (v) the results of a review as to whether this chapter is clearly written and easily understandable by affected entities.

B. Upon review of the department's analysis, the board shall confirm the need to (i) continue this chapter without amendment, (ii) repeal this chapter, or (iii) amend this chapter. If the board's decision is to repeal or amend this chapter, the board shall authorize the department to initiate the applicable regulatory process to carry out the decision of the board.

PART III. REGULATIONS AND ORDERS.

9 VAC 5-170-80. Establishment of regulations and orders.

A. Regulations of the board shall be adopted, amended or repealed in accordance with the provisions of the enabling laws, Articles 1 (§ 9-6.14:4.1 et seq.) and 2 (§ 9-6.14:7.1 et seq.) of the Administrative Process Act, and Part IV (9 VAC 5-170-90 et seq.) of this chapter.

B. Regulations, amendments, and repeals shall become effective as provided in § 9-6.14:9.3 of the Administrative Process Act.

C. If necessary in an emergency situation, the board may adopt, amend or stay a regulation as an exclusion under

§ 9-6.14:4.1 of the Administrative Process Act, but the regulation shall remain effective no longer than one year unless readopted following the requirements of subsection A of this section. The provisions of this subsection are not applicable to emergency special orders of the board; these orders are subject to the provisions of subsection E of this section.

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

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

Additional information on specific documents which have been incorporated by reference and on the availability of these documents may be found in the specific regulations of the board which incorporate the documents.

E. Orders, special orders, and emergency special orders may be issued pursuant to § 10.1-1307 D, § 10.1-1309, or § 10.1-1309.1 of the Virginia Air Pollution Control Law.

PART IV. PUBLIC PARTICIPATION IN REGULATION DEVELOPMENT.

9 VAC 5-170-90. General provisions.

A. The procedures in 9 VAC 5-170-100 shall be used for soliciting the input of interested people in the formation and development, amendment or repeal of regulations in accordance with the Administrative Process Act. This part does not apply to regulations exempted from the provisions of the Administrative Process Act (§ 9-6.14:4.1 A and B) or excluded from the operation of Article 2 of the Administrative Process Act (§ 9-6.14:4.1 C).

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

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

1. Name of petitioner.
2. Petitioner's mailing address and telephone number.
3. Petitioner's interest in the proposed action.
4. Recommended regulation or addition, deletion or amendment to a specific regulation or regulations.
5. Statement of need and justification for the proposed action.

6. Statement of impact on the petitioner and other affected people.

7. Supporting documents, as applicable.

The board shall provide a written response to a petition within 180 days from the date the petition was received.

9 VAC 5-170-100. Public participation procedures.

A. The department shall establish and maintain a list consisting of people expressing an interest in the adoption, amendment or repeal of regulations. Anyone wishing to be placed on the list may do so by writing the department. In addition, the department, at its discretion, may add to the list any person, organization, or publication it believes will be interested in participating in the promulgation of regulations. Individuals and organizations may be periodically requested to indicate their desire to continue to receive documents or be deleted from a list. Individuals and organizations may be deleted from the list at the request of the individual and organization, or at the discretion of the department when mail is returned as undeliverable.

B. Whenever the board so directs or upon its own initiative, the department may commence the regulation adoption process and proceed to draft a proposal according to these procedures.

C. The department shall use the participatory approach to assist in the development of the proposal or use one of the following alternatives:

1. Proceed without using the participatory approach if the board specifically authorizes the department to proceed without using the participatory approach.

2. Include in the notice of intended regulatory action a statement inviting comment on whether the department should use the participatory approach to assist the department in the development of the proposal. If the department receives written responses from at least five people during the associated comment period indicating that the department should use the participatory approach, the department will use the participatory approach requested. Should different approaches be requested, the director shall determine the specific approach to be used.

D. The department shall issue a notice of intended regulatory action whenever it considers the adoption, amendment or repeal of a regulation.

1. The notice of intended regulatory action shall include at least the following:

- a. A description of the subject matter of the planned regulation.
- b. A description of the intent of the planned regulation.
- c. A brief statement as to the need for regulatory action.

d. A brief description of alternatives available, if any, to meet the need.

e. A request for comments on the intended regulatory action, to include ideas to assist the department in the development of a proposal.

f. A request for comments on the costs and benefits of the stated alternatives or other alternatives.

g. A statement of the department's intent to hold at least one public hearing on the proposed regulation after it is published in the Virginia Register of Regulations.

h. A statement inviting comment on whether the department should use the participatory approach to assist the department in the development of a proposal. Including this statement shall be required only when the department makes a decision to pursue the alternative provided in subdivision C 2 of this section.

2. The department shall hold at least one public meeting whenever it considers the adoption, amendment or repeal of a regulation unless the board specifically authorizes the department to proceed without holding a public meeting. In those cases where a public meeting will be held, the notice of intended regulatory action shall also include the date, not to be less than 30 days after publication in the Virginia Register of Regulations, time, and place of the public meeting.

3. The public comment period for notices of intended regulatory action under this section shall be no less than 30 days after publication of the notice of intended regulatory action in the Virginia Register of Regulations.

E. The department shall disseminate the notice of intended regulatory action to the public via the following:

1. Distribution to the Registrar of Regulations for publication in the Virginia Register of Regulations.

2. Distribution by mail to people on the list established under subsection A of this section.

F. After consideration of public input, the department may complete the draft proposed regulation and the supporting documentation required for review. If the participatory approach is being used, the draft proposed regulation shall be developed in consultation with the participants. A summary or copies of the comments received in response to the notice of intended regulatory action shall be distributed to the participants during the development of the draft proposed regulation. This summary or copies of the comments received in response to the notice of intended regulatory action shall also be distributed to the board.

G. Upon approval of the draft proposed regulation by the board, the department shall publish a notice of public comment and the proposal for public comment.

Final Regulations

H. The notice of public comment shall include at least the following:

1. The notice of the opportunity to comment on the proposed regulation, the location where copies of the proposal may be obtained, and the name, address, and telephone number of the individual to contact for further information about the proposed regulation.
2. A request for comments on the costs and benefits of the proposal.
3. The identity of a locality particularly affected by the proposed regulation.
4. A statement that an analysis of the following has been conducted by the department and is available to the public upon request:
 - a. A statement of purpose: the rationale or justification for the new provisions of the regulation, from the standpoint of the public's health, safety or welfare.
 - b. A statement of estimated impact:
 - (1) Projected number and types of regulated entities or people affected.
 - (2) Projected cost, expressed as a dollar figure or range, to regulated entities (and to the public, if applicable) for implementation and compliance. In those instances where the department is unable to quantify projected costs, it shall offer qualitative data, if possible, to help define the impact of the proposed regulation. Qualitative data shall include, if possible, an example or examples of the impact of the proposed regulation on a typical member or members of the regulated community.
 - (3) Projected cost to the department for implementation and enforcement.
 - (4) Beneficial impact the regulation is designed to produce.
 - c. An explanation of need for the proposed regulation and potential consequences that may result in the absence of the regulation.
 - d. An estimate of the impact of the proposed regulation upon small businesses, as defined in § 9-199 of the Code of Virginia, or organizations in Virginia.
 - e. A description of provisions of the proposed regulation which are more restrictive than applicable federal requirements together with the reason why the more restrictive provisions are needed.
 - f. A discussion of alternative approaches that were considered to meet the need the proposed regulation addresses, and a statement as to whether the department believes that the proposed regulation is the least burdensome alternative to the regulated

entities that fully meets the stated purpose of the proposed regulation.

g. A schedule setting forth when, after the effective date of the regulation, the department will evaluate it for effectiveness and continued need.

5. The date, time, and place of at least one public hearing held in accordance with § 9-6.14:7.1 of the Administrative Process Act to receive comments on the proposed regulation. The public hearing may be held at any time during the public comment period and, whenever practicable, no less than 15 days prior to the close of the public comment period. The public hearing may be held in the location which the department determines will best facilitate input from interested people. (In those cases in which the department elects to conduct an evidentiary hearing, the notice shall indicate that the hearing will be held in accordance with § 9-6.14:8 of the Administrative Process Act.)

I. The public comment period shall close no less than 60 days after publication of the notice of public comment in the Virginia Register of Regulations.

J. The department shall disseminate the notice of public comment to the public via the following:

1. Distribution to the Registrar of Regulations for publication in the Virginia Register of Regulations.
2. Distribution by mail to people on the list established under subsection A of this section.

[K. The department may publish a notice of the hearing and comment period in any newspaper as it deems appropriate.]

[~~L.~~ L.] The department shall prepare a summary of comments received in response to the notice of public comment and the department's response to the comments received. The department shall send a draft of the summary of comments to public commenters on the proposed regulation at least five days before final adoption of the regulation. The department shall submit the summary and the department response and, if requested, submit the full comments to the board. The summary, the department response, and the comments shall become a part of the department file and after final action on the regulation by the board, made available, upon request, to interested people.

[~~M.~~ M.] If the department determines that the process to adopt, amend or repeal a regulation should be terminated after approval of the draft proposed regulation by the board, the department shall present to the board for its consideration a recommendation and rationale for the withdrawal of the proposed regulation.

[~~N.~~ N.] Completion of the remaining steps in the adoption process shall be carried out in accordance with the Administrative Process Act.

9 VAC 5-170-110. Transition.

A. Regulatory actions for which a notice of intended regulatory action has been published in the Virginia Register of Regulations prior to May 16, 1994, shall be processed in accordance with Appendix E of VR 120-01 as revised by the emergency amendments in effect from June 29, 1993, to June 28, 1994, unless sooner modified or vacated or superseded by permanent regulations.

B. This part when effective shall supersede and repeal Appendix E of VR 120-01 as revised by the emergency amendments which became effective on June 29, 1993. Regulatory actions for which a notice of intended regulatory action has not been published in the Virginia Register of Regulations prior to May 16, 1994, shall be processed in accordance with this part.

PART V. ENFORCEMENT.

9 VAC 5-170-120. Enforcement of regulations, permits, and orders.

A. As provided in § 10.1-1186(10) of the Code of Virginia, the director has independent authority to compel compliance with the Virginia Air Pollution Control Law, regulations of the board, permits, certifications, and case decisions. However, whenever the director has reason to believe that a violation of any provision of the regulations of the board or a permit or order has occurred, he may serve notice on the suspected violator on behalf of the board, citing the applicable provision of the regulations of the board, permit, or order and the facts on which the suspected violation is based. When acting on behalf of the board, the director may obtain compliance through one of the enforcement proceedings provided in subdivisions 1 and 2 of this subsection. Thus, the director may act on his own independent authority or on the authority of the board as delegated to him by this chapter.

1. The director may obtain compliance through administrative means. These means may be a variance, order, special order, control program, consent agreement, or another mechanism that requires compliance by a specific date. The means and the associated date shall be determined on a case-by-case basis and shall not allow an unreasonable delay in compliance.

2. The director may obtain compliance through legal means pursuant to § 10.1-1307.3, § 10.1-1316, or § 10.1-1320 of the Virginia Air Pollution Control Law.

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

C. Orders, consent orders, delayed compliance orders, special orders, and emergency special orders are considered administrative means, and the board reserves the right to use these means in lieu of or to provide a legal basis for the enforcement of administrative means approved by the director under subsection A of this section.

D. Case decisions regarding the enforcement of regulations, orders, and permits shall be made by the director or board. Case decisions of the director that are made pursuant to a formal hearing (i) may be regarded as a final decision of the board and appealed pursuant to 9 VAC 5-170-200 D or (ii) may be directly considered by the board as provided in 9 VAC 5-170-200 G, with the review being on the record and not de novo with opportunity for oral argument. Case decisions of the director that are made pursuant to an informal fact finding (i) may be appealed to the board pursuant to 9 VAC 5-170-200 A or (ii) may be directly considered by the board according to 9 VAC 5-170-200 G.

9 VAC 5-170-130. Right of entry.

A. Whenever it is necessary for the purposes of the regulations of the board, the board or an agent authorized by the board may at reasonable times enter an establishment or upon property, public or private, for the purpose of obtaining information or conducting surveys or investigation as authorized by § 10.1-1315 or § 46.2-1187.1 of the Code of Virginia.

B. Upon the procurement of an inspection warrant signed by a judge of the circuit court whose territorial jurisdiction encompasses the property or premises to be inspected or entered, the board or an agent authorized by the board may enter any property or premises and conduct any inspection, testing, or collection of samples for testing required or authorized by state law or regulation in connection with the manufacturing, emitting, or presence of a toxic substance, as authorized by § 19.2-393 et seq. of the Code of Virginia.

PART VI. BOARD ACTIONS.

9 VAC 5-170-140. Variances.

A. Pursuant to § 10.1-1307 C of the Virginia Air Pollution Control Law, the board may in its discretion grant local variances to a provision of the regulations of the board after an investigation and public hearing. If a local variance is appropriate, the board shall issue an order to this effect. The order shall be subject to amendment or revocation at any time.

B. The board shall adopt variances and amend or revoke variances if warranted only after conducting a public hearing pursuant to public advertisement in at least one major newspaper of general circulation in the affected area of the subject, date, time, and place of the public hearing at least 30 days prior to the scheduled hearing.

C. The public participation procedures of § 10.1-1307.01 of the Virginia Air Pollution Control Law shall be followed in the consideration of variances.

9 VAC 5-170-150. Local ordinances.

A. Local ordinances shall be established and approved as follows:

i. The governing body of any locality proposing to adopt an ordinance, or an amendment to an existing ordinance,

Final Regulations

relating to air pollution shall first obtain the approval of the board as to the provisions of the ordinance or amendment. Except for an ordinance or amendment pertaining solely to open burning, the board shall not approve an ordinance or amendment which regulates an emission source that is required to register with the board or to obtain a permit pursuant to Virginia Air Pollution Control Law and the regulations of the board. The board in approving local ordinances will consider, but will not be limited to, the following criteria:

- a. The local ordinance shall provide for intergovernmental cooperation and exchange of information.
- b. Adequate local resources will be committed to enforcing the proposed local ordinance.
- c. The provisions of the local ordinance shall be as strict as state regulations, except as provided for leaf burning in § 10.1-1308 of the Virginia Air Pollution Control Law.

2. Approval of a local ordinance shall be withdrawn if the board determines that the local ordinance is less strict than state regulations, or if the locality fails to enforce the ordinance.

3. If a local ordinance must be amended to conform to an amendment to state regulations, the local amendment will be made within six months. If the necessary amendment is not made within six months, the board may rescind its approval of the ordinance.

B. Local ordinances shall provide for reporting information required by the board to fulfill its responsibilities under the Virginia Air Pollution Control Law and the federal Clean Air Act. Reports shall include, but are not limited to monitoring data, surveillance programs, procedures for investigation of complaints, variance hearings, and status of control programs and permits.

C. Local ordinances are a supplement to state regulations. Provisions of local ordinances which have been approved by the board and are more strict than state regulations shall take precedence over state regulations within the respective locality. It is the intention of the board to coordinate activities among the enforcement officers of the various localities in the enforcement of local ordinances and state regulations. The board will also provide technical and other assistance to local authorities in the investigation and study of air pollution problems, and in the enforcement of local ordinances and state regulations. The board emphasizes its intention to assist in the local enforcement of local ordinances. If a locality fails to enforce its own ordinance, the board reserves the right to enforce state regulations.

D. A local governing body may grant a variance to a provision of its air pollution control ordinance provided that:

1. A public hearing is held prior to granting the variance;

2. The public is notified of the application for a variance by advertisement in at least one major newspaper of general circulation [in the affected locality] and a major newspaper of general circulation in the state capital area [~~in the affected locality~~] at least 30 days prior to the date of the public hearing [by the locality]; and

3. The variance does not permit an owner or other person to take action that would result in a violation of a provision of state regulations unless a variance is granted by the board. The [~~public hearings~~ local public hearing] required for the variances to the local ordinance and [the public hearing required under] state regulations may be conducted jointly as one proceeding.

E. This section shall not apply to the approval of local ordinances concerning open burning established pursuant to 9 VAC 5-40-5640 D.

9 VAC 5-170-160. Conditions on approvals.

A. The board may impose conditions upon permits and other approvals which may be necessary to carry out the policy of the Virginia Air Pollution Control Law, and which are consistent with the regulations of the board. Except as otherwise specified, nothing in this chapter shall be understood to limit the power of the board in this regard. If the owner or other person fails to adhere to the conditions, the board may automatically cancel the permit or approvals. This section shall apply, but not be limited, to approval of variances, approval of control programs, and granting of permits.

B. An owner may consider a condition imposed by the board as a denial of the requested approval or permit, which shall entitle the applicant to appeal the decision of the board pursuant to 9 VAC 5-170-200.

9 VAC 5-170-170. Considerations for approval actions.

Pursuant to the provisions of § 10.1-1307 E of the Virginia Air Pollution Control Law, the board, in making regulations and in approving variances, control programs, or permits, shall consider facts and circumstances relevant to the reasonableness of the activity involved and the regulations proposed to control it, including:

1. The character and degree of injury to, or interference with safety, health, or the reasonable use of property which is caused or threatened to be caused;
2. The social and economic value of the activity involved;
3. The suitability of the activity to the area in which it is located; and
4. The scientific and economic practicality of reducing or eliminating the discharge resulting from the activity.

PART VII.
DELEGATION OF AUTHORITY.

9 VAC 5-170-180. General provisions.

A. In accordance with the Virginia Air Pollution Control Law and the Administrative Process Act, the board confers upon the director the administrative, enforcement, and decision-making powers as are set forth in [~~9 VAC 5-170-220~~ this part]. The board reserves the right to exercise its authority in any of the following delegated powers should it choose to do so.

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

1. Control and regulate the internal affairs of the board;
2. Approve proposed regulations for public comment and adopt final regulations;
3. Grant variances to regulations;
4. Approve amendments to a policy or procedure approved by the board except as may be otherwise provided;
5. Appoint people to the State Advisory Board on Air Pollution;
6. Create local air pollution control districts and appoint representatives; and
7. Approve local ordinances except those that concern open burning as provided in 9 VAC 5-40-5640 D.

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

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

PART VIII.
APPEAL OF BOARD ACTIONS.

9 VAC 5-170-190. General provisions.

~~[Reserved.]~~ A. Except as provided in subsection B of this section, this part applies to the appeal of case decisions and other actions or inactions of the board.

B. Provisions of this part do not apply to the appeal of the promulgation of regulations or variances. Appeals of the promulgation of regulations and variances shall be pursued

under Article 4 (§ 9-6.14:15 et seq.) of the Administrative Process Act.]

9 VAC 5-170-200. Appeal procedures.

A. An owner or other party significantly affected by an 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 a formal hearing is filed with the board. In cases involving actions of the board, the petition shall be filed within 30 days after notice of the action is mailed or delivered to the owner or party requesting notification of the action.

B. Prior to a formal hearing, an informal fact finding shall be held pursuant to § 9-6.14.11 of the Administrative Process Act unless waived by the named party and the board.

C. A decision of the board resulting from a formal hearing shall constitute the final decision of the board.

D. Judicial review of a final decision of the board shall be afforded in accordance with § 10.1-1318 of the Virginia Air Pollution Control Law and § 9-6.14:16 of the Administrative Process Act.

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

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

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

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

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

VA.R. Doc. No. R97-494; Filed October 8, 1997, 11:33 a.m.



Final Regulations

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 5-50-10 et seq. Rules Governing New Annuity Mortality Tables for Use in Determining Reserve Liabilities for Annuities (amending 14 VAC 5-50-10 through 14 VAC 5-50-40; adding 14 VAC 5-50-41).

Statutory Authority: § 12.1-13 of the Code of Virginia.

Effective Date: October 15, 1997.

Agency Contact: Copies of the regulation may be obtained from Douglas C. Stolte, Bureau of Insurance, State Corporation Commission, P.O. Box 1197, Richmond, VA 23218, telephone (804) 371-9061. There is a charge for copies of \$1.00 for the first two pages and \$.50 for each page thereafter.

AT RICHMOND, SEPTEMBER 23, 1997

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

CASE NO. INS970209

Ex Parte: In the Matter of Adopting Revisions to the Rules Governing New Annuity Mortality Tables for Use in Determining Reserve Liabilities for Annuities

ORDER ADOPTING REGULATION

WHEREAS, by order entered herein July 10, 1997, all interested persons were ordered to take notice that the Commission would enter an order subsequent to September 5, 1997, adopting revisions proposed by the Bureau of Insurance to the Commission's Rules Governing New Annuity Mortality Tables for Use in Determining Reserve Liabilities for Annuities unless on or before September 5, 1997, any person objecting to the adoption of the proposed revisions filed a request for a hearing with the Clerk of the Commission;

WHEREAS, as of the date of this order, no request for a hearing has been filed with the Clerk of the Commission;

THEREFORE, IT IS ORDERED that the regulation entitled "Rules Governing New Annuity Mortality Tables for Use in Determining Reserve Liabilities for Annuities" which is

attached hereto and made a part hereof should be, and it 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 Douglas C. Stolte, who shall forthwith give further notice of the adoption of the revisions to the regulation by mailing a copy of this order, together with a complete copy of the regulation, to all insurance companies licensed to issue annuities in the Commonwealth of Virginia.

14 VAC 5-50-10. Purpose.

The purpose of this chapter (14 VAC 5-50-10 et seq.) is to recognize ~~new the following mortality tables, 1983 Table "a" and 1983 GAM Table,~~ for use in determining the minimum standard of valuation for annuity and pure endowment contracts: [~~the 1983 Table "a,"~~] the 1983 Group Annuity Mortality (1983 GAM) Table, [~~the 1983 Table "a,"~~] the Annuity 2000 Mortality Table, and the 1994 Group Annuity Reserving (1994 GAR) Table.

14 VAC 5-50-20. Definitions.

As used in this chapter (14 VAC 5-50-10 et seq.), "~~1983 Table "a"~~" means that mortality table developed by the Society of Actuaries Committee to Recommend a New Mortality Basis for Individual Annuity Valuation and adopted as a recognized mortality table for annuities in June 1982 by the National Association of Insurance Commissioners.

As used in this chapter (14 VAC 5-50-10 et seq.):

"~~1983 Group Annuity Mortality Table~~" and "~~1983 GAM Table~~" means mean that mortality table developed by the Society of Actuaries Committee on Annuities and adopted as a recognized mortality table for annuities in December 1982 by the National Association of Insurance Commissioners.

[~~As used in this chapter (14 VAC 5-50-10 et seq.),~~] "~~1983 Table "a"~~" means that mortality table developed by the Society of Actuaries Committee to Recommend a New Mortality Basis for Individual Annuity Valuation and adopted as a recognized mortality table for annuities in June 1982 by the National Association of Insurance Commissioners.

"~~1994 Group Annuity Reserving Table~~" and "~~1994 GAM Table~~" mean that mortality table developed by the Society of Actuaries Group Annuity Valuation Table Task Force and adopted as a recognized mortality table for annuities in December 1995 by the National Association of Insurance Commissioners.

"Annuity 2000 Mortality Table" means that mortality table developed by the Society of Actuaries Committee on Life Insurance Research and adopted as a recognized mortality table in December 1996 by the National Association of Insurance Commissioners.

14 VAC 5-50-30. Individual annuity or pure endowment contracts.

A. ~~The~~ Except as provided in subsections B and C of this section, the 1983 Table "a" is recognized and approved as an individual annuity mortality table for valuation and, at the option of the company, may be used for purposes of determining the minimum standard of valuation for any individual annuity or pure endowment contract issued on or after July 1, 1979.

B. ~~The~~ Except as provided in subsection C of this section, either the 1983 Table "a" ~~is to~~ or the Annuity 2000 Mortality Table shall be used for determining the minimum standard of valuation for any individual annuity or pure endowment contract issued on or after January 1, 1987.

C. Except as provided in subsection D of this section, the Annuity 2000 Mortality Table shall be used for determining the minimum standard of valuation for an individual annuity or a pure endowment contract issued on or after January 1, 1999.

D. The 1983 Table "a" without projection is to be used for determining the minimum standards of valuation for an individual annuity or pure endowment contract issued on or after January 1, 1999, solely when the contract is based on life contingencies and is issued to fund periodic benefits arising from:

1. Settlements of various forms of claims pertaining to court settlements or out of court settlements from tort actions;
2. Settlements involving similar actions such as [~~worker's~~ workers'] compensation claims; or
3. Settlements of long-term disability claims where a temporary or life annuity has been used in lieu of continuing disability payments.

14 VAC 5-50-40. Group annuity or pure endowment contracts.

A. ~~The~~ Except as provided in subsections B and C of this section, the 1983 GAM Table ~~and the~~, 1983 Table "a," and the 1994 GAR Table are recognized and approved as group annuity mortality tables for valuation and, at the option of the company, ~~either table~~ any of these tables may be used for purposes of valuation for any annuity or a pure endowment purchased on or after July 1, 1979, under a group annuity or pure endowment contract.

B. ~~The~~ Except as provided in subsection C of this section, the 1983 GAM Table ~~is to~~ or the 1994 GAR Table shall be used for determining the minimum standard of valuation for any annuity or a pure endowment purchased on or after January 1, 1987, under a group annuity or pure endowment contract.

C. The 1994 GAR Table shall be used for determining the minimum standard of valuation for any annuity or a pure endowment purchased on or after January 1, 1999, under a group annuity or pure endowment contract.

14 VAC 5-50-41. Application of the 1994 GAR Table.

In using the 1994 GAR Table, the mortality rate for a person age x in year $(1994 + n)$ is calculated as follows:

$$q_x^{1994+n} = q_x^{1994}(1 - AA_x)^n$$

where the q_x^{1994} 's and [~~Aa_x's~~ AA_x's] are as specified in the 1994 GAR Table.

VA.R. Doc. No. R97-632; Filed September 29, 1997, 12:08 p.m.



Final Regulations

TITLE 24. TRANSPORTATION AND MOTOR VEHICLES

COMMONWEALTH TRANSPORTATION BOARD

REGISTRAR'S NOTICE: The following regulation was filed by description with the Registrar of Regulations in accordance with § 2.3 of the Virginia Code Commission Regulations Implementing the Virginia Register Act. Section 2.3 of the Virginia Code Commission Regulations allows the Registrar to authorize the filing of a regulatory document by description in lieu of filing the entire text pursuant to criteria identified in that section.

Title of Regulation: 24 VAC 30-400-10. Disposal of Limited Access Control.

Statutory Authority: § 33.1-58 of the Code of Virginia.

Effective Date: September 29, 1997.

Exemptions Claimed:

This regulation is exempt from the Administrative Process Act pursuant to § 9-6.14:4.1 B 4 of the Code of Virginia, which exempts agency action involving grants of state or federal funds or property. Subdivision 2 e of § 2.3 of the Virginia Code Commission Regulations allows regulations concerning state property or funds to be filed by description subject to the authorization of the Registrar of Regulations.

Summary:

This regulation establishes the policy and rules pertaining to payment of damages to property owners abutting a new or existing highway when easements are extinguished. The policy change deletes the ability of the person or persons receiving a break in limited access control to deduct the cost of safety and operation improvements from the compensation. The new policy allows the Virginia Department of Transportation to receive full compensation for enhancements to abutting property as a direct result of relinquishment of access control. Previously, features needed to control traffic (such as traffic signals, deceleration lanes, fencing adjustments, etc.) could be deducted from the compensation. With the policy revision, they are no longer deductible items. Policy affecting the method of compensation (a comparison of before and after value based on an appraisal) was not changed.

Document available for inspection at the following location:

Virginia Department of Transportation
Management Services Division
1401 East Broad Street, Room 712
Richmond, VA 23219

VA.R. Doc. No. R98-58; Filed September 29, 1997, 3:32 p.m.

EMERGENCY REGULATIONS

TITLE 12. HEALTH

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Title of Regulation: Health Insurance Program for Working Uninsured Individuals.
12 VAC 30-100-10 et seq. State Programs (adding Part IV, 12 VAC 30-100-400 et seq.).

Statutory Authority: § 32.1-325 of the Code of Virginia and Items 323 B and C of the 1997 Appropriation Act.

Effective Dates: October 1, 1997, through September 30, 1998.

SUMMARY

REQUEST: The Governor is hereby requested to approve this agency's adoption of the emergency regulation entitled Health Insurance Program for Working Uninsured Individuals. This regulation will enable the Department of Medical Assistance Services to implement a pilot health insurance subsidy program for working uninsured individuals with household incomes at or below 200 percent of the federal poverty level.

RECOMMENDATION: Recommend approval of the Department's request to take an emergency adoption action regarding the Health Insurance Program for Working Uninsured Individuals. The Department intends to initiate the public notice and comment requirements contained in the Code of Virginia § 9-6.14:7.1.

/s/ Joseph M. Teefey, Director
Department of Medical Assistance Services
Date: July 9, 1997

/s/ Robert C. Metcalf
Secretary of Health and Human Resources
Date: August 11, 1997

/s/ George Allen
Governor
Date: September 25, 1997

DISCUSSION

BACKGROUND: The regulations affected by this action are 12 VAC 30-100-400 et seq., Health Insurance Program for Working Uninsured Individuals.

In 1993, the General Assembly, in an effort to address the problem of the uninsured in Virginia, passed Senate Joint Resolution 315. This resolution directed the Technical Advisory Panel (TAP) of the Indigent Health Care Trust Fund (Trust Fund) to support strategies which will increase the number of Virginians with health insurance. (The Trust Fund was established to help offset some of the charity care provided by Virginia's private acute care hospitals, and is funded with a combination of state general fund appropriations and private hospital donations.) The TAP,

working with DMAS staff, has developed a proposal to use a portion of the contributions to the Trust Fund to test a method to expand health insurance coverage to the uninsured who are employed by small businesses, and to provide subsidies to low-income employees who couldn't otherwise afford to participate.

Although this program can trace its origins to SJR 315 (1993), it was not until the fall of 1996 that a consensus was reached about how the program should be implemented based on the TAP proposal. The 1997 General Assembly directed that the program become operational by July, 1997. Therefore, emergency regulations are needed in order to implement the program as directed, and to avoid the risk of losing the funding commitment from Inova Health System.

Currently, individuals without insurance will often delay seeking medical care and will often seek care in hospital emergency rooms, thus incurring relatively high medical expenditures which they cannot afford. This uncompensated care is often shifted to those who have insurance, resulting in more expensive medical care for everyone. By providing health insurance to this population, the program aims to accomplish several objectives which will benefit all Virginians. The program aims to reduce charity care costs provided in hospitals. Subsidizing health insurance premiums and providing a medical benefits package which includes primary as well as preventive health care services through a managed care plan should reduce unnecessary hospitalizations and emergency room care for the uninsured population. Providing health insurance through a public/private partnership involving employers, employees, health care providers, and the Trust Fund will help leverage Trust Fund contributions with additional funds from individuals and businesses. Finally, the program may provide timely support for individuals who have recently come off welfare by providing health insurance through a small business which otherwise may not have offered this benefit.

The program is an incremental approach to health care reform, and one which will not involve any additional funds on the part of the state. The program will be funded with donations from hospitals which have expressed an interest in implementing a pilot site in their service area. Inova Health System has been committed to providing funding for a pilot site in the Northern Virginia area from the beginning stages of the project, and expects to be able to implement this program in the very near future.

These regulations will establish the Health Insurance Program for Working Uninsured Individuals. DMAS will contract with a managed care plan in each pilot site. The managed care plan will be responsible for marketing the program to small businesses and employees, and for providing the Essential Health Benefits Plan to the beneficiaries for a fixed monthly health insurance payment which will come from contributions from employers, employees and the project subsidy. The applications of employees requesting the subsidy will be forwarded by the Contractor to DMAS where their eligibility for the premium

Emergency Regulations

subsidies will be determined. If determined eligible, the employees will be enrolled into the health plan, and DMAS will remit the subsidy for eligible employees to the managed care plan.

This program will provide Virginia with a chance to test the provision of health insurance premium subsidies on a small scale with the possibility of later expanding to a statewide program. As part of the product development phase of the project, market research was conducted in two potential pilot sites (Northern Virginia and Tidewater) to gauge the level of interest of small employers and their employees in providing and obtaining health insurance, and to determine the level of subsidy that will be needed to ensure adequate participation in the subsidized health insurance program. The market research identified a willingness to pay for a sizable portion of the premium both on the part of the employers and the employees.

This program will provide insights into what kind of coverage, at what price, will induce this low-income working population to purchase health insurance. The program will help determine to what extent the premium subsidies help employees obtain health insurance for themselves and their dependents, and to what extent the provision of subsidies serve as an incentive for small businesses to offer health insurance to their employees. Employing a public-private partnership with various cost-sharing mechanisms, and allowing each contributor to leverage their contribution and multiply its effect, will provide preliminary information on total funding needed for a large scale effort to provide health insurance to this population.

There are many aspects of this program which will affect its outcome, but which will not be defined by these regulations. This program is a "demonstration" and, as such, is designed to obtain information on the behavior of employees, employers and managed care organizations which is market driven and cannot be predicted with certainty at this time. A certain amount of flexibility is needed to enable the program to change if circumstances so require. For example, the monthly health insurance premium rates will be set by the managed care plan in each pilot site. These premium rates may need to be changed at some point during the program. The managed care plan will probably require a minimum participation of employees (subsidized and unsubsidized) in each small business before it agrees to cover the employees in that business. These and other operational aspects of the program will be settled with the managed care plans and defined in the contract between DMAS and each managed care plan.

These regulations, however, will define in a fair and equitable manner who is eligible to receive premium subsidies, how beneficiaries will be enrolled and disenrolled, and what appeal rights they will have. The regulations will outline the rights and responsibilities of the providers and describe how DMAS will monitor the services provided by the managed care plans. The regulations will also outline the administrative structure and reimbursement methodology.

Finally they will provide information on the benefit package or covered services.

AUTHORITY TO ACT: The Code of Virginia (1950) as amended, § 32.1-324, grants to the Director of the Department of Medical Assistance Services (DMAS) the authority to administer and amend the Plan for Medical Assistance in lieu of Board action pursuant to the Board's requirements. The Code also provides, in the Administrative Process Act (APA) § 9-6.14:4.1(C)(5), for an agency's adoption of emergency regulations subject to the Governor's prior approval. Subsequent to the emergency adoption action and filing with the Registrar of Regulations, this agency intends to initiate the public notice and comment process contained in Article 2 of the APA.

Without an emergency regulation, the Program cannot become effective until the publication and concurrent comment and review period requirements of the APA's Article 2 are met. Therefore, an emergency regulation is needed to meet the July 1, 1997 effective date established by the General Assembly.

NEED FOR EMERGENCY ACTION: The Code § 9-6.14:4.1(C)(5) provides for regulations which an agency finds are necessitated by an emergency situation. To enable the Director, in lieu of the Board of Medical Assistance Services, to comply with the legislative mandate, he is to implement the program by July 1, 1997. This issue qualifies as an emergency regulation as provided for in § 9-6.14:4.1(C)(5)(ii), because the Appropriation Act requires this regulation be effective within 280 days from the enactment of the law. As such, this regulation may be adopted without public comment with the prior approval of the Governor. Since this emergency regulation will be effective for no more than 12 months and the Director wishes to continue regulating the subject entities, the Department is initiating the APA Article 2 process.

FISCAL/BUDGETARY IMPACT: This program does not require any additional general fund tax dollars. The funds to start the project will come from contributions or donations from hospitals. Two or three hospitals which are net recipients of funds from the Trust Fund have expressed an interest in donating money for the project. In exchange for donating these funds, the hospitals have requested that DMAS contract with their own managed care plan to provide health services to residents in their own service area. The funds donated by the hospitals will be administered by DMAS, and will be leveraged by requiring the employers and employees to contribute towards the cost of providing health insurance. Thus, the total cost of the health insurance premiums will be shared between the employers, employees and the program subsidy. This program is not a Medicaid entitlement program.

RECOMMENDATION: Recommend approval of this request to adopt this emergency regulation to become effective upon its filing with the Registrar of Regulations. From its effective date, this regulation is to remain in force for one full year or until superseded. Without an effective emergency regulation,

the Department would lack the authority to implement the Health Insurance Program for Working Uninsured Individuals.

APPROVAL SOUGHT FOR 12 VAC 30-100-400 through 12 VAC 30-100-450. Approval of the Governor is sought for an emergency action in accordance with the Code of Virginia § 9-6.14:4.1(C)(5) to adopt the following regulation:

PART IV.

HEALTH INSURANCE PROGRAMS FOR THE WORKING UNINSURED.

12 VAC 30-100-400. Definitions.

Definitions. In this regulation, the Health Insurance Program for Working Uninsured Individuals will be referred to as "Program." When reference is made to eligibility for the Program or to Program benefits, the intent is to refer specifically to the health insurance premium subsidies provided through the Program. The following words and terms, when used in this regulation, shall have the following meaning, unless the context clearly indicates otherwise:

"Appeal" means any written communication from a client or his representative which clearly expresses that he wants to present his case to a reviewing authority.

"Applicant" means an individual who has applied for or is in the process of applying for health insurance premium subsidies.

"Applicant's representative" means a person who, because of the applicant's or enrollee's mental or physical incapacity, is authorized to complete, sign, or withdraw an application for the benefits of the Program; activate the appeal process; and otherwise supply any information requested by the Program on behalf of the applicant or enrollee.

"Client, recipient, enrollee or beneficiary" means an individual who has been determined to be eligible for, and is receiving premium subsidies through the Program.

"Contractor" means a health maintenance organization in each pilot site which enters into a contract with DMAS to provide the Essential Health Benefits Plan to beneficiaries of the Program.

"Covered services" means services as defined in the Essential Health Benefits Plan.

"Date of application" means either the date that the Contractor officially receives an application from an employee or the date that the Contractor officially receives enough employee applications from any given employer to meet its minimum participation requirement if the Contractor has such a requirement.

"Department" means the Department of Medical Assistance Services, also referred to as DMAS.

"Dependents" means family members of an eligible individual. This includes the individual's spouse and any children under 21 years of age who live at home.

"Disenrollment" means a recipient voluntarily decides to discontinue receiving subsidized health insurance premiums, or is determined ineligible by DMAS to continue receiving subsidized health insurance benefits.

"Eligible alien" means an individual who satisfies the alien status criteria for Medical Assistance Services administered by the Department of Medical Assistance Services (12 VAC 30-40-10, 12 VAC 30-110-1300).

"Eligible person or employee" means a full-time employee of a primary small employer determined by DMAS to meet the qualifications needed to receive premium subsidies under the Program. Other employees who do not meet the necessary income requirements may enroll in the Contractor's health plan if they pay the cost of the premium beyond any contribution from their employer. However, throughout these regulations, employees described as eligible for the Program are those eligible for premium subsidies.

"Eligible employer or firm" means any employer determined by the Program and the Contractor to meet the qualifications needed in order for its employees to be qualified to enroll in the program.

"Emergency services" means services provided in a hospital, clinic, office, or other facility that is equipped to furnish the required care, after the sudden onset of a medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) that the absence of immediate medical attention could reasonably be expected to result in:

- a. Placing the client's health in serious jeopardy; or
- b. Serious impairment to bodily functions; or
- c. Serious dysfunction of any bodily organ or part.

"Essential Health Benefits Plan" means a health benefit package developed pursuant to § 38.2-3431, subsection D of the Code of Virginia.

"Family" means (i) the applicant or recipient, (ii) the applicant's or participant's spouse, and (iii) the applicant's or recipient's children who are under 21 years of age and live at home with the applicant or recipient.

"Grievance" means any request by a client to a Contractor to resolve a dispute.

"Health Care Plan" means any arrangement in which any health maintenance organization undertakes to provide, arrange for, pay for, or reimburse any part of the cost of any health care services.

"Health Insurance Premium Subsidy" means the portion of the health insurance premiums paid by the Program on behalf of an individual eligible to participate in the Program.

"HMO" means a health maintenance organization, as licensed by the Bureau of Insurance which undertakes to provide, arrange for, pay for, or reimburse any part of the cost of any health care services.

Emergency Regulations

"Initial enrollment period" means a period of at least 30 days when the health benefit package is initially offered by the Contractor to an eligible firm.

"Late enrollee" means an eligible employee who does not enroll during the initial enrollment period for his firm.

"Minimum participation requirement" means the minimum percentage of employees in a given firm who are required to enroll in the health plan before the Contractor agrees to provide coverage to that firm. The minimum participation requirement may be met through the enrollment of subsidized as well as nonsubsidized employees within any given firm.

"Network" means doctors, hospitals or other health care providers who participate or contract with a managed care plan and, as a result, agree to accept a mutually-agreed upon sum or fee schedule as payment in full for covered services.

"Nonparticipating provider" means a facility or provider not in the managed care plan's network. A nonparticipating provider practicing in a network facility is not a "participating provider."

"Primary small employer" means any person actively engaged in business that, on at least fifty percent of its working days during the preceding year, employed no more than twenty-five qualified employees and not less than two unrelated qualified employees, the majority of whom are enrolled (employed) within this Commonwealth. Qualified employees are employees who work on a full-time basis, have a normal work week of thirty or more hours, and are not part-time or substitute employees. Primary small employer includes companies that are affiliated companies or that are eligible to file a combined tax return.

"Program" means the Health Insurance Program for Working Uninsured Individuals. References to the "Program" specifically refer to subsidized health insurance premium payments.

12 VAC 30-100-410. Program enrollees.

DMAS shall determine the eligibility of individuals who have applied for premium subsidies under the Program. This section of the regulations, and, generally, throughout the regulations, the provisions of the regulations apply to individuals eligible for premium subsidies. Employees of eligible firms who are not eligible for the premium subsidy, or who choose not to apply for the subsidy, may enroll with the Contractor to receive the Essential Health Benefits Plan subject to requirements the Contractor may impose. The employees' rights and responsibilities as well as those of the Contractor, the employers and the providers will be governed by relevant state or federal laws and regulations that apply to HMOs.

A. Eligibility requirements. Employees and their dependents shall be eligible for receiving health insurance premium subsidies through the Program if the following requirements are met:

1. The employee's gross household income is at or under 200 percent of the United States nonfarm poverty income guidelines.
2. The employee is a U.S. citizen, or eligible alien, and a resident of Virginia. The employee must also reside within the Contractor's service area.
3. The employee has no health insurance and is ineligible for Medicaid.
4. The employee is employed by a primary small employer which is located in the geographical area covered by the program.
5. The employee works full-time (30 hours per week or more).
6. The employer agrees to pay at least 50 percent of the cost of the premium for all his employees. (The employer is not obligated to contribute toward the cost of health insurance for the employee's dependents.)
7. The employer has not offered health insurance to his employees for 12 months prior to his employees enrolling in the Program.
8. A Contractor may exclude a late enrollee from coverage for up to 18 months. If a contractor does impose a waiting period on late enrollees, then the enrollment of employees in any given eligible firm shall be limited to the initial enrollment period.
9. A Contractor may impose a minimum participation requirement for each firm. Thus, although an employee and his employer may have met all the other eligibility requirements, the Contractor will not enroll any employees until the minimum participation requirement is met.

B. Determination of countable income. When determining eligibility for the Program, income shall include total projected family income for the year beginning with the month of application to the Program, including, but not limited to:

1. Wages;
2. Commissions and fees;
3. Salaries and tips;
4. Profit from self-employment;
5. Dividends or interest income;
6. Disability benefits;
7. Unemployment;
8. Pension or retirement.

C. Client application and enrollment process. The HMO contracted to provide services in each pilot area will market the Program to the employers and employees in its service area. Employees not requesting the subsidy shall be enrolled directly by the Contractor while the applications of the employees requesting the subsidy shall be forwarded to

Emergency Regulations

DMAS where their eligibility for the subsidies shall be determined. Eligible persons shall be enrolled in the Program on a first-come, first-served basis taking into account that the Contractor may have a minimum participation requirement. Eligible individuals shall be enrolled until the available funding limit for that pilot site is reached as provided for in paragraph E.

1. An applicant or applicant's representative shall complete an application on the form designated by DMAS and the Contractor. The application shall include information requested by the Contractor for purposes of enrolling the applicant into the health plan, as well as financial information requested by DMAS to determine the applicant's eligibility for the Program.

2. Applications shall conform with the requirements of this regulation and shall be approved by DMAS. DMAS may request additional documentation for eligibility determination purposes as it deems necessary. Applicants shall provide additional documentation requested by DMAS within 20 days of the date that DMAS mails its request for information. Applicants shall be determined ineligible without prejudice when they fail to provide information sufficient for the determination of eligibility.

3. An applicant or applicant's representative shall sign a statement authorizing DMAS to verify from any source, including banks and public or private agencies providing monetary benefits, qualifying information submitted to the Program as part of the application process. Refusal to sign an authorization is considered failure to provide sufficient information, and applicants shall be determined ineligible in accordance with the provisions of this regulation.

4. Eligibility determination by DMAS shall be made promptly, not later than 30 days from the date of receipt of the completed application by the Program. This time standard shall be extended for reasons of just cause, as determined by DMAS.

5. An applicant or applicant's representative may voluntarily withdraw the application at any time without prejudice.

6. Program enrollment shall be effective on the first day of the month following determination by DMAS that the applicant is eligible to participate and that there is an available applicant space. For individuals found eligible after appeal of an ineligibility decision, Program participation shall be retroactive to the first day of the month following the decision that was the subject of appeal.

7. Clients eligible for premium subsidies shall receive evidence of coverage from the Contractor as provided for in § 38.2-4306 of the Code of Virginia, and shall be provided authorized medical care in accordance with the health plan.

D. DMAS will promptly redetermine eligibility when it receives information concerning an applicant's or participant's circumstances that may affect eligibility.

1. The recipient or his representative shall notify DMAS within ten working days of any changes in circumstances which would affect continuing eligibility, including, but not limited to a change in:

- a. Income;
- b. Name or address;
- c. Employment status;
- d. Marital status.

2. If any changes in status result in a recipient no longer qualifying for the Program, the premium subsidy payments will be canceled. The cancellation shall be effective at the end of the month of determination of ineligibility. DMAS shall notify the participant of its determination and inform the participant of any legal rights to appeal the decision pursuant to the notification requirements of this regulation. If the recipient who no longer qualifies for the subsidy chooses, he may continue to receive the Essential Health Benefit Plan through the Contractor by agreeing to pay any premium amount not covered by his employer.

E. The number of participants enrolled in the Program shall be limited to the number that can be covered by the Program's available funding, based on DMAS' projections of expenditures.

1. Enrollment of eligible applicants will be performed on a first-come, first-served basis once any minimum participation requirement for each firm has been reached. If the Contractor has a minimum participation requirement, available openings in the Program shall be filled based on the official date of receipt by the Contractor of a batch of applications from each firm with sufficient employees to meet the minimum participation requirement of the Contractor. If the Contractor does not have a minimum participation requirement, enrollment of eligible employees shall be performed on a first-come, first-served basis, based on the date the employee's application is officially received by the Contractor. If the Contractor imposes a waiting period on late enrollees, employees who choose not to enroll during the initial enrollment period shall not be allowed to enroll in the Program. New employees hired by a firm after the initial enrollment period will be permitted to apply for subsidized health insurance at the discretion of the Contractor or DMAS as long as there are available openings in the Program.

2. DMAS shall maintain a waiting list of applicants who are determined to be eligible for the Program but for whom openings are not available when the eligibility determinations are made. Available openings shall be filled from the waiting list on a first-come, first-served

Emergency Regulations

basis, taking into account that the Contractor may have minimum participation requirements.

3. The goal of the Program shall be to enroll the maximum number of applicants for the premium subsidy from any given firm into the Program. For this reason, as the enrollment cap is approached, DMAS shall limit the number of employees who are enrolled in such a way as to ensure that the next eligible firm is assured of being able to enroll all its eligible employees who have applied to participate in the Program. Similarly, if additional spaces become available when clients disenroll, DMAS shall wait until sufficient openings become available to enroll all eligible applicants from the next eligible firm on the waiting list.

4. If openings become available, the applicant, employer, and employee shall be notified in writing by DMAS. The applicant and the employer must provide any necessary information to the Contractor and to DMAS to verify that they are still eligible within ten days of receiving notification. The ten-day period may be extended by DMAS for just cause. If determined to be still eligible, the applicant shall be enrolled.

F. Authorization for premium subsidies under this Program shall be granted until Program termination, unless the recipient's status changes so that he no longer meets the eligibility criteria. Program termination is projected to be two years after the date the Program is implemented unless funding is not available, and the Program must be terminated before the projected two-year period. If additional funding becomes available, the Program may be extended as funding permits.

G. Disenrollment. A recipient may request to disenroll at any time. Participation in the Program is voluntary. However, once a recipient disenrolls, he may not be allowed to enroll in the Program again at a later date.

H. Client appeals process.

1. An applicant, participant, or representative who is dissatisfied with a decision, action, or inaction of the Contractor with regard to the provision of medical services may request, and shall be granted an opportunity to appeal an adverse decision to the Contractor as provided for under Insurance Regulation No. 28 (14 VAC 5-210-70 (H)(1-5)).

2. An employer who is dissatisfied with a decision, action, or inaction of the Contractor with regard to the firm's meeting the requirements of these regulations so that their employees may participate in the Program, may request, and shall be granted an opportunity to appeal an adverse decision to the Contractor. The Contractor shall develop an appeals process to respond to complaints from employers. This appeals process shall follow the model for applicant appeals as provided for under Insurance Regulation No. 28 (14 VAC 5-210-70 et seq.).

3. An applicant, participant or representative may request, and shall be granted an opportunity to appeal an adverse decision to DMAS when:

a. His application for health insurance premium subsidies is denied. However, if an application for premium subsidies is denied because of a lack of funds, then there is no right to appeal;

b. DMAS takes action or proposes to take action which will adversely affect, reduce, or terminate his receipt of benefits;

c. DMAS does not act with reasonable promptness on his application for premium subsidies.

4. An applicant's, participant's, or representative's appeal to DMAS will be heard as provided for under the applicable provisions of the Department's Appeals regulations. The following listing of the sections of the Department's Appeals regulations indicates whether the provision is applicable to appeals heard under this Program:

12 VAC 30-110-10--Applicable;

12 VAC 30-110-20--Applicable;

12 VAC 30-110-30--The federal regulations imposing a time limitation for appeals do not apply to this Program. However, for this Program, appeals shall be scheduled and conducted within 90 days, unless waived in writing by the Appellant or Appellant's Representative;

12 VAC 30-110-40 through 12 VAC 30-110-80--Applicable;

12 VAC 30-110-90--Not Applicable. (An applicant's right to appeal is stipulated in subsection 3 above);

12 VAC 30-110-100 through 12 VAC 30-110-190--Applicable;

12 VAC 30-110-200--Not applicable. (Decisions or actions regarding the provision of medical services shall be appealed to the Contractor);

12 VAC 30-110-210--Applicable if there is no right to appeal under subsection 3 above.

12 VAC 30-110-220 through 12 VAC 30-110-350--Applicable;

12 VAC 30-110-360--With the exception that paragraph A, providing for an independent medical assessment, is not applicable to this Program.

12 VAC 30-110-370--Applicable;

12 VAC 30-110-380--Applicable.

5. The following provisions shall apply to appeals by an applicant, participant or representative to DMAS:

a. If an applicant is found eligible for the Program as a result of an appeal, the Program shall reimburse the

Emergency Regulations

applicant directly for the premium subsidy amount paid by the applicant, beginning with a payment for the month following the application. The applicant shall provide proof of payment of premiums for health insurance.

b. Cases in or pending appeal shall be considered filled enrollee openings until the appeal process has been completed.

12 VAC 30-100-420. Program contractors.

A. The Department shall contract with one HMO in each pilot site to market the Program, enroll the beneficiaries, and provide medical care services. These HMOs are referred to as the "Contractors."

B. The Contractors shall be responsible for the following services:

1. Each Contractor shall market the Program to the employers and employees in its respective pilot area and enroll clients into its health plan according to provisions of the Contract between the Contractor and DMAS.

2. The Contractors shall provide, at a minimum, all medically necessary covered services provided under the Essential Health Benefits Plan, except as otherwise modified or excluded in these regulations. The Contractor shall provide enrollees with evidence of coverage and charges for health care services as provided for in § 38.2-4306 of the Code of Virginia.

3. The Contractor shall provide reasonable reimbursement for services necessary to determine whether an emergency exists when the clinical circumstances that exist at the time of the recipient's presentation to the ER (inside or outside the network) indicate that an emergency may exist.

a. The Contractors shall pay for all emergency services provided to enrollees.

i. In Network.

Contractors shall pay for emergency services whether they are provided inside the Contractors' network.

ii. Outside Network.

Clients may seek emergency services from a provider outside the Contractors' network.

Contractors shall pay for services furnished in facilities or by practitioners outside the Contractors' networks if services are needed because of a medical emergency.

Contractors shall pay for services furnished in an area outside the Contractors' service area if medical services are needed and the recipient's health would be endangered if he were required to travel to his place of residence.

Contractors shall pay for emergency services when provided outside the Contractors' network. Emergency care provided to an enrollee by a provider or facility not in the network will be reimbursed according to rates which should be negotiated between the Contractor and the emergency department using the Medicaid fee schedule as a guideline. This reimbursement shall be considered payment in full.

b. Nonemergency Services Provided by Emergency Departments.

i. In Network.

Nonemergency services provided by hospital emergency departments shall be covered by Contractors in accordance with rates negotiated between the Contractors and emergency departments.

ii. Outside Network.

Nonemergency services provided by hospital emergency departments shall be covered by Contractors in accordance with rates negotiated between the Contractors and the emergency departments. These rates should be negotiated using the Medicaid fee schedule as a guideline. The Contractor may deny payment to a non-network provider for services which go beyond those provided to determine whether an emergency exists.

4. The Contractors shall pay for services furnished in facilities or by practitioners outside the Contractors' networks if the needed medical services or necessary supplementary resources are required by the Essential Health Benefit Plan and are not available in the Contractors' networks. The Contractor may establish procedures to authorize these services.

5. The Contractors shall verify that employers meet the eligibility requirements of the Program: that the firms be primary small employers, that the employers agree to pay 50 percent of the cost of the all their employees' health insurance, and that the employer not have offered health insurance to their employees in the past 12 months.

6. The Contractor shall maintain such records as may be required by state law and regulation, and by DMAS policy. The Contractor shall furnish such required information to DMAS, or the Attorney General of Virginia or his or her authorized representatives on request and in the form requested.

7. The Contractor shall ensure that the health care provided to its clients meets all applicable federal and state mandates and standards for quality.

8. Consistent with § 32.1-330.2 of the Code of Virginia, each Contractor shall test the readability of its Program information documents by use of the Flesch Readability

Emergency Regulations

Formula, as set forth in Rudolf Flesch, *The Art of Readable Writing* (1949, as revised 1974), and no program information document shall be used unless it achieves a Flesch total readability score of 40 or better. This requirement shall not apply to language that is mandated by federal or state laws, regulations or agencies.

a. All program information documents within the scope of this section, and all amendments thereto, shall be filed with DMAS in advance of their use and distribution, accompanied by certificates setting forth the Flesch scores and certifying compliance with the requirements of this section. Any program information document to which this does not apply shall be accompanied by documentation of the federal or state laws, regulation or agency mandate that authorizes the exemption.

b. The term "program information documents" means all forms, brochures, handbooks or other documentation (a) provided to recipients covered under the Program, and (b) describing the Program's medical care coverage and the rights and responsibilities of recipients covered. The term "recipient" shall include potential recipients and recipients.

C. Monitoring of services and administrative practices. DMAS shall monitor to determine if the Contractor:

1. Fails substantially to provide the medically necessary items and services required under law or under the contract to be provided to an enrolled recipient and the failure has adversely affected (or has substantial likelihood of adversely affecting) the individual.

2. Imposes on clients premium amounts in excess of premiums permitted as outlined in the contract between the Contractor and DMAS.

3. Engages in any practice that discriminates among individuals on the basis of their health status or requirements for health care services, including expulsion, or any practice that could reasonably be expected to have the effect of denying or discouraging enrollment by eligible individuals whose medical conditions or histories indicate a need for substantial future medical services

4. Misrepresents or falsifies information that it furnishes, to DMAS, an individual, or any other entity.

D. Sanctions.

1. If DMAS determines that a Contractor is not in compliance with state or federal laws, regulations including, but not limited to the requirements of or pursuant to paragraph B.7, or their Program contract, DMAS may impose sanctions on the Contractor. The sanctions may include but are not limited to:

- a. Developing procedures with which the Contractor must comply to eliminate specific sanctions,
- b. Freezing subsidy payments for new applicants,
- c. Imposing a fine if the Contractor does not take steps to correct a problem in a timely fashion, and
- d. Terminating the Contractor's Program contract.

2. Quality Violations. When DMAS determines that an Contractor committed one of the violations specified in paragraph C, DMAS shall consider imposing one or more of the sanctions listed in subsection 1.

a. Any sanction imposed pursuant to this subsection shall be binding upon the Contractor.

b. The Contractor shall have the appeals rights for any sanction imposed pursuant to subsection 2 as specified in subsection 3.

3. Contractor appeals. In the event DMAS determines that the Contractor poses a threat to the life or safety of a recipient, that Contractor may be terminated from participation in the Program without prior notice. In accordance with the terms of the contract, Contractors shall have the right to appeal any adverse action taken by DMAS. For appeal procedures not addressed by the contract, the Contractor shall proceed in accordance with the appeals provisions of the Code of Virginia § 11-35 et seq. (the Virginia Public Procurement Act). Pursuant to the Code of Virginia §§ 11-70 and 11-71, DMAS establishes an administrative appeals procedure, which the Contractor may elect to appeal decisions on disputes arising during the performance of its contract. Pursuant to Virginia Code § 11-71, such appeal shall be heard by a hearing officer; however, in no event shall the hearing officer be an employee of DMAS. In conducting the administrative appeal, the hearing officer shall follow the hearing procedure used in Virginia Code § 9-6.14:12.

12 VAC 30-100-430. Recipients' employers.

A. Eligibility requirements. In order for their employees to be eligible for premium subsidies, employers must meet the following requirements and assume the following responsibilities:

1. Employers must be located in the geographical region covered by the pilot Program.

2. Firms must be primary small employers (have between 2 and 25 employees who work full-time and on at least fifty percent of its working days during the preceding year, employed no more than twenty-five qualified employees and not less than two unrelated qualified employees).

3. Employers shall provide assurances to the Contractor that they have not offered health insurance to their employees in the 12 months preceding the application of their employees to the Program.

4. Employers shall agree to pay at least 50 percent of the cost of the health insurance premium for a single employee (an employee-only policy), and must agree to cover such costs for all employees.

5. Employers shall agree to withhold the employee's share of the premium payment from their pay, and to send the employee's and the employer's share of the premium payment to the Contractor on a monthly basis.

6. A Contractor may impose a minimum participation requirement for each firm before any employees of that firm receive coverage through the Program.

12 VAC 30-100-440. Program reimbursement.

A. The capitated payment rate to cover services provided by the Contractors to employees receiving health insurance subsidies will be specified in the contract between DMAS and the Contractor.

B. The Contractors shall pay for services furnished in facilities or by practitioners outside the Contractors' networks or outside the Contractors' service areas if services are needed because of a medical emergency, or because the recipient's health would be endangered if he were required to travel to his place of residence, or because the needed medical services or necessary supplementary resources are not available in the Contractors' network. Under these circumstances, medical care provided to a Program recipient by a provider or facility not participating in the Contractors' network will be reimbursed according to a fee based on contract negotiations between the Contractor and these nonparticipating providers and facilities. This reimbursement shall be considered payment in full to the provider or facility of emergency care.

C. Premium subsidy payments to cover the portion of the capitated fee not paid by the employer and the employee will be made by DMAS to the Contractor according to procedures established by DMAS. Payments under this Program are limited to the cost of the health insurance premium subsidy, and will not include co-payments, deductibles, or any other costs incurred by the recipients of the Program.

D. In all cases in which Program benefits have been incorrectly paid to the Contractor, the Program shall seek recovery from the Contractor, according to the Department's recovery policies.

E. Cases of suspected misrepresentation or fraud shall be investigated according to the Department's fraud prevention and control policies, and any other applicable statutory provision.

12 VAC 30-100-450. Confidentiality.

All information maintained by DMAS containing personal data including name, address, employer, insurance company, health status, application to or enrollment in the Program, and any other information which could identify or be reasonably used to identify any applicant or participant in the Program shall be maintained in confidence according to all applicable

DMAS policies and procedures and any other applicable laws or regulations. Such information may not be disclosed to any individual or organization without the written and dated consent of the applicant, recipient, or representative.

VA.R. Doc. No. R98-59; Filed October 1, 1997, 2:26 p.m.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF LICENSED PROFESSIONAL COUNSELORS, MARRIAGE AND FAMILY THERAPISTS AND SUBSTANCE ABUSE TREATMENT PROFESSIONALS

Title of Regulation: 18 VAC 115-40-10 et seq. Regulations Governing the Certification of Rehabilitation Providers (amending 18 VAC 115-40-10, 18 VAC 115-40-20, 18 VAC 115-40-22, 18 VAC 115-40-25, 18 VAC 115-40-40 and 18 VAC 115-40-50; adding 18 VAC 115-40-26 and 18 VAC 115-40-27).

Statutory Authority: §§ 54.1-2400 and 54.1-3515 of the Code of Virginia.

Effective Dates: October 1, 1997, through September 30, 1998.

Reason for the Emergency Regulation:

The 1997 General Assembly enacted amendments to statutes in Chapter 839 pertaining to rehabilitation provider certification which more precisely define the scope of practice for individuals that exercise *professional judgment* in the provision of vocational rehabilitation services, and clearly restrict the mandate for certification to those individuals. Further, Chapter 839 provides that regulations implementing provisions of law must be in effect within 280 days of the enactment, which occurred on April 2, 1997.

The regulations that are currently in effect provide for certification of individuals who provide a broad range of services to rehabilitation clients that may or may not require the use of professional judgment. Under these regulations, an individual can obtain certification by documenting one year of experience in "whatever services will be provided to a workers' compensation claimant," without having to document having any particular skills or training in vocational rehabilitation.

The board has the duty under § 54.1-2400 to protect the public by establishing qualifications and requirements for licensure which are necessary to ensure the competence and integrity of the individuals it certifies. The scope of practice in the current statutes describes certified rehabilitation providers as individuals who possess education, training, skills and experience which qualify them to evaluate injured workers' functional limitations, aptitudes and capabilities, culminating in recommendations of appropriate employment. Until the

Emergency Regulations

regulations are amended, the board must continue issuing certificates which authorize the holders to make recommendations that will significantly impact an injured worker's future, with no assurance of even a high school level of literacy.

To ensure general communication skills and the ability to evaluate and discern as required to perform the functions of vocational rehabilitation, the board proposes requiring, at a minimum, a baccalaureate degree in any field or an associate's degree in nursing as evidenced by a current RN license. To ensure competency in skills specific to vocational rehabilitation which are generally acquired through on-the-job training, the board is recommending 2,000 hours of appropriately supervised training over a five-year period under an appropriately credentialed supervisor.

18 VAC 115-40-10. Definitions.

A. The terms "board," "certified rehabilitation provider," and "rehabilitation services professional judgment," when used in this chapter, shall have the meanings ascribed to them in § 54.1-3500 of the Code of Virginia.

B. The following words and terms, when used in this chapter, shall have the following meanings unless the context indicates otherwise:

"Competency area" means an area in which a person possesses knowledge and skills and the ability to apply them in the rehabilitation setting.

"Experience" means on-the-job experience under appropriate supervision as set forth in this chapter.

~~"Health care practitioner" means any individual certified or licensed by any of the health regulatory boards within the Department of Health Professions, except individuals regulated by the Board of Funeral Directors and Embalmers or the Board of Veterinary Medicine.~~

"Internship" means a supervised field experience as part of a degree requirement obtained from a regionally accredited university as set forth in 18 VAC 115-40-22.

"Regionally accredited" means an institution accredited by one of the regional accreditation agencies recognized by the United States Secretary of Education as responsible for accrediting senior post secondary institutions and training programs.

"Rehabilitation client" or "client" means an individual receiving rehabilitation services whose benefits are regulated by the Virginia Workers' Compensation Commission.

"Supervisee" means any individual who has met the education requirements and is under appropriate supervision and working towards certification according to the requirements of this chapter. Services provided by the supervisee shall not involve the exercise of professional judgment as defined in § 54.1-3510 of the Code of Virginia.

"Supervision" means the ongoing process performed by a supervisor who monitors the performance of the person

supervised and provides regular, documented, personal instruction, guidance, and education with respect to the skills and competencies of the person supervised.

"Supervisor" means one who provides case related supervision, consultation, education, and guidance for the applicant. The supervisor must be credentialed as defined in 18 VAC 115-40-27 of this chapter.

"Training" means the educational component of on-the-job experience.

18 VAC 115-40-20. Fees required by the board.

A. The board has established the following fees applicable to the certification of rehabilitation providers:

Application processing	\$100
Certification renewal	\$50
Duplicate certificate	\$15
Late Renewal	\$50
Replacement of or additional wall certificate	\$15
Returned check	\$15

B. Fees shall be made by check or money order payable to the Treasurer of Virginia and forwarded to the board. All fees are nonrefundable.

Examination fees shall be made payable to the examination service and mailed directly to the examination service.

18 VAC 115-40-22. Criteria for eligibility.

A. Education ~~or~~ and experience requirements for certification are as follows:

1. ~~Graduation Any baccalaureate degree from a regionally accredited college or university with a degree in an education, health or human services field or a diploma in nursing current registered nurse license in good standing in Virginia; or and~~

2. Documentation of 2,000 hours of ~~training or supervised~~ experience in performing those services that will be offered to a workers' compensation claimant under § 65.2-603 of the Code of Virginia. Experience may be acquired through supervised training or experience or both. A supervised internship in rehabilitation services may count toward part of the required 2,000 hours. Any individual who does not meet the experience requirement for certification must practice under the supervision of an individual who meets the requirements of 18 VAC 115-40-27. Individuals shall not practice in an internship or supervisee capacity for more than 5 years.

B. A passing score on a board-approved examination shall be required.

C. The board may grant certification without examination to applicants certified as rehabilitation providers in other states or by nationally recognized certifying agencies, boards, associations and commissions by standards substantially equivalent to those set forth in the board's current regulation.

18 VAC 115-40-25. Application process.

The applicant shall submit to the executive director of the board at least 90 days prior to the date of the written examination:

1. A completed application form;
2. ~~Documentation of one of the following:~~ a. Official transcript or transcripts in the original sealed envelope submitted from the appropriate institutions of higher education directly to the applicant;
3. ~~b. Employment verification form or forms signed by the employer or his authorized representative or by a licensed health care practitioner who has direct knowledge of the applicant's work in provision of rehabilitation services, or~~ Documentation, on the appropriate forms, of the successful completion of the supervised experience requirements of 18 VAC 115-40-26. Documentation of supervision obtained outside of Virginia must include verification of the supervisor's out-of-state license or certificate; and
- ~~c. Certificates or official documentation of training in the area in which services will be provided to workers' compensation claimants; and~~
- ~~3-~~ 4. Documentation of the applicant's national or out-of-state license or certificate in good standing where applicable.

18 VAC 115-40-26. Supervised experience requirements.

The supervised experience shall meet the following requirements:

1. On average, the supervisor and the supervisee shall consult for two hours per week in group or personal instruction. The total hours of personal instruction shall not be less than 100 hours within the 2,000 hours of experience. Group instruction shall not exceed 6 members in a group.
2. Half of the personal instruction contained in the total supervised experience shall be face-to-face between the supervisor and supervisee. A portion of the face-to-face instruction shall include direct observation of the supervisee-rehabilitation client interaction.

18 VAC 115-40-27. Supervisor requirements.

A. A supervisor shall:

1. Be a licensed professional counselor, licensed psychologist, licensed clinical social worker, licensed marriage and family therapist, licensed substance abuse treatment practitioner, licensed physician or licensed registered nurse; with a minimum of one year experience in rehabilitation service provision; or
2. Be a rehabilitation provider certified by the board who has national certification in rehabilitation service provision as outlined in subsection C of 18 VAC 115-40-22; or

3. Have two years experience as a board certified rehabilitation provider.

B. The supervisor shall assume responsibility for the professional activities of the supervisee.

C. At the time of application for certification by examination, the supervisor shall document for the board: (i) credentials to provide supervision in accordance with this section; (ii) the applicant's total hours of supervision; (iii) length of work experience; (iv) competence in rehabilitation service provision and (v) any needs for additional supervision or training.

D. Supervision by any individual whose relationship to the supervisee compromises the objectivity of the supervisor is prohibited. This includes but is not limited to immediate family members (spouses, parents, siblings, children and in-laws).

18 VAC 115-40-40. Standards of practice.

A. The protection of the public health, safety and welfare, and the best interest of the public shall be the primary guide in determining the appropriate professional conduct of all persons whose activities are regulated by the board.

B. Each person certified by the board shall:

1. Provide services in a manner that is in the best interest of the public and does not endanger the public health, safety, or welfare.
2. Provide services only within the competency areas for which one is qualified by training or experience.
3. Not provide services under a false or assumed name, or impersonate another practitioner of a like, similar or different name.
4. ~~Not represent oneself as "board certified" without specifying the complete name of the specialty board. (Repealed.)~~
5. Be aware of the areas of competence of related professions and make full use of professional, technical and administrative resources to secure for rehabilitation clients the most appropriate services.
6. Not commit any act which is a felony under the laws of this Commonwealth, other states, the District of Columbia or the United States, or any act which is a misdemeanor under such laws and involves moral turpitude.
7. Stay abreast of new developments, concepts and practices which are important to providing appropriate services.
8. State a rationale in the form of an identified objective or purpose for the provision of services to be rendered to the rehabilitation client.
9. Not engage in offering services to a rehabilitation client who is receiving services from another rehabilitation provider without attempting to inform such

Emergency Regulations

other providers in order to avoid confusion and conflict for the rehabilitation client.

10. Represent accurately one's competence, education, training and experience.

11. Refrain from undertaking any activity in which one's personal problems are likely to lead to inadequate or harmful services.

12. Not engage in improper direct solicitation of rehabilitation clients and announce services fairly and accurately in a manner which will aid the public in forming their own informed judgments, opinions and choices and which avoids fraud and misrepresentation through sensationalism, exaggeration or superficiality.

13. Recognize conflicts of interest and inform all parties of the nature and directions of loyalties and responsibilities involved.

14. Report to the board known or suspected violations of the laws and regulations governing the practice of rehabilitation providers.

15. Report to the board any unethical or incompetent practices by other rehabilitation providers that jeopardize public safety or cause a risk of harm to rehabilitation clients.

16. Provide rehabilitation clients with accurate information of what to expect in the way of tests, evaluations, billing, rehabilitation plans and schedules before rendering services.

17. Provide services and submission of reports in a timely fashion and ensure that services and reports respond to the purpose of the referral and include recommendations, if appropriate. All reports shall reflect an objective, independent opinion based on factual determinations within the provider's area of expertise and discipline. The reports of services and findings shall be distributed to appropriate parties and shall comply with all applicable legal regulations.

18. Specify, for the referral source and the rehabilitation client, at the time of initial referral, what services are to be provided and what practices are to be conducted. This shall include the identification, as well as the clarification, of services that are available by that member.

19. ~~When considering personal or confidential information, the provider must assure~~ *Assure* that the rehabilitation client is aware, from the outset, if the delivery of service is being observed by a third party. Professional files, reports and records shall be maintained ~~under conditions of security and provisions will be made for their destruction when appropriate for three years beyond the termination of services.~~

20. Never engage in nonprofessional relationships with rehabilitation clients, that compromise the rehabilitation client's well-being, impair the rehabilitation providers

objectivity and judgment or increase the risk of rehabilitation client exploitation.

21. Never engage in sexual intimacy with rehabilitation clients or former rehabilitation clients, as such intimacy is unethical and prohibited.

18 VAC 115-40-50. Grounds for revocation, suspension, probation, reprimand, censure, denial of renewal of license, certificate or registration; petition for rehearing.

Action by the board to revoke, suspend, decline to issue or *renew* a certificate, place such a certificate on probation or censure, reprimand or fine a certified rehabilitation provider may be taken in accord with the following:

1. Procuring a license, certificate or registration by fraud or misrepresentation.

2. Violation of or aid to another in violating ~~any provision of any regulation or statute applicable to the provision of rehabilitation services, or any part or portion of this chapter.~~

3. The denial, revocation, suspension or restriction of a *registration*, license or certificate to practice in another state, or a United States possession or territory or the surrender of any such *registration*, license or certificate while an active administrative investigation is pending.

4. Conviction of a felony or *of a misdemeanor* involving moral turpitude.

5. Providing rehabilitation services without reasonable skill and safety to clients by virtue of physical or emotional illness or substance abuse.

/s/ John W. Hasty, Director
Department of Health Professions
Date: September 2, 1997

/s/ Robert C. Metcalf
Secretary of Health and Human Resources
Date: September 11, 1997

/s/ George Allen
Governor
Date: September 15, 1997

FORMS

NOTICE: The forms used in administering 18 VAC 115-40-10 et seq., Regulations Governing the Certification of Rehabilitation Providers, are listed below. Any amended or added forms are reflected in the listing and are published following the listing.

Application for Certification as a Rehabilitation Provider, 4/97.

Verification of Experience for Rehabilitation Provider Certification, 10/97.

Rehabilitation Provider Verification of Licensure/Certification, 4/97.

Training in Rehabilitation Services, 10/97.

	<p align="center">COMMONWEALTH OF VIRGINIA</p> <p align="center">BOARD OF PROFESSIONAL COUNSELORS AND MARRIAGE AND FAMILY THERAPISTS</p> <p align="center">Department of Health Professions 6606 West Broad Street, 4th Floor Richmond, Virginia 23230-1717</p>
--	---

APPLICATION FOR CERTIFICATION AS A REHABILITATION PROVIDER

I hereby make application for certification by ___ examination ___ endorsement (refer to 18 VAC 115-40-22 of the regulations) to practice as a **Rehabilitation Provider** in the Commonwealth of Virginia. The following evidence of my qualifications is submitted with a **check or money order** in the amount of \$100.00 made payable to the Treasurer of Virginia. **The application fee is non-refundable.**

PLEASE TYPE OR PRINT			
I. GENERAL INFORMATION. Applications lacking a Social Security or Virginia Department of Motor Vehicles Number will not be processed. This number will be used for identification and will not be disclosed for other purposes except as provided for by law.			
Name (Last, First, M.I., Suffix, Maiden Name)		Social Security Number or Virginia DMV number	Date of Birth
Mailing Address (Street and/or Box Number, City, State, ZIP Code)			Home Telephone Number
Business Name and Address (if different from above)			Business Telephone Number
II. EDUCATION. Indicate one of the following: (a) The name and location of the college or university where a baccalaureate degree was awarded or (b) Current Virginia RN license number. Applicants documenting a baccalaureate degree must submit with this application official transcripts in the original envelopes sealed and signed by the Registrar of the college or university.			
Educational Institution:		Virginia RN license #:	
Date Degree Conferred:			
III. LICENSURE/CERTIFICATION - List all the states or institutions from which you now hold or have ever held a license or certificate as a provider of rehabilitation services in order of attainment. Include Form 3 with your application.			
STATE	LICENSE/CERTIFICATE NUMBER	ISSUE DATE	TYPE OF LICENSE/CERTIFICATE

Emergency Regulations

FORM 1

IV. ANSWER THE FOLLOWING QUESTIONS:

- | | YES | NO |
|--|-----|-----|
| 1. Have you ever been denied the privilege of taking an occupational licensure or certification examination? If yes, state what type of occupational examination and where: | [] | [] |
| _____ | | |
| _____ | | |
| 2. Have you ever had any disciplinary action taken against an occupational license, registration or certification to practice or are any such actions pending? If yes, explain in detail. | [] | [] |
| _____ | | |
| _____ | | |
| 3. Have you ever been convicted of a violation of or pled nolo contendere to any federal, state, or local statute, regulation or ordinance or entered into any plea bargaining relating to a felony or misdemeanor? (Excluding traffic violations, except for driving under the influence.) If yes, explain in detail: | [] | [] |
| _____ | | |
| _____ | | |
| 4. Have you ever been terminated or asked to withdraw from any health care facility, agency, or practice? If yes, please explain. | [] | [] |
| _____ | | |
| _____ | | |

V. The following statement must be executed by a Notary Public. This form is not valid unless properly notarized.

AFFIDAVIT
(To be completed before a notary public)

State of _____ County/City
of _____

Name _____, being duly sworn, says that he/she is the person who is referred to in the foregoing application for certification to practice as a rehabilitation provider in the Commonwealth of Virginia; that the statements herein contained are true in every respect, that he/she has complied with all requirements of the law; and that he/she has read and understands this affidavit.

Signature of Applicant

Subscribed to and sworn to before me this _____ day of _____, 19_____.

My commission expires on _____

Signature of Notary Public

SEAL

rev. 4/97

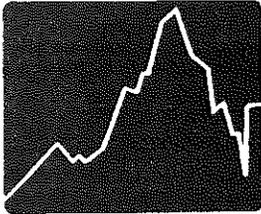
	<p>COMMONWEALTH OF VIRGINIA</p> <p>BOARD OF LICENSED PROFESSIONAL COUNSELORS, MARRIAGE AND FAMILY THERAPISTS AND SUBSTANCE ABUSE PROFESSIONALS</p> <p>Department of Health Professions 6606 West Broad Street, 4th Floor Richmond, Virginia 23230-1717</p>
--	--

VERIFICATION OF EXPERIENCE FOR REHABILITATION PROVIDER CERTIFICATION

This form is to be filled out by the supervisor when supervision is completed.
Submit one form for each supervisor verifying experience.

I. APPLICANT INFORMATION (To be completed by applicant)				
Applicant's Name: _____		Social Security or DMV Control Number: _____		
II. SUPERVISOR INFORMATION				
Name: _____		Social Security or Virginia DMV Control Number _____		
Business Address: _____		Telephone _____		
Number of years experience in provision of rehabilitation services: _____				
License/Certificate Title (Submit Form A-5 if out-of-state)	Number	Issuing State or Agency	Initial Date of Licensure/Certification	Expiration Date
III. TYPE OF EXPERIENCE APPLICANT RECEIVED UNDER YOUR SUPERVISION				
____ Internship (Applicant must submit an official transcript documenting completion of the internship)				
____ In-Service Training (Applicant must submit Form 4 to document training hours)				
____ On-the-Job Experience				

FORM 3



COMMONWEALTH OF VIRGINIA
BOARD OF PROFESSIONAL COUNSELORS
AND
MARRIAGE AND FAMILY THERAPISTS

Department of Health Professions
6606 West Broad Street, 4th Floor
Richmond, Virginia 23230-1717

REHABILITATION PROVIDER
VERIFICATION OF LICENSURE/CERTIFICATION

I. TO BE COMPLETED BY VIRGINIA APPLICANT

Name: _____ License/Certificate Number: _____

Address: _____

II. TO BE COMPLETED BY STATE BOARD OR PROFESSIONAL ASSOCIATION

Please complete this form and return it directly to the applicant. Thank you.

Title of License/Certificate: _____ License/Certificate Number: _____

Issue Date: _____ Expiration Date: _____

By Examination _____ By Endorsement _____ By Waiver _____ By Reciprocity _____

Date of Examination: _____ Type of Written Examination: _____

Cut-Off Score _____ Applicant's Score _____

Has the license/certificate ever been surrendered, suspended, or revoked? [] Yes [] No

If yes, please give full particulars on the reverse side of this form.

Certification by the authorized Official of the State Board/Association of _____

State of _____

I certify that the information is correct

Authorized Official

SEAL

Date

rev. 4/97

TITLE 22. SOCIAL SERVICES

BOARD OF SOCIAL SERVICES

Title of Regulation: 22 VAC 40-35-5 et seq. Virginia Independence Program (amending 22 VAC 40-35-10; adding 22 VAC 40-35-125).

Statutory Authority: §§ 63.1-25 and 63.1-25.3 of the Code of Virginia.

Effective Dates: September 30, 1997, through September 29, 1998.

Statement of Need:

This emergency regulation is required because § 63.1-25.3 requires the Virginia Targeted Jobs Grant Program to take effect no later than 280 days from its enactment. The Virginia Targeted Jobs Grant Program will pay a grant to qualifying employers who hire Virginia Initiative for Employment not Welfare (VIEW) participants who have been recipients of Temporary Assistance to Needy Families (TANF) for at least nine months.

22 VAC 40-35-10. Definitions.

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

"Actively seeking employment" means satisfactorily participating in any assigned job-seeking activity while in the program.

"Adult portion" means the AFDC amount paid on behalf of the parent or other caretaker-relative with whom the AFDC child resides, including a minor parent. This amount is the difference in the standard of assistance for a family size which includes the adult and the standard of assistance for a family size of one less person.

"Aid to Families with Dependent Children Program" or "AFDC" means the program authorized in § 406 of the Social Security Act (42 USC § 606) and administered by the Virginia Department of Social Services, through which a relative can receive monthly cash assistance for the support of his eligible children.

"AFDC-Foster Care" means a federal program authorized under § 472 of the Social Security Act (42 USC § 672) and administered by the Virginia Department of Social Services, which provides financial assistance on behalf of qualifying children.

"Aid to Families with Dependent Children-Unemployed Parent" or "AFDC-UP" means the program authorized in § 407 of the Social Security Act (42 USC § 607) and administered by the Virginia Department of Social Services, which provides aid to families with dependent children who are deprived of parental support or care by reason of the unemployment of the parent who is the principal wage earner.

"Agreement" means the written individualized Agreement of Personal Responsibility required by § 63.1-133.49 of the Code of Virginia.

"Allotment" means the monthly food stamp benefit given to a household.

"Applicant" means a person who has applied for AFDC or AFDC-UP benefits and the disposition of the application has not yet been determined.

"Assistance unit" means those persons who have been determined categorically and financially eligible to receive assistance.

"Caretaker-relative" means the natural or adoptive parent or other relative, as specified in 45 CFR 233.90(c)(1)(v), who is responsible for supervision and care of the needy child.

"Case management" means the process of assessing, coordinating, monitoring, delivering or brokering activities and services necessary for VIEW participants to enter employment or employment-related activities as quickly as possible.

"Case management services" means services which include, but are not limited to, job development and job placement, community work experience, education, skills training, and support services.

"Case manager" means the worker designated by the local department of social services, a private-sector contractor or a private community-based organization including nonprofit entities, churches, or voluntary organizations that provide case management services.

"Child day care" means those services for which a participant is eligible pursuant to child day care services policy.

"Child day care services/program" means a regularly operating service arrangement for children where, during the absence of a parent or guardian, a person or organization has agreed to assume responsibility for the supervision, protection, and well-being of children under the age of 13 (or children up to 18 years of age if they are physically or mentally incapable of caring for themselves or subject to court supervision) for less than a 24-hour period.

"Community work experience" means work for benefits in a public or private organization that serves a community/public function.

"Division of Child Support Enforcement" or "DCSE" means that division of the Virginia Department of Social Services which is responsible under Title IV-D of the Social Security Act (42 USC §§ 651-669) to locate noncustodial parents, establish paternity, establish child support and health care orders, enforce payment of delinquent support, and collect and distribute support payments.

"Department" means the Virginia Department of Social Services.

Emergency Regulations

"Diversionary cash assistance" means a one-time lump sum payment to an individual or third-party vendor to prevent long-term receipt of AFDC.

"Family" means an AFDC assistance unit.

"Food Stamp Program" means the program administered through the Virginia Department of Social Services through which a household can receive food stamps with which to purchase food products.

"Full Employment Program" or "FEP" means subsidized, training-oriented, employment which replaces the AFDC and food stamp benefits of a participant. This component of VIEW is designed to train the recipient for a specific job, increase his self-sufficiency and improve his competitiveness in the labor market.

"Full-time unsubsidized employment" means employment which is considered by the employer to be full time, but in no case less than 30 hours per week, and for which no JOBS, VIEW, AFDC, or food stamp funds are used to pay the individual's salary.

"Grant" means the monthly AFDC benefit payment.

"Hardship exceptions" means prescribed reasons which, if applicable, would allow an extension of receipt of AFDC benefits.

"He" means a male or female as applicable.

"Hiring authority" means an individual with the authority to hire employees for a business.

"In loco parentis" means an adult relative or other adult who is acting in place of a parent.

"Incapacitated" means a medically verified condition which renders an individual unable to work.

"Job Opportunities and Basic Skills Training Program (JOBS)" means the program authorized by Title IV-F of the Social Security Act (42 USC §§ 681-687). This program provides education, training and work experience to enhance employment opportunities for AFDC recipients who are not exempt from participation.

"Job finding" means identification of available jobs.

"Job matching" means matching a participant's minimum skills or prior work experience to available job openings.

"Job placement" means placing a participant in an unsubsidized or subsidized job. Job placement is the result of job finding and job matching.

"Job search" means a structured, time-limited period in which the participant is required to search for employment. To complete the job search, the participant must search and apply for a set number of jobs.

"Job skills training" means training in technical job skills or required knowledge in a specific occupational area in the labor market.

"Local agency" or "local department" means any one of the local social services or welfare agencies throughout the Commonwealth which administers the VIP program.

"Minor parent" means any parent under 18 years of age.

"On-the-job training" means training which is provided by an employer during routine performance of a job.

"Parent" means a mother or father, married or unmarried, natural, or adoptive following entry of an interlocutory order. The parent may be a minor parent.

"Participant" means an AFDC or AFDC-UP recipient who is participating in the VIEW program.

"Participating family" means an assistance unit including a parent who participates in the Virginia Initiative for Employment Not Welfare (VIEW) Program.

"Part-time unsubsidized employment" means employment of at least eight hours but less than 30 hours per week and for which no JOBS, VIEW, AFDC, or food stamp funds are used to pay the individual's salary.

"Post-secondary education" means formal instruction at an institution of higher education or vocational school leading to the attainment of a certificate, an associate degree, or a baccalaureate degree.

"Qualified employer" means an employer who may participate in the Targeted Jobs Grant Program by virtue of meeting all of the program criteria for employers.

"Qualified participant" means a Virginia Initiative for Employment not Welfare participant who meets all of the program criteria and may be hired by a qualified employer.

"Recipient" means an individual who is presently receiving an AFDC assistance payment or whose eligibility exists even though the assistance payment is zero.

"Recipient family" means an assistance unit in which the caretaker-relative is a parent of the eligible child and the parent's needs may or may not be included on the grant.

"Sanction" means to reduce or suspend a participant's AFDC grant or food stamp allotment or both, where applicable, for noncompliance with these regulations or the statute.

"School" means (i) any public school from kindergarten through grade 12 operated under the authority of any locality within this Commonwealth; or (ii) any private or parochial school that offers instruction at any level or grade from kindergarten through grade 12.

"Support services" means services such as child care or transportation provided to program participants to enable the participant to work or to receive training or education which are intended to lead to employment.

"Targeted Jobs Grant Program" means a program which pays a grant to employers who hire qualified participants in the Virginia Initiative for Employment not Welfare Program.

"Time limitations" means a specified period of time, under the statute, to receive AFDC.

"Transitional support services" means child care, transportation or medical assistance provided to working participants whose AFDC has been terminated either voluntarily although still eligible for AFDC or involuntarily due to time limitations.

"Truant" means a child who fails to report to school for three consecutive school days, or for a total of five scheduled school days per month or an aggregate of seven scheduled school days per school calendar quarter, whichever occurs sooner, and no indication has been received by school personnel that the child's parent or guardian is aware of the child's absence, and a reasonable effort by school personnel to notify the parent or guardian has failed; or (ii) is not enrolled in school at any time during the month.

"Underemployed" means working at a job for less than the federal hourly minimum wage.

"Unsubsidized employment" means employment in which no government funds are used to subsidize directly the wages earned by a participant.

"Virginia Initiative for Employment not Welfare" or "VIEW" means the Job Opportunities and Basic Skills Training Program as implemented in the Commonwealth.

"Virginia Independence Program" or "VIP" means the program in the Commonwealth of Virginia which is made up of the AFDC Program and the Virginia Initiative for Employment Not Welfare.

"Work activity" means participation in unsubsidized employment, FEP, part-time work, community work experience, or on-the-job training.

22 VAC 40-35-125. The Targeted Jobs Grant Program.

A. In order to enhance the employment opportunities of participants, the VIEW Program shall administer a grant program called the Targeted Jobs Grant Program (TAG).

1. The Targeted Jobs Grant Program shall pay a grant of \$1,000 to participating qualified employers.
2. Participating employers shall sign an agreement with the Virginia Department of Social Services which will outline the program requirements for both the employer and the state.

B. The participant must have been in the VIEW program for at least nine months prior to hiring.

1. The participant must be unemployed or underemployed at the time he is hired by the employer.
2. The participant shall not be a relative of the hiring authority.

C. In order to make application for the Targeted Grant Program grant, a participating employer shall complete the application form supplied by the State Department of Social Services. The application form shall be submitted to the

Department of Social Services with verification of the participant's employment for the period in question.

/s/ Clarence H. Carter, Commissioner
Department of Social Services
Date: July 16, 1997

/s/ Robert C. Metcalf
Secretary of Health and Human Resources
Date: September 4, 1997

/s/ George Allen
Governor
Date: September 15, 1997

VA.R. Doc. No. R98-56; Filed September 30, 1997. 2 26 p m

◆

SCHEDULES FOR COMPREHENSIVE REVIEW OF REGULATIONS

Governor George Allen issued and made effective Executive Order Number Fifteen (94) on June 21, 1994. This Executive Order was published in *The Virginia Register of Regulations* on July 11, 1994 (10:21 VA.R. 5457-5461 July 11, 1994). The Executive Order directs state agencies to conduct a comprehensive review of all existing regulations to be completed by January 1, 1997, and requires a schedule for the review of regulations to be developed by the agency and published in *The Virginia Register of Regulations*. This section of the *Virginia Register* has been reserved for the publication of agencies' review schedules. Agencies will receive public comment on the following regulations listed for review.

DEPARTMENT OF SOCIAL SERVICES

Pursuant to Executive Order Number Fifteen (94), the Department of Social Services is currently reviewing the below listed regulations to determine if they should be terminated, amended, or retained in their current form. The review will be guided by the principles listed in Executive Order Number Fifteen (94) and in the department's Plan for Review of Existing Agency Regulations.

The department seeks public comment regarding the regulations' interference in private enterprise and life, essential need of the regulations, less burdensome and intrusive alternatives to the regulations, specific and measurable goals that the regulations are intended to achieve, and whether the regulations are clearly written and easily understandable.

REGULATIONS

22 VAC 15-60-10 et seq., Standards and Regulations for Licensed Child Day Center Systems.

22 VAC 40-92-10 et seq., Standards and Regulations for Licensed Child Day Center Systems.

Written comments may be submitted until November 26, 1997, to Kathryn Thomas, Program Development Supervisor, Division of Licensing Programs, Department of Social Services, 730 E. Broad Street, Richmond, VA 23219-1849, telephone (804) 692-1793 or FAX (804) 692-2370.

GENERAL NOTICES/ERRATA

STATE WATER CONTROL BOARD

Proposed Consent Special Order

Allen Elliott t/a Clarksville Exxon

The State Water Control Board proposes to issue a Consent Special Order to Allen Elliott t/a Clarksville Exxon, located in Clarksville, Virginia. The proposed order requires Allen Elliott to update his tank registration, submit a Site Characterization Report, and pay a civil charge in settlement of alleged violations of the State Water Control Law.

On behalf of the State Water Control Board, the Department of Environmental Quality will receive written comments relating to the proposed order for 30 days from the date of publication of this notice. Comments should be addressed to Cathie P. Franco, 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

Augusta County Service Authority and City of Staunton

The State Water Control Board proposes to enter into a Consent Special Order with the Augusta County Service Authority and the City of Staunton. The parties have agreed to the terms of a Consent Special Order to resolve violations of the State Water Control Law and regulations at the Middle River regional sewage treatment plant. The sewage treatment plant has experienced violations resulting in a loss of solids to the Middle River. Interim steps have corrected the solids problem temporarily, and a contracting firm has been retained to upgrade the plant to handle actual flows. The proposed Consent Special Order settles the outstanding Notices of Violation and reflects corrective action taken to abate the violations. It also defers further toxicity testing until the upgrade is complete and provides a schedule for submittal of O & M Manual revisions.

The board will receive written comments relating to the proposed Consent Special Order for 30 days from the date of publication of this notice. Comments should be addressed to Elizabeth V. Scott, Department of Environmental Quality, Post Office Box 1129, Harrisonburg, Virginia 22801 and should refer to the Consent Special Order.

The proposed order may be examined at the Department of Environmental Quality, Valley Regional Office, 4411 Early Road, Harrisonburg, Virginia 22801. A copy of the order may be obtained in person or by mail from this office.

Proposed Amended Consent Special Order

Boy Scouts of America-Capitol Area Council/Lake Merriweather

The State Water Control Board proposes to take an enforcement action against the Boy Scouts of America-Capitol Area Council (BSA). The BSA owns and operates the Goshen Scout Camps in Rockbridge County. The BSA was placed under a Consent Special Order in 1993 to address adverse environmental impacts caused by releases of heavy sedimentation from the Goshen Dam on Lake Merriweather into the Little Calfpasture River. The scouts have not completed corrective action required under the order and a 1996 benthic survey demonstrated that the releases from the dam were still causing a severe adverse impact to the river. The Consent Special Order amendment requires that Lake Merriweather be maintained at full pool; and requires the BSA to provide a spillway gate operation protocol. The BSA will also continue its efforts to secure a federal appropriation for design and construction of permanent dam improvements.

The board will receive written comments relating to the proposed Amended Consent Special Order for 30 days from the date of publication of this notice. Comments should be addressed to Elizabeth V. Scott, Department of Environmental Quality, Post Office Box 1129, Harrisonburg, Virginia 22801 and should refer to the Consent Special Order.

The proposed order may be examined at the Department of Environmental Quality, Valley Regional Office, 4411 Early Road, Harrisonburg, Virginia 22801. A copy of the order may be obtained in person or by mail from this office.

Proposed Consent Special Orders

Cardinal Concrete Company

The State Water Control Board (board) proposes to issue two Consent Special Orders (orders) to Cardinal Concrete Company (permittee) regarding the permittee's Lorton Plant located in Lorton, Virginia, and the Dulles Plant located in Loudoun County, Virginia.

The Lorton and Dulles Plants are ready-mixed concrete dischargers and are subject to VPDES Permit No. VA0086894 and VA0086924, respectively. Each order defers processing of the plant's VPDES permit application until a General Permit for ready-mixed concrete dischargers, for which regulations are now being promulgated, becomes available. Also, each order requires that the permittee register for a General Permit for the plant within 30 days of availability and comply with the order's appended Schedule of Compliance, which is the plant's existing VPDES permit, until the board issues a General Permit or individual permit for the plant.

General Notices/Errata

On behalf of the board, the Department of Environmental Quality's Northern Virginia Regional Office will receive written comments relating to each of the orders through November 26, 1997. Please address comments to Elizabeth Anne Crosier, Northern Virginia Regional Office, Department of Environmental Quality, 13901 Crown Court, Woodbridge, Virginia 22193. Please write or visit the Woodbridge address or call (703) 583-3886 in order to examine or to obtain a copy of either of the orders.

Proposed Amended Consent Special Order

Donald DeWitt and Shenandoah Mobile Home Court, Inc.

The State Water Control Board proposes to take an enforcement action against Donald DeWitt and Shenandoah Mobile Home Court, Inc. The parties have agreed to the terms of an Amended Consent Special Order to resolve violations of the State Water Control Law and regulations at the mobile home court's sewage treatment plant. Donald DeWitt and the mobile home court are subject to a 1992 Consent Special Order which requires connection to the Frederick County sewer system and closure of the existing sewage treatment lagoon. The connection was complete in August 1996, but the facility was unable to carry out the approved lagoon closure plan due to wet weather. The proposed Amended Consent Special Order provides a new lagoon closure plan and schedule.

The board will receive written comments relating to the proposed Consent Special Order for 30 days from the date of publication of this notice. Comments should be addressed to Elizabeth V. Scott, Department of Environmental Quality, Post Office Box 1129, Harrisonburg, Virginia 22801 and should refer to the Consent Special Order.

The proposed order may be examined at the Department of Environmental Quality, Valley Regional Office, 4411 Early Road, Harrisonburg, Virginia 22801. A copy of the order may be obtained in person or by mail from this office.

Proposed Consent Special Order

Dubrook Concrete, Inc.

The State Water Control Board (board) proposes to issue a Consent Special Order (order) to Dubrook Concrete, Inc., (permittee) regarding the permittee's Chantilly Plant located in Loudoun County, Virginia.

The Chantilly Plant is a ready-mixed concrete discharger and is subject to VPDES Permit No. VA0073865. The order defers processing of the plant's VPDES permit application until a General Permit for ready-mixed concrete dischargers, for which regulations are now being promulgated, becomes available. Also, the order requires that the permittee register for a General Permit for the Chantilly Plant or an individual

permit within 30 days of availability of the General Permit and comply with the order's appended Schedule of Compliance, which is the Chantilly Plant's existing VPDES permit, until the board issues a General Permit or individual permit for the Chantilly Plant.

On behalf of the board, the Department of Environmental Quality's Northern Virginia Regional Office will receive written comments relating to the order through November 26, 1997. Please address comments to Elizabeth Anne Crosier, Northern Virginia Regional Office, Department of Environmental Quality, 13901 Crown Court, Woodbridge, Virginia 22193. Please write or visit the Woodbridge address or call (703) 583-3886 in order to examine or to obtain a copy of the order.

Proposed Consent Special Order

Chip Edwards and Associates, Inc.

The State Water Control Board proposes to issue a Consent Special Order to Chip Edwards and Associates, Inc., located in Richmond, Virginia. The proposed order requires Chip Edwards and Associates, Inc., to pay a civil charge in settlement of alleged violations of the State Water Control Law.

On behalf of the State Water Control Board, the Department of Environmental Quality will receive written comments relating to the proposed order for 30 days from the date of publication of this notice. Comments should be addressed to Cathie P. Franco, 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

King George County Board of Supervisors Elementary and High School Sewage Treatment Plant

The State Water Control Board (board) proposes to issue a Consent Special Order (order) to King George County Board of Supervisors (permittee) regarding the King George County Elementary School and High School Sewage Treatment Plant (lagoon) located in King George County, Virginia.

The lagoon is subject to VPDES Permit No. VA0027570. The order provides, among other things, that the permittee connect the contributing facilities to the Purkins Corner WWTP and eliminate discharges from the lagoon, submit the lagoon closure plan for review and approval, and submit a plan and schedule for stabilizing the lagoon's berm and for providing adequate treatment. The permittee has agreed to the issuance of the order.

On behalf of the board, the Department of Environmental Quality's Northern Virginia Regional Office will receive written

comments relating to the order through November 26, 1997. Please address comments to Elizabeth Anne Crosier, Northern Virginia Regional Office, Department of Environmental Quality, 13901 Crown Court, Woodbridge, Virginia 22193. Please write or visit the Woodbridge address or call (703) 583-3886 in order to examine or to obtain a copy of the order.

Proposed Amended Consent Special Order

City of Lexington

The State Water Control Board proposes to take an enforcement action against the City of Lexington. Lexington is subject to a 1991 Consent Special Order requiring construction of a new regional wastewater treatment plant with the Maury River Sewer Authority. The proposed amended Consent Special Order extends the date for compliance with final ammonia limits until construction is complete and the new facility is on line. The proposed amended Consent Special Order also requires some interim corrective actions to address recent BOD and TSS violations caused by a toxic material in the plant's influent. Lexington will be required to continue its efforts to identify the source of the toxicity and to prevent recurrence of the interference with the sewage treatment plant.

The board will receive written comments relating to the proposed Amended Consent Special Order for 30 days from the date of publication of this notice. Comments should be addressed to Elizabeth V. Scott, Department of Environmental Quality, Post Office Box 1129, Harrisonburg, Virginia 22801 and should refer to the Consent Special Order.

The proposed order may be examined at the Department of Environmental Quality, Valley Regional Office, 4411 Early Road, Harrisonburg, Virginia 22801. A copy of the order may be obtained in person or by mail from this office.

Proposed Consent Special Order

Miller Fuel Company, Inc.

The State Water Control Board proposes to take an enforcement action against Miller Fuel Company, Inc. The company has agreed to the terms of a Consent Special Order to resolve a violation of the State Water Control Law and regulations at its facility in Harrisonburg, Virginia, following a release of fuel oil to Black's Run. The company cooperated fully in the containment and cleanup of the spill. Miller Fuel Company has voluntarily agreed, without admitting liability, to pay a stated sum to the Department of Environmental Quality in settlement of the violation and has agreed to construct containment around an unregulated above-ground storage tank on the site as a supplemental environmental project.

The board will receive written comments relating to the proposed Consent Special Order for 30 days from the date of publication of this notice. Comments should be addressed to Elizabeth V. Scott, Department of Environmental Quality, Post Office Box 1129, Harrisonburg, Virginia 22801 and should refer to the Consent Special Order.

The proposed order may be examined at the Department of Environmental Quality, Valley Regional Office, 4411 Early Road, Harrisonburg, Virginia 22801. A copy of the order may be obtained in person or by mail from this office.

Proposed Consent Special Order

Nelson County School Board

The State Water Control Board proposes to take an enforcement action against the Nelson County School Board. The school board has agreed to the terms of a Consent Special Order to resolve violations and prevent future violations of the State Water Control Law and regulations at the Nelson County High School sewage treatment plant. The school has experienced minor permit violations and is facing a VPDES permit requirement to upgrade to meet ammonia limits by October 1997. The Nelson County Service Authority will be extending a sewer line to serve the high school within two years. The proposed Consent Special Order defers the permit's upgrade requirement, requires the school board to hook to county sewer and close the existing facility, and mandates that the school board meet all other permit requirements until connection is complete.

The board will receive written comments relating to the proposed Consent Special Order for 30 days from the date of publication of this notice. Comments should be addressed to Elizabeth V. Scott, Department of Environmental Quality, Post Office Box 1129, Harrisonburg, Virginia 22801 and should refer to the Consent Special Order.

The proposed order may be examined at the Department of Environmental Quality, Valley Regional Office, 4411 Early Road, Harrisonburg, Virginia 22801. A copy of the order may be obtained in person or by mail from this office.

Proposed Consent Special Order

Ogden Aviation Fueling Company of Virginia

The State Water Control Board (board) proposes to issue a Consent Special Order (order) to Ogden Aviation Fueling Company of Virginia regarding discharge of jet fuel from a storage tank located at the facility on or about October 11, 1996, in Chantilly, Virginia.

The order provides, among other things, that they repair and replace visual gauges on storage tanks, update and incorporate an operational/maintenance manual for storage tanks, and upgrade notification procedures to ensure compliance with applicable statutory and regulatory

General Notices/Errata

requirements. Ogden Aviation has agreed to the issuance of the order and to payment of a civil charge.

On behalf of the board, the Department of Environmental Quality's Northern Virginia Regional Office will receive written comments relating to the order through November 26, 1997. Please address comments to Douglas E. Washington, Northern Virginia Regional Office, Department of Environmental Quality, 13901 Crown Court, Woodbridge, Virginia 22193. Please write or visit the Woodbridge address or call (703) 583-3888 in order to examine or to obtain a copy of the order.

Proposed Special Order

John W. Scott d/b/a Lakewood Trailer Park

The State Water Control Board proposes to take an enforcement action against John W. Scott, doing business as the Lakewood Trailer Park. The owner has agreed to settle the matter of VPDES permit violations at the trailer park located at Route 729 near Route 360 in Scottsburg, Halifax County. Under the order, the owner agrees to make modifications at the trailer park's wastewater treatment plant to ensure compliance with its permit.

On behalf of the State Water Control Board, the Department of Environmental Quality will receive for 30 days from the date of publication of this notice written comments relating to the Special Order. Comments should be addressed to Amy Thatcher Clarke, Piedmont Regional Office, Department of Environmental Quality, 4949-A Cox Road, Glen Allen, Virginia 23060 and should refer to the Special Order.

The proposed order may be examined at the same address. A copy of the order may also be obtained in person or by mail from the Piedmont Regional Office.

Proposed Consent Special Orders

Virginia Concrete Company, Inc.

The State Water Control Board (board) proposes to issue six Consent Special Orders (orders) to Virginia Concrete Company, Inc., (permittee) regarding six of the permittee's Northern Virginia plants including: the Shirlington Plant located in Arlington; the Alexandria Plant located in Alexandria; the Chantilly Plant located in Loudoun County; the Woodbridge Plant located in Woodbridge; the Dulles Plant located in Loudoun County; and the Manassas Plant located in Manassas.

The aforementioned plants are ready-mixed concrete dischargers and are subject to VPDES Permit Nos. VA0058017; VA0075108; VA0087521; VA0076643; VA0075078; and VA0076848; respectively. Each order defers processing of the plant's VPDES permit application until a General Permit for ready-mixed concrete dischargers, for which regulations are now being promulgated, becomes

available. Also, each order requires that the permittee register for a General Permit for the plant within 30 days of availability and comply with the order's appended Schedule of Compliance, which is the plant's existing VPDES permit, until the board issues a General Permit or individual permit for the plant.

On behalf of the board, the Department of Environmental Quality's Northern Virginia Regional Office will receive written comments relating to each of the orders through November 26, 1997. Please address comments to Elizabeth Anne Crosier, Northern Virginia Regional Office, Department of Environmental Quality, 13901 Crown Court, Woodbridge, Virginia 22193. Please write or visit the Woodbridge address or call (703) 583-3886 in order to examine or to obtain a copy of any of the orders.

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 have been merged into the Proposed Regulations, Final Regulations, Emergency Regulations, or General Notices sections as appropriate. In addition, regulations 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

**TITLE 6. CRIMINAL JUSTICE AND
CORRECTIONS**

BOARD OF JUVENILE JUSTICE

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

Publication: 14:2 VA.R. 256-269 October 13, 1997.

Correction to Final Regulation:

Page 258, 6 VAC 35-140-30 A, line 2, change the
reference for Part II from "(6 VAC 35-140-60 et seq.)" to
"(6 VAC 35-140-50 et seq.)"

Page 261, 6 VAC 35-140-260 A, line 1, change
"November 12, 1997" to "January 1, 1998"

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 OF AGRICULTURE AND CONSUMER SERVICES

December 11, 1997 - 1:30 p.m. -- Public Hearing
State Capitol, Capitol Square, House Room 4, Richmond, Virginia.

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.

December 11, 1997 - 1:30 p.m. -- Public Hearing
State Capitol, Capitol Square, House Room 4, Richmond, Virginia.

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 Farmers' Market Board

† **November 18, 1997 - 1:15 p.m.** -- Open Meeting
Washington Building, 1100 Bank Street, 2nd Floor Board Room, Richmond, Virginia. ☒

A meeting to approve the minutes of the August 19 board meeting and to hear the board's financial statement. In addition, operational reports will be heard from representatives of the Eastern Shore of Virginia Farmers' Market and the Southwest Virginia Farmers' Market. A status report will be heard on the consideration of the Southeast Virginia Farmers' Market and the Northern Neck of Virginia Farmers' Market. Representatives of the operators of each of these potential markets will provide the board with organizational activity in preparation of market completion and opening anticipated for the spring of 1998. 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 Susan K. Simpson at least five days before the meeting date so that suitable arrangements can be made.

Contact: Susan K. Simpson, Special Programs Manager, Virginia Farmers' Market Board, Washington Bldg., 1100 Bank St., Room 1002, Richmond, VA 23219, telephone (804) 786-2112 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 Irish Potato Board

† **December 15, 1997 - 7 p.m.** -- Open Meeting
Eastern Shore Agricultural Research and Extension Center, Research Drive, Painter, Virginia. ☒

A meeting to discuss programs (promotion, research and education), the annual budget, and other business that may come before the board. The board will entertain public comment at the conclusion of all other business for a period not to exceed 30 minutes. Any person who needs any accommodations in order to participate at the meeting should contact J. William Mapp at least five days before the meeting date so that suitable arrangements can be made.

Contact: J. William Mapp, Program Director, Virginia Irish Potato Board, P.O. Box 26, Onley, VA 23418, telephone (757) 787-5867 or FAX (757) 787-1041.

Virginia Seed Potato Board

† **November 4, 1997 - 7:30 p.m.** -- Open Meeting
Eastern Shore Agricultural Research and Extension Center, Research Drive, Painter, Virginia. ☒

A meeting to review the 1997 seed season and to discuss other business that may come before the board. The board will entertain public comment at the conclusion of all other business for a period not to exceed 30 minutes. Any person who needs any accommodations in order to participate at the meeting should contact J. William Mapp at least five days before the meeting date so that suitable arrangements can be made.

Contact: J. William Mapp, Program Director, Virginia Seed Potato Board, P.O. Box 26, Onley, VA 23418, telephone (757) 787-5867 or FAX (757) 787-1041.

Calendar of Events

Virginia Soybean Board

† December 8, 1997 - 2:30 p.m. -- Open Meeting
Williamsburg Marriott, 50 Kingsmill Road, Williamsburg,
Virginia. ☎

A meeting to discuss checkoff revenues and the financial status resulting from sales of the 1997 soybean crop. Reports will be heard from the chairman, United Soybean Board representatives and from other committee representatives. 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 Phil Hickman at least five days before the meeting date so that suitable arrangements can be made.

Contact: Philip T. Hickman, Program Director, Virginia Soybean Board, 1100 Bank St., Suite 1005, Richmond, VA 23219, telephone (804) 371-6157 or FAX (804) 371-7786.

Virginia Sweet Potato Board

† December 3, 1997 - 6 p.m. -- Open Meeting
Little Italy Restaurant, 10227 Rogers Drive, Nassawadox,
Virginia. ☎

A meeting to discuss (i) programs regarding promotion, research and education, (ii) the annual budget, and (iii) other business that may come before the board. The board will entertain public comment at the conclusion of all other business for a period not to exceed 30 minutes. Any person who needs any accommodations in order to participate at the meeting should contact J. William Mapp at least five days before the meeting date so that suitable arrangements can be made.

Contact: J. William Mapp, Program Director, Virginia Sweet Potato Board, P.O. Box 26, Onley, VA 23418, telephone (757) 787-5867 or FAX (757) 787-1041.

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 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

Board for Architects

† November 10, 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 23230-4917, telephone (804) 367-8514 or (804) 367-9753/TDD ☎

Board for Land Surveyors

† November 19, 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 23230-4917, telephone (804) 367-8514 or (804) 367-9753/TDD ☎

Board for Professional Engineers

† **November 6, 1997 - 9 a.m.** -- Open Meeting
Department of Professional and Occupational Regulation,
3600 West Broad Street, Richmond, Virginia. ☎

A meeting to conduct board business. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact the board at least 10 days prior to the meeting so that suitable arrangements can be made. The board fully complies with the Americans with Disabilities Act.

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

COMPREHENSIVE SERVICES FOR AT RISK YOUTH AND THEIR FAMILIES

State Management Team

† **November 6, 1997 - 9 a.m.** -- Open Meeting
St. Joseph's Villa, 8000 Brook Road, Richmond, Virginia. ☎
(Interpreter for the deaf provided upon request)

A meeting to discuss recommendations for policy and procedure to the State Executive Council on the Comprehensive Services Act.

Contact: Elizabeth Hutton, Secretary, Department of Health, P.O. Box 2448, Richmond, VA 23218, telephone (804) 371-4099.

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 PUBLIC HEARING 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.

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 ☎

Calendar of Events

BOARD FOR BRANCH PILOTS

† **November 3, 1997 - 9:30 a.m.** -- Open Meeting
Virginia Port Authority, 600 World Trade Center, Norfolk,
Virginia. ☎

A meeting to conduct board business. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact the 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 23230-4917, telephone (804) 367-8514 or (804) 367-9753/TDD ☎

CHARITABLE GAMING COMMISSION

† **November 3, 1997 - 11 a.m.** -- Open Meeting
General Assembly Building, 910 Capitol Square, House
Room C, Richmond, Virginia. ☎

A regular meeting of the commission to discuss and approve final regulations.

Contact: Donna Pruden, Administrative Staff Assistant, Charitable Gaming Commission, Monroe Bldg., 101 N. 14th St., 17th Floor, Richmond, VA, telephone (804) 786-3014 or FAX (804) 786-1079.

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.

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.

DEPARTMENT OF CONSERVATION AND RECREATION

Chippokes Plantation Farm Foundation

† **November 5, 1997 - 10 a.m.** -- Open Meeting
Chippokes Plantation State Park, Chippokes Farm and Forestry Museum, Surry, Virginia. ☎ (Interpreter for the deaf provided upon request)

A general business meeting of the fund raising committee to continue work on the Visionary Plan.

Contact: Katherine R. Wright, Executive Secretary, Department of Conservation and Recreation, 203 Governor St., Richmond, VA 23219, telephone (804) 786-7950.

Board on Conservation and Development of Public Beaches

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.

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 OF CORRECTIONS

† November 19, 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, Department of Corrections, 6900 Atmore Dr., Richmond, VA 23225, telephone (804) 674-3235 or FAX (804) 674-3130.

Administration Committee

† November 19, 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, Department of Corrections, 6900 Atmore Dr., Richmond, VA 23225, telephone (804) 674-3235 or FAX (804) 674-3130.

Correctional Services Committee

† November 18, 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, Department 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

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 Officers.** The proposed amendments relate to approval authority for performance outcomes, hours, and categories of training by the Criminal Justice Services

Calendar of Events

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

† November 7, 1997 - 8:30 a.m. -- Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A panel will conduct formal hearings. This is a public meeting; however, no public comment will be taken.

Contact: Marcia J. Miller, Executive Director, Board of Dentistry, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9906 or (804) 662-7197/TDD

Special Conference Committee

† November 14, 1997 - 9 a.m. -- Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A meeting to hear disciplinary cases. This is a public meeting; however, no public comment will be taken.

Contact: Marcia J. Miller, Executive Director, Board of Dentistry, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9906 or (804) 662-7197/TDD

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.

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

† November 27, 1997 - 9 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 Product Development Committee to discuss strategic planning. The agenda is available upon request. 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 East 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.

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 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.

† **November 6, 1997 - 7 p.m.** -- Public Hearing
Bellwood Elementary School, 9536 Dawnshire Road, Richmond, Virginia.

A public hearing to receive comments on the proposed reissuance of a Resource Conservation and Recovery Act permit for the Defense Supply Center in Richmond.

Contact: Doug Brown, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4182.

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.

FAMILY AND CHILDREN'S TRUST FUND

† **November 21, 1997 - 10 a.m.** -- Open Meeting
† **December 19, 1997 - 10 a.m.** -- Open Meeting
Department of Social Services, 730 East Broad Street, Richmond, Virginia. ☎

A regular monthly meeting. Contact the Trust Fund for more information or for a copy of the agenda.

Calendar of Events

Contact: Margaret Ross Schultze, Executive Director, Family and Children's Trust Fund, 730 E. Broad St., Richmond, VA 23219, telephone (804) 692-1823.

VIRGINIA FIRE SERVICES BOARD

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

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

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

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 FUNERAL DIRECTORS AND EMBALMERS

† December 4, 1997 - 9 a.m. -- Open Meeting
Department of Health Professions, 6606 West Broad Street, 4th Floor, Richmond, Virginia ☎

A general board meeting. Public comment will be received during the first 15 minutes of the meeting. A formal hearing will follow the general board meeting.

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 ☎

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 ☎

Special Conference Committee

† December 3, 1997 - 9 a.m. -- Open Meeting
Department of Health Professions, 6606 West Broad Street, 4th Floor, Richmond, Virginia ☎

Informal conferences. No public comment will be received.

Contact: Elizabeth Young Tisdale, Executive Director, Board of Funeral Directors and Embalmers, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9907 or (804) 662-7197/TDD ☎

DEPARTMENT OF GENERAL SERVICES

Design-Build/Construction Management Review Board

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 ☎

BOARD FOR GEOLOGY

† **November 6, 1997 - 9 a.m.** -- Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia. ☎

A general business meeting. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact the department at least two weeks prior to the meeting so that suitable arrangements can be made. The department fully complies with the Americans with Disabilities Act.

Contact: William H. Ferguson, II, Board Administrator, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-2406, FAX (804) 367-2475, or (804) 367-9753/TDD ☎

STATE HAZARDOUS MATERIALS TRAINING ADVISORY COMMITTEE

† **November 12, 1997 - 10 a.m.** -- Open Meeting
Department of Emergency Services, 10501 Trade Court, Training Room, Richmond, Virginia. ☎

A meeting to discuss curriculum course development and to review existing hazardous materials courses. Individuals with a disability, as defined in the Americans with Disabilities Act, desiring to attend should contact the Department of Emergency Services at (804) 674-2489 10 days prior to the meeting so appropriate accommodations can be provided.

Contact: George B. Gotschalk, Jr., Department of Criminal Justice Services, 805 E. Broad St., Richmond, VA 23219, telephone (804) 786-8001.

STATE BOARD OF HEALTH

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.

Biosolids Use Information Committee

† **November 20, 1997 - Noon** -- Open Meeting
UVA Richmond Center, 7740 Shrader Road, Suite E, Richmond, Virginia. ☎

A meeting to evaluate specific concerns relating to the land application and agricultural use of biosolids, including issues related to the final amendments to the regulations entitled: **12 VAC 5-585-10 et seq., Biosolids Use Regulations** recently adopted by the State Board of Health to regulate the land application, marketing or distribution of biosolids.

Contact: C. M. Sawyer, Director, Division of Wastewater Engineering, Department of Health, Office of Water Programs, P.O. Box 2448, Richmond, VA 23218, telephone (804) 786-1755 or FAX (804) 371-2891.

Biosolids Use Regulations Advisory Committee

† **November 20, 1997 - 10 a.m.** -- Open Meeting
UVA Richmond Center, 7740 Shrader Road, Suite E, Richmond, Virginia. ☎

A meeting to discuss issues concerning the implementation of the final amendments to the regulations entitled: **12 VAC 5-585-10 et seq., Biosolids Use Regulations** involving land application, distribution or marketing of biosolids.

Contact: C. M. Sawyer, Director, Division of Wastewater Engineering, Department of Health, Office of Water

Calendar of Events

Programs, P.O. Box 2448, Richmond, VA 23218, telephone (804) 786-1755 or FAX (804) 371-2891.

STATE COUNCIL OF HIGHER EDUCATION FOR VIRGINIA

† **November 7, 1997 - 8 a.m.** -- Open Meeting
Virginia State University, Petersburg, Virginia.

† **December 12, 1997 - 8 a.m.** -- Open Meeting
James Monroe Building, 101 North 14th Street, 9th Floor, Richmond, Virginia. (Interpreter for the deaf provided upon request)

The Resources Committee will meet at 8 a.m.; the Planning Committee will meet at 11 a.m.; and the Outreach Committee will meet at 12 p.m. The full council will hold its regular meeting at 1 p.m.

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.

Executive Committee

November 25, 1997 - 1 p.m. -- Open Meeting
State Council of Higher Education, James Monroe Building, 101 North 14th Street, Richmond, Virginia. (Interpreter for the deaf provided upon request)

December 19, 1997 - 8:30 a.m. -- Open Meeting
Piedmont Virginia Community College, Board Room, Charlottesville, Virginia. (Interpreter for the deaf provided upon request)

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.

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.

GOVERNOR'S JOB TRAINING COORDINATING COUNCIL

† **November 6, 1997 - 10 a.m.** -- Open Meeting
Department of Social Services, Theater Row Building, 730 East Broad Street, Training Rooms 1 and 2, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A regular business meeting of the council to discuss workforce training.

Contact: Gail Nottingham, Policy Analyst, Governor's Employment and Training Department, 730 E. Broad St., 9th Floor, Richmond, VA 23219, telephone (804) 786-2511, FAX (804) 786-2310, or (804) 786-2315/TDD

STATE BOARD OF JUVENILE JUSTICE

November 12, 1997 - 1 p.m. -- Public Hearing
700 Centre, 700 East Franklin Street, Board Room, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A public hearing to provide opportunity for additional comment on regulations entitled: **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.

NOTE: CHANGE IN MEETING DATE

† **November 19, 1997 - 9 a.m.** -- Open Meeting
Department of Corrections Academy for Staff Development, Goochland County, Virginia. (Interpreter for the deaf provided upon request)

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 take action on regulations, and to consider certification and policy issues and other matters brought before it.

Contact: Donald R. Carignan, Regulatory Coordinator, Department of Juvenile Justice, 700 Center, 700 E. Franklin St., Richmond, VA 23218-1110, telephone (804) 371-0743 or FAX (804) 371-0773.

DEPARTMENT OF LABOR AND INDUSTRY

Migrant and Seasonal Farmworkers Board

† **December 3, 1997 - 10 a.m.** -- Open Meeting
State Capitol, Capitol Square, House Room 1, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A regular quarterly meeting of the board.

Contact: Patti C. Bell, Board Administrator, Department of Labor and Industry, Powers-Taylor Bldg., 13 S. 13th St., Richmond, VA 23219, telephone (804) 225-3083, FAX (804) 786-8418 or (804) 786-2376/TDD

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.

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.

Calendar of Events

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 ☎

MARINE RESOURCES COMMISSION

October 28, 1997 - 9:30 a.m. -- Open Meeting
† **November 25, 1997 - 9 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 ☎

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.

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

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.

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

† **November 20, 1997 - 8:30 a.m.** -- Open Meeting
† **November 21, 1997 - 8:30 a.m.** -- Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Richmond, Virginia.

A panel of the board will convene, pursuant to §§ 54.1-2400 and 9-6.14:12 of the Code of Virginia, to inquire into allegations that a practitioner may have violated laws governing the practice of medicine. The panel will meet in open and closed sessions pursuant to § 2.1-344 A 7 and A 15 of the Code of Virginia. Public comment will not be received.

Contact: Karen W. Perrine, Deputy Executive Director, Board of Medicine, 6606 W. Broad St., 4th Floor, Richmond,

VA 23230-1717, telephone (804) 662-7693, FAX (804) 662-9943 or (804) 662-7197/TDD

Informal Conference Committee

November 6, 1997 - 10:30 a.m. -- Open Meeting
Roanoke Airport Marriott, 2801 Hershberger Road, N.W.,
Roanoke, Virginia.

† November 13, 1997 - 9:30 a.m. -- Open Meeting
Department of Health Professions, 6606 West Broad Street,
5th Floor, Richmond, 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

Facility Work Group

† October 28, 1997 - 10 a.m. -- Open Meeting
Henrico Area Mental Health and Mental Retardation Board, 10299 Woodman Road, Glen Allen, Virginia. (Interpreter for the deaf provided upon request)

A meeting to discuss the collection of additional information as requested by the HJR 240 Joint Legislative Subcommittee and how this information will be used for planning purposes.

Contact: Cheryl Crawford, Administrative Assistant, Department of Mental Health, Mental Retardation and Substance Abuse Services, P.O. Box 1797, Richmond, VA 23214, telephone (804) 786-5682 or FAX (804) 371-0092.

State Human Rights Committee

† October 31, 1997 - 9 a.m. -- Open Meeting
Department of Mental Health, Mental Retardation and Substance Abuse Services, James Madison Building, 109 Governor Street, Commissioner's Board Room, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A regular meeting of the committee to discuss business and conduct hearings relating to human rights issues. Contact the department for a copy of the agenda.

Contact: Kli Kinzie, Executive Secretary, Department of Mental Health, Mental Retardation and Substance Abuse Services, P.O. Box 1797, Richmond, VA 23218-1797, telephone (804) 786-3988, FAX (804) 371-2308 or (804) 371-8977/TDD

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.

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

† November 12, 1997 - Time to be announced -- Open Meeting

† November 13, 1997 - Time to be announced -- Open Meeting
Roanoke, Virginia area.

Calendar of Events

A regular meeting to receive the report from the state board appointed Human Rights Study Group. Please contact Marlene Butler for exact meeting location and times.

Contact: Marlene Butler, State Board Secretary, Department of Mental Health, Mental Retardation and Substance Abuse Services, P.O. Box 1797, Richmond, VA 23214, telephone (804) 786-7945 or FAX (804) 371-2308.

VIRGINIA MILITARY INSTITUTE

Board of Visitors

† **December 6, 1997 - 8:30 a.m.** -- Open Meeting
Virginia Military Institute, Smith Hall Board Room, Lexington, Virginia. ☎

A regular meeting to hear committee reports and to visit academic departments. The Board of Visitors will not provide an opportunity for public comment at this meeting. Public comment is received at the first meeting of the academic year, normally in August or September.

Contact: Colonel Edwin L. Dooley, Jr., Secretary to the Board, Virginia Military Institute, Superintendent's Office, Lexington, VA 24450, telephone (540) 464-7206 or FAX (540) 464-7600.

VIRGINIA MUSEUM OF FINE ARTS

Education and Programs Committee

† **November 20, 1997 - 2 p.m.** -- Open Meeting
Virginia Museum of Fine Arts, 2800 Grove Avenue, Richmond, Virginia. ☎

A meeting to review educational programs/assessment. Public comment will not be received at the meeting.

Contact: Emily C. Robertson, Secretary of the Museum, Virginia Museum of Fine Arts, 2800 Grove Ave., Richmond, VA 23221-2466, telephone (804) 367-0553.

Executive Committee

† **November 4, 1997 - 8 a.m.** -- Open Meeting
Virginia Museum of Fine Arts, 2800 Grove Avenue, Conference Room, Richmond, Virginia. ☎

A monthly briefing with the director. Public comment will not be received.

Contact: Emily C. Robertson, Secretary of the Museum, Virginia Museum of Fine Arts, 2800 Grove Ave., Richmond, VA 23221-2466, telephone (804) 367-0553.

Exhibitions Committee

† **November 20, 1997 - 10 a.m.** -- Open Meeting
Virginia Museum of Fine Arts, 2800 Grove Avenue, Richmond, Virginia. ☎

A meeting to review and consider upcoming exhibitions and the exhibitions program. Public comment will not be received.

Contact: Emily C. Robertson, Secretary of the Museum, Virginia Museum of Fine Arts, 2800 Grove Ave., Richmond, VA 23221-2466, telephone (804) 367-0553.

Finance Committee

† **November 20, 1997 - 11 a.m.** -- Open Meeting
Virginia Museum of Fine Arts, 2800 Grove Avenue, Conference Room, Richmond, Virginia. ☎

A meeting to review the budget. Public comment will not be received.

Contact: Emily C. Robertson, Secretary of the Museum, Virginia Museum of Fine Arts, 2800 Grove Ave., Richmond, VA 23221-2466, telephone (804) 367-0553.

Board of Trustees

† **November 20, 1997 - 12:30 p.m.** -- Open Meeting
Virginia Museum of Fine Arts, 2800 Grove Avenue, Auditorium, Richmond, Virginia. ☎

A regular meeting to receive committee and staff reports and to review the budget. Public comment will not be received.

Contact: Emily C. Robertson, Secretary of the Museum, Virginia Museum of Fine Arts, 2800 Grove Ave., Richmond, VA 23221-2466, telephone (804) 367-0553.

VIRGINIA MUSEUM OF NATURAL HISTORY

Marketing Committee

† **November 15, 1997 - 8 a.m.** -- Open Meeting
English Inn, 2000 Morton Drive, Charlottesville, Virginia. ☎

A meeting to discuss marketing issues.

Contact: Rhonda J. Knighton, Administrative Staff Assistant, Virginia Museum of Natural History, 1001 Douglas Ave., Martinsville, VA 24112, telephone (540) 666-8616 or (540) 666-8638/TDD ☎

Outreach Committee

† **November 15, 1997 - 8 a.m.** -- Open Meeting
English Inn, 2000 Morton Drive, Charlottesville, Virginia. ☎

A meeting to discuss publications policy, children's books, development of education kit program and educational products on the Internet.

Contact: Rhonda J. Knighton, Administrative Staff Assistant, Virginia Museum of Natural History, 1001 Douglas Ave., Martinsville, VA 24112, telephone (540) 666-8616 or (540) 666-8638/TDD ☎

Research and Collections Committee

† **November 15, 1997 - 7:30 a.m.** -- Open Meeting
English Inn, 2000 Morton Drive, Charlottesville, Virginia. ☎

A meeting to discuss appointment/reappointment of research associates, the collections policy and the research policy.

Contact: Rhonda J. Knighton, Administrative Staff Assistant, Virginia Museum of Natural History, 1001 Douglas Ave., Martinsville, VA 24112, telephone (540) 666-8616 or (540) 666-8638/TDD ☎

Board of Trustees

† **November 15, 1997 - 9:30 a.m.** -- Open Meeting
University of Virginia, University Rotunda, Board of Visitors Room, Charlottesville, Virginia. ☎

A meeting to include reports from the development, executive, finance, legislative, marketing, nominating, outreach, personnel, planning and facilities, and research and collections committees. Public comment will be received following approval of the minutes of the August meeting.

Contact: Rhonda J. Knighton, Administrative Staff Assistant, Virginia Museum of Natural History, 1001 Douglas Ave., Martinsville, VA 24112, telephone (540) 666-8616 or (540) 666-8638/TDD ☎

BOARD OF NURSING

† **November 7, 1997 - 10 a.m.** -- Open Meeting
The Pavilion, 1000 19th Street, Mezzanine Conference Room, Virginia Beach, Virginia. ☎ (Interpreter for the deaf provided upon request)

† **November 13, 1997 - 9 a.m.** -- Open Meeting
Virginia Highlands Community College, Nursing Building, Abingdon, Virginia. ☎ (Interpreter for the deaf provided upon request)

A meeting to conduct informal conferences with nurses and certified nurse aides. 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 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 ☎

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

Calendar of Events

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 10, 1997 - 10 a.m.** -- Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 2, Richmond, Virginia. (Interpreter for the deaf provided upon request)

Formal hearings before a panel of the board. 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.

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.

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.

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, 3rd 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. The board intends to amend regulations entitled: **18 VAC 115-20-10 et seq., 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.

Regulatory Committee

† **November 20, 1997 - 10 a.m.** -- Open Meeting
Department of Health Professions, 6606 West Broad Street,
5th Floor, Conference Room 4, Richmond, Virginia. ☎

A meeting to review draft amendments to regulations entitled: **18 VAC 115-20-10 et seq., Regulations Governing the Practice of Professional Counseling**, pursuant to Executive Order 15 (94). Public comment will be received at the beginning of the meeting.

Contact: Janet Delorme, Deputy Executive Director, Department of Health Professions, 6606 W. Broad St., 4th Floor, Richmond, VA 23230, telephone (804) 662-9575, FAX (804) 662-9943 or (804) 662-7197/TDD ☎

† **December 8, 1997 - 1 p.m.** -- Open Meeting
Department of Health Professions, 6606 West Broad Street,
5th Floor, Conference Room 2, Richmond, Virginia. ☎

An information-gathering meeting to hear issues and concerns pertaining to licensure requirements for substance abuse treatment practitioners.

Contact: Janet Delorme, Deputy Executive Director, Department of Health Professions, 6606 W. Broad St., 4th Floor, Richmond, VA 23230, telephone (804) 662-9575, FAX (804) 662-9943 or (804) 662-7197/TDD ☎

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

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 - 9 a.m.** -- Open Meeting
Department of Health Professions, 6606 West Broad Street,
5th Floor, Conference Room 3, Richmond, Virginia. ☎

A meeting to conduct informal hearings regarding an applicant's academic and experience credentials. Portions of the meeting involving confidential applicant information will be conducted in Executive Session. 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 ☎

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

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.

Calendar of Events

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.

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 ☎

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 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.

REAL ESTATE BOARD

† **December 10, 1997 - 2 p.m.** -- Public Hearing
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia.

December 27, 1997 -- Public comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Real Estate Board intends to amend regulations entitled: **18 VAC 135-20-10 et seq. Virginia Real Estate Board Licensing Regulations.** The purpose of the proposed action is to replace emergency regulations governing the duties of real estate brokers and salespersons and to incorporate statutory changes effective July 1, 1995, and July 1, 1996.

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

Contact: Karen W. O'Neal, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8552.

STATE REHABILITATION ADVISORY COUNCIL

† **November 17, 1997 - 10 a.m.** -- Open Meeting
Department of Rehabilitative Services, 8004 Franklin Farms Drive, Richmond, Virginia. ☎ (Interpreter for the deaf provided upon request)

A regular business meeting.

Contact: Kay Magill, SRAC Liaison, Department of Rehabilitative Services, 8004 Franklin Farms Dr., Richmond, VA 23288, telephone (804) 662-7527, FAX (804) 662-7696, toll-free 1-800-552-5019/TDD and Voice, or (804) 464-9950/TDD ☎

VIRGINIA RESOURCES AUTHORITY

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.

VIRGINIA SCHOOL-TO-WORK ADVISORY COMMITTEE

† **November 6, 1997 - 1 p.m.** -- Open Meeting
Science Museum of Virginia, 2500 West Broad Street, Richmond, Virginia. ☎

A meeting to discuss the Virginia School-to-Work Initiative and the School-to-Work implementation grant application to be submitted to the federal government.

Contact: Joseph M. Jones, Special Assistant, Virginia School-to-Work Advisory Committee, 200-202 N. 9th St., 5th Floor, Richmond, VA 23219, telephone (804) 692-0244 or FAX (804) 371-8654.

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 ☎

COMMONWEALTH TRANSPORTATION BOARD

† **November 19, 1997 - 2 p.m.** -- Open Meeting
Department of Transportation, 1401 East Broad Street, Richmond, Virginia. ☎ (Interpreter for the deaf provided upon request)

A work session of the board and the Department of Transportation staff.

Contact: Robert E. Martinez, Secretary of Transportation, 1401 E. Broad St., Richmond, VA 23219, telephone (804) 786-8032.

† **November 20, 1997 - 10 a.m.** -- Open Meeting
Department of Transportation, 1401 East Broad Street, Richmond, Virginia. ☎ (Interpreter for the deaf provided upon request)

A monthly meeting of the board to vote on proposals presented regarding bids, permits, additions and deletions to the highway system and any other matters requiring board approval. Public comment will be received at the outset of the meeting on items on the meeting agenda for which the opportunity for public comment has not been afforded 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.

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,

Calendar of Events

Richmond, VA 23230-1717, telephone (804) 662-9915 or (804) 662-7197/TDD

DEPARTMENT FOR THE VISUALLY HANDICAPPED

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.

VIRGINIA WASTE MANAGEMENT BOARD

† November 13, 1997 - 10 a.m. -- Open Meeting
Department of Environmental Quality, Piedmont Regional Office, 4949-A Cox Road, Training Room, Glen Allen, Virginia.

A regular meeting of the board.

Contact: Cindy M. Berndt, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4378.

STATE WATER CONTROL BOARD

† November 6, 1997 - 7 p.m. -- Public Hearing
North Fork Middle School, Quicksburg, Virginia.

A public hearing to receive comments on the proposed modification of a Virginia Pollution Abatement permit for Rocco Foods, Inc.

Contact: William Kregloe, Department of Environmental Quality, Valley Regional Office, P.O. Box 1129, Harrisonburg, VA 22801, telephone (540) 574-7800.

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.

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.

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.

† **November 20, 1997 - 7 p.m.** -- Public Hearing
Armory, Dabney Lancaster Community College, Clifton Forge, Virginia.

A public hearing to receive comments on overflows of untreated sewage to state water from the City of Clifton Forge's sewerage system and treatment plant.

Contact: Jim Smith, Department of Environmental Quality, West Central Regional Office, 3019 Peters Creek Rd., Roanoke, VA 24019, telephone (540) 562-6778.

COUNCIL ON THE STATUS OF WOMEN

† **October 31, 1997 - 1:30 p.m.** -- Open Meeting
Department of Rehabilitative Services, 8004 Franklin Farms Drive, Conference Room, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

A briefing on health, welfare and public safety issues.

Contact: Cathy Noonan, Assistant Secretary of Health and Human Resources, 202 N. 9th St., Suite 622, Richmond, VA 23219, telephone (804) 786-7765, FAX (804) 371-6984 or (804) 786-7765.

INDEPENDENT

STATE LOTTERY BOARD

† **November 19, 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: David L. Norton, Esq., Director, Legislative and Regulatory Affairs, State Lottery Department, 900 E. Main St., Richmond, VA 23219, telephone (804) 692-7109 or FAX (804) 692-7775.

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)

Calendar of Events

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.  (Interpreter for the deaf provided upon request)

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 Square, 2nd Floor, Richmond, VA 23219. 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, P.O. Box 406, Richmond, VA 23218, telephone (804) 786-7681 or (804) 786-2369/TDD 

Education Task Force

† October 30, 1997 - 10 a.m. -- Open Meeting
General Assembly Building, 910 Capitol Square, 5th Floor East Conference Room, Richmond, Virginia.  (Interpreter for the deaf provided upon request)

A regular meeting. Please submit all questions regarding the agenda or the work of the Task Force to Brenda Edwards or Micah Yarbrough, Division of Legislative Services, 910 Capitol Square, 2nd Floor, Richmond, VA 23219. 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, P.O. Box 406, Richmond, VA 23218, telephone (804) 786-7681 or (804) 786-2369/TDD 

Employment and Economics Task Force

† November 20, 1997 - 10 a.m. -- Open Meeting
General Assembly Building, 910 Capitol Square, 5th Floor East Conference Room, Richmond, Virginia.  (Interpreter for the deaf provided upon request)

A regular meeting. Please submit all questions regarding the agenda or the work of the task force to Brenda Edwards or Micah Yarbrough, Division of Legislative Services, 910 Capitol Square, 2nd Floor, Richmond, VA 23219. 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, P.O. Box 406, Richmond, VA 23218, telephone (804) 786-7681 or (804) 786-2369/TDD 

Health and Substance Abuse Task Force

† November 10, 1997 - 2 p.m. -- Open Meeting
General Assembly Building, 910 Capitol Square, 5th Floor East Conference Room, Richmond, Virginia.  (Interpreter for the deaf provided upon request)

A regular meeting. Please submit all questions regarding the agenda or the work of the task force to Brenda Edwards or Micah Yarbrough, Division of Legislative Services, 910 Capitol Square, 2nd Floor, Richmond, VA 23219. 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, P.O. Box 406, 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.

SPECIAL JOINT SUBCOMMITTEE OF THE COMMITTEE ON CORPORATIONS, INSURANCE AND BANKING STUDYING DISPOSAL OF UNCLAIMED PROPERTY - HJR 428

† **December 3, 1997 - 10 a.m.** -- Open Meeting
State Capitol, Capitol Square, House Room 2, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A regular meeting. Please direct any questions to Rob Omberg or Arlen Bolstad, Division of Legislative Services, 910 Capitol Square, 2nd Floor, Richmond, VA 23219. Individuals requiring interpreter services should contact Barbara Regen at least 10 working days prior to the meeting.

Contact: Barbara L. Regen, Committee Operations, House of Delegates, State Capitol, P.O. Box 406, Richmond, VA 23218, telephone (804) 786-7681 or (804) 786-2369/TDD

SUBCOMMITTEE STUDYING EARLY INTERVENTION SERVICES FOR INFANTS AND TODDLERS WITH DISABILITIES - HJR 581

† **November 24, 1997 - 1 p.m.** -- Open Meeting
General Assembly Building, 910 Capitol Square, 6th Floor Conference Room, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A regular meeting. Please call Amy Marschean, Division of Legislative Services, 910 Capitol Square, 2nd Floor, Richmond, VA 23219 with any questions regarding this meeting. Individuals requiring interpreter services or other accommodations should contact Kathleen Myers at least 10 working 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

JOINT SUBCOMMITTEE STUDYING THE EDUCATIONAL NEEDS OF CERTAIN UNDERSERVED GIFTED STUDENTS - HJR 575

† **November 10, 1997 - 10 a.m.** -- Open Meeting
General Assembly Building, 910 Capitol Square, 6th Floor Conference Room, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A regular meeting. Please call Brenda Edwards, Division of Legislative Services, at 786-3591 with any questions

regarding this meeting. Individuals requiring interpreter services or other accommodations should contact Dawn Smith at least 10 working days prior to the meeting.

Contact: Dawn B. Smith, Committee Operations, House of Delegates, State Capitol, P.O. Box 406, Richmond, VA 23218, telephone (804) 786-7681 or (804) 786-2369/TDD

JOINT SUBCOMMITTEE STUDYING POTENTIAL CHANGES IN RESTRUCTURING THE ELECTRICAL UTILITIES INDUSTRY IN THE COMMONWEALTH - SJR 259

† **November 7, 1997 - 10 a.m.** -- Open Meeting
General Assembly Building, 910 Capitol Square, Senate Room B, Richmond, Virginia.

A regular meeting. Individuals requiring interpreter services or other accommodations should contact Tommy Gilman by November 1.

Contact: Thomas C. Gilman, Coordinator, Committee Operations, Senate of Virginia, P.O. Box 396, Richmond, VA 23218, telephone (804) 786-5742 or (804) 225-4749/TDD

HEALTH PROFESSIONS SUBCOMMITTEE OF SENATE EDUCATION AND HEALTH COMMITTEE

† **October 28, 1997 - 1 p.m.** -- Open Meeting
General Assembly Building, 910 Capitol Square, Senate Room A, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A regular meeting. Individuals requiring interpreter services or other accommodations should contact Crystal Webb by October 21, 1997.

Contact: Crystal Webb, Senate Committee Operations, P.O. Box 396, Richmond, VA 23218, telephone (804) 786-5742 or (804) 225-4749/TDD

JOINT LEGISLATIVE AUDIT AND REVIEW COMMISSION

† **November 10, 1997 - 9:30 a.m.** -- Open Meeting
General Assembly Building, 910 Capitol Square, Senate Room A, Richmond, Virginia.

Staff briefings on the State Data Center within the Department of Information Technology.

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.

Calendar of Events

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.

COMMITTEE TO STUDY ON-FARM SALES OF AGRICULTURAL PRODUCTS - SR 29

† **November 14, 1997 - 10 a.m.** -- Open Meeting
General Assembly Building, 910 Capitol Square, Third Floor
East Conference Room, Richmond, Virginia.

A regular meeting. Individuals requiring interpreter
services or other accommodations should contact Brian
Taylor by November 7.

Contact: Brian B. Taylor, Senate Committee Operations,
P.O. Box 396, Richmond, VA 23218, telephone (804) 786-
5742 or (804) 225-4749/TDD ☎

PRIVILEGES AND ELECTIONS SUBCOMMITTEE ON REDISTRICTING

† **November 10, 1997 - 2 p.m.** -- Open Meeting
State Capitol, Capitol Square, House Room 2, Richmond,
Virginia. ☎ (Interpreter for the deaf provided upon request)

A regular meeting. Please direct any questions to Mary
Spain, Division of Legislative Services, telephone (804)
786-3591. Individuals requiring interpreter services or
other accommodations should contact Barbara Regen at
least 7 working days prior to the meeting.

Contact: Barbara L. Regen, Committee Operations, House
of Delegates, State Capitol, P.O. Box 406, Richmond, VA
23218, telephone (804) 786-7681 or (804) 786-2369/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.

COMMISSION ON STATE AND LOCAL GOVERNMENT RESPONSIBILITY AND TAXING AUTHORITY - HJR 532

† **November 20, 1997 - 10:30 a.m.** -- Open Meeting
Dulles Airport Hilton, Herndon, Virginia. ☎ (Interpreter for the
deaf provided upon request)

A briefing on federal tax code changes and the earned
income tax credit. Questions concerning the meeting
agenda should be addressed to Joan Putney, Division of
Legislative Services, at (804) 786-3591. Individuals
requiring interpreter services or other accommodations
should contact Brandon Merchant at least 10 working
days prior to the meeting.

Contact: Brandon Merchant, Committee Operations, House
of Delegates, State Capitol, P.O. Box 406, Richmond, VA
23218, telephone (804) 786-7681 or (804) 786-2369.

† **December 16, 1997 - 2 p.m.** -- Public Hearing
General Assembly Building, 910 Capitol Square, House
Room D, Richmond, Virginia. ☎ (Interpreter for the deaf
provided upon request)

A public hearing on all state and local tax issues.
Questions concerning the meeting agenda should be
addressed to Joan Putney, Division of Legislative
Services, at (804) 786-3591. Individuals requiring
interpreter services or other accommodations should
contact Brandon Merchant at least 10 working days prior
to the meeting.

Contact: Brandon Merchant, Committee Operations, House
of Delegates, State Capitol, P.O. Box 406, Richmond, VA
23218, telephone (804) 786-7681 or (804) 786-2369.

CONFERENCE STEERING COMMITTEE

† **November 7, 1997 - 10 a.m.** -- Open Meeting
General Assembly Building, 910 Capitol Square, 6th Floor
Conference Room, Richmond, Virginia. ☎ (Interpreter for the
deaf provided upon request)

A regular meeting to discuss conference findings and
determine final recommendations on the Commission on
the Impact of Certain Federal Court Decisions on the
Commonwealth's Institutions of Higher Education (HJR
525), the Dr. Martin Luther King, Jr. Memorial
Commission, and the African/American Males
Subcommittee (HJR 570). Should you have questions
regarding the agenda please contact Brenda Edwards,
Division of Legislative Services, at (804) 786-3591.
Individuals requiring interpreter services or other
accommodations should contact Dawn Smith at least 10
working days prior to the meeting.

Contact: Dawn B. Smith, Committee Operations, House of
Delegates, State Capitol, P.O. Box 406, Richmond, VA
23218, telephone (804) 786-7681 or (804) 786-2369/TDD ☎

JOINT COMMISSION ON TECHNOLOGY AND SCIENCE

† **November 19, 1997 - 1:30 p.m.** -- Open Meeting
 General Assembly Building, 910 Capitol Square, House Room D, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

A general meeting. The public is invited to attend. The final agenda for the meeting can be obtained via the commission's website at <http://legis.state.va.us/agencies.htm> or by contacting the commission.

Contact: Diane E. Horvath, Director, Joint Commission on Technology and Science, Division of Legislative Services, 910 Capitol Square, 2nd Floor, Richmond, VA 23219, telephone (804) 786-3591 or FAX (804) 371-0169.

COMMISSION ON THE FUTURE OF TRANSPORTATION IN VIRGINIA - HJR 160

† **November 17, 1997 - 10 a.m.** -- Open Meeting
 General Assembly Building, 910 Capitol Square, House Room D, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

† **December 10, 1997 - 10 a.m.** -- Open Meeting
 General Assembly Building, 910 Capitol Square, House Room D, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

A regular meeting. Individuals requiring interpreter services or other accommodations should contact Chad Hudson at least 10 working days prior to the meeting.

Contact: Chad Hudson, Committee Operations, House of Delegates, State Capitol, P.O. Box 406, Richmond, VA 23218, telephone (804) 786-7681 or (804) 786-2369.

CHRONOLOGICAL LIST

OPEN MEETINGS

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
 - Special Conference Committee

October 28

- Auctioneers Board
- Aviation Board, Virginia
- † Health Professions Subcommittee of Senate Education and Health Committee
- † Marine Resources Commission

- † Mental Health, Mental Retardation and Substance Abuse Services, Department of
 - Facility Work Group
- Nursing, Board of
 - Special Conference Committee
- Small Business Financing Authority, Virginia
 - Loan Committee

October 29

- Agriculture and Consumer Services, Department of
 - Virginia Winegrowers Advisory Board
- Agriculture Subcommittee Studying the Impact of Industrial Swine Production in Virginia - HJR 573, Special
 - Aviation Board, Virginia
- Code Commission, Virginia
- Environmental Quality, Department of

October 30

- † African-American Males in Virginia - HJR 570, Joint Subcommittee Studying the Status and Needs of
 - Education Task Force
- Environmental Quality, Department of
- Opticians, Board for
 - Ad Hoc Committee
- Soil Scientists, Board for Professional

October 31

- † Mental Health, Mental Retardation and Substance Abuse Services, Department of
 - State Human Rights Committee
- † Women, Council on the Status of

November 3

- † Branch Pilots, Board for
- † Charitable Gaming Commission
- 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

- † Agriculture and Consumer Services, Department of
 - Virginia Seed Potato Board
- Hopewell Industrial Safety Council
- † Museum of Fine Arts, Virginia
 - Executive Committee
- Veterinary Medicine, Board of

November 5

- † African-American Males in Virginia - HJR 570, Joint Subcommittee Studying the Status and Needs of
 - Criminal/Judicial System Task Force
- † Conservation and Recreation, Department of
 - Chippokes Plantation Farm Foundation
- Deaf and Hard-of-Hearing, Department for the
 - Advisory Board
- Veterinary Medicine, Board of

Calendar of Events

November 6

- † Architects, Professional Engineers, Land Surveyors and Landscape Architects, Board for
 - Board for Professional Engineers
- † At Risk Youth and Their Families, Comprehensive Services for
 - State Management Team
- Conservation and Recreation, Department of
 - Falls of the James Scenic River Advisory Board
- † Geology, Board for
- † Job Training Coordinating Council, Governor's
- Medicine, Board of
 - Informal Conference Committee
- Mental Health, Mental Retardation and Substance Abuse Services, Department of
 - Pilot Leadership Team
- † School-to-Work Advisory Committee, Virginia

November 7

- † Dentistry, Board of
- † Electrical Utilities Industry in the Commonwealth - SJR 259, Joint Subcommittee Studying Potential Changes in Restructuring the
- † Higher Education for Virginia, State Council of
- † Nursing, Board of
- Psychology, Board of
 - Credentials Committee
- † Steering Committee, Conference

November 10

- † African-American Males in Virginia - HJR 570, Joint Subcommittee Studying the Status and Needs of
 - Health and Substance Abuse Task Force
- † Architects, Professional Engineers, Land Surveyors and Landscape Architects, Board for
 - Board for Architects
- † Educational Needs of Certain Underserved Gifted Students - HJR 575, Joint Subcommittee Studying the
- † Legislative Audit and Review Commission, Joint Noncredit Education for Workforce Training in Virginia - HJR 622, Joint Subcommittee Studying
- † Pharmacy, Board of
- † Privileges and Elections Subcommittee on Redistricting

November 11

- Resources Authority, Virginia

November 12

- Administrative Law Advisory Committee
- † Hazardous Materials Training Advisory Committee
- † Mental Health, Mental Retardation and Substance Abuse Services, State Board of

November 13

- Conservation and Recreation, Department of
 - Falls of the James Scenic River Advisory Board
- † Medicine, Board of
 - Informal Conference Committee
- † Mental Health, Mental Retardation and Substance Abuse Services, State Board of
- † Nursing, Board of

- Pharmacy, Board of
- Physical Fitness and Sports, Governor's Commission on Public Education and Advisory Task Force, Commission on the Future of
- † Waste Management Board, Virginia

November 14

- † Dentistry, Board of
 - Special Conference Committee
- Medicine, Board of
 - Informal Conference Committee
- † On-Farm Sales of Agricultural Products - SR 29, Committee to Study
- Opticians, Board for
- Transportation Safety Board

November 15

- † Museum of Natural History, Virginia
 - Marketing Committee
 - Outreach Committee
 - Research and Collections Committee
 - Board of Trustees
- Visually Handicapped, Department for the
 - Vocational Rehabilitation Advisory Council

November 17

- Local Government, Commission on
- † Rehabilitation Advisory Council, State
- † Transportation in Virginia - HJR 160, Commission on the Future of

November 18

- † Agriculture and Consumer Services, Department of
 - Virginia Farmers' Market Board
 - Virginia Horse Industry Board
- † Corrections, Board of
 - Correctional Services Committee
- 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
- † Architects, Professional Engineers, Land Surveyors and Landscape Architects, Board for
 - Board for Land Surveyors
- † Corrections, Board of
 - Administration Committee
- Funeral Directors and Embalmers, Board of
 - Examination Task Force
- † Juvenile Justice, State Board of
- † Lottery Board, State
- † Technology and Science, Joint Commission on
- † Transportation Board, Commonwealth

Calendar of Events

November 20

- † African-American Males in Virginia - HJR 570, Joint Subcommittee Studying the Status and Needs of
 - Employment and Economics Task Force
- † Health, Department of
 - Biosolids Use Information Committee
 - Biosolids Use Regulations Advisory Committee
- Medical Assistance Services, Department of
 - Drug Utilization Review Board
- † Medicine, Board of
- † Museum of Fine Arts, Virginia
 - Education and Programs Committee
 - Exhibitions Committee
 - Finance Committee
 - Board of Trustees
- † Professional Counselors, Marriage and Family Therapists and Substance Abuse Treatment Professionals, Board of Licensed
 - Regulatory Committee
- † State and Local Government Responsibility and Taxing Authority - HJR 532, Commission on
- † Transportation Board, Commonwealth

November 21

- Family and Children's Trust Fund General Services, Department of
 - Design-Build/Construction Management Review Board
- † Medicine, Board of
- Professional Counselors, Marriage and Family Therapists and Substance Abuse Treatment Professionals, Board of Licensed
 - Credentials Committee

November 24

- Cosmetology, Board for
- † Early Intervention Services for Infants and Toddlers with Disabilities - HJR 581, Subcommittee Studying Elections, State Board of

November 25

- Higher Education, State Council of
 - Executive Committee
- † Marine Resources Commission

November 27

- † Economic Development Partnership, Virginia
 - Virginia Tourism Corporation

December 2

- Hopewell Industrial Safety Council

December 3

- † Agriculture and Consumer Services, Department of
 - Virginia Sweet Potato Board
- † Corporations, Insurance and Banking Studying Disposal of Unclaimed Property - HJR 428, Special Joint Subcommittee of the Committee on
- Fire Services Board, Virginia
 - Sprinkler/Code Change Committee
- Funeral Directors and Embalmers, Board of
 - Special Conference Committee

- † Labor and Industry, Department of
 - Migrant and Seasonal Farmworkers Board

December 4

- Fire Services Board, Virginia
 - Fire Prevention and Control Committee
 - Fire/EMS Education and Training Committee
 - Legislative/Liaison Committee
- † Funeral Directors and Embalmers, Board of Voluntary Formulary Board, Virginia

December 5

- Fire Services Board, Virginia

December 6

- † Military Institute, Virginia
 - Board of Visitors

December 8

- † Agriculture and Consumer Services, Department of
 - Virginia Soybean Board
- † Professional Counselors, Marriage and Family Therapists and Substance Abuse Treatment Professionals, Board of Licensed
 - Regulatory Committee

December 9

- Medicine, Board of
 - Informal Conference Committee
- Resources Authority, Virginia

December 10

- † Transportation in Virginia - HJR 160, Commission on the Future of

December 11

- Code Commission, Virginia
- Public Education and Advisory Task Force, Commission on the Future of

December 12

- † Higher Education for Virginia, State Council of

December 15

- † Agriculture and Consumer Services, Department of
 - Virginia Irish Potato Board

December 16

- Medical Assistance Services, Board of

December 19

- † Family and Children's Trust Fund
- Higher Education, State Council of
 - Executive Committee

PUBLIC HEARINGS

November 3

- Audiology and Speech-Language Pathology, Board of

November 5

- Criminal Justice Services Board

Calendar of Events

November 6

† Environmental Quality, Department of
† Water Control Board, State

November 12

† Juvenile Justice, State Board of

November 17

Education, Board of
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
† Water Control Board, State

November 24

Child Day-Care Council

November 25

Child Day-Care Council

December 10

† Real Estate Board

December 11

Agriculture and Consumer Services, Board of

December 16

† State and Local Government Responsibility and Taxing
- HJR 532, Commission on