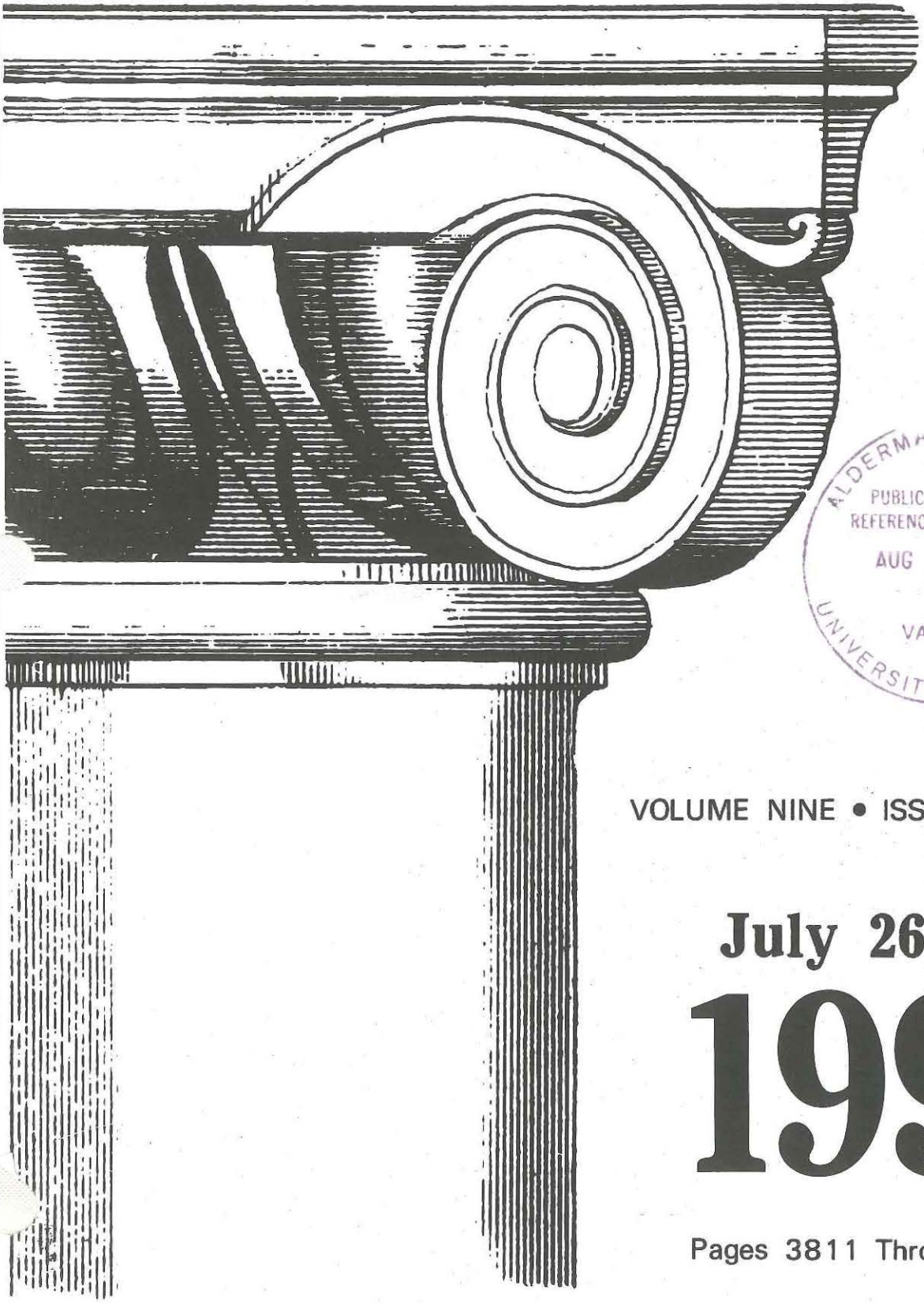
THE VIRGINIA REGISTER

OF REGULATIONS



VOLUME NINE • ISSUE TWENTY-TWO

July 26, 1993

1993

Pages 3811 Through 4078

VIRGINIA REGISTER

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 full text of all regulations, both as proposed and as finally adopted or changed by amendment 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 issued by the Governor, and Executive Orders, the Virginia Tax Bulletin issued periodically by the Department of Taxation, and notices of all 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 proposed action; a basis, purpose, impact and summary statement; a notice giving the public an opportunity to comment on the proposal, and the text of the proposed regulations.

Under the provisions of the Administrative Process Act, the Registrar has the right to publish a summary, rather than the full text, of a regulation which is considered to be too lengthy. In such case, the full text of the regulation will be available for public inspection at the office of the Registrar and at the office of the promulgating agency.

Following publication of the proposal in the *Virginia Register,* sixty days must elapse before the agency may take action on the proposal.

During this time, the Governor and the General Assembly will review the proposed regulations. The Governor will transmit his comments on the regulations to the Registrar and the agency and such comments will be published in the *Virginia Register.*

Upon receipt of the Governor's comment on a proposed regulation, the agency (i) may adopt the proposed regulation, if the Governor has no objection to the regulation; (ii) may modify and adopt the proposed regulation after considering and incorporating the Governor's suggestions, or (iii) may adopt the regulation without changes despite the Governor's recommendations for change.

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 *Virginia Registrar* and the promulgating agency. The objection will be published in the *Virginia Register.* Within twenty-one 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 promulgating agency must again publish the text of the regulation, as adopted, highlighting and explaining any substantial changes in the final regulation. A thirty-day final adoption period will commence upon publication in the *Virginia Register.*

The Governor will review the final regulation during this time and if he objects, forward his objection to the Registrar and the agency. His objection will be published in the *Virginia Register.* If the Governor finds that changes made to the proposed regulation are substantial, he may suspend the regulatory process for thirty days and require the agency to solicit additional public comment on the substantial changes.

A regulation becomes effective at the conclusion of this thirty-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 twenty-one day extension period; or (ii) the Governor exercises his authority to suspend the regulatory process for solicitation of additional public comment, in which event the regulation, unless withdrawn, becomes effective on the date specified which date shall be after the expiration of the period for which the Governor has suspended the regulatory process.

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

EMERGENCY REGULATIONS

If an agency determines that an emergency situation exists, it then requests the Governor to issue 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 in time and cannot exceed a twelve-months duration. The emergency regulations will be published as quickly as possible in the *Virginia Register.*

During the time the emergency status is in effect, the agency may proceed with the adoption of permanent regulations through the usual procedures (See "Adoption, Amendment, and Repeal of Regulations," above). If the agency does not choose 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 of Chapter 1.1:1 (§§ 9-6.14:6 through 9-6.14:9) 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. **1:3 VA.R. 75-77 November 12, 1984** refers to Volume 1, Issue 3, pages 75 through 77 of the Virginia Register issued on November 12, 1984.

"The Virginia Register of Regulations" (USPS-001831) is published bi-weekly, except four times 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. Second-Class 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 of Chapter 1.1:1 (§ 9-6.14:2 et seq.) of the Code of Virginia. Individual copies are available for $4 each from the Registrar of Regulations.

VIRGINIA REGISTER OF REGULATIONS

PUBLICATION DEADLINES AND SCHEDULES

January 1993 through April 1994

MATERIAL SUBMITTED BY Noon Wednesday	PUBLICATION DATE
Volume 9 - 1993	
Dec. 23	Jan. 11, 1993
Jan. 6	Jan 25
Jan. 20	Feb. 8
Feb. 3	Feb. 22
Feb. 17	Mar. 8
Mar. 3	Mar. 22
Mar. 17	Apr. 5
Index 2 - Volume 9	
Mar. 31	Apr. 19
Apr. 14	May 3
Apr. 28	May 17
May 12	May 31
May 26	June 14
June 9	June 28
Index 3 - Volume 9	
Jun. 23	July 12
July 7	July 26
July 21	Aug. 9
Aug. 4	Aug. 23
Aug. 18	Sept. 6
Sept. 1	Sept. 20
Final Index - Volume 9	
Volume 10 - 1993-94	
Sept. 15	Oct. 4
Sept. 29	Oct. 18
Oct. 13	Nov. 1
Oct. 27	Nov. 15
Nov. 10	Nov. 29
Nov. 24	Dec. 13
Dec. 8	Dec. 27
Index 1 - Volume 10	
Dec. 22	Jan 10, 1994
Jan. 5	Jan. 24
Jan. 19	Feb. 7
Feb. 2	Feb. 21
Feb. 16	Mar. 7
Mar. 2	Mar. 21
Mar. 16	Apr. 4
Index 2 - Volume 10	

TABLE OF CONTENTS

NOTICES OF INTENDED REGULATORY ACTION

PROPOSED REGULATIONS

STATE AIR POLLUTION CONTROL BOARD

DEPARTMENT OF COMMERCE

DEPARTMENT OF CRIMINAL JUSTICE SERVICES (BOARD OF)

VIRGINIA WORKERS' COMPENSATION COMMISSION

FINAL REGULATIONS

STATE AIR POLLUTION CONTROL BOARD

DEPARTMENT OF EDUCATION (STATE BOARD OF)

BOARD OF FUNERAL DIRECTORS AND EMBALMERS

DEPARTMENT OF GAME AND INLAND FISHERIES (BOARD OF)

DEPARTMENT OF LABOR AND INDUSTRY

Safety and Health Codes Board

Table of Contents

GOVERNOR

EXECUTIVE ORDERS

GOVERNOR'S COMMENTS

DEPARTMENT OF HEALTH

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

THE LEGISLATIVE RECORD

GENERAL NOTICES/ERRATA

DEPARTMENT OF LABOR AND INDUSTRY

VIRGINIA CODE COMMISSION

ERRATA

DEPARTMENT OF TAXATION

CALENDAR OF EVENTS

EXECUTIVE

LEGISLATIVE

CHRONOLOGICAL LIST

Table of Contents

NOTICES OF INTENDED REGULATORY ACTION

Symbol Key †
† Indicates entries since last publication of the Virginia Register

BOARD FOR ACCOUNTANCY

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board for Accountancy intends to consider repealing regulations entitled: **VR 105-01-01. Public Participation Guidelines.** The purpose of the proposed action is to promulgate regulations to replace emergency regulations. The agency does not intend to hold a public hearing on the proposed repeal of this regulation.

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

Written comments may be submitted until September 1, 1993.

Contact: Roberta L. Banning, Assistant Director, Board for Accountancy, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8590.

VA.R. Doc. No. C93-1716; Filed July 2, 1993, 11:59 a.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board for Accountancy intends to consider promulgating regulations entitled: **VR 105-01-1:1. Board for Accountancy Public Participation Guidelines.** The purpose of the proposed action is to promulgate public participation guidelines to replace emergency regulations adopted June 1993, and to provide full opportunity for public participation in the regulation formation and promulgation process. The agency does not intend to hold a public hearing on the proposed regulation.

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

Written comments may be submitted until September 1, 1993.

Contact: Roberta L. Banning, Assistant Director, Board for Accountancy, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8590.

DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES (BOARD OF)

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Agriculture and Consumer Services intends to consider amending regulations entitled: **VR 115-01-01. Guidelines for Public Participation.** The purpose of the proposed action is to review the regulation for effectiveness and continued need, including, but not limited to, amending the regulation to comport with newly-enacted provisions of the Administrative Process Act. The agency invites comment on whether there should be an advisor appointed for the present regulatory action. An advisor is (i) a standing advisory panel; (ii) an ad-hoc advisory panel; (iii) consultation with groups; (iv) consultation with individuals; or (v) any combination thereof. As specified by Chapter 898 of the 1993 Acts of Assembly, the agency plans to hold a public hearing on the proposed regulation after it is published.

Statutory Authority: § 9-6.14:7.1 of the Code of Virginia and Chapter 898 of the 1993 Acts of Assembly.

Written comments may be submitted until August 16, 1993.

Contact: L. H. Redford, Regulatory Coordinator, 1100 Bank St., P.O. Box 1163, Richmond, VA 23209-1163, telephone (804) 786-3539.

STATE AIR POLLUTION CONTROL BOARD

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the State Air Pollution Control Board intends to consider amending regulations entitled: **VR 120-01. Regulations for the Control and Abatement of Air Pollution. (Rev. HH)** The purpose of the proposed action is to amend the regulations concerning standards of performance for new and expanding industry to address concerns relating to requirements for regulated medical waste incinerators.

Public meeting: A public meeting will be held by the Department in the Board Room, State Water Control Board Office Building, 4900 Cox Road, Innsbrook Corporate Center, Glen Allen, Virginia, at 10:00 A.M. on August 25, 1993, 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.

Public hearing plans: 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 1992 General Assembly of Virginia passed legislation to impose a moratorium on the issuance of permits for commercial regulated medical waste incinerators (MWIs) until September 1, 1993, and to require the promulgation of regulations by September 1, 1993. The legislation was proposed in response to health concerns about commercial MWI emissions. This legislation was again submitted to the General Assembly in the 1993 session, and a new version extending the original moratorium for the issuance of permits for commercial infectious waste incinerators (i.e., MWIs) from September 1, 1993, to December 1, 1993, was passed. However, the deadline for promulgation of regulations remains September 1, 1993.

Although the Virginia Waste Management Board has promulgated regulations regarding the storage, transportation, and disposal of regulated medical wastes, the Virginia State Air Pollution Control Board has not promulgated air pollution permit regulations specifically addressing MWIs. State and federal air quality regulations governing incineration in general and municipal waste combustors in particular do exist, but none specifically address MWIs.

The General Assembly passed legislation directly addressing MWIs for a number of reasons:

1. The State Air Pollution Control Board had not promulgated air pollution permit regulations specifically addressing medical waste incinerators.

2. The State Air Pollution Control Board had issued permits for approximately 17 hospital regulated medical waste incinerators and one commercial regulated medical waste incinerator during the preceding two years.

3. The total regulated medical waste generated in the Commonwealth averaged between 35 and 45 tons per day. Currently, sufficient capacity within the Commonwealth to dispose of such waste may exist.

4. The incineration of regulated medical waste generates toxic or trace metals, dioxins and furans, acid gases, particulate matter, and pathogens, which may adversely affect human health and the environment.

Alternatives:

1. Amend the regulations to satisfy the provisions of the law and associated regulations and policies. This option would meet the stated purpose of the regulation: to limit emissions of certain air pollutants to a specified level necessary to protect public health and welfare. This, then, will accomplish the specific objectives of the law.

2. Make alternative regulatory changes to those required by the provisions of the law and associated regulations and policies. This option would not necessarily meet the stated purpose of the regulatory action; further, alternative regulatory changes could also go beyond the stated purpose by imposing requirements that may not be consistent with the General Assembly's wishes.

3. Take no action to amend the regulations and continue to regulate regulated medical waste incinerators under existing air quality programs. This option would not accomplish the goals of the law or the agency, nor would it accomplish the stated purpose of the regulatory action.

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

Applicable statutory requirements: Legislation passed by the 1993 General Assembly imposes a moratorium for the issuance of permits for commercial infectious waste incinerators (i.e., MWIs). An MWI is considered "commercial" if more than 25% of the waste it burns is generated off site. "Infectious waste" (i.e., regulated medical waste) is defined as solid waste with the potential to cause infectious disease in humans. The law states, "No permits for the construction, reconstruction, or expansion of a commercial infectious waste incinerator shall be issued or approved by the State Air Pollution Control Board or the Virginia Waste Management Board prior to December 1, 1993; and no such permits shall be reviewed or processed by the Boards prior to September 1, 1993." Existing and proposed noncommercial MWIs, and existing commercial MWIs are not affected.

The law further states, "The State Air Pollution Control Board and the Virginia Waste Management Board shall each promulgate regulations with respect to the permitting of infectious waste incinerators by September 1, 1993, or as soon as practicable thereafter within the constraints of the Administrative Process Act (§ 9-6.14:1 et seq.)." Factors to be considered by both boards include:

"1. An assessment of the annual need for the disposal of infectious waste generated in the Commonwealth;

2. Means of reducing the volume of infectious waste and similar wastes containing or producing toxic substances disposed of in the Commonwealth;

3. The availability and feasibility of methods of disposing of infectious waste other than incineration;

4. Criteria for siting infectious waste incinerators in order to safeguard public health and safety to the maximum extents;

5. Standards for assessing the economic feasibility of proposed commercial infectious waste incinerators;

6. The propriety of establishing different criteria and procedures for the permitting of incinerators disposing of infectious waste generated on-site or off-site;

7. The economic demand for the importation of infectious waste generated outside the Commonwealth to existing and future commercial infectious waste incinerators located in the Commonwealth, and an estimate of the fair share of incinerator capacity to be allowed for infectious waste generated outside the Commonwealth;

8. The impact of the Clean Air Act (42 U.S.C. § 1857 et seq.), as amended by the 1990 amendments (P.L. 101-549), on the incineration of infectious waste by hospitals; and

9. The impact of reports by the Environmental Protection Agency to the Congress of the United States regarding the Medical Waste Tracking Act of 1988 (P.L. 100-582)."

To address these issues, a study working group consisting of Department of Environmental Quality (DEQ) Air and Waste Division staff and the public (including representatives from industry, environmental groups, general public, and the Virginia Department of Health) was established. The group determined each factor's relevance to the regulatory responsibilities of the State Air Pollution Control Board and the Waste Management Board. It was agreed that the factors pertaining to the economics of commercial regulated medical waste incineration (items 1, 5, and 7) were not within the purview of either board to adopt as regulatory performance standards or siting criteria. It was also determined by the group that items 2, 3, 4, 6, and 9 were waste management issues more appropriately studied by the Waste Division, while item 8 was an air quality issue best reviewed by the Air Division. Study results were presented to the General Assembly in January 1993.

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

Written comments may be submitted until close of business September 6, 1993, to Director of Program Development, Air Division, Department of Environmental Quality, P.O. Box 10089, Richmond, Virginia 23240.

Contact: Karen G. Sabasteanski, Policy Analyst, Program Development, Department of Environmental Quality, P.O. Box 10089, Richmond, VA 23240, telephone (804) 786-1624.

VA.R. Doc. No. C93-1783; Filed July 7, 1993, 9:35 a.m.

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the State Air Pollution Control Board intends to consider promulgating regulations entitled: **VR 120-01. Regulations for the Control and Abatement of Air Pollution (Federal Operating Permits for Stationary Sources - Rev. JJ).** The purpose of the proposed action is to develop a regulation to meet the requirements of Title V of the Clean Air Act, as amended in November 1990.

Public meeting: A public meeting will be held by the department in House Committee Room One, State Capitol Building, Richmond, Virginia, at 10:00 a.m. on August 25, 1993, 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.

Public hearing plans: 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: Title V of the Clean Air Act (the Act) as amended November 1990 provides a mechanism to implement the various requirements under the other titles in the Act through the issuance of operating permits. Under this title, the U.S. Environmental Protection Agency (EPA) is required to develop regulations with specific operating permit requirements. The federal regulations (40 CFR Part 70) were promulgated in final form on July 21, 1992. The States are required, in turn, to develop operating permit programs that meet the requirements specified in EPA's regulations. These programs are due to EPA for review by November 15, 1993.

The operating permits issued under this program should enhance the ability of EPA, the states, and citizens to enforce the requirements of the Act; clarify for the permitted sources exactly which air quality requirements apply; and also aid in implementing the Act by providing States with permit fees to support their programs.

Source surveillance activities are those activities undertaken by air pollution control agencies to monitor and determine the compliance status of polluting facilities.

The current new source permit program provides that owners of certain new stationary sources and certain modifications of existing stationary sources must obtain a permit to construct and operate that source. The permit sets out enforceable operating and emission control requirements for the facility and is done one time only, unless an additional new source or modification necessitates a new application. Permits have been issued for facilities in Virginia since 1972.

The current operating permit program provides that owners of new and existing sources that would not be exempt under the new and modified source exemption levels must obtain an operating permit every five years to

continue to operate the source. The permit sets out enforceable operating and emission control requirements for the facility, such as emission limits, processes or operations covered by the permit, limits on hours of operation and process rates, legal obligations and rights accompanying issuance of the permit, maximum permit renewal period, and limits on transferability. Permits can also specify reporting requirements, compliance dates, monitoring requirements, operation and malfunction provisions, and other appropriate factors relating to the operation of the source and enforcement of the permit conditions.

These new source review and operating permit programs provide benefits for the department, those who must obtain permits and the general public. A permit sets out for both the department and the owner the regulatory requirements appropriate to that source's operation. The benefits are that the operator or owner knows what requirements must be fulfilled and the department has an agreement with the owner through the permit that these requirements will be carried out. It enables the department to more efficiently and effectively carry out its source surveillance activities while providing a clear mandate for each source on what its responsibility entails. An operating permit inclusive of all requirements pertaining to the source ensures that the owner of the source is fully informed of all applicable state and federal regulations. The operating permit program provides that both the department and the owner conduct a periodic review of polluting activities to ensure that effective emission reductions are taking place.

At all facilities, operating conditions change over time, new technologies become available, and new regulatory requirements are developed that may necessarily change original permit conditions. Operating permits provide a mechanism to adapt to these changing conditions. The benefits of an operating permit program discussed above are enhanced source surveillance capability for the department and clearer regulatory ground rules for owners and operators of facilities emitting air pollution. Other benefits to the regulated community of an operating permit program are described below.

Owners of sources subject to compliance programs through new regulatory initiatives or other air quality planning requirements must sign a consent order which is, in effect, an agreement between the department and the owner for the source to meet those initiatives or requirements. An operating permit program supplants the use of consent orders under these conditions and removes the negative connotation that comes with signed consent orders. Consent orders are generally used after a facility has been found in violation of the regulations when the department needs an enforceable administrative mechanism to ensure that the facility's operation will change to avoid a violation in the future.

Current federal requirements mandate that allowable emissions of existing sources be used in air quality analyses associated with the new source permit program and air quality planning requirements. For sources that do not have a permit under the current new source review program, allowable emissions must be based on the maximum emissions legally allowed, even if it is impossible or unlikely that such levels could be achieved. In some cases, an existing source has been found to cause, by itself, concentration levels that exceed the federal standard for a criteria pollutant such as sulfur dioxide. Without some means to legally restrict the hours of operation, the additional emissions must be counted. An operating permit program enables the department to permit facilities at emission levels closer to actual emission levels with a reasonable margin for normal operation. At present, there is often a disparity between the actual emissions a facility produces and those allowed by emission limits.

Current federal policy allows the use of emissions trading activities by sources to meet emission standards in a more cost effective manner. These activities include bubbling, netting, offsetting and banking. The operating permit provides a mechanism for implementing and enforcing emissions trading activities, provided EPA policy or a state generic policy, as appropriate, is followed. Currently these activities are enforced using consent orders which, as explained above, have a negative connotation.

An operating permit provides the mechanism for the department to assess any facility's compliance with the air quality standards and regulations that provide a basis to protect human health and the environment. The permit provides a direct enforcement mechanism for the department to determine a facility's compliance whereas the enforcement of the standards and regulations without the permit is more difficult because specific conditions for the individual facility have not been derived from those standards and regulations. The public participation requirements of the operating permit program provide an opportunity for citizens to review and to provide comments about the compliance performance of facilities emitting air pollutants along with the department.

Alternatives: In a general sense, the most basic regulatory alternative is either to develop a regulation to satisfy the provisions of Title V of the Clean Air Act and 40 CFR Part 70 or to decide that EPA will carry out the provisions of this part of the Clean Air Act in Virginia. The regulatory alternatives considered below are specific to some of the options available to the board under the provisions of the Act and applicable federal regulations.

1. Applicability

a. Extend the applicability of the regulation only to major sources as defined in Title V.

b. Expand the regulation beyond the provisions of the Clean Air Act to cover sources in addition to those defined as major by Title V.

2. Operational flexibility

As specified in the preamble to 40 CFR Part 70 and below, alternatives (i) and (iii) must be provided for in the state's operating permit program under Title V; alternative (ii) may be included in the program.

(i) Allow certain narrowly defined changes within a permitted facility that contravene specific permit terms without requiring a permit revisions, as long as the source does not exceed the emissions allowable under the permit.

(ii) Allow emissions trading at the facility to meet SIP limits where the SIP provides for such trading on seven days notice in cases where trading is not already provided for in the permit.

(iii) Provide for emissions trading for the purposes of complying with a federally enforceable emissions cap established in the permit independent of or more strict than otherwise applicable requirements.

a. Provide only for alternatives (i) and (iii) in the operating permit program.

b. Provide for alternative (ii) as well as (i) and (iii) in the operating permit program. The current Virginia SIP does not provide for an emissions trading program. An emissions trading program would have to be developed but could not be developed by November 15, 1993.

3. Permit modifications

a. Adopt the procedures EPA set out in 40 CFR Part 70, § 70.7 (e) regarding permit modifications.

b. Adopt procedures that are essentially equivalent to those set out in 40 CFR Part 70, § 70.7 (e).

4. General permits

Should the regulation provide for general permits and, if so, what process should be used, what types of processes could or should be covered by general permits and what levels of emissions should be covered by general permits?

5. Temporary permits

Should the regulation provide for one permit to be issued for multiple temporary locations of a source, and, if so, what process should be used?

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

Applicable federal requirements: The 1990 Amendments create a major change to the approach taken by the U.S. Congress in previous promulgations of the Act. Title V of the 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.

Section 502 (a) requires 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 nonattainment areas designated as serious, any source emitting 50 TPY or more (in Virginia, the northern Virginia area is designated serious for ozone); for severe or extreme nonattainment areas, sources emitting 25 and 10 TPY, 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.

3. Any other source, including an area source, subject to a hazardous air pollutant standard under section 112.

4. Any source subject to new source performance standards under section 111.

5. Any source required to have a preconstruction review permit pursuant to the requirements of the PSD program under Title I, part C or the nonattainment area new source review program under Title I, part D.

6. Any other stationary source in a category that EPA designates in whole or in part by regulation, after notice and comment.

Section 502 (b) sets 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.

2. Monitoring and reporting requirements.

3. A permit fee system.

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.

6. Authority to issue permits for a fixed term, not to exceed five years.

7. Authority to assure that permits incorporate emission limitations in an applicable implementation plan.

8. Authority to terminate, modify, or revoke and reissue permits for cause, which is not further defined, and a requirement to reopen permits in certain circumstances.

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.

10. Authority to assure that no permit will be issued if EPA objects to its issuance in a timely fashion.

11. Procedures for (a) expeditiously determining when applications are complete, (b) processing applications, (c) public notice, including offering an opportunity for public comment, and a hearing on applications, (d) expeditious review of permit actions, and (e) state court review of the final permit action.

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 section 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.

Section 503 (b) requires 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.

Section 503 (d) specifies 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.

Section 503 (e) requires 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 section 114 (c) of the Act can be submitted separately.

Section 504 specifies what is to be included in each operating permit issued under this program. Section 504 (a) requires that each permit shall 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.

Section 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.

Section 504 (c) requires that each permit issued under the program shall set forth inspection, entry, monitoring, compliance certification, and reporting requirements to assure compliance with the permit terms and conditions. Such monitoring and reporting requirements shall conform to applicable regulations issued under 504 (b). 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.

Section 504 (d) allows 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.

Section 504 (e) allows 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 assure 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.

Section 504 (f) provides 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 Section 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.

Section 503 (c) specifies 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.

Section 505 (a) requires 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, Section 505 (a) also requires 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. Section 505 (b) provides 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 section 505 (d), the permit program submitted by the state may not have to meet these requirements for sources other than major sources covered by the program. Section 505 (e) allows 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.

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

Written comments may be submitted until close of business August 25, 1993, to Director of Program Development, Air Division, Department of Environmental Quality, P.O. Box 10089, Richmond, Virginia 23240.

Contact: Nancy S. Saylor, Policy Analyst, Program Development, Department of Environmental Quality, P.O. Box 10089, Richmond, VA 23240, telephone (804) 786-1249.

VA.R. Doc. No. C93-1786; Filed July 7, 1993, 9:35 a.m.

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the State Air Pollution Control Board intends to consider promulgating regulations entitled: **VR 120-01. Regulations for the Control and Abatement of Air Pollution (Permit Program Fees - Revision KK)** . The purpose of the proposed action is to develop a regulation to meet the permit program fee requirements of Title V of the Clean Air Act and of § 10.1-1322 of the Code of Virginia.

Public meeting: A public meeting will be held by the department in House Committee Room One, State Capitol Building, Richmond, Virginia, at 10 a.m. on Wednesday, August 25, 1993, 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.

Public hearing plans: 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: Title V of the Clean Air Act (the Act) as amended November 1990, provides a mechanism to implement the various requirements under the other titles in the act through the issuance of operating permits. Under this title, the U.S. Environmental Protection Agency (EPA) is required to develop regulations with specific operating permit requirements. The federal regulations (40 CFR Part 70) were promulgated in final form on July 21, 1992. The states are required, in turn, to develop operating permit programs that meet the requirements specified in EPA's

regulations. These programs are due to EPA for review by November 15, 1993.

One of the requirements of Title V is for states to develop permit fee programs to use in funding the costs of developing, implementing and enforcing the other requirements of Title V. The permit fees obtained should fund the resources necessary for states to carry out their programs. The basis of the required permit fees is a charge per ton of emissions of regulated pollutants emitted by stationary sources covered under Title V. While the permit fee program provides a benefit to state agencies, the program also provides other benefits related to air quality. Permit fees charged for emissions may provide an incentive to stationary sources to keep their emissions as low as possible. The charging of permit fees also more directly allows the costs of the air quality programs to be paid for by those who create the pollution, rather than indirectly through the state taxation system.

Alternatives: Generally, the most basic regulatory alternative is either to amend the regulation to satisfy the provisions of Title V of the Clean Air Act, § 10.1-1322 of the Air Pollution Control Law of Virginia and 40 CFR Part 70 or to decide that EPA will carry out the permit fee provisions of Title V of the Act in Virginia. The regulatory options and alternatives set out below more specifically pertain to the requirements of the Act, Virginia law and applicable federal regulations.

1. Program coverage.

   a. Extend the coverage of the fee program only to those major sources as defined in Title V.

   b. Extend the coverage of the fee program to sources other than those covered in Title V.

2. Emissions fee approach.

   a. Provide for a graduated fee program so that the greater the emissions of each regulated pollutant, the higher the fee would be.

   b. Provide for a straight-line fee program so that each ton of a regulated pollutant emitted would be charged the same fee.

3. Other fee alternatives.

   a. Provide small businesses with reduced fees, defining a size of small business below which such reductions are appropriate.

   b. Provide sources that qualify for general permits, if such permits are developed within the state's Title V program, with reduced fees.

   c. Determine if any source sizes or types should not be assessed a fee, and if so, what source sizes or types should these be.

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

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

Applicable federal requirements: The legal basis for the regulation is Title V, §§ 501-507 of the Federal Clean Air Act (42 USC 7401 et seq., 91 Stat 685). The regulatory basis for the regulation is 40 CFR Part 70.

The 1990 amendments create a major change to the approach taken by the U.S. Congress in previous promulgations of the Act. Title V of the 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. In addition to requiring that states develop operating permit programs, Congress is also requiring that states develop permit fee programs to pay for the cost of the programs.

Section 502(b)(3) sets out the minimum elements that must be included in each permit fee program. The owner or operator of all sources subject to the requirement to obtain a permit must pay an annual fee, or the equivalent over some other period, sufficient to cover all reasonable (direct and indirect) costs required to develop and administer the permit program requirements of Title V, including the costs of the small business technical assistance program. Section 502(b)(3)(A) specifies what is meant by reasonable costs, as follows:

1. Reviewing and acting upon any application for a permit.

2. Implementing and enforcing the terms and conditions of the permit, but not including any court costs or other costs associated with any enforcement action.

3. Emissions and ambient monitoring.

4. Preparing generally applicable regulations or guidance.

5. Modeling, analyses, and demonstrations.

6. Preparing inventories and tracking emissions.

Section 502(b)(3)(B) specifies the requirements for the total amount of fees to be collected by the state permitting authority, as follows:

1. The state must demonstrate that, except as otherwise provided, the program will collect in the aggregate from all sources subject to the program an amount not less than $25 per ton of each regulated pollutant, or such other amount as the EPA administrator may determine adequately reflects the reasonable costs of the permit program.

2. "Regulated pollutant" means (a) a volatile organic compound; (b) each pollutant regulated under Section 111 or 112 of the Act; and (c) each pollutant for which a national primary ambient air quality standard has been promulgated (except carbon monoxide).

3. In determining the amount to be collected, the permitting authority is not required to include any amount of regulated pollutant emitted by any source in excess of 4,000 tons per year of that pollutant.

4. The requirements of paragraph 1 above will not apply if the permitting authority can demonstrate that collecting an amount less than $25 per ton of each regulated pollutant will meet the requirements of 502(b)(3)(A).

5. The fee calculated under paragraph 1 above shall be increased (consistent with the need to cover the reasonable costs authorized by 502(b)(3)(A)) in each year beginning after the year of the enactment of the Act by the percentage, if any, by which Consumer Price Index for the most recent calendar year ending before the beginning of such year exceeds the Consumer Price Index for the calendar year 1989.

Section 502(b)(3)(C) specifies the requirements of a permit fee program if the EPA administrator finds that the fee provisions of a state program are inadequate or if the Title V operating permit program itself is inadequate and EPA has to administer the fee program itself.

Section 507(f) concerning fees and the Small Business Technical Assistance Program specifies that the state may reduce any fee required under Title V to take into account the financial resources of small business stationary sources.

Section 408(c)(4) of Title IV concerning sources of acid deposition states that Phase I affected units shall not be required to pay permit fees during the years 1995 through 1999.

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

Written comments may be submitted until the close of business on August 25, 1993, to Director of Program Development, Air Division, Department of Environmental Quality, P.O. Box 10089, Richmond, Virginia 23240.

Contact: Dr. Kathleen Sands, Policy Analyst, Department of Environmental Quality, P.O. Box, 10089, Richmond, VA 23240, telephone (804) 225-2722.

VA.R. Doc. No. C93-1782; Filed July 7, 1993, 9:35 a.m.

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the State Air Pollution Control Board intends to consider promulgating regulations entitled: **VR 120-99-03. Regulation for the Control of Motor Vehicle Emissions through Enhanced Testing.** The purpose of the proposed action is to develop a regulation for the testing of vehicle emissions which will conform to federal requirements.

Public meeting: A public meeting will be held by the department in the Pohick Regional Library, 6450 Sydenstricker Road, Burke, Virginia, at 10:30 a.m. on August 25, 1993, 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.

Public hearing plans: The department will hold at least one public hearing to provide opportunity for public comment on any regulations or amendments drafted pursuant to this notice.

Need: The National Ambient Air Quality Standard for ozone is 0.12 parts per million (ppm) and was established by the U.S. Environmental Protection Agency (EPA) to protect the health of the general public with an adequate margin of safety. Ozone is formed when volatile organic compounds and nitrogen oxides in the ambient air reach together in the presence of sunlight. When concentrations of ozone in the ambient air exceed EPA standard the area is considered to be out of compliance and is classified "nonattainment." Numerous counties and cities within the Northern Virginia, Richmond, and Hampton Roads areas have been identified as ozone nonattainment areas according to new provisions of the 1990 Clean Air Act (Act); therefore, over 3.5 million Virginia citizens are being exposed to air quality that does not meet the federal health standard for ozone. States are required to develop plans to ensure that areas will come into compliance with the federal health standard. Failure to develop adequate programs to meet the ozone air quality standard: (i) will result in the continued violations of the standard to the detriment of public health and welfare; (ii) may result in assumption of the program by the EPA at which time the Commonwealth would lose authority over matters affecting its citizens; and (iii) may result in the implementation of sanctions by EPA, such as prohibition of new major industrial facilities and loss of federal funds for highway construction and sewage treatment plant development. Although the EPA has been reluctant to impose these sanctions in the past, the new Act now includes specific provisions requiring these sanctions to be issued by EPA if so warranted.

Of the consequences resulting from failure to develop an

adequate program to control ozone concentrations in the ambient air, the most serious consequence will be the adverse impact on public health and welfare. Ozone not only affects people with impaired respiratory systems, such as asthmatics, but also many people with healthy lungs, both children and adults. It can cause shortness of breath and coughing when healthy adults are exercising, and more serious effects in the young, old, and infirm. There are significant health care costs associated with these adverse effects.

Northern Virginia has an ozone air pollution problem classified by the EPA as "serious." The problem is predominately from motor vehicle emissions. A vehicle emissions inspection and maintenance (I/M) program has been in place in Northern Virginia for 10 years to help reduce these emissions; however, substantially greater emission reductions are now required and a more effective I/M program must be implemented in the Northern Virginia area.

I/M programs provide a way to check whether the emission control system on a vehicle is working correctly. All new passenger cars and trucks sold in the United States today must meet stringent air pollution standards and those standards will become more stringent in model year 1994, but they can only retain this low-polluting profile if the emission controls and engine are functioning properly. I/M is designed to ensure that vehicles stay clean in actual use. Through periodic vehicle checks and required repair of vehicles that fail the test, I/M encourages proper vehicle maintenance and discourages tampering with emission control devices. This, in turn, can substantially reduce the amount of volatile organic compounds, carbon monoxide, and nitrogen oxides emitted to the ambient air, thereby reducing the formation of ozone and lowering ozone concentrations.

Alternatives:

1. Draft new regulations which will provide for implementation of a motor vehicle emissions testing program that meets the provisions of the federal Clean Air Act and associated EPA regulations and policies.

2. Make alternative regulatory changes to those required by the Act. No alternatives have been promulgated by EPA as meeting the requirements of the Act. Adopting an unapprovable program will result in sanctions being imposed by EPA.

3. Take no action to amend the regulations and continue to operate the existing program in violation of the Act and risk sanctions by EPA.

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

Applicable federal requirements: The 1990 amendments to the Clean Air Act represent the most comprehensive piece of clean air legislation ever enacted and for the first time delineates nonattainment areas as to the severity of the pollution problem. Nonattainment areas are now classified as marginal, moderate, serious, severe and extreme. Marginal areas are subject to the least stringent requirements and each subsequent classification is subject to successively more stringent control measures. Areas with higher classification of nonattainment must meet the requirements of all areas in lower classifications. Virginia's nonattainment areas are classified as marginal for the Hampton Roads nonattainment area, moderate for the Richmond nonattainment area, and serious for the Northern Virginia nonattainment area.

Section 182(c)(3) of the federal Act requires "enhanced" I/M programs in all urbanized areas with 1980 populations of 200,000 or more (as defined by the Bureau of Census) that are classified as serious or above ozone nonattainment areas. In addition, the Act created ozone transport regions (OTR) and specifically established one such region in the Northeastern United States, covering Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, and the Consolidated Metropolitan Statistical Area of the District of Columbia, which includes Northern Virginia. The Act requires an enhanced I/M program in any metropolitan statistical area (MSA) or portion of a MSA within the OTR with a 1990 population of 100,000 or more, regardless of its nonattainment status.

The enhanced model I/M program is based on annual, centralized testing of all model year 1968 and later light duty vehicles and light duty trucks to 8,500 pounds gross vehicle weight rating. The model presumes steady-state testing is performed on 1968 through 1985 model year vehicles, while 1986 and later model year vehicles are subject to transient tailpipe emission testing. Also required is a test of the integrity of the fuel system and the effectiveness of the fuel vapor recovery system including charcoal canister operation.

EPA regulations require that enhanced programs utilize a test-only network to achieve the performance standard. EPA does encourage biennial testing as a cost effective alternative to annual testing but the resulting difference in emissions control must be made up by further enhancements to the programs, such as inclusion of more vehicles in the program.

At a minimum, the program must include computerized emission analyzers, on-road testing, denial of waivers for warranted vehicles or repairs related to tampering, a $450 cost waiver requirement for emission-related repairs not covered by manufacturer's warranty, enforcement through vehicle registration denial, and inspection of the emissions control diagnostic system. In addition, each state must report biennially to EPA on emissions reductions achieved by the program.

An enhanced I/M program must be implemented by

January 1, 1995. Areas switching from a test-and-repair to a test-only network, which applies to the Northern Virginia area, may phase in the change between January 1995 and January 1996. The General Assembly of Virginia passed legislation providing for a biennial, test-only, enhanced emission inspection program which will become effective January 1, 1995. The program will apply to motor vehicles that have actual gross weights of 26,000 pounds or less. The new legislation also provides for regulations to address the protection of the following consumer interests in accordance with EPA requirements: (i) the number of inspection facilities and inspection lanes relative to population density; (ii) the proximity of inspection facilities to motor vehicle owners; (iii) the time spent waiting for inspections; and (iv) the days and hours of operation of inspection facilities.

Other key provisions of the legislation include:

Beginning January 1, 1995, an inspection fee cap of $20 and a minimum repair cost of $450 to qualify for a waiver;

Motor vehicles being titled for the first time may be registered for up to two years without being subject to an emissions inspection;

Vehicle held for resale by dealers, up to five years old, may be issued a one-year registration without being required to have an I/M test, provided that the dealer states in writing that the emissions equipment on the motor vehicle was operating in accordance with the manufacturer's warranty at the time of resale; and

The requirement for the inspection to apply to all vehicles registered and/or operated in the affected area including (i) vehicles owned by government entities; (ii) vehicles owned by military personnel residing in the affected areas; and (iii) vehicles owned by leasing or rental companies.

The legislation directs the State Air Pollution Control Board to adopt regulations to implement the program. Federal law requires that regulations be adopted and submitted to EPA by November 15, 1993.

Statutory Authority: §§ 46.2-1179 and 46.2-1180 of the Code of Virginia.

Written comments may be submitted until close of business on August 25, 1993, to Director of Program Development, Air Division, Department of Environmental Quality, P.O. Box 10089, Richmond, Virginia 23240.

Contact: David J. Kinsey, Policy Analyst, Program Development, Department of Environmental Quality, P.O. Box 10089, Richmond, VA 23240, telephone (804) 786-1620.

VA.R. Doc. No. C93-1785; Filed July 7, 1993, 9:35 a.m.

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency★s public participation guidelines that the State Air Pollution Control Board intends to consider promulgating regulations entitled: **VR 120-99-05. Regulation for the Control of Emissions from Fleet Vehicles.** The purpose of the proposed action is to develop a regulation that will conform to the federal and state requirements for control of emissions from fleet vehicles in the Northern Virginia, Richmond and Hampton Roads ozone nonattainment areas.

Public meeting: A public meeting will be held by the department in House Committee Room One, State Capitol Building, Richmond, Virginia, at 2 p.m. on August 25, 1993, 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.

Public hearing plans: 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 National Ambient Air Quality Standard for ozone is 0.12 parts per million (ppm) and was established by the U.S. Environmental Protection Agency (EPA) to protect the health of the general public with an adequate margin of safety. Ozone is formed when volatile organic compounds and nitrogen oxides in the ambient air react together in the presence of sunlight. When concentrations of ozone in the ambient air exceed the EPA standard the area is considered to be out of compliance and is classified as "nonattainment." Numerous counties and cities within the Northern Virginia, Richmond, and Hampton Roads areas have been identified as ozone nonattainment areas according to new provisions of the 1990 Clean Air Act (Act); therefore, over 3.5 million Virginia citizens are being exposed to air quality that does not meet the federal health standard for ozone.

States are required to develop plans to ensure that areas will come into compliance with the federal health standard. Failure to develop adequate programs to meet the ozone air quality standard: (i) will result in the continued violations of the standard to the detriment of public health and welfare, (ii) may result in assumption of the program by EPA at which time the Commonwealth would lose authority over matters affecting its citizens, and (iii) may result in the implementation of sanctions by EPA, such as prohibition of new major industrial facilities and loss of federal funds for sewage treatment plant development and highway construction. Although the EPA has been reluctant to impose these sanctions in the past, the new Act now includes specific provisions requiring these sanctions to be issued by EPA if so warranted.

Of the consequences resulting from failure to develop an adequate program to control ozone concentrations in the ambient air, the most serious consequence will be the

adverse impact on public health and welfare. Ozone not only affects people with impaired respiratory systems, such as asthmatics, but also many people with healthy lungs, both children and adults. It can cause shortness of breath and coughing when healthy adults are exercising, and more serious effects in the young, old, and infirm.

Northern Virginia has been identified by EPA as having a serious ozone air pollution problem. The problem originates in large part from motor vehicle emissions including fleet vehicles. A vehicle emissions inspection program has been in place in Northern Virginia for 10 years to help reduce these emissions; however, substantially greater emission reductions are now required. The 1990 amendments to the Clean Air Act have required the fleet owners in the Northern Virginia nonattainment area to purchase vehicles that conform to stricter exhaust emission standards. These vehicles are known as Clean Fuel Fleet (CFF) vehicles.

In addition, the 1993 General Assembly adopted legislation that requires a clean fuel fleet program in the Richmond and Hampton Roads nonattainment areas. The legislation requires fleet owners to include an increasing percentage of CFF vehicles in their fleet purchases beginning in the 1998 model year. As more and more vehicles in the affected fleets become CFF vehicles the total emissions from the fleets will decrease. This, in turn, can substantially reduce the amount of volatile organic compounds emitted to the ambient air, thereby reducing the formation of ozone and lowering ozone concentrations.

Alternatives:

1. Adopt regulations which will provide for implementation of a clean fuel fleets program to satisfy the provisions of state law and the Clean Air Act and associated EPA regulations and policies.

2. Make alternative regulatory changes to those required by the Act. For example, one control measure that has been identified as an equivalent alternative to the clean fuel fleets program is a low emissions vehicle (LEV) program; however, legal authority to adopt a LEV program does not exist.

3. Take no action to adopt regulations and continue to operate fleets in violation of the Act and risk sanctions by EPA.

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

Applicable federal requirements: The 1990 amendments to the Clean Air Act delineate nonattainment areas as to the severity of the pollution problem. Nonattainment areas are now classified as marginal, moderate, serious, severe and extreme. Marginal areas are subject to the least stringent requirements and each subsequent classification is subject to successively more stringent control measures. Areas with higher classification of nonattainment must meet the requirements of all the areas in lower classifications. Virginia's nonattainment areas are marginal for the Hampton Roads nonattainment area, moderate for the Richmond nonattainment area, and serious for the Northern Virginia nonattainment area.

Section 246 (a) of Part C of Title II of the federal Act requires CFF programs in all urbanized areas with 1980 populations of 250,000 or more (as defined by the Bureau of Census) that are classified as serious or above ozone nonattainment areas.

The Act requires that a percentage of all new fleet vehicles purchased by each affected fleet operator in serious nonattainment areas (Northern Virginia) in model year 1998 and thereafter be clean-fuel vehicles. In addition, the law further requires that the vehicles shall use clean alternative fuels when operating in the covered areas. Fleet operators have their choice of CFF vehicles and type of clean fuel to be used and requires that the choice of fuel be made available to fleet operators. The phase-in requirements for new purchases are:

Vehicle Type & Gross Vehicle Weight (GVW)	Model Year 1998	Model Year 1999	Model Year 2000
Light-duty vehicles and trucks up to 6,000 lbs GVW	30%	50%	70%
Light-duty trucks between 6,000 and 8,500 GVW [1]	30%	50%	70%
Heavy-Duty trucks above 8,500 GVW	50%	50%	50%

[1] EPA interpretation that LDTs over 6,000 GVW are included in the same phase-in schedule as LTDs below 6,000 pounds GVW.

Credit shall be provided to fleet operators for the purchase of more clean-fuel vehicles than required and/or the purchase of CFF vehicles which meet more stringent standards than required. Credits may be used to demonstrate compliance or may be sold or traded for other fleet operators to demonstrate compliance. Credits may be held or banked for later use with no decrease in the credit value.

In addition to the federal requirement for Northern Virginia, legislation passed by the Virginia General Assembly also requires the CFF program to be implemented in the Richmond and Hampton Roads areas. This requirement is not only for fleet vehicles registered in the affected nonattainment areas, but also applies to motor vehicles NOT registered in the nonattainment areas, but have either (i) a base of operations or (ii) a majority of their annual travel in one or more of the mentioned localities.

The law also provides for the development of regulations

by the State Corporation Commission and the Department of Environmental Quality to ensure the availability of clean alternative fuels to affected fleet operators should it be deemed necessary.

Statutory Authority: § 46.2-1179.1 of the Code of Virginia (Chapters 234 and 571 of the 1993 Acts of Assembly).

Written comments may be submitted until the close of business August 25, 1993, to the Director of Program Development, Air Division, Department of Environmental Quality, P.O. Box 10089, Richmond, Virginia 23240.

Contact: Mary E. Major, Senior Policy Analyst, Program Development, Air Division, Department of Environmental Quality, P.O. Box 10089, Richmond, VA 23240, telephone (804) 786-7913.

VA.R. Doc. No. C93-1784; Filed July 7, 1993, 9:35 a.m.

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

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board for Architects, Professional Engineers, Land Surveyors and Landscape Architects intends to consider amending regulations entitled: **VR 130-01-2. Board for Architects, Professional Engineers, Land Surveyors and Landscape Architects Rules and Regulations.** The purpose of the proposed action is to (i) amend the current licensure and registration requirements; (ii) promulgate new regulations governing the registration of professional limited liability companies and limited liability companies; and (iii) review current fee structure and other changes as needed. The agency plans to hold a public hearing on the proposed regulation.

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

Written comments may be submitted until August 26, 1993.

Contact: Willie Fobbs, III, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8514.

VA.R. Doc. No. C93-1706; Filed July 1, 1993, 11:57 a.m.

VIRGINIA BOARD FOR ASBESTOS LICENSING

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Virginia Board for Asbestos Licensing intends to consider repealing regulations entitled: **VR 190-05-01. Asbestos Licensing Regulations.** The purpose of the proposed action is to review the entire regulation with special attention to sections pertaining to definitions, project designers, asbestos contractors, training requirements, and other changes that are necessary to reflect 1993 General Assembly legislation. The agency does not intend to hold a public hearing on the repeal of this regulation.

Statutory Authority: § 54.1-501 of the Code of Virginia.

Written comments may be submitted until August 26, 1993.

Contact: Kent Steinruck, Regulatory Boards Administrator, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8595.

VA.R. Doc. No. R93-1707; Filed June 30, 1993, 2:46 p.m.

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Virginia Board for Asbestos Licensing intends to consider promulgating regulations entitled: **VR 190-05-1:1. Asbestos Licensing Regulations.** The purpose of the proposed action is to review the entire regulation with special attention to sections pertaining to definitions, project designers, asbestos contractors, training requirements, and other changes that are necessary to reflect 1993 General Assembly legislation. The agency does not intend to hold a public hearing on the proposed regulation.

Statutory Authority: §§ 36-99.7 and 54.1-501 of the Code of Virginia.

Written comments may be submitted until August 26, 1993.

Contact: Kent Steinruck, Regulatory Boards Administrator, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8595.

VA.R. Doc. No. R93-1708; Filed June 30, 1993, 2:46 p.m.

BOARD FOR BRANCH PILOTS

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board for Branch Pilots intends to consider amending regulations entitled: **VR 535-01-2. Branch Pilots Regulations.** The purpose of the proposed action is to (i) make changes to the requirements for licensure renewal; and (ii) promulgate changes for ARPA radar for licensed pilots. The agency plans to hold a public hearing on the proposed regulation.

Statutory Authority: § 54.1-902 of the Code of Virginia.

Written comments may be submitted until August 26, 1993.

Contact: Willie Fobbs, III, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8514.

VA.R. Doc. No. C93-1705; Filed July 1, 1993, 11:58 a.m.

CHILD DAY-CARE COUNCIL

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Child Day-Care Council intends to consider repealing regulations entitled: **VR 175-01-01. Public Participation Guidelines.** The purpose of the proposed action is to repeal the existing public participation guidelines so new guidelines can be promulgated. No public hearing on the proposed regulation is planned.

Statutory Authority: § 63.1-202 of the Code of Virginia.

Written comments may be submitted until August 26, 1993, to Peg Spangenthal, Chair, Child Day-Care Council, 730 East Broad Street, Richmond, Virginia 23219.

Contact: Peggy Friedenberg, Legislative Analyst, Office of Governmental Affairs, Department of Social Services, 730 E. Broad St., Theater Row Bldg., Richmond, VA 23219, telephone (804) 692-1820.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Child Day-Care Council intends to consider promulgating regulations entitled: **VR 175-01-01:1. Public Participation Guidelines.** The purpose of the proposed action is to develop guidelines the council will use to obtain public input when developing regulations. This regulation will replace the emergency public participation guidelines approved by the council on June 22, 1993. No public hearing on the proposed regulation is planned.

Statutory Authority: §§ 9-6.14:7.1 and 63.1-202 of the Code of Virginia.

Written comments may be submitted until August 26, 1993, to Peg Spangenthal, Chair, Child Day-Care Council, 730 East Broad Street, Richmond, Virginia 23219.

Contact: Peggy Friedenberg, Legislative Analyst, Office of Governmental Affairs, Department of Social Services, 730 E. Broad St., Theater Row Bldg., Richmond, VA 23219, telephone (804) 692-1820.

DEPARTMENT OF COMMERCE

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Department of Commerce intends to consider repealing regulations entitled: **VR 190-00-01. Public Participation Guidelines.** The purpose of the proposed action is to promulgate public participation guidelines to replace the emergency public participation guidelines adopted in June 1993, and to provide full opportunity for public participation in the regulation formation and promulgation process. The agency does not intend to hold a public hearing on the proposed regulation.

Statutory Authority: §§ 9-6.14:7.1 and 54.1-501 of the Code of Virginia.

Written comments may be submitted until August 16, 1993.

Contact: David E. Dick, Assistant Director, Department of Commerce, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8596.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Department of Commerce intends to consider promulgating regulations entitled: **Asbestos Contractors and Workers Public Participation Guidelines.** The purpose of the proposed action is to promulgate public participation guidelines to replace the emergency public participation guidelines adopted in June, 1993, and to provide full opportunity for public participation in the regulation formation and promulgation process. The agency does not intend to hold a public hearing on the proposed regulation.

Statutory Authority: §§ 9-6.14:7.1 and 54.1-501 of the Code of Virginia.

Written comments may be submitted until August 16, 1993.

Contact: David E. Dick, Assistant Director, Department of Commerce, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8596.

BOARD OF CORRECTIONS

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Corrections intends to consider amending regulations entitled: **VR 230-01-001. Public Participation Guidelines.** The purpose of the proposed action is to replace the emergency amended regulations VR 230-01-001 which were effective July 1, 1993. The public participation guidelines will outline how the agency plans to ensure public

participation in the formation and development of regulations as required in the Administrative Process Act. A public hearing will be held on the proposed regulations after publication. The location, date and time of the public hearing will be published at a later date.

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

Written comments may be submitted until August 25, 1993.

Contact: Amy Miller, Agency Regulatory Coordinator, Planning and Engineering, P.O. Box 26963, Richmond, VA 23261, telephone (804) 674-3262.

VA.R. Doc. No. C93-1779; Filed July 7, 1993, 11:43 a.m.

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Corrections intends to consider promulgating regulations entitled: **VR 230-01-004. Regulations for Human Subject Research.** The purpose of the proposed action is to establish under what circumstances human research is authorized and conducted within the Department of Corrections as required in § 32.1-162 et seq. of the Code of Virginia. This notice replaces the original Notice of Intended Regulatory Action to promulgate these same regulations under the title "Research Regulations" in the February 8, 1993, Virginia Register. By reinitiating this action, the agency is allowing the required 30 days for written comment. A public hearing will be held on the proposed regulations after publication. The location, date and time of the public hearing will be published at a later date.

Statutory Authority: § 53.1-5.1 of the Code of Virginia.

Written comments may be submitted until August 25, 1993.

Contact: Dr. Larry Guenther, Agency Management Lead Analyst, Research and Evaluation Unit, P.O. Box 26963, Richmond, VA 23261, telephone (804) 674-3268.

VA.R. Doc. No. C93-1780; Filed July 7, 1993, 11:43 a.m.

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Corrections intends to consider amending regulations entitled: **VR 230-20-001:1. Standards for State Correctional Facilities.** The purpose of the proposed action is to update the language and remove conflicting data contained in some of the standards. This notice replaces the Notice of Intended Regulatory Action to promulgate regulations under this same title in the February 8, 1993, Virginia Register. A public hearing will be held on the proposed regulations after publication. The location, date and time of the public hearing will be published at a later date.

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

Written comments may be submitted until August 25, 1993.

Contact: Lou Ann White, Certification Supervisor, Planning and Engineering, P.O. Box 26963, Richmond, VA 23261, telephone (804) 674-3268.

VA.R. Doc. No. C93-1778; Filed July 7, 1993, 11:43 a.m.

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Corrections intends to consider promulgating regulations entitled: **VR 230-30-005:1. Standards for Planning, Design, Construction and Reimbursement of Local Correctional Facilities.** The purpose of the proposed action is to promulgate regulations to replace the emergency amended regulations which were effective July 1, 1993. The regulations will establish minimum standards for the construction, equipment, administration and operation of local correctional facilities, along with regulations establishing criteria to assess need, establish priorities, and evaluate requests for reimbursement of construction costs to ensure fair and equitable distribution of state funds provided. A public hearing will be held on the proposed regulations after publication. The location, date and time of the public hearing will be published at a later date.

Statutory Authority: §§ 53.1-5, 53.1-68, and 53.1-80 through 53.1-82.3 of the Code of Virginia.

Written comments may be submitted until August 25, 1993.

Contact: Mike Howerton, Chief of Operations, Division of Community Corrections, P.O. Box 26963, Richmond, VA 23261, telephone (804) 674-3251.

VA.R. Doc. No. C93-1781; Filed July 7, 1993, 11:43 a.m.

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Corrections intends to consider repealing regulations entitled: **VR 230-30-005. Guide for Minimum Standards in Design and Construction of Jail Facilities.** The purpose of the proposed action is to repeal regulations which are superseded by the emergency regulations, VR 230-30-005.2, Standards for Planning, Design, Construction and Reimbursement of Local Correctional Facilities, which were effective July 1, 1993. The Board of Corrections does not plan to hold a public hearing on the proposed repeal of the regulations.

Statutory Authority: §§ 53.1-5, 53.1-68, and 53.1-80 through 53.1-82.3 of the Code of Virginia.

Written comments may be submitted until August 25, 1993.

Contact: Mike Howerton, Chief of Operations, Division of Community Corrections, P.O. Box 26963, Richmond, VA 23261, telephone (804) 674-3251.

VA.R. Doc. No. C93-1777; Filed July 7, 1993, 11:43 a.m.

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Corrections intends to consider repealing regulations entitled: **VR 230-30-006. Jail Work/Study Release Program Standards.** The purpose of the proposed action is to repeal regulations which are not included in VR 230-30-001, Minimum Standards for Jail and Lockups. By this action, the Board of Corrections withdraws the first Notice of Intended Regulatory Action to repeal VR 230-30-006, which was published in the June 14, 1993, Virginia Register. The Board of Corrections does not plan to hold a public hearing on the proposed repeal of the regulations.

Statutory Authority: §§ 53.1-5 and 53.1-131 of the Code of Virginia.

Written comments may be submitted until August 25, 1993.

Contact: Mike Howerton, Chief of Operations, Division of Community Corrections, P.O. Box 26963, Richmond, VA 23261, telephone (804) 674-3251.

VA.R. Doc. No. C93-1776; Filed July 7, 1993, 11:43 a.m.

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Corrections intends to consider repealing regulations entitled: **VR 230-30-008. Regulations for State Reimbursement of Local Correctional Facility Costs.** The purpose of the proposed action is to repeal regulations which are superseded by the emergency regulations, VR 230-30-005.2, Standards for Planning, Design, Construction and Reimbursement of Local Correctional Facilities, which were effective July 1, 1993. The Board of Corrections does not plan to hold a public hearing on the proposed repeal of the regulations.

Statutory Authority: §§ 53.1-5, 53.1-68, and 53.1-80 through 53.1-82.1 of the Code of Virginia.

Written comments may be submitted until August 25, 1993.

Contact: Mike Howerton, Chief of Operations, Division of Community Corrections, P.O. Box 26963, Richmond, VA 23261, telephone (804) 674-3251.

VA.R. Doc. No. C93-1775; Filed July 7, 1993, 11:43 a.m.

CRIMINAL JUSTICE SERVICES BOARD

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Criminal Justice Services Board intends to consider promulgating regulations entitled: **Regulations Relating to Private Security Services.** The purpose of the proposed action is to promulgate regulations relating to private security services through the regular process of the Administrative Process Act and to revise and amend the existing emergency regulations. The board intends to conduct a public hearing in the spring of 1994 to hear and consider recommendations concerning the proposed regulations.

Statutory Authority: § 9-182 of the Code of Virginia.

Written comments may be submitted until August 25, 1993, to L. T. Eckenrode, Department of Criminal Justice Services, P.O. Box 10110, Richmond, Virginia 23240-9998.

Contact: Paula Scott Dehetre, Administrative Assistant, Department of Criminal Justice Services, 805 E. Broad St., Richmond, VA 23219, telephone (804) 786-4000.

VA.R. Doc. No. C93-1795; Filed July 7, 1993, 10:19 a.m.

STATE EDUCATION ASSISTANCE AUTHORITY

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the State Education Assistance Authority intends to consider amending regulations entitled: **VR 275-01-1. Regulations Governing Virginia Administration of the Federally Guaranteed Student Loan Programs.** The purpose of the proposed action is to reflect recent changes in federal laws and regulations governing the student loan programs. The State Education Assistance Authority does not intend to hold a public hearing on the proposed regulation after publication.

Statutory Authority: § 23-38.33:1 C 7 of the Code of Virginia.

Written comments may be submitted until August 25, 1993, to Marvin Ragland, VSAA, 411 East Franklin Street, Richmond, Virginia 23219.

Contact: Sherry Scott, Policy Analyst, 411 E. Franklin St., Richmond, VA 23219, telephone (804) 775-4000.

VA.R. Doc. No. C93-1698; Filed July 2, 1993, 3:02 a.m.

BOARD FOR GEOLOGY

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board for Geology intends to consider repealing regulations entitled: **VR 335-01-1. Public Participation Guidelines.** The purpose of the proposed action is to promulgate public participation guidelines to replace the emergency public participation guidelines adopted in June 1993, and to provide full opportunity for public participation in the regulation formation and promulgation process. The agency does not intend to hold a public hearing on the proposed regulation.

Statutory Authority: §§ 9-6.14:7.1 and 54.1-1402 of the Code of Virginia.

Written comments may be submitted until August 16, 1993.

Contact: David E. Dick, Assistant Director, Department of Commerce, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8596.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board for Geology intends to consider promulgating regulations entitled: **VR 335-01-1:1. Board for Geology Public Participation Guidelines.** The purpose of the proposed action is to promulgate public participation guidelines to replace the emergency public participation guidelines adopted in June 1993, and to provide full opportunity for public participation in the regulation formation and promulgation process. The agency does not intend to hold a public hearing on the proposed regulation.

Statutory Authority: §§ 9-6.14:7.1 and 54.1-1402 of the Code of Virginia.

Written comments may be submitted until August 16, 1993.

Contact: David E. Dick, Assistant Director, Department of Commerce, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8596.

VDH VIRGINIA DEPARTMENT OF HEALTH
Protecting You and Your Environment

DEPARTMENT OF HEALTH (STATE BOARD OF)

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the State Board of Health intends to consider amending regulations entitled: **VR 355-01-100. Public Participation Guidelines.** The purpose of the proposed action is to amend the public participation guidelines to reflect 1993 amendments to the Administrative Process Act. Currently, emergency public participation guidelines are in place and effective July 1, 1993, through June 30, 1994. No public hearings are planned during the public comment period to commence with publication of the proposed revisions.

Statutory Authority: §§ 32.1-12 and 9-6.14:7.1 of the Code of Virginia.

Written comments may be submitted until August 27, 1993.

Contact: Susan R. Rowland, MPA, Director, Office of Public Affairs, P.O. Box 2448, Richmond, VA 23218, telephone (804) 786-3564.

VA.R.Doc. No. R93-1798; Filed July 7, 1993, 11:07 a.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the State Board of Health intends to consider repealing regulations entitled: **VR 355-19-05. Rules and Regulations for the Sanitary Control of the Picking, Packing and Marketing of Crab Meat for Human Consumption.** The purpose of the proposed action is to replace current regulations with updated regulations. The agency intends to hold a public hearing on the proposed regulation.

Statutory Authority: § 28.2-801 of the Code of Virginia.

Written comments may be submitted until August 11, 1993.

Contact: Keith Skiles, Program Manager, Department of Health, Division of Shellfish Sanitation, 1500 E. Main St., Main Street Station, Room 109, Richmond, VA 23219, telephone (804) 786-7937.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the State Board of Health intends to consider promulgating regulations entitled: **VR 355-19-500. Shellfish and Crustacea Sanitation Regulations.** The purpose of the proposed action is to provide up-to-date and comprehensive regulations governing the shellfish and crustacea industries and to assure Virginia's compliance with the National Shellfish Sanitation Program. The agency intends to hold a public hearing on the proposed regulation.

Statutory Authority: § 28.2-801 of the Code of Virginia.

Written comments may be submitted until August 11, 1993.

Contact: Keith Skiles, Program Manager, Department of Health, Division of Shellfish Sanitation, 1500 E. Main St., Suite 105, Richmond, VA 23219, telephone (804) 786-7937.

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the State Board of Health intends to consider amending regulations entitled: **VR 355-34-200. Sewage Handling and Disposal Regulations (previously VR 355-34-02).** The purpose of the proposed action is to implement recommendations of the Secretaries Task Force on Septic System Regulations, which include increased separation distances to water table and rock, reduced system installation depths, easier access for the use of new technologies and the establishment of mass drainfield requirements. The Board of Health intends to hold a series of public hearing across the Commonwealth of Virginia. Dates and locations for public hearings will be announced when the proposed regulations are published.

Statutory Authority: §§ 32.1-12, 32.1-163, and 32.1-164 of the Code of Virginia.

Written comments may be submitted until August 27, 1993.

Contact: Donald J. Alexander, Director, Division of Onsite Sewer and Water Services, P.O. Box 2448, Suite 117, Richmond, VA 23218, telephone (804) 786-1750.

VA.R. Doc. No. R93-1797; Filed July 7, 1993, 11:08 a.m.

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the State Board of Health intends to consider promulgating regulations entitled: **VR 355-35-700. Swimming Pool Regulations Governing the Posting of Water.** The purpose of the proposed action is to ensure that all public swimming pools are maintained in a manner which does not adversely affect the public health, welfare and safety by specifying how daily water quality tests are to be posted as newly required by the Code of Virginia, effective July 1, 1990. A public hearing will be held during the public comment period after the proposed regulations are published. These regulations, previously initiated, have been withdrawn to assure promulgation under new public participation guidelines.

Statutory Authority: §§ 32.1-248 of the Code of Virginia.

Written comments may be submitted until August 31, 1993.

Contact: John E. Benko, M.P.H., Director, Division of Food and Environmental Services, P.O. Box 2448, Suite 115, Richmond, VA 23218, telephone (804) 786-3559.

VA.R. Doc. No. R93-1796; Filed July 7, 1993, 11:08 a.m.

VIRGINIA HEALTH SERVICES COST REVIEW COUNCIL

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Virginia Health Services Cost Review Council intends to consider amending regulations entitled: **VR 370-01-000. Public Participation Guidelines in the Formation and Development of Regulations.** The purpose of the proposed action is to amend the public participation guidelines to reflect recent statutory changes. No public hearing is planned on the proposed regulation after publication.

Statutory Authority: §§ 9-6.14:7.1 and 9-164 2 of the Code of Virginia.

Written comments may be submitted until September 15, 1993, to John A. Rupp, Executive Director, 805 East Broad Street, 6th Floor, Richmond, Virginia 23219.

Contact: Kim Bolden, Public Relations Coordinator, 805 E. Broad St., 6th Floor, Richmond, VA 23219, telephone (804) 786-6371.

VA.R. Doc. No. C93-1703; Filed July 1, 1993, 3:12 p.m.

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Virginia Health Services Cost Review Council intends to consider amending regulations entitled: **VR 370-01-001. Rules and Regulations of the Virginia Health Services Cost Review Council.** The purpose of the proposed action is to amend its general rules and regulations so that they will be consistent with other regulations which establish the Virginia Health Services Cost Review Council's new methodology for the review and measurement of efficiency and productivity of health care institutions. A public hearing will be held at noon on December 21, 1993, at 2015 Staples Mill Road, Richmond, Virginia.

Statutory Authority: §§ 9-161.1 and 9-164 of the Code of Virginia.

Written comments may be submitted until September 15, 1993, to John A. Rupp, Executive Director, 805 East Broad Street, 6th Floor, Richmond, Virginia 23219.

Contact: Kim Bolden, Public Relations Coordinator, 805 E. Broad St., 6th Floor, Richmond, VA 23219, telephone (804) 786-6371.

VA.R. Doc. No. C93-1700; Filed July 1, 1993, 3:12 p.m.

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Virginia Health Services Cost Review Council intends to consider promulgating regulations entitled: **VR 370-01-002.**

Methodology to Measure Efficiency and Productivity of Health Care Institutions. The purpose of the proposed action is to adopt specific regulations to establish a new Virginia Health Services Cost Review Council methodology to measure efficiency and productivity of health care institutions. A public hearing will be held at noon on December 21, 1993, at 2015 Staples Mill Road, Richmond, Virginia.

Statutory Authority: §§ 9-161.1 and 9-164 2 of the Code of Virginia.

Written comments may be submitted until September 15, 1993, to John A. Rupp, Executive Director, 805 East Broad Street, 6th Floor, Richmond, Virginia 23219.

Contact: Kim Bolden, Public Relations Coordinator, 805 E. Broad St., 6th Floor, Richmond, VA 23219, telephone (804) 786-6371.

VA.R. Doc. No. C93-1701; Filed July 1, 1993, 3:12 p.m.

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Virginia Health Services Cost Review Council intends to consider promulgating regulations entitled: **Regulations of the Virginia Health Services Cost Review Council Patient Level Data System.** The purpose of the proposed action is to adopt regulations to implement the Virginia Health Services Cost Review Council's responsibility for the establishment of a patient level database system in Virginia. A public hearing will be held at noon on December 21, 1993, at 2015 Staples Mill Road, Richmond, Virginia.

Statutory Authority: §§ 9-164 2 and 9-166.5 of the Code of Virginia.

Written comments may be submitted until September 15, 1993, to John A. Rupp, Executive Director, 805 East Broad Street, 6th Floor, Richmond, Virginia 23219.

Contact: Kim Bolden, Public Relations Coordinator, 805 E. Broad St., 6th Floor, Richmond, VA 23219, telephone (804) 786-6371.

VA.R. Doc. No. C93-1702; Filed July 1, 1993, 3:12 p.m.

BOARD OF HOUSING AND COMMUNITY DEVELOPMENT

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Housing and Community Development intends to consider amending regulations entitled: **VR 394-01-1. Public Participation Guidelines to be used in the Formation, Promulgation, and Adoption in the Form of Regulations.** The purpose of the proposed action is to amend current regulation to comply with legislative actions. The Board of Housing and Community Development will hold a public hearing on the proposed regulation in this notice.

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

Written comments may be submitted until August 12, 1993, to the Department of Housing and Community Development, Code Development Office, 501 N. 2nd St., Richmond, VA 23219-1321.

Contact: Norman R. Crumpton, Program Manager, Department of Housing and Community Development, 501 N. 2nd St., Richmond, VA 23219-1321, telephone (804) 371-7170.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Housing and Community Development intends to consider amending regulations entitled: **VR 394-01-2. Certification Standards for Building Inspection Personnel, Amusement Device Inspectors, Blasters, Plumber, Electricians, and Building Related Mechanical Workers/1990.** The purpose of the proposed action is to amend current regulation to comply with other revised regulations and standards. The Board of Housing and Community Development will hold a public hearing on the proposed regulation in this notice.

Statutory Authority: §§ 15.1-11.4, 36-98.3, 36-137, and 27-97 of the Code of Virginia.

Written comments may be submitted until August 12, 1993, to the Department of Housing and Community Development, Code Development Office, 501 N. 2nd St., Richmond, VA 23219-1321.

Contact: Norman R. Crumpton, Program Manager, Department of Housing and Community Development, 501 N. 2nd St., Richmond, VA 23219-1321, telephone (804) 371-7170.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Housing and Community Development intends to consider amending regulations entitled: **VR 394-01-4. Virginia Amusement Device Regulations.** The purpose of the proposed action is to amend current regulation to comply with other revised regulations and standards. The Board of Housing and Community Development will hold a public hearing on the proposed regulation in this notice.

Statutory Authority: §§ 36-98 and 36-98.3 of the Code of

Virginia.

Written comments may be submitted until August 12, 1993, to the Department of Housing and Community Development, Code Development Office, 501 N. 2nd St., Richmond, VA 23219-1321.

Contact: Norman R. Crumpton, Program Manager, Department of Housing and Community Development, 501 N. 2nd St., Richmond, VA 23219-1321, telephone (804) 371-7170.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Housing and Community Development intends to consider amending regulations entitled: **VR 394-01-6. Virginia Statewide Fire Prevention Code/1990.** The purpose of the proposed action is to amend current regulation to comply with other revised regulations and standards. The Board of Housing and Community Development will hold a public hearing on the proposed regulation in this notice.

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

Written comments may be submitted until August 12, 1993, to the Department of Housing and Community Development, Code Development Office, 501 N. 2nd St., Richmond, VA 23219-1321.

Contact: Norman R. Crumpton, Program Manager, Department of Housing and Community Development, 501 N. 2nd St., Richmond, VA 23219-1321, telephone (804) 371-7170.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Housing and Community Development intends to consider amending regulations entitled: **VR 394-01-21. Virginia Uniform Statewide Building Code - Vol. I - New Construction Code/1990.** The purpose of the proposed action is to amend current regulation to comply with other revised regulations and standards. The Board of Housing and Community Development will hold a public hearing on the proposed regulation in this notice.

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

Written comments may be submitted until August 12, 1993, to the Department of Housing and Community Development, Code Development Office, 501 N. 2nd St., Richmond, VA 23219-1321.

Contact: Norman R. Crumpton, Program Manager, Department of Housing and Community Development, 501 N. 2nd St., Richmond, VA 23219-1321, telephone (804) 371-7170.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Housing and Community Development intends to consider amending regulations entitled: **VR 394-01-22. Virginia Uniform Statewide Building Code - Vol. II - Building Maintenance Code/1990.** The purpose of the proposed action is to amend current regulation to comply with other revised regulations and standards. The Board of Housing and Community Development will hold a public hearing on the proposed regulation in this notice.

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

Written comments may be submitted until August 12, 1993, to the Department of Housing and Community Development, Code Development Office, 501 N. 2nd St., Richmond, VA 23219-1321.

Contact: Norman R. Crumpton, Program Manager, Department of Housing and Community Development, 501 N. 2nd St., Richmond, VA 23219-1321, telephone (804) 371-7170.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Housing and Community Development intends to consider amending regulations entitled: **VR 394-01-31. Virginia Industrialized Building and Manufactured Home Safety Regulations/1990.** The purpose of the proposed action is to amend current regulation to comply with other revised regulations and standards. The Board of Housing and Community Development will hold a public hearing on the proposed regulation in this notice.

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

Written comments may be submitted until August 12, 1993, to the Department of Housing and Community Development, Code Development Office, 501 N. 2nd St., Richmond, VA 23219-1321.

Contact: Norman R. Crumpton, Program Manager, Department of Housing and Community Development, 501 N. 2nd St., Richmond, VA 23219-1321, telephone (804) 371-7170.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Housing and Community Development intends to consider amending regulations entitled: **VR 394-01-200. Virginia Private Activity Bond Regulations.** The purpose of the proposed action is to change allocation priorities and make minor administrative changes. The Board of Housing and

Community Development will hold a public hearing on the proposed regulation in this notice.

Statutory Authority: § 51.1-1399.17 of the Code of Virginia.

Written comments may be submitted until August 12, 1993.

Contact: Charles Gravatt, Financial Assistance Coordinator, Department of Housing and Community Development, 501 N. 2nd St., Richmond, VA 23219-1321, telephone (804) 371-7025.

VIRGINIA MANUFACTURED HOUSING BOARD

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Virginia Manufactered Housing Board intends to consider promulgating regulations entitled: **VR 449-01-01. Public Participation Guidelines.** The purpose of the proposed action is to develop permanent public participation guidelines to replace the public participation guidelines adopted as emergency regulations. The Manufactured Housing Board will hold a public hearing on the proposed regulations in this notice.

Statutory Authority: §§ 9-6.14:7.1 and 36-85.18 of the Code of Virginia.

Written comments may be submitted until August 12, 1993, to the Department of Housing and Community Development, Code Enforcement Office, 501 North 2nd Street, Richmond, Virginia 23219-1321.

Contact: Curtis L. McIver, Associate Director, Code Enforcement and Manufactured Housing Office, The Jackson Center, 501 N. 2nd St., Richmond, VA 23219-1321, telephone (804) 371-7160.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Virginia Manufactered Housing Board intends to consider promulgating regulations entitled: **VR 449-01-02. Manufactured Housing Licensing and Transaction Recovery Fund Regulations.** The purpose of the proposed action is to develop regulations to be used in the administration and enforcement of the Manufactured Housing Licensing Law and Recovery Fund. The Manufactured Housing Board will hold a public hearing on the proposed regulations in this notice.

Statutory Authority: § 36-85.18 of the Code of Virginia.

Written comments may be submitted until August 12, 1993, to the Department of Housing and Community Development, Code Enforcement Office, 501 North 2nd Street, Richmond, Virginia 23219-1321.

Contact: Curtis L. McIver, Associate Director, Code Enforcement and Manufactured Housing Office, The Jackson Center, 501 N. 2nd St., Richmond, VA 23219-1321, telephone (804) 371-7160.

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES (BOARD OF)

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Medical Assistance Services intends to consider promulgating regulations entitled: **Financial Administration: Hospital Credit Balance Reporting.** The purpose of the proposed action is to require hospitals to report and refund Medicaid credit balances which may result from overpayments. Hospitals failing to comply will be penalized, similarly to the Medicare penalty. DMAS will not be holding public hearings for this proposed regulation.

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

Written comments may be submitted until July 28, 1993, to Jesse Garland, Director, Division of Fiscal Services, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, Virginia 23219.

Contact: Victoria P. Simmons, Regulatory Coordinator, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 371-8850.

BOARD OF MEDICINE

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Medicine intends to consider promulgating regulations entitled: **VR 465-01-1. Public Participation Guidelines.** The purpose of the proposed regulation is to promulgate permanent regulations that will replace emergency regulations that became effective in June 1993. These regulations are promulgated in conjunction with the Legislative Committee to the Board of Medicine. The agency does not intend to hold a public hearing on the proposed regulation.

Statutory Authority: §§ 9-6.14:7.1 and 54.1-2400 of the Code of Virginia.

Written comments may be submitted until August 27, 1993, to Hilary H. Connor, M.D., Executive Director, 6606 West Broad Street, 4th Floor, Richmond, Virginia 23230-1717.

Contact: Eugenia K. Dorson, Deputy Executive Director, 6606 W. Broad St., 4th Floor, Richmond, VA 23230, telephone (804) 662-9908.

VA.R. Doc. No. C93-1717; Filed July 2, 1993, 4:20 p.m.

DEPARTMENT OF MOTOR VEHICLES

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Department of Motor Vehicles intends to consider promulgating regulations entitled: **VR 485-50-9302. Regulations Governing Requirements for Proof of Residency to Obtain a Virginia Driver's License or Photo Identification Card.** The purpose of the proposed action is to provide information on the process that will be used and the documentation that will be required for proof of residency in the Commonwealth of Virginia. The process and documentation requirements will be applicable to all persons applying for agency documents beginning July 1, 1994. The Department of Motor Vehicles will hold public hearings on the proposed regulations after they have been published.

Statutory Authority: §§ 46.2-203, 46.2-323, 46.2-345, and 46.2-348 of the Code of Virginia.

Written comments may be submitted until August 31, 1993, to Robin Brannon, Department of Motor Vehicles, Room 319, P.O. Box 27412, Richmond, Virginia 23269-0001.

Contact: Clarence H. Bradbery, Policy Analyst, Department of Motor Vehicles, Room 314, P.O. Box 27412, Richmond, VA 23269-0001, telephone (804) 367-0408.

VA.R. Doc. No. C93-1697; Filed July 2, 1993, 2:50 p.m.

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Department of Motor Vehicles intends to consider promulgating regulations entitled: **VR 485-50-9303. Insurance and Surety Company Reporting of Information to DMV.** The purpose of the proposed action is to define the process for insurance and surety companies doing business in Virginia to report and furnish motor vehicle liability information to Virginia DMV. The Department of Motor Vehicles will hold public hearings on the proposed regulations after they have been published.

Statutory Authority: § 46.2-706.1 of the Code of Virginia.

Written comments may be submitted until August 31, 1993.

Contact: Jerome L. Stein, DMV Division Manager, Department of Motor Vehicles, Room 315, P.O. Box 27412, Richmond, VA 23269-0001, telephone (804) 367-6728.

VA.R. Doc. No. C93-1699; Filed July 2, 1993, 4:31 p.m.

DEPARTMENT OF STATE POLICE

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Department of State Police intends to consider amending regulations entitled: **VR 545-00-01. Regulations Relating to Public Participation Policy.** The purpose of the proposed action is to revise this agency's guidelines for public participation consistent with the recent changes to the Administrative Process Act. The agency does not intend to hold a public hearing on the proposed regulation.

Statutory Authority: §§ 9-6.14:7.1, 18.2-295, 18.2-308.2:2, 46.2-1165, 52-8.4, 52-25.1, and 54.1-4009 of the Code of Virginia.

Written comments may be submitted until August 25, 1993.

Contact: Captain W. Gerald Massengill, Safety Officer, P.O. Box 85607, Richmond, VA 23285-5607, telephone (804) 674-2017.

VA.R. Doc. No. C93-1709; Filed July 2, 1993, 11:14 a.m.

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Department of State Police intends to consider promulgating regulations entitled: **Regulations Relating to Standards and Specifications for Back-Up Audible Alarm Signals.** The purpose of the proposed action is to establish specifications which define standards and identification for back-up audible alarm signals required on garbage and refuse collection and disposal vehicles, and certain vehicles used primarily for highway repair and maintenance. The agency does not intend to hold a public hearing on the proposed regulation.

Statutory Authority: § 46.2-1175.1 of the Code of Virginia.

Written comments may be submitted until August 25, 1993.

Contact: Captain W. Gerald Massengill, Safety Officer, P.O. Box 85607, Richmond, VA 23285-5607, telephone (804) 674-2017.

VA.R. Doc. No. C93-1712; Filed July 2, 1993, 11:15 a.m.

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Department of State Police intends to consider promulgating regulations entitled: **Standards and Specifications of the Safety Lights for Farm Tractors in Excess of 108 Inches in Width.** The

purpose of the proposed action is to establish specifications for lights used on farm tractors in excess of 108 inches in width as required by § 46.2-1102 of the Code of Virginia. The agency does not intend to hold a public hearing on the proposed regulation.

Statutory Authority: § 46.2-1102 of the Code of Virginia.

Written comments may be submitted until August 25, 1993.

Contact: Captain W. Gerald Massengill, Safety Officer, P.O. Box 85607, Richmond, VA 23285-5607, telephone (804) 674-2017.

VA.R. Doc. No. C93-1715; Filed July 2, 1993, 11:14 a.m.

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Department of State Police intends to consider promulgating regulations entitled: **Regulations Relating to Standards and Specifications for Overdimensional Warning Lights.** The purpose of the proposed action is to establish specifications which define standards and identification for warning lights used in the escorting or towing of overdimensional materials, equipment, boats or manufactured housing units by authority of a highway hauling permit issued pursuant to § 46.2-1139 of the Code of Virginia. The agency does not intend to hold a public hearing on the proposed regulation.

Statutory Authority: § 46.2-1026 of the Code of Virginia.

Written comments may be submitted until August 25, 1993.

Contact: Captain W. Gerald Massengill, Safety Officer, P.O. Box 85607, Richmond, VA 23285-5607, telephone (804) 674-2017.

VA.R. Doc. No. C93-1713; Filed July 2, 1993, 11:15 a.m.

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Department of State Police intends to consider promulgating regulations entitled: **Regulations Relating to Standards and Specifications for Regrooved or Recut Tires.** The purpose of the proposed action is to establish specifications which define standards for regroovable and regrooved tires and identification of regroovable tires. The agency does not intend to hold a public hearing on the proposed regulation.

Statutory Authority: § 46.2-1042 of the Code of Virginia.

Written comments may be submitted until August 25, 1993.

Contact: Captain W. Gerald Massengill, Safety Officer, P.O. Box 85607, Richmond, VA 23285-5607, telephone (804) 674-2017.

VA.R. Doc. No. C93-1710; Filed July 2, 1993, 11:14 a.m.

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Department of State Police intends to consider promulgating regulations entitled: **Standards and Specifications for Warning Stickers or Decals for All-Terrain Vehicles.** The purpose of the proposed action is to establish specifications which define standards for stickers or decals required to be placed on all-terrain vehicles sold by retailers within the Commonwealth. The agency does not intend to hold a public hearing on the proposed regulation.

Statutory Authority: § 46.2-915.1 of the Code of Virginia.

Written comments may be submitted until August 25, 1993.

Contact: Captain W. Gerald Massengill, Safety Officer, P.O. Box 85607, Richmond, VA 23285-5607, telephone (804) 674-2017.

VA.R. Doc. No. C93-1714; Filed July 2, 1993, 11:15 a.m.

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Department of State Police intends to consider amending regulations entitled: **VR 545-01-07. Motor Vehicle Safety Inspection Rules and Regulations.** The purpose of the proposed action is to revise the Motor Vehicle Safety Inspection Rules and Regulations to be consistent with recent changes in state law, federal regulations, nationally accepted standards and automotive practices. Minor technical and administrative changes are included. The agency does not intend to hold a public hearing on the proposed regulation.

Statutory Authority: §§ 46.2-909, 46.2-1002, 46.2-1011, 46.2-1018, 46.2-1022, 46.2-1023, 46.2-1024, 46.2-1025, 46.2-1052, 46.2-1053, 46.2-1056, 46.2-1058, 46.2-1063, 46.2-1065, 46.2-1070, 46.2-1090.1, 46.2-1093, 46.2-1163, 46.2-1164, 46.2-1165 and 46.2-1171 of the Code of Virginia.

Written comments may be submitted until August 25, 1993.

Contact: Captain W. Gerald Massengill, Safety Officer, Department of State Police, Safety Division, P.O. Box 85607, Richmond, VA 23285-5607, telephone (804) 674-2017.

VA.R. Doc. No. C93-1711; Filed July 2, 1993, 11:16 a.m.

BOARD FOR PROFESSIONAL SOIL SCIENTISTS

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board for Professional Soil Scientists intends to consider repealing regulations entitled: **VR 627-01-1. Public Participation Guidelines.** The purpose of the proposed action is to promulgate public participation guidelines to replace the emergency public participation guidelines adopted in June 1993, and to provide full opportunity for public participation in the regulation formation and promulgation process. The agency does not intend to hold a public hearing on the proposed regulation.

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

Written comments may be submitted until August 16, 1993.

Contact: David E. Dick, Assistant Director, Department of Commerce, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8596.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board for Professional Soil Scientists intends to consider promulgating regulations entitled: **VR 627-01-1:1. Board for Professional Soil Scientists Public Participation Guidelines.** The purpose of the proposed action is to promulgate public participation guidelines to replace the emergency public participation guidelines adopted in June 1993, and to provide full opportunity for public participation in the regulation formation and promulgation process. The agency does not intend to hold a public hearing on the proposed regulation.

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

Written comments may be submitted until August 16, 1993.

Contact: David E. Dick, Assistant Director, Department of Commerce, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8596.

REAL ESTATE BOARD

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Real Estate Board intends to consider promulgating regulations entitled: **Real Estate Board Public Participation Guidelines.** The purpose of the proposed action is to promulgate regulations to replace emergency regulations. The agency does not intend to hold a public hearing on the proposed regulation.

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

Written comments may be submitted until September 1, 1993.

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

VA.R. Doc. No. C93-1799; Filed July 7, 1993, 11:34 a.m.

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Real Estate Board intends to consider repealing regulations entitled: **VR 585-01-0. Public Participation Guidelines.** The purpose of the proposed action is to promulgate regulations to replace emergency regulations. The agency does not intend to hold a public hearing on the proposed regulation.

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

Written comments may be submitted until September 1, 1993.

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

VA.R. Doc. No. C93-1807; Filed July 7, 1993, 11:34 a.m.

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Real Estate Board intends to consider promulgating regulations entitled: **Common Interest Association Annual Report Regulations.** The purpose of the proposed action is to promulgate regulations which establish the filing fee and time of filing for community association annual reports. The agency does not intend to hold a public hearing on the proposed regulation.

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

Written comments may be submitted until August 27, 1993.

Contact: Emily O. Wingfield, Property Registration Administrator, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8510.

VA.R. Doc. No. C93-1704; Filed July 1, 1993, 12:25 p.m.

DEPARTMENT OF SOCIAL SERVICES (STATE BOARD

OF)

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the State Board of Social Services intends to consider repealing regulations entitled: **VR 615-01-01. Public Participation Guidelines.** The purpose of the proposed action is to repeal existing public participation guidelines. No public hearing is planned on the proposed regulation.

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

Written comments may be submitted until August 12, 1993.

Contact: Margaret J. Friedenberg, Agency Regulatory Coordinator, Department of Social Services, 730 E. Broad St., Richmond, VA 23219, telephone (804) 692-1820.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the State Board of Social Services intends to consider promulgating regulations entitled: **VR 615-01-01:1. Public Participation Guidelines.** The purpose of the proposed action is to adopt public participation guidelines that conform with the Administrative Process Act as amended by the 1993 Virginia Acts of Assembly. No public hearing is planned on the proposed regulation.

Statutory Authority: §§ 9-6.14:7.1 and 63.1-25 of the Code of Virginia.

Written comments may be submitted until August 12, 1993.

Contact: Margaret J. Friedenberg, Agency Regulatory Coordinator, Department of Social Services, 730 E. Broad St., Richmond, VA 23219, telephone (804) 692-1820.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the State Board of Social Services intends to consider amending regulations entitled: **VR 615-27-02. Minimum Standards for Licensed Private Child Placing Agencies.** The purpose of the proposed regulation is to develop standards governing home studies of intended parents and surrogate and her husband as required by § 20-160 of the Code of Virginia, (Children of Assisted Conception Act). The Minimum Standards for Licensed Private Child Placing Agencies are the standards private agencies must meet to obtain a license to place children in foster or adoptive homes. No public hearing is planned on the proposed regulation.

Statutory Authority: § 63.1-202 of the Code of Virginia.

Written comments may be submitted until August 30, 1993, to Doris Jenkins, Division of Licensing Programs, 730 East Broad Street, Richmond, Virginia 23219.

Contact: Margaret J. Friedenberg, Policy Analyst, Bureau of Governmental Affairs, Department of Social Services, 730 E. Broad St., Richmond, VA 23219, telephone (804) 692-1820.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the State Board of Social Services intends to consider amending regulations entitled: **VR 615-45-3. Child Protective Services Release of Information to Family Advocacy Representatives of the United States Armed Forces.** The purpose of the proposed regulation is to provide guidelines for sharing information related to child protective services cases. No public hearing is planned on the proposed regulation.

Statutory Authority: §§ 2.1-386 and 63.1-248.6 of the Code of Virginia.

Written comments may be submitted until August 13, 1993, to Rita Katzman, 730 East Broad Street, Richmond, Virginia 23219.

Contact: Margaret J. Friedenberg, Policy Analyst, Bureau of Governmental Affairs, Department of Social Services, 730 E. Broad St., Richmond, VA 23219, telephone (804) 692-1820.

DEPARTMENT OF TAXATION

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Department of Taxation intends to consider amending regulations entitled: **VR 630-0-1. Guidelines for Public Participation in Regulation Development and Promulgation.** The purpose of the proposed action is to update the regulation for guidelines for public participation in regulation development and promulgation in accordance with Chapter 898 of the 1993 Acts of the General Assembly. This action will replace emergency regulation 630-0-1, which was effective as of June 30, 1993. The agency intends to hold a public hearing on the proposed regulation.

Statutory Authority: §§ 9-6.14:7.1 and 58.1-203 of the Code of Virginia.

Written comments may be submitted until August 25, 1993.

Contact: David M. Vistica, Tax Policy Analyst, P.O. Box 1880, Richmond, VA 23282-1880, telephone (804) 367-0167.

VA.R. Doc. No. C93-1793; Filed July 7, 1993, 10:48 a.m.

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Department of Taxation intends to consider promulgating, amending and repealing regulations entitled: **VR 630-3-301 through VR 630-3-504. Virginia Corporate Income Tax Regulations.** The purpose of the proposed action is to update all of the existing corporate income tax regulations by amending or repealing existing regulations and adding new regulations in order to clarify current departmental policy. This notice is being republished to ensure compliance with the changes to the Administrative Process Act pursuant to HB 1652 (Chapter 898) of 1993. The agency intends to hold a public hearing on the proposed regulation.

Statutory Authority: § 58.1-203 of the Code of Virginia.

Written comments may be submitted until August 11, 1993.

Contact: John P. Josephs, Senior Policy Analyst, P.O. Box 1880, Richmond, VA 23282-1880, telephone (804) 367-8010.

VA.R. Doc. No. C93-1791; Filed July 7, 1993, 10:48 a.m.

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Department of Taxation intends to consider promulgating, amending and repealing regulations entitled: **VR 630-10-1 through VR 630-10-113. Virginia Retail Sales and Use Tax Regulations.** The purpose of the proposed action is to update all of the retail sales and use tax regulations by amending or repealing existing regulations and adding new regulations in order to clarify current departmental policy. This notice is being republished to ensure compliance with the changes to the Administrative Process Act pursuant to HB 1652 (Chapter 898) of 1993. The agency intends to hold a public hearing on the proposed regulation.

Statutory Authority: § 58.1-203 of the Code of Virginia.

Written comments may be submitted until August 25, 1993.

Contact: Terry M. Barrett, Policy Analyst, P.O. Box 1880, Richmond, VA 23282-1880, telephone (804) 367-0010.

VA.R. Doc. No. C93-1790; Filed July 7, 1993, 10:48 a.m.

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Department of Taxation intends to consider amending regulations entitled: **VR 630-18-796.11:1 through VR 630-18-796.11:9. Virginia Egg Excise Tax.** The purpose of the proposed action is to amend the existing regulations in order to incorporate the law change in HB 2113 (Chapter 809) of 1993, which expands egg tax coverage. The agency intends to hold a public hearing on the proposed regulation.

Statutory Authority: § 58.1-203 of the Code of Virginia.

Written comments may be submitted until August 25, 1993.

Contact: Cecilia H. Glembocki, Virginia Egg Board, 911 Saddleback Court, McLean, VA 22102, telephone (703) 790-1984.

VA.R. Doc. No. C93-1792; Filed July 7, 1993, 10:48 a.m.

VIRGINIA RACING COMMISSION

† Withdrawal of Notices of Intended Regulatory Action

The Virginia Racing Commission is **withdrawing** the following Notices of Intended Regulatory Action:

1. Regulations Pertaining to Horse Racing with Pari-Mutuel Wagering (Medication Guidelines and Post-Race Testing), initially published in 6:6 VA.R. 1011 December 18, 1989;

2. Satellite Wagering Facilities, initially published in 8:22 VA.R. 3887 July 27, 1993;

3. VR 662-01-01, Public Participation Guidelines for Adoption or Amendment of Regulations, initially published in VA.R. 9:20 3535 June 28, 1993.

VA.R. Doc. No. C93-1754; Filed July 6, 1993, 2:03 p.m.

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Virginia Racing Commission intends to consider amending regulations entitled: **VR 662-01-01. Public Participation Guidelines for Adoption or Amendment of Regulations.** The purpose of the proposed action is to bring the Virginia Racing Commission's public participation guidelines into conformance with the recent changes to the Administrative Process Act. The commission will hold a public hearing on the proposed regulation after it is published in The Virginia Register.

Statutory Authority: §§ 9-6.14:7.1 and 59.1-369 of the Code of Virginia.

Written comments may be submitted until August 27, 1993.

Contact: William H. Anderson, Policy Analyst, Virginia Racing Commission, P.O. Box 1123, Richmond, VA 23208, telephone (804) 371-7363.

VA.R. Doc. No. C93-1787; Filed July 6, 1993, 2:03 p.m.

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Virginia Racing Commission intends to consider promulgating regulations entitled: **Medication.** The purpose of the proposed action is to establish procedures for post-race testing in racehorses utilized in pari-mutuel wagering and establish guidelines for the use of medication if any mediciation is permitted by the commission. The commission will hold a public hearing on the proposed regulation after it is published in The Virginia Register.

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

Written comments may be submitted until August 27, 1993.

Contact: William H. Anderson, Policy Analyst, Virginia Racing Commission, P.O. Box 1123, Richmond, VA 23208, telephone (804) 371-7363.

VA.R. Doc. No. C93-1788; Filed July 6, 1993, 2:03 p.m.

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Virginia Racing Commission intends to consider promulgating regulations entitled: **Satellite Facilities.** The purpose of the proposed action is to establish the conditions under which satellite facilities shall be permitted to conduct pari-mutuel wagering on horse races. The commission will hold a public hearing on the proposed regulation after it is published in The Virginia Register.

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

Written comments may be submitted until August 27, 1993.

Contact: William H. Anderson, Policy Analyst, Virginia Racing Commission, P.O. Box 1123, Richmond, VA 23208, telephone (804) 371-7363.

VA.R. Doc. No. C93-1789; Filed July 6, 1993, 2:03 p.m.

VIRGINIA WASTE MANAGEMENT BOARD

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Virginia Waste Management Board intends to consider amending regulations entitled: **VR 672-20-1. Financial Assurance Regulations of Solid Waste Facilities.** The purpose of the proposed action is to amend the financial assurance regulations to be consistent with EPA criteria for municipal solid waste facilities, consider alternative mechanisms for financial responsibility and liability and to incorporate changes necessary to comply with 1993 legislation.

The current regulations are not consistent with the requirements of EPA Guideline Criteria for Municipal Solid Waste Facilities and must be amended to allow Virginia to become authorized for the full solid waste management program. Financial assurance for liability coverage requires environmental insurance which may not be readily available to many permitted facilities. The Code of Virginia in § 10.1-1410 requires the Waste Management Board to promulgate regulations. There are no appropriate alternatives to the amendment of existing regulations to assure effectiveness.

The purpose is to amend existing regulations to incorporate requirements contained in EPA Guidelines for Municipal Solid Waste Facilities and EPA Financial Assurance Guidelines for local governments which are under development by EPA. It is proposed to revise the applicability of the regulations, the liability coverage requirements and financial assurance mechanisms to be more efficient and effective in the establishment of funds necessary for facility closure and post-closure care of permitted facilities.

Comments are requested on the intended action to include recommendations on the regulations. Comments are requested on the costs and benefits of the regulations, amendments, and any proposed alternatives. Comments are invited on whether the agency should establish an ad hoc advisory committee, utilize a standing advisory committee, or consult with groups registering interest in working with the agency to assist in the drafting and formation of the proposed regulation.

There will be a public meeting to solicit comments on the intended regulatory action on August 17, 1993, at 10 a.m. in the Main Floor Conference Room C at the Monroe Building, 101 North 14th Street, Richmond, Virginia. The department will hold at least one informational proceeding on the proposed regulation after it is published.

Statutory Authority: §§ 10.1-1402 and 10.1-1410 of the Code of Virginia.

Written comments may be submitted until August 31, 1993, to W. Gulevich, Department of Environmental Quality, 101 North 14th Street, 11th Floor, Richmond, Virginia 23219.

Contact: William F. Gilley, Regulatory Service Manager, Department of Environmental Quality, 101 N. 14th St., 11th Floor, Richmond, VA 23219, telephone (804) 225-2966.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's

public participation guidelines that the Virginia Waste Management Board intends to consider promulgating regulations entitled: **Waste Tire End User Partial Reimbursement Regulation.** The purpose of the proposed action is to fulfill the directive set forth in § 10.1-1422 of the Code of Virginia by establishing a regulation for procedures and guidelines for the partial reimbursement to the end users of waste tires.

The Code of Virginia in § 10.1-1422 requires the Waste Management Board to promulgate regulations establishing a regulation for procedures and guidelines for the partial reimbursement to the end users of waste tires. There are no appropriate alternatives to the adoption of regulations to assure effectiveness and equity in accomplishing the requirement for partial reimbursement.

The purpose is to the means by which reimbursements may be made. The regulations proposed would establish the eligible end uses for reimbursement; the process for verification and tracking of tires; a reimbursement application and process; and methods and amounts of partial reimbursement including levels of reimbursement depending on end uses.

Comments are requested on the intended action to include recommendations on the regulations. Comments are requested on the costs and benefits of the regulations and any proposed alternatives.

Comments are invited on whether the agency should establish an ad hoc advisory committee, utilize a standing advisory committee, or consult with groups registering interest in working with the agency to assist in the drafting and formation of the proposed regulation. The intent is to use the Institute for Environmental Negotiation at the University of Virginia as facilitator and convener. Anyone desiring to participate should contact Mr. Lassiter.

There will be a public meeting to solicit comments on the intended regulatory action on August 18, 1993, at 10 a.m. in the Department of Environmental Quality, SWCB Board Room, located in the Innsbrook Offices at 4900 Cox Road, Glen Allen, Virginia. The department will hold at least one informational proceeding on the proposed regulation after it is published.

Statutory Authority: § 10.1-1422 of the Code of Virginia.

Written comments may be submitted until August 31, 1993.

Contact: Allan Lassiter, Director, Waste Tire Program, Department of Environmental Quality, 101 N. 14th St., 11th Floor, Richmond, VA 23219, telephone (804) 225-2945.

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Virginia Waste Management Board intends to consider amending regulations entitled: **VR 672-40-01. Regulated Medical Waste Management Regulations.** The purpose is to restart the adoption of amendment of VR 672-40-01, Virginia Regulated Medical Waste Management Regulations as a permanent regulation to amend VR 672-40-01, Virginia Infectious Waste Management Regulations, effective May 2, 1990, and replace the emergency regulation adopted by the Waste Management Board on June 25, 1993. The purpose is to amend those regulations that establish standards and procedures pertaining to regulated medical waste management in this Commonwealth in order to protect the public health and public safety, and to enhance the environment and natural resources.

Basis and statutory authority: The basis for this regulation is the Virginia Waste Management Act as set out in Chapter 14 (§ 10.1-1400 et seq.) of Title 10.1 of the Code of Virginia. Specifically, § 10.1-1402 authorizes the board to promulgate regulations for the supervision and control of waste management activities.

Need: This reissuance of the notice to restart the adoption process is necessary because of changes in the Administrative Process Act which were enacted during the 1993 General Assembly and to comply with the requirements of the board to amend existing regulations.

Substance and purpose: The purpose is to amend those regulations that establish standards and procedures pertaining to regulated medical waste management in this Commonwealth in order to protect the public health and public safety, and to enhance the environment and natural resources. The Virginia Waste Management Board adopted rules and regulations, titled "Infectious Waste Management Regulations," on November 2, 1989. The proposed amendments to the regulation will reflect improved and simpler practices providing more flexibility in waste management options. These improvements are incorporated into an amendment to the regulations, including a change in the name of the regulations to Regulated Medical Waste Regulations.

Estimated impact: There are several thousand facilities or individuals in the Commonwealth who manage, treat, transport or dispose of regulated medical waste including facilities with permits or permits by rule. Adoption of the proposed amendment will provide more flexibility in waste management options.

Alternatives: The General Assembly required the amendment of the regulated medical waste regulations. Therefore, there is no alternative to the proposed amendment. Leaving the regulation unamended would prevent the implementation of improved management practices.

Public comments: The Department of Environmental Quality will hold a public meeting to consider public comment on the proposed regulatory action. The department requests that the public submit comments, at the meeting or by letter, on the correctness of the regulatory action, any ideas or advice the agency should

consider in formation and drafting of the proposed regulations, and the costs and benefits of the proposed regulations amendment. The department intends to use its original ad hoc advisory committee to assist in revising the proposed regulations. Persons interested in being on the interested persons mailing list should provide name, address and specific areas of interest.

The department intends to hold at least one informational proceeding after the proposed regulations are published. On August 25, 1993, at 10 a.m., the department will hold joint public meetings with the Waste Division and Air Division to discuss proposed amendments and to hear public comment on the proposed amendment, VR 672-40-01, Virginia Regulated Medical Waste Management Regulations and proposed Air Pollution Control Board regulations. The meeting will be held in the Main Board Room, at the department's Innsbrook office, 4900 Cox Road, Glen Allen, Virginia.

Accessibility to persons with disabilities: The meetings are being held at a public facility believed to be accessible to persons with disabilities. Any person with question on the accessibility to the facility should contact Mr. William F. Gilley at (804) 225-2966 or TDD (804) 371-8737. Persons needing interpreter services for the deaf must notify Mr. Gilley no later than August 1, 1993.

Statutory Authority: § 10.1-1402 of the Code of Virginia.

Written comments may be submitted until 5 p.m. on September 6, 1993, to Robert G. Wickline, Department of Environmental Quality, 101 North 14th Street, 11th Floor, Richmond, Virginia 23219.

Contact: William F. Gilley, Regulatory Services Manager, Department of Environmental Quality, 101 N. 14th St., 11th Floor, Richmond, VA 23219, telephone (804) 229-2966.

VA.R. Doc. C93-1794, Filed July 7, 1993, 10:57 a.m.

For information concerning Proposed Regulations, see information page.

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

STATE AIR POLLUTION CONTROL BOARD

Title of Regulation: **VR 120-01. Regulations for the Control and Abatement of Air Pollution (Rev. HH - Standards for Performance for Regulated Medical Waste Incinerators, Rule 5-6, §§ 120-05-0601 through 120-05-0618).**

The State Air Pollution Control Board is **WITHDRAWING** its proposed regulation entitled, "VR 120-01, Regulations for the Control and Abatement of Air Pollution (Rev. HH - Standards of Performance for Regulated Medical Waste Incinerators, Rule 5-6)." The proposed regulation was published in 9:18 VA.R. 3033-3039 May 31, 1993.

VA.R. Doc. No. R93-708; Filed June 28, 1993, 12:25 p.m.

DEPARTMENT OF COMMERCE

Title of Regulation: **VR 190-05-1. Asbestos Licensing Regulations (REPEALING).**

Title of Regulation: **VR 190-05-1:1. Asbestos Licensing Regulations.**

The Department of Commerce has **WITHDRAWN** the proposed repeal of "VR 190-05-1, Asbestos Licensing Regulations" and its proposed regulation entitled "VR 190-05-01:1, Asbestos Licensing Regulations," published in 9:3 VA.R. 270 November 2, 1992.

VA.R. Doc. No. R93-715; Filed June 30, 1993, 2:46 p.m.

DEPARTMENT OF CRIMINAL JUSTICE SERVICES (BOARD OF)

Title of Regulation: **VR 240-02-1. Regulations Relating to Criminal History Record Information Use and Security.**

Statutory Authority: §§ 9-170 and 9-184 through 9-196 of the Code of Virginia.

Public Hearing Date: September 29, 1993 - 2 p.m.
Written comments may be submitted through September 24, 1993.
(See Calendar of Events section for additional information)

Basis: Section 9-170(21) of the Code of Virginia provides that the Department of Criminal Justice Services shall have the authority to issue regulations that establish guidelines and standards for the collection, storage and dissemination of criminal history record information and correctional status information and that these regulations shall ensure the privacy, confidentiality and security of this type of information to be in compliance with the state and federal statutes and court orders regulating this area. It is generally the policy of the department to periodically review the adequacy of these regulations.

Purpose: The current regulations require the use of dedicated telecommunication lines to access criminal history record information. Recent innovations in technology have demonstrated that remote access to criminal history record information is now possible using nondedicated telecommunication lines that may result in significant cost savings to authorized users, while still ensuring a secure transmission.

Substance: The Department of Criminal Justice Services intends to amend § 3.5 of the regulations dealing with telecommunications to allow, in limited but secure circumstances, the use of nondedicated telecommunication lines to access criminal history record information.

Issues: None.

Impact: Dedicated telecommunication lines are now required for any transmission of criminal history record information. These circumstances now include (i) transmission from a substation of a local law enforcement agency to a local, central agency site; (ii) transmission from a remote site to a criminal justice agency centrally based (e.g., the Parole Board); and (iii) transmission from a remote site to the Virginia Criminal Information Network (VCIN) operated by the Department of State Police. Local law-enforcement agencies have access to the VCIN network with dedicated lines provided by State Police. Therefore, little if any impact will involve clause (iii). The proposed amendments to the regulations will primarily impact local and state agencies which now access their respective criminal history databases using dedicated telecommunication lines.

Number of Persons Affected: Approximately 40% of 129 sheriffs departments and one-third of 230 police departments that are now automated to some degree could be positively affected by the proposed amendment.

Cost of Implementation: It is proposed that approvals for the use of nondedicated lines would be granted on an exception basis. Agencies that would like to use nondedicated lines would request approval from the Department of Criminal Justice Services and, if the VCIN network was involved, the Department of State Police as well. Because both departments would use existing personnel to implement the amended regulations, the costs

are considered minimal.

Cost of Compliance: The savings to a particular agency for the use of nondedicated telecommunication lines would be substantial. For example, in agencies where dedicated telecommunication line access is no longer required, monthly costs for maintaining a data transmission line may be reduced by 90%. In most cases local and state agencies requesting the appropriate exemption would be able to purchase necessary security hardware from the savings resulting from the use of nondedicated telecommunication lines.

Summary:

The proposed amendments permit use of nondedicated telecommunication lines to access criminal history record information in limited, but secure, circumstances. Exceptions to the current requirement for use of dedicated telecommunication lines for data transmission would be granted on an exceptional basis provided that documented policies and procedures ensure that access to criminal history record information is limited to authorized users. The changes result from requests of authorized users for cost-effective access to criminal history record information stored in electronic data systems.

VR 240-02-1. Regulations Relating to Criminal History Record Information Use and Security.

PART I.
GENERAL.

Pursuant to the provisions of §§ 9-170(1), 9-170(15), 9-170(16), 9-170(17), 9-170 21 and §§ 9-184 through 9-196 of the Code of Virginia, the Criminal Justice Services Board hereby promulgates the following regulations relating to Criminal History Record Information Use and Security.

The purpose of these regulations is to assure that state and local criminal justice agencies maintaining criminal history record information establish required record keeping procedures to ensure that criminal history record information is accurate, complete, timely, electronically and physically secure, and disseminated only in accordance with federal and state legislation and regulations. Agencies may implement specific procedures appropriate to their particular systems, but at a minimum shall abide by the requirements outlined herein.

§ 1.1. Definitions.

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

"Access" means the ability to obtain, directly or through an intermediary, criminal history record information contained in manual or automated files.

"Board" means the Criminal Justice Services Board , as defined in § 9-168 of the Code of Virginia.

"Central Criminal Records Exchange (CCRE)" means the repository in this Commonwealth which receives, identifies, maintains, and disseminates individual criminal history records, in accordance with § 9-170 22 of the Code of Virginia.

"Conviction data" means information in the custody of any criminal justice agency relating to a judgement of conviction, and the consequences arising therefrom, in any court.

"Correctional status information" means records and data concerning each condition of a convicted person's custodial status, including probation, confinement, work release, study release, escape, or termination of custody through expiration of sentence, parole, pardon, or court decision.

"Criminal history record information" means records and data collected by criminal justice agencies on adult individuals consisting of identifiable descriptions and notations of arrests, detentions, indictments, informations, or other formal charges and any disposition arising therefrom. The term shall not include juvenile record information which is controlled by Chapter 11 (§ 16.1-226 et seq.), of Title 16.1 of the Code of Virginia, criminal justice investigative information, or correctional status information.

"Criminal history record information area" means any office, room, or space in which criminal history record information is regularly collected, processed, stored, or disseminated to an authorized user. This area includes computer rooms, computer terminal workstations, file rooms and any other rooms or space in which the above activities are carried out.

"Criminal intelligence information" means information on identifiable individuals compiled in an effort to anticipate, prevent or monitor possible criminal activity.

"Criminal investigative information" means information on identifiable individuals compiled in the course of the investigation of specific criminal acts.

"Criminal justice agency" means a court or any other governmental agency or subunit thereof which as its principal function performs the administration of criminal justice and any other agency or subunit thereof which performs criminal justice activities.

"Criminal justice information system" means a system including the equipment, facilities, procedures, agreements, and organizations thereof, which is used for the collection, processing, preservation or dissemination of criminal history record information. The operations of the system may be performed manually or by using electronic computers or other automated data processing equipment.

"Department" means the Department of Criminal Justice Services.

"Destroy" means to totally eliminate and eradicate by various methods, including, but not limited to, shredding, incinerating, or pulping.

"Director" means the chief administrative officer of the department.

"Dissemination" means any transfer of information, whether orally, in writing, or by electronic means. The term does not include access to the information by officers or employees of a criminal justice agency maintaining the information who have both a need and a right to know the information.

"Expunge" means to remove, in accordance with a court order, a criminal history record, or a portion of a record, from public inspection or normal access.

"Modify" means to add or delete information from a record to accurately reflect the reported facts of an individual's criminal history record. (See § 9-192(C) of the Code of Virginia.) This includes eradicating, supplementing, updating, and correcting inaccurate and erroneous information.

"Seal" means to physically prevent access to a criminal history record, or portion of a criminal history record.

PART II.
CRIMINAL HISTORY RECORD INFORMATION USE.

§ 2.1. Applicability.

These regulations govern originals and copies of manual or automated criminal history record information which are used, collected, stored or disseminated by a state or local criminal justice agencies or other agencies receiving criminal history record information in the Commonwealth. The regulations also set forth the required procedures that ensure the proper processing of the expungement of criminal history record information. The provisions of these regulations apply to the following groups, agencies and individuals:

1. State and local criminal justice agencies and subunits of these agencies in the Commonwealth;

2. The United States Government or the government of another state or its political subdivisions which exchange such information with criminal justice agencies in the Commonwealth, but only to the extent of that enchange;

3. Noncriminal justice agencies or individuals who are eligible under the provisions of § 19.2-389 of the Code of Virginia to receive limited criminal history record information.

The provisions of these regulations do not apply to: (i) original or copied records of entry, such as police blotters maintained by a criminal justice agency on a chronological basis and permitted to be made public, but only if such records are not indexed or accessible by name; (ii) offense and dispatch records maintained by a criminal justice agency on a chronological basis and pemitted to be made public, if such records are not indexed or accessible by name or do not contain criminal history record information; (iii) court records of public criminal proceedings, including opinions and published compilations thereof; (iv) records of traffic offenses disseminated to or maintained by the Department of Motor Vehicles for the purpose of regulating the issuance, suspension, revocation, or renewal of drivers' or other operators' licenses; (v) statistical or analytical records or reports in which individuals are not identified and from which their identities are not ascertainable; (vi) announcements of executive clemency; (vii) posters, announcements, or lists for identifying or apprehending fugitives or wanted persons; and (viii) criminal justice intelligence information; or criminal justice investigative information.

Nothing in these regulations shall be construed as prohibiting a criminal justice agency from disclosing to the public factual information concerning the status of an investigation, the apprehension, arrest, release or prosecution of an individual, the adjudication of charges, or the correctional status of an individual, which is related to the offense for which the individual is currently within the criminal justice system.

§ 2.2. Collection.

A. Responsibility.

Responsibility for collecting and updating criminal history record information rests with:

1. State officials and criminal justice agencies having the power to arrest, detain, or hold convicted persons in correctional facilities;

2. Sheriffs of cities or counties;

3. Police officials of cities, counties and towns;

4. Other local law-enforcement officers or conservators of the peace who have the power to arrest for a felony (see § 19.2-390 of the Code of Virginia);

5. Clerks of court and court agencies or officers of the court; and

6. Other criminal justice agencies or agencies having criminal justice responsibilities which generate criminal history record information.

B. Reportable offenses.

The above officials and their representatives are

required to submit to the Central Criminal Records Exchange, on forms provided by the Central Criminal Records Exchange, a report on every arrest they complete for:

1. Treason;

2. Felonies or offenses punishable as a misdemeanor under Title 54.1 of the Code of Virginia;

3. Class 1 and 2 misdemeanors under Title 18.2 (except an arrest for a violation of Article 2 (§ 18.2-266 et seq.) of Chapter 7 of Title 18.2; violation of Article 2 (§ 18.2-415 of Chapter 9 of Title 18.2, or § 18.2-119; or violation of any similar ordinance of a county, city or town.

In addition to those offenses enumerated above, the Central Criminal Records Exchange may receive, classify and file any other fingerprints and records of arrest or confinement submitted to it by any law-enforcement agency or correctional institution.

The chief of police, sheriff, or criminal justice agency head is responsible for establishing a system to ensure that arrest forms are completed and submitted in a timely and accurate fashion.

C. Timelines of submission.

1. Arrests. Arrest reports for all offenses noted above, except as provided in this section, and a fingerprint card for the arrested individual shall be forwarded to the Central Criminal Records Exchange in accordance with the time limits specified by the Department of State Police. A copy of the Central Criminal Records Exchange arrest form shall also be sent to the local court (a copy of the form is provided for the courts) at the same time.

The link between the arrest report and the fingerprint card shall be established according to Central Criminal Records Exchange requirements. Arrests that occur simultaneously for multiple offenses need only be accompanied by one fingerprint card.

2. Nonconvictions. For arrests except as noted in subdivision 3a below, the clerk of each circuit and district court shall notify the Central Criminal Records Exchange of the final action on a case. This notification must always be made no more than 30 days from the date the order is entered by the presiding judge.

3. Convictions.

a. For persons arrested and released on summonses under § 19.2-74 of the Code of Virginia, the chief law-enforcement officer or his designee, who may be the arresting officer, shall furnish fingerprint cards and a completed copy of the Central Criminal Records Exchange form to the Central Criminal Records Exchange. The form shall be completed immediately upon conviction unless an appeal is noted. In the case of an appeal, officials responsible for reporting the disposition of charges shall report the conviction within 30 days after final action of the case.

b. For arrests except as noted in subdivision 3 a above, the clerk of each circuit and district court shall notify the Central Criminal Records Exchange of the final action on a case. This notification must always be made no more than 30 days after occurrence of the disposition.

4. Final disposition. State correctional officials shall submit to the Central Criminal Records Exchange the release status of an inmate of the state correctional system within 20 days of the release.

D. Updating and accuracy.

Arresting officers and court clerks noted above are responsible for notifying the Central Criminal Records Exchange in a timely fashion, and always within 30 days, of changes or errors and necessary corrections in arrests, convictions, or other dispositions, concerning arrests and dispositions that the criminal justice agency originated. In the case of correctional status or release information, correctional officials are responsible for notifying the Central Criminal Records Exchange within the same time limits of updates or changes in correctional status information. Forms for updating and correcting information are provided by the Central Criminal Records Exchange.

Each criminal justice agency is required to supply timely corrections of criminal history record information the agency has provided to a criminal justice or noncriminal justice agency for a period of two years after the date of dissemination.

E. Locally maintained and nonreportable offenses.

Criminal history record information generated by a criminal justice agency and maintained in a locally used and maintained file, including criminal history record information on offenses not required to be reported to the Central Criminal Records Exchange but maintained in local files, as well as criminal history record information maintained by the Central Criminal Records Exchange, shall adhere to the standards of collection, timeliness, updating and accuracy as required by these regulations. Arrests shall be noted and convictions or adjudications recorded within 30 days of court action or the elapse of time to appeal.

§ 2.3. Dissemination.

A. Authorization.

No criminal justice agency or individual shall confirm or

deny the existence or nonexistence of a criminal history record to persons or agencies that would not be eligible to receive the information. No dissemination of a criminal history record is to be made to a noncriminal justice agency or individual if an interval of one year has elapsed from the date of arrest and no disposition of the charge has been recorded and no active prosecution of the charge is pending.

Criminal history record information or portions of an individual's record both maintained and used by criminal justice agencies and eligible recipients, maintained either at the Central Criminal Records Exchange, or by the originating criminal justice agency, or both, shall only be disseminated as provided by § 19.2-389 of the Code of Virginia.

Upon receipt of a request for criminal history record information, by personal contact, mail, or electronic means from an agency or individual claiming to be authorized to obtain such information, the person responding to the request shall determine whether the requesting agency or individual is authorized to receive criminal history record information.

Criminal justice agencies shall determine what positions in their agency require regular access to criminal history record information as part of their job responsibilities. These positions will be exempt from the dissemination rules below. Use of criminal history record information by a member of a criminal justice agency not occupying a position authorized to receive criminal history record information, or for a purpose or activity other than one for which the person is authorized to receive criminal history record information, will be considered a dissemination and shall meet the provisions of this section. If the user of criminal history record information does not meet the procedures in subsection B, the use of the information will be considered an unauthorized dissemination.

The release of criminal history record information to an individual or entity not included in § 19.2-389 of the Code of Virginia is unlawful and unauthorized. An individual or criminal justice agency that releases criminal history record information to a party which does not clearly belong to one of the categories of agencies and individuals authorized to receive the information as outlined in § 19.2-389 of the Code is subject to being denied access to state and national criminal history record information on a temporary or permanent basis and to the administrative sanctions described in § 2.8 of these regulations. Unlawful dissemination contrary to the provisions of these regulations is also a Class 2 misdemeanor (see § 9-195 of the Code of Virginia).

B. Procedures for responding to requests.

A criminal justice agency disseminating criminal history record information shall adhere to the following regulations:

1. Allowable responses to requests. Local and regional criminal justice agencies may respond to requests for criminal history record information in two ways:

a. For offenses required to be reported to the Central Criminal Records Exchange (CCRE), they may refer the requester to the Central Criminal Records Exchange, which will directly provide the requester with the information, or shall themselves query the Central Criminal Records Exchange to obtain the most accurate and complete information available and provide the information to the requester. (See § 19.2-389 of the Code of Virginia.)

It should be noted that the Code of Virginia provides an exception to the above mentioned procedure for responding to information requests. The local law-enforcement agency may directly provide criminal history record information to the requester without making an inquiry to the Central Criminal Records Exchange or referring the requester to the Central Criminal Records Exchange if the time is of the essence and the normal response time of the exchange would exceed the necessary time period. (See § 19.2-389 of the Code of Virginia.) Under circumstances where an inquiry to the exchange is not made, the record provided by the local law-enforcement agency should be accompanied by an appropriate disclaimer indicating that the record may not be complete.

b. For nonreportable offenses (those offenses not reported to the Central Criminal Records Exchange), the law-enforcement agency shall provide the information requested, following the dissemination procedures as required by the regulations below.

2. Prior to dissemination. Prior to disseminating criminal history record information a criminal justice agency shall:

a. Verify requester identity.

(1) Individual requester. For an individual requesting his own record and not known to the person responding to the request, the individual shall provide proper identification, to include at least two of the following, one of which must be a photo identification: (i) a valid passport, (ii) drivers' license with photo, (iii) social security card, (iv) birth certificate, or (v) military identification, if there is more than one name match. Fingerprints or other additional information shall be required if the disseminating criminal justice agency deems it appropriate or necessary to ensure a match of the record and the requesting subject.

(2) Criminal justice agencies. For personnel of criminal justice agencies requesting a record, the requester shall provide valid agency identification unless the disseminator recognizes the requesting

individual as having previously been authorized to receive the information for the same purpose.

(3) Noncriminal justice agencies or individuals. For an individual requesting the record of another, as in the case of an attorney requesting the record of his client, the individual shall provide a sworn written request from the record subject naming the requester as a recipient, as provided in § 19.2-389A of the Code of Virginia. Identification of the attorney or individual shall also be required unless the attorney or individual is known to the official responding to the request.

b. Verify record subject identity. Because serious harm could come from the matching of criminal history record information to the wrong individual, verification procedures shall be carefully managed, particularly when dissemination will be to noncriminal justice recipients. The following verification methods are the only acceptable methods:

(1) Individual requesters. The verification requirements for individuals requesting their own records and for individual requesters with sworn requests from the subject of the information shall be the same as the requirements for noncriminal justice agencies as described below. Only when information supplied and information in the Central Criminal Records Exchange or local files satisfactorily match shall information be disseminated.

(2) Criminal justice agencies. Criminal history record information which reasonably corresponds to the name, aliases, and physical identity of the subject can be disseminated to a legitimate requester when time is of the essence or if criminal justice interests will be best served by the dissemination. This includes the dissemination of records with similar but not identical name spellings, similar physical characteristics, and similar but not identical aliases. When criminal history record information is obtained in this manner and results in an apparent match between the identity of the subject and the record, the criminal history record should be verified using fingerprint identification prior to prosecution, adjudication or sentencing of the record subject. If a criminal justice agency does not have the capability to classify fingerprints, it may submit them by mail to the Central Criminal Records Exchange.

(3) Noncriminal justice agencies. Full name, date of birth, race, and sex of the record subject must be provided by the requester for a criminal history record to be disseminated. Fingerprint identification may be required prior to dissemination if there is any doubt as to the match. If a criminal justice agency does not have the capability to classify fingerprints, it may submit them by mail to the Central Criminal Records Exchange. Information supplied by the requester and available through the Central Criminal Records Exchange (or in the local files where the request is for criminal history record information maintained only locally) must match to the satisfaction of the disseminator, or the dissemination shall not be made.

c. Notify requester of costs and restrictions. The official responsible for aiding the requester shall notify the requester of the costs involved and of restrictions generally imposed on use of the data, or be reasonably assured that the requester is familiar with the costs and restrictions, prior to beginning the search for the requested criminal history record information, and shall obtain the consent of the requester to pay any charges associated with the dissemination.

3. Locating and disseminating information requested. Once a request for a criminal history record has been made, and the responsible official is satisfied as to the legitimacy of the request and the identity of the subject and has informed the requester of costs and restrictions, the responsible official conducting the search for the record shall supply the information after querying the Central Criminal Records Exchange. However, if time is of the essence, or the offenses in a criminal history record are not required to be reported to Central Criminal Records Exchange, the responsible official may directly supply the information (see § 19.2-389 of the Code of Virginia).

4. Instructions regarding dissemination to requesters. The disseminated record must be accompanied by one of the three following messages in printed form, whichever matches the category of the requester:

a. Record subjects. Record subjects have a right to receive and disseminate their own criminal history record information, subject to these regulations and § 19.2-389(11) of the Code of Virginia. If a record subject or his attorney complies with the requirements of these sections, he shall be given the requested criminal history record information. However, if an agency or individual receives a record from the record subject, that agency or individual shall not further disseminate the record. The following printed message shall accompany the criminal history record information disseminated to a record subject:

"UNAUTHORIZED DISSEMINATION WILL SUBJECT THE DISSEMINATOR TO CRIMINAL AND CIVIL PENALTIES."

b. Criminal justice agencies. The following printed message shall accompany the criminal history record information disseminated to a criminal justice agency:

"UNAUTHORIZED DISSEMINATION WILL SUBJECT THE DISSEMINATOR TO CRIMINAL AND CIVIL PENALTIES."

c. Noncriminal justice agencies and individuals other than record subjects. Even with the sworn consent of the record subject, only criminal history record information that is conviction data shall be disseminated to a noncriminal justice agency or individual in compliance with the existing laws and shall not be disseminated further. The following printed message shall accompany the criminal history record information disseminated to an individual or a noncriminal justice agency receiving criminal history record information:

"UNAUTHORIZED DISSEMINATION WILL SUBJECT THE DISSEMINATOR TO CRIMINAL AND CIVIL PENALTIES."

5. Maintaining a dissemination log. A record of any dissemination shall be maintained at the disseminating criminal justice agency or shall be accessible electronically for a period of at least two years from the date of the dissemination.

The dissemination log must list all requests for criminal history record information. The log may be automated or manual.

Records will include the following information on each dissemination:

a. Date of inquiry;

b. Requesting agency name and address;

c. Identifying name and number (either FBI or state identification number of record subject, or notification of "no record found");

d. Name of requester within the agency requesting criminal history record information; and

e. Name of disseminator (officer or civilian who provides the criminal history record information to the requester).

6. Reporting unauthorized disseminations. While individual criminal justice agencies are not expected to audit agencies who receive criminal history record information that they provide, in order to identify unauthorized releases, they shall notify the Department of any violations observed of the above dissemination regulations. The department will investigate and respond to the violation in a manner deemed appropriate by the department.

A criminal justice agency which knowingly fails to report a violation may be subject to immediate audit of its entire dissemination log to ensure that disseminations are being appropriately managed.

7. Interstate dissemination. Interstate dissemination of criminal history record information shall be subject to the procedures described herein. Dissemination to an agency outside of the Commonwealth shall be carried out in compliance with Virginia law and these regulations, as if the agency were within the jurisdiction of the Commonwealth.

8. Fees. Criminal justice agencies may charge a reasonable fee for search and copying time expended when dissemination of criminal history record information is requested by a noncriminal justice agency or individual. The criminal justice agency shall post the schedule of fees to be charged, and shall obtain approval from the requester to pay such costs prior to initiating the search.

§ 2.4. Access and review.

A. Who can review.

An individual or his attorney, upon providing proper identification and in the case of an attorney representing a client, with a sworn written request from the record subject, shall have the right to inspect criminal history record information being maintained on that individual by the Central Criminal Records Exchange or other criminal justice agencies. Completing a request form may be required by the Central Criminal Records Exchange or the local criminal justice agency.

B. Review at local law-enforcement agency or central criminal records exchange.

An individual or his attorney may review the individual's criminal history record information arising from arrests for felonies and Class 1 and 2 misdemeanors maintained in the Central Criminal Records Exchange by applying at any law enforcement agency terminal capabilities on the Virginia Criminal Information Network or to the Central Criminal Records Exchange of the Virginia Department of State Police, during normal working hours. An individual or his attorney may review the individual's criminal history record regarding offenses not required to be reported to the Central Criminal Records Exchange at the arresting law-enforcement agency.

The law-enforcement agency to which the request is directed shall inform the individual or his attorney of the procedures associated with the review.

Individuals shall be provided, at cost, one copy of their record. If no record can be found, a statement shall be furnished to this effect.

C. Timeliness and completeness.

An individual requesting his own record shall be advised

when the record will be available. In no case shall the time between request and availability of the record exceed one week, except where fingerprint identification is required; then it shall not exceed 30 days. Criminal justice agencies should seek to provide the record as soon as reasonably possible unless there are questions of identification.

The criminal justice agency locating an individual's criminal history record information shall examine its own files and shall contact the Central Criminal Records Exchange for the most up-to-date criminal history record information, and supply both to the requester.

D. Assistance.

The criminal justice agency to which the request is directed shall provide reasonable assistance to the individual or his attorney to help understand the record.

The official releasing the record shall also inform the individual of his right to challenge the record.

§ 2.5. Challenge.

Individuals who desire to challenge their own criminal history record information must complete documentation provided by the criminal justice agency maintaining the record and forward it to the Central Criminal Records Exchange or the criminal justice agency maintaining the record. A duplicate copy of the form and the challenged record may be maintained by the individual initiating the challenge or review. The individual's record concerning arrests for felonies and Class 1 and 2 misdemeanors may be challenged at the Central Criminal Records Exchange or the criminal justice agency maintaining the record. For offenses not required to be reported to the Exchange, the challenge shall be made at the arresting law-enforcement agency or the criminal justice agency maintaining the records.

A challenge will be processed as described below.

A. Record maintained by the Central Criminal Records Exchange.

1. Message flags. If the challenge is made of a record maintained by the Central Criminal Records Exchange, both the manual and the automated record shall be flagged with the message "CHALLENGED RECORD." A challenged record shall carry this message when disseminated while under challenge.

2. Review at exchange. The Central Criminal Records Exchange shall compare the information contained in the repository files as reviewed by the individual with the original arrest or disposition form. If no error is located, the Central Criminal Records Exchange shall forward a copy of the challenge form, a copy of the Central Criminal Records Exchange record and other relevant information to the criminal justice agency or agencies which the Central Criminal Records Exchange records indicate as having originated the information under challenge, and shall request them to examine the relevant files to determine the validity of the challenge.

3. Examination. The criminal justice agency or agencies responsible for originating the challenged record shall conduct an examination of their source data, the contents of the challenge, and information supplied by the Central Criminal Records Exchange for any discrepancies or errors, and shall advise the Central Criminal Records Exchange of the results of the examination.

4. Correction. If any modification of a Central Criminal Records Exchange record is required, the Exchange shall modify the record and shall then notify the criminal justice agency in which the record was originally reviewed of its action, and supply it and other agencies involved in the review with a copy of the corrected record.

5. Notification by Central Criminal Records Exchange. The Central Criminal Records Exchange shall also provide notification of the correction to all recipients of the record within the last 24 months.

6. Notification by other criminal justice agencies. Criminal justice agencies which have disseminated an erroneous or incomplete record shall in turn notify agencies which have received the disseminated record or portion of the record in the last two years from the date of the Central Criminal Records Exchange modifications of the records. Notification shall consist of sending a copy of the original record, and corrections made, to the recipients of the erroneous record noted in the dissemination log for the two-year period prior to the date of correction by the Central Criminal Records Exchange. (See § 9-192 C of the Code of Virginia.) The criminal justice agency in which the review and challenge occurred shall notify the individual or his attorney of the action of Central Criminal Records Exchange.

7. Appeal. The record subject or his attorney, upon being told of the results of his record review, shall also be informed of his right to review and appeal those results.

B. Record maintained by a criminal justice agency other than the central Criminal Records Exchange.

1. Message flags. If a challenge is made of a record maintained by a criminal justice agency, both the manaul and the automated record shall be flagged with the message "CHALLENGED RECORD." A disseminated record shall contain this message while under challenge.

2. Examination and correction agency. If the

challenged record pertains to the criminal justice agency's arrest information, the arresting agency shall examine the relevant files to determine the vaildity of the challenge. If the review demonstrates that modification is in order, the modification shall be completed and the erroneous information destroyed. If the challenged record pertains to the disposition information, the arresting agency shall compare contents of the challenge with information originally supplied by the clerk of the court.

3. Review by Clerk of Court. If no error is found in the criminal justice agency's records, the arresting agency shall forward the challenge to the clerk of the court that submitted the original disposition. The Clerk of the Court shall examine the court records pursuant to the challenge and shall, in turn, notify the arresting agency of its findings. The arresting agency shall then proceed as described in Subsection B.2 of this section.

4. Notification. The criminal justice agency in which the challenge occurred shall notify the individual or his attorney of the action taken, and shall notify the Central Criminal Records Exchange and other criminal justice agencies receiving the erroneous information of the necessary corrections if required, as well as the noncriminal justice agencies to which it has distributed the information in the last 24 months, as noted in its dissemination log.

5. Correction. The Central Criminal Records Exchange will correct its records, and notify agencies that received erroneous information within the past 24 months. The agencies will be requested to correct their files and to notify agencies which have the disseminated information, as provided in subsection A.6 of this section.

6. Appeal. The record subject or his attorney, upon receiving the results of the record review, shall be informed of the right to review and appeal.

C. Administrative review of challenge results.

1. Review by criminal justice agency head. After the aforementioned review and challenge concerning a record either in the Central Criminal Records Exchange or another criminal justice agency, the individual or his attorney may, within 30 days, request in writing that the head of the criminal justice agency in which the challenge was made, review the challenge if the individual is not satisfied with the results of the review and challenge.

2. Thirty-day review. The criminal justice agency head or his designated official shall review the challenge by reviewing the action taken by the agency, the Central Criminal Records Exchange, and other criminal justice agencies, and shall notify the individual or his attorney in writing of the decision within 30 days of the receipt of the written request to review the challenge. The criminal justice agency head shall also notify the individual of the option to request an administrative appeal through the department within 30 days of the postmarked date of the notification of the decision. This notification of the appeal shall include the address of the Department of Criminal Justice Services.

3. Correction and notification. If required, correction and notification shall follow the procedures outlined in subsections A and B of this section.

4. Notification of the department. A copy of the notice required in subsection C 2 of this section shall be forwarded to the department by the criminal justice agency at the same time it is provided to the individual.

D. Administrative appeal.

1. Departmental assessment. The individual or his attorney challenging his record, within 30 days of the postmark of his notification of the decision of the administrative review, may request that the Director of the Department of Criminal Justice Services review the challenge and conduct an informal hearing. The director may designate a hearing officer for this purpose.

2. Determination of merits of case. The director of his designee shall contact the criminal justice agencies involved and request any and all information needed. Criminal justice agencies shall supply the information requested in a timely manner, to allow the department to respond to the individual within 30 days. The director will then rule on the merits of a hearing and notify the individual or his attorney that such hearing will or will not be held.

3. Hearing. The hearing, if held, shall be conducted within 30 days of the receipt of the request, and the decision of the hearing officer communicated to the individual or his attorney within 30 days of the hearing.

4. Finding. If the director or the hearing officer determines that correction and modification of the records are required, correction of the record and notification of all involved parties shall proceed according to the procedures outlined in subsections A and B of this section.

5. Removal of a challenge designation. When records and relevant action taken by the criminal justice agencies involved are deemed to be correct, the department shall notify the affected criminal justice agencies to remove the challenge designation from their files.

E. Department notification following corrections.

For audit purposes, the Central Criminal Records Exchange shall annually forward the names and addresses of the agencies which originated erroneous record information or received erroneous information from the exchange in that year to the Department of Criminal Justice Services.

§ 2.6. Expungement and sealing.

A. Responsiblity of the director.

The expungement of a criminal history record or portion thereof is only permitted on the basis of a court order. Upon receipt of a court order, petition and other supporting documents for the expungement of a criminal history record, the director of the department, pursuant to § 19.2-392.2 of the Code of Virginia, shall by letter with an enclosed copy of the order, direct the Central Criminal Records Exchange and those agencies and individuals known to maintain or to have obtained such a record, to remove the electronic or manual record or portion thereof from its repository and place it in a physically sealed, separate file. The file shall be properly indexed to allow for later retrieval of the record if required by court order, and the record shall be labeled with the following designation: "EXPUNGED RECORD TO BE UNSEALED ONLY BY COURT ORDER."

B. Responsibility of agencies with a record to be expunged.

The record named in the department's letter shall be removed from normal access. The expunged information shall be sealed but remain available, as the courts may call for its reopening at a later date. (See § 19.2-392.3 of the Code of Virginia.) Access to the record shall be possible only through a name index of expunged records maintained either with the expunged records or in a manner that will allow subsequent retrieval of the expunged record as may be required by the court or as part of the department's audit procedures. Should the name index make reference to the expunged record, it shall be apart from normally accessed files.

C. Procedure for expungement and sealing of hard copy records.

1. The expungement and sealing of hard copy original records of entry (arrest forms) is accomplished by physically removing them from a file, and filing them in a physically secure location elsewhere, apart from normally accessed files. This file should be used only for expunged records and should be accessible only to the manager of records.

2. If the information to be expunged is included among other information that has not been expunged on the same form or piece of paper, the expunged information shall be obliterated on the original or the orginal shall be retyped eliminating the expunged information. The expunged information shall then be placed in the file for expunged records, in its original or copied form, and shall be accessible only to the manager of records.

3. If the expunged information is located on a criminal history record provided by the Central Criminal Records Exchange (i.e., "RAP sheet"), the criminal history record information shall be destroyed, and a new copy, not containing the expunged data, shall be obtained when necessary.

D. Procedure for expunging automated records.

Should the record to be expunged be maintained in an automated system, the Central Criminal Record Exchange or the agency known to possess such a record shall copy the automated record onto an off-line medium such as tape, disk or hard copy printouts. The expunged record, regardless of the type of medium on which it is maintained, shall then be kept in a file used for expunged records and sealed from normal use, accessible only to the manager of records. No notification that expunged data exists shall be left in the normally accessed files.

E. Department to be notified following expungement.

Upon receipt of a request from the department to expunge and seal a record, the affected agency or agencies shall perform the steps above, and notify the department of their action in writing within 120 days of their receipt of the request.

F. Expungement order not received by department.

Should a court ordered expungement be directed to a criminal justice agency other than the department, the directed criminal justice agency shall comply as outlined herein and advise the director without delay of such order. The director shall, upon receipt of such notification, obtain a copy of the order from the appropriate circuit court.

§ 2.7. Audit.

The department shall annually conduct an audit of a random representative sample of state and local criminal justice agencies to ensure and verify adherence to these regulations and to ensure that criminal history records are accurate and complete.

The audits may include, but will not be limited to: (i) examination of record accuracy, (ii) completeness, (iii) timely submission of information, (iv) evidence of dissemination limitation and adequate dissemination logs, (v) security provisions, (vi) evidence of notification of the individual's right of access and challenge, (vii) appropriate handling of record challenges, (viii) timely modification of erroneous records, (ix) evidence of timely notifications of required changes, and (x) appropriate notifications of the department as required.

§ 2.8. Administrative sanctions.

Discovery of violations or failure to comply with these regulations in whole or in part will occasion the following sanctions. Additional criminal penalties and other sanctions may be invoked as provided in § 2.3 should the violation involve an unauthorized dissemination.

A. Law-enforcement agencies.

1. Should a law-enforcement agency fail to comply with these regulations, a letter will be forwarded by the Department to either the chief or police or sheriff, citing the problem and notifying the police department or the sheriff's department that the matter will be referred to the chief official of the locality or commonwealth's attorney, respectively, if a satisfactory result is not forthcoming. The criminal justice agency shall have 10 working days to respond with a letter describing how the situation was remedied or explaining why there is no need to do so.

2. Should there be no satisfactory response after the 10 working day period, the matter will be referred to the offices of the city, county or town manager or the local commonwealth's attorney requesting resolution of the matter within 30 days.

3. If 30 days have passed and the matter fails to be resolved to the satisfaction of the department, the matter will be referred to the Criminal Justice Services Board and the Office of the Attorney General for action.

B. Courts.

1. Should a court or officer of the court fail to comply with these regulations, a letter will be forwarded by the department to the court, citing the problem and notifying the court clerk that the matter will be referred to the chief judge of the locality and the local commonwealth's attorney if a satisfactory result is not forthcoming. The court shall have 10 working days to respond with a letter describing how the situation was remedied or explaining why there is no need to do so.

2. Should there be no satisfactory response after the 10 working day period, the matter will be referred to the chief judge requesting resolution of the matter within 30 days. The Executive Secretary of the Supreme Court of Virginia will also be notified.

3. If 30 days have passed and the matter fails to be resolved to the satisfaction of the department, the matter will be referred to the Criminal Justice Services Board and the Chief Justice of Virginia.

PART III.
CRIMINAL HISTORY RECORD INFORMATION SECURITY.

§ 3.1. Applicability.

These regulations are applicable to criminal justice information systems operated within the Commonwealth of Virginia. These regulations on security are not applicable to court records or other records expressly excluded by § 9-184, B of the Code of Virginia.

These regulations establish a minimum set of security standards which shall apply to any manual or automated recordkeeping system which collects, stores, processes, or disseminates criminal history record information.

Where individuals or noncriminal justice agencies are authorized to have direct access to criminal history record information pursuant to a specific agreement with a criminal justice agency to provide service required for the administration of criminal justice, the service support agreement will embody the restrictions on dissemination and the security requirements contained in these regulations and the Code of Virginia.

§ 3.2. Responsibilities.

In addition to those responsibilities mandated by state and federal laws, the Department of State Police shall have the responsibility for the implementation of these regulations in regard to the operation of the Central Criminal Records Exchange.

The implementation of these regulations, except as set forth in the above paragraph, shall be the responsibility of the criminal justice agency as designated and authorized by the county or municipality in cases of political subdivisions. Nothing in these regulations shall be deemed to affect in any way the exercise of responsibility conferred on counties and municipalities of the state under Title 15.1 of the Code of Virginia. The determination of the suitability of the actual procedures instituted by the criminal justice agency will be the subject of study in any audit by the department, mandated by § 9-186 of the Code of Virginia.

§ 3.3. Physical access.

Access to areas in which criminal history record information is collected, stored, processed or disseminated shall be limited to authorized persons. Control of access shall be ensured through the use of locks, guards or other appropriate means. Authorized personnel shall be clearly indentified.

Procedures shall be established to detect an unauthorized attempt or access. Furthermore, a procedure shall be established to be followed in those cases in which an attempt or unauthorized access is detected. Such procedures shall become part of the orientation of employees working in criminal history record information area(s) and shall be reviewed periodically to ensure their effectiveness.

Criminal justice agencies shall provide direct access to criminal history record information only to authorized officers or employees of a criminal justice agency and, as necessary, other authorized personnel essential to the proper operation of the criminal history record information system.

Criminal justice agencies shall institute, where computer processing is not utilized, procedures to ensure that an individual or agency authorized to have direct access is responsible for: (i) the physical security of criminal history record information under its control or in its custody, and (ii) the protection of such information from unauthorized access, disclosure or dissemination.

Procedures shall be instituted to protect any central repository of criminal history record information from unauthorized access, theft, sabotage, fire, flood, wind or other natural or man-made disasters.

For criminal justice agencies that have their criminal history files automated, it is highly recommended that "backup" copies of criminal history information be maintained, preferably off-site. Further, for larger criminal justice agencies having automated systems, it is recommended that the criminal justice agencies develop a disaster recovery plan. The plan should be available for inspection and review by the department.

System specifications and documentation shall be carefully controlled to prevent unauthorized access and dissemination.

§ 3.4. Personnel.

In accordance with applicable law, ordinances, and regulations, the criminal justice agency shall:

A. Screen and have the right to reject for employment, based on good cause, personnel to be authorized to have direct access to criminal history record information;

B. Have the right to initiate or cause to be initiated administrative action leading to the transfer or removal of personnel authorized to have direct access to this information where these personnel violate the provisions of these regulations or other security requirements established for the collection, storage, or dissemination of criminal history record information; and

C. Ensure that employees working with or having access to criminal history record information shall be made familiar with the substance and intent of these regulations. Designated employees shall be briefed on their roles and responsibilities in protecting the information resources in the criminal justice agency. Special procedures connected with security shall be reviewed periodically to ensure their relevance and continuing effectiveness.

§ 3.5. Telecommunications.

Direct or remote access to computer systems for the purpose of accessing criminal history record information shall require that the direct or remote access device use dedicated telecommunication lines. The use of any nondedicated means of data transmission to access criminal history record information shall generally be prohibited. Exceptions may be granted for systems which obtain expressed approval of the department based on a determination that the system has adequate and verifiable policies and procedures in place to ensure that access to criminal history record information is limited to authorized system users. The Department of State Police shall further approve of any access to the Virginia Criminal Information Network (VCIN), in accordance with State Police regulations governing the network. Nothing in this regulation shall be construed to affect the authority of the Department of State Police to regulate access to VCIN.

In those systems where ~~terminal~~ *remote* access of criminal history record information is permitted, ~~terminal~~ *remote access* devices must be secure. ~~Terminal~~ *Remote access* devices capable of receiving or transmitting criminal history record information shall be attended during periods of operation. In cases in which the ~~terminal~~ *remote access device* is unattended, the device shall, through security means, be made inoperable *, for purposes of accessing criminal history record information* .

Telecommunications facilities used in connection with the ~~terminal~~ *remote access device* shall also be secured. The ~~terminal~~ *remote access* device shall be identified on a hardware basis to the host computer. In addition, appropriate identification of the ~~terminal~~ *remote access device* operator may be required. Equipment associated with the ~~terminal~~ *remote access* device shall be reasonably protected from possible tampering or tapping. ~~In cases in which a computer system provides terminal access to criminal history record information, the use of dial-up lines shall be prohibited to access criminal history record information.~~

§ 3.6. Computer operations.

Where computerized data processsing is employed, effective and technologically advanced software and hardware design shall be instituted to prevent unauthorized access to this information.

Computer operations, whether dedicated or shared, which support criminal justice information systems shall operate in accordance with procedures developed or approved by the participating criminal justice agencies.

Criminal history record information shall be stored by the computer in such a manner that it cannot be modified, destroyed, accessed, changed, purged or overlaid in any fashion by noncriminal justice terminals.

Operational programs shall be used that will prohibit inquiry, record updates, or destruction of records, from terminals other than criminal justice system terminals

which are so designated.

The destruction of record shall be limited to designated terminals under the direct control of the criminal justice agency responsible for creating or storing the criminal history record information.

Operational programs shall be used to detect and log all unauthorized attempts to penetrate criminal history record information systems, programs, or files.

Programs designed for the purpose of prohibiting unauthorized inquiries, unauthorized record updates, unauthorized destruction of records, or for the detection and logging of unauthorized attempts to penetrate criminal history record information systems shall be known only to the criminal justice agency employees responsible for criminal history record information system control or individuals and agencies pursuant to a specific agreement with the criminal justice agency to provide such security programs. The program(s) shall be kept under maximum security conditions.

Criminal justice agencies having automated criminal history record files should designate a system administrator to maintain and control authorized user accounts, system management, and the implementation of security measures.

The criminal justice agency shall have the right to audit, monitor, and inspect procedures established pursuant to these rules and regulations.

~~§ 3.7. Effective date.~~

~~These regulations shall be effective on January 1, 1990, and until amended or rescinded.~~

~~§ 3.8. Adopted:~~

~~July 27, 1977~~

~~§ 3.9. Amended:~~

~~April 20, 1978~~

~~April 10, 1981~~

~~September 6, 1983~~

~~January 8, 1986~~

~~October 4, 1989~~

VA.R. Doc. No. R93-711; July 7, 1993, 11:45 a.m.

VIRGINIA WORKERS' COMPENSATION COMMISSION

REGISTRAR'S NOTICE: The following proposed regulations filed by the Virginia Workers' Compensation Commission are 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.

Title of Regulation: **VR ~~405-01-04~~ *405-02-01* . Procedural Regulations Governing the Administration of Medical Costs Peer Review *by the Regional Peer Review Committees* Under the Virginia ~~Workmen's~~ *Workers'* Compensation Act.**

Statutory Authority: § 65.2-1305 of the Code of Virginia.

Public Hearing Date: N/A

Summary:

The Statewide Coordinating Committee has promulgated these regulations in order to establish standard procedures for the review of the appropriateness of the level, quality, duration, and cost of health care and health services provided by physicians to recipients of compensation benefits. These regulations became effective following a public hearing on January 9, 1981, were amended April 13, 1993, by majority vote of the Statewide Coordinating Committee, and approved by the Virginia Workers' Compensation Commission on May 19, 1993.

VR 405-02-01. Procedural Regulations Governing the Administration of Medical Costs Peer Review by the Regional Peer Review Committees Under the Virginia Workers' Compensation Act.

PART I.
GENERAL INFORMATION.

§ 1.1. Authority for regulations.

Chapter 13 (§ 65.2-1300 et seq.) of Title 65.2 of the Code of Virginia vests authority in the Statewide Coordinating Committee for the development of a peer review program for services rendered by physicians who are paid in whole or in part pursuant to the Virginia Workers' Compensation Act.

§ 1.2. Definitions.

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

"Commission" means the Virginia Workers' Compensation Commission.

"Peer review committee" means the appropriate regional peer review committee for a designated health systems area.

§ 1.3. Purpose of regulations.

The Statewide Coordinating Committee has promulgated these regulations in order to establish standard procedures for the review of the appropriateness of the level, quality, duration, and cost of health care and health services provided by physicians to recipients of workers' compensation benefits.

§ 1.4. Implementation and administration of regulations.

These regulations shall be implemented and administered as follows:

1. The Statewide Coordinating Committee shall have the responsibility, subject to the approval of the commission, to promulgate, amend, and repeal, as appropriate, regulations for the implementation and administration of the peer review system; and

2. Each regional peer review committee shall administer these regulations for its respective health system area.

§ 1.5. Application of regulations.

These regulations shall have general application throughout the Commonwealth.

§ 1.6. Effective date of regulations.

These regulations ~~shall become effective March 23, 1981~~ *became effective following a public hearing on January 9, 1981, and were amended April 13, 1993, by majority vote of the Statewide Coordinating Committee* .

§ 1.7. Severability.

If any provision of these regulations or the application thereof to any person or circumstances is held to be invalid, such invalidity shall not affect other provisions or application of any other part of these regulations which can be given effect without the invalid provisions or applications. To this end the provisions of these regulations are declared to be severable.

PART II.
INITIAL REVIEW.

§ 2.1. Requests for peer review.

A. Requests for peer review ~~may~~ *shall* be made on a form prescribed by the Statewide Coordinating Committee and shall set forth or be accompanied by the following:

1. The name and address of the party requesting review;

2. The names of any physicians or clinics involved;

3. The name of the patient;

4. A description of the injury;

5. A description of the medical treatment, services, or costs complained of;

6. A description of where and when the treatment or services took place; and

7. A copy of any other relevant information forming the basis of the request for review , *including any evidence indicating that the fees charged are different from those that prevail in the same community for similar treatment when the treatment is paid for by the injured person* .

B. Requests for peer review shall be made to the Secretary of the Statewide Coordinating Committee. Requests may be submitted by the commission, *a treating physician,* any insurance company providing coverage for the cost of services paid for in whole or in part pursuant to the Workers' Compensation Act, or any employer.

C. The Secretary of the Statewide Coordinating Committee shall refer each completed request for review to the chairman of the appropriate regional peer review committee or to a member designated by the chairman.

§ 2.2. ~~Notification of physician~~ *Defendng party* .

A. Any ~~physician~~ *defending party* subject to review under § 2.1 shall be notified in writing by the Secretary of the Statewide Coordinating Committee.

~~A.~~ *B.* The ~~physician~~ *defending party* shall be notified of peer review by certified mail, return receipt requested, within 30 days of the submission of a completed request for review to the Secretary. A copy of the notice shall be sent to the party requesting review.

~~B.~~ *C.* The notice shall include:

1. A copy of the request for review;

2. A notice of the right of physician, *insurer, employer,* or counsel, to respond in writing and to appear before the peer review committee at an informal hearing; and

3. A notice of the requirement that a decision be reached by the peer review committee within 30 days after the informal hearing.

§ 2.3. Assignment for initial review.

A. Each request for review shall be assigned by the chairman of the peer review committee to an individual member for initial investigation and evaluation. The chairman shall establish rotating assignment procedures for equitable distribution among the committee members.

B. A committee member ~~may~~ *shall* disqualify himself from participation in the review and decision of a particular request for review if ethically constrained by a

conflict of interest. *A committee member shall not participate in any review that relates to any care that he, or one of his associates, has rendered.*

§ 2.4. Initial evaluation.

A. The committee member shall review the completed request for review, any response submitted by the ~~physician~~ *defending party* , and any additional information acquired during investigation.

B. The responsible peer review committee member may request additional information from the physician, the ~~party requesting review~~ *insurer/employer* , or any other source that has relevant information. If necessary, the chairman of the peer review committee may request that the commission utilize its powers of investigation.

C. The committee member shall be prepared to make an oral evaluation of the request for review and recommended disposition at the informal hearing. *The committee member or chairman has the discretion to resolve the matter in dispute with the consent of the parties and without the necessity of an informal hearing.*

PART III.
INFORMAL HEARING PROCEDURES.

§ 3.1. Informal fact finding.

Peer review committee consideration of each request for review shall be conducted as follows:

1. ~~Regular~~ Meetings of the peer review committee shall be scheduled ~~for alternating months, unless~~ *by* the chairman ~~advises otherwise. Special meetings may be called by the chairman~~ . The informal hearing on a request for review shall be scheduled during a ~~regular~~ meeting of the peer review committee. The hearing shall be scheduled on the next open agenda and shall be held no later than ~~120~~ *180* days after the date the request is received by the commission.

2. The Secretary of the Statewide Coordinating Committee shall notify the ~~physician~~ *defending party* by certified mail, return receipt requested, of the date of the informal hearing no less than 15 days before the hearing. A copy of the notice shall be sent to the party requesting review. *In the event there is a request for a continuance of an informal hearing, the decision whether to grant the continuance shall be left to the discretion of the chairman.*

3. Informal hearings on requests for review shall be conducted as follows:

a. A quorum shall consist of three members;

b. The chairman or his designated substitute shall preside;

c. The committee member who evaluated the request for review shall present orally his evaluation and recommendation;

d. The ~~physician~~ *defending party* shall be advised of any contrary factual basis or information in the committee's possession upon which ~~it~~ *the committee* may rely in making an adverse decision;

e. The chairman shall allow the ~~physician~~ *defending party* , or counsel, an opportunity to present factual data, argument, or proofs for a period of time not exceeding 20 minutes;

f. Upon the conclusion of the presentation of all relevant information, the hearing will be closed;

g. The committee will, at a convenient time, conduct its deliberations outside the presence of the parties.

4. The peer review committee shall determine whether the physician has provided treatment or charged fees as prevail in the same community for injuries requiring similar treatment ~~of persons of a like standard of living where~~ *when* the treatment is paid for by the injured person *(§ 65.2-605 of the Code of Virginia)* .

5. Peer review committee proceedings, deliberations, and records constitute privileged communications as provided by § 65.2-1308 of the Code of Virginia. Committee communications, both oral and written, shall not be disclosed except as provided.

§ 3.2. Decision.

A. After deliberation , the peer review committee will vote on the recommended disposition, in the following manner:

1. The vote of the majority of the members present shall be adopted;

2. In the case of a tie vote, the review will be terminated and the decision deemed to be favorable to the ~~physician~~ *defending party* ; and

3. Dissenting members may record their objections in writing.

B. If the decision is favorable to the physician, the peer review committee shall approve the payment of fees.

C. If the decision is unfavorable to the physician, the peer review committee shall set the physician's fee at a reasonable amount as described by the standard set out in § 65.2-605 of the Code of Virginia and, if the fee has already been paid by the party requesting review, require repayment by the physician of the excess amount.

D. Within 30 days of the informal hearing, the peer

review committee shall prepare a statement, in writing, of the factual basis for its decision. Notice of the ~~physician's~~ *defending party's* right of appeal shall be included in this statement. A copy of this statement shall be forwarded by the Secretary of the Statewide Coordinating Committee by certified mail, return receipt requested, to the ~~physician~~ *defending party* , the party requesting review, and the commission. The peer review committee file compiled under § 2.4 of these regulations shall be forwarded to the commission

PART IV.
APPEAL.

§ 4.1. Appeals.

Chapter 13 (§ 65.2-1300 et seq.) of Title 65.2 of the Code of Virginia and regulations promulgated by the commission shall govern all appeals.

VA.R. Doc. No. R93-581; Filed June 28, 1993, 12.32 p.m.

* * * * * * * * *

Title of Regulation: **VR 405-02-02. Plan of Operation for the Medical Costs Peer Review Statewide Coordinating Committee Under the Virginia Workers' Compensation Act.**

Statutory Authority: § 65.2-1309 of the Code of Virginia.

Public Hearing Date: N/A

Summary:

These provisions establish the internal operating procedures for the committee and its staff. The plan of operation is descriptive in order to facilitate the performance of the committee's administrative functions, but the procedures shall not be exclusive. This Plan of Operation became effective following a public hearing on January 9, 1981, was amended April 13, 1993, by majority vote of the Statewide Coordinating Committee, and approved by the Virginia Workers' Compensation Commission on May 19, 1993.

VR 405-02-02. Plan of Operation for the Medical Costs Peer Review Statewide Coordinating Committee Under the Virginia Workers' Compensation Act.

PART I.
GENERAL INFORMATION.

§ 1.1. Authority for plan of operation.

Chapter 13 (§ 65.2-1300 et seq.) of Title 65.2 of the Code of Virginia vests authority in the Statewide Coordinating Committee for the administration of a peer review program.

§ 1.2. Definitions.

As used in this plan of operation, the words and terms shall have the meanings as set forth herein and in § 65.2-1300 of the Code of Virginia unless the context clearly requires a different meaning.

"Commission" means the Virginia Workers' Compensation Commission.

"Committee" means the Statewide Coordinating Committee.

§ 1.3. Purpose of plan of operation.

These provisions establish the internal operating procedures for the committee and its staff. The plan of operation is descriptive in order to facilitate the performance of the committee's administrative functions, but the procedures shall not be exclusive.

§ 1.4. Effective date.

This plan of operation became effective following a public hearing on January 9, 1981, and was amended April 13, 1993, by majority vote of the Statewide Coordinating Committee.

PART II.
MEETINGS OF THE COMMITTEE.

§ 2.1. Scheduled meetings.

A. Regular meetings shall be scheduled twice a year, on the call of the chairman of the committee. Special meetings may be called by the chairman or on the request of three or more members of the committee. Notice of committee meetings shall be mailed in advance by the secretary. The committee may, in lieu of a meeting, act pursuant to a telephone conference call to all members or by written ballot sent to all members provided that any such action shall be approved by a majority of the members then serving.

B. Committee meetings shall be conducted as follows:

1. A quorum shall consist of five members;

2. The chairman or his designated substitute shall preside;

3. The vote of the majority of the members present shall be adopted;

4. The secretary shall take minutes.

§ 2.2. Compensation.

Each member of the committee is entitled, pursuant to § 65.2-1302 of the Code of Virginia, to receive such compensation as may be specified by the commission, together with all necessary expenses incurred. The member shall file the appropriate forms and receipts with

the secretary for reimbursement.

PART III.
PEER REVIEW SYSTEM.

§ 3.1. Appointment of peer review committees.

A. The committee shall establish a regional peer review committee in each health systems area of the Commonwealth.

B. Each regional peer review committee shall be composed of five physicians who practice in the health systems area and treat recipients of workers' compensation benefits. The physician member of the committee who represents that health systems area shall be one of the members of, and shall serve as chairman of, the regional peer review committee.

C. The Medical Society of Virginia may nominate to the committee physicians having these qualifications. The committee may request additional nominees.

D. The term of the chairman shall be concurrent with his term on the committee. Appointments of members other than the chairman shall be made for terms of three years or the unexpired portions thereof. A vacancy other than by expiration of term shall be filled by the chairman of the committee for the unexpired term.

§ 3.2. Rules and regulations.

The committee, subject to the approval of the Virginia Workers' Compensation Commission, shall adopt and amend such rules and regulations as may be necessary to implement the peer review program.

§ 3.3. Administration.

The committee shall assist the regional peer review committees in administrative and procedural matters and shall monitor the performance of these committees to ensure consistent implementation of the peer review program throughout the Commonwealth. The committee shall not participate in substantive decisions by regional peer review committees.

PART IV.
STAFF.

§ 4.1. Staff.

A. The committee may employ a secretary, subject to the approval of the commission, to perform various administrative functions of the committee, including the following:

1. All requests for peer review shall be submitted to the secretary who shall review each request for completeness. Completed requests shall be forwarded by the secretary to the chairman of the appropriate regional committee or to a member designated by the chairman.

2. The secretary shall send notice of peer review to the defending party promptly by certified mail, return receipt requested. A copy shall be sent to the party requesting review.

3. The secretary shall schedule an informal hearing on a request for peer review on the next open agenda, but in no case later than 180 days after receipt of request. Notice of the informal hearing date shall be sent by certified mail, return receipt requested, to the defending party and to the party requesting review no later than 15 days prior to the hearing.

4. The secretary shall prepare an agenda for meetings of the Statewide Coordinating Committee at the direction of its chairman. Notice of the meeting and the proposed agenda shall be mailed by the secretary to committee members in advance.

5. The secretary shall assist in the preparation of committee reports.

B. The committee may hire additional staff or contract for services as may be required from time to time subject to the approval of the Virginia Workers' Compensation Commission.

PART V.
FORMS AND REPORTS.

§ 5.1. Forms.

The committee shall promulgate forms to facilitate the acquisition of necessary data and information including the following:

1. A Request for Peer Review that shall include:

a. The name and address of the party requesting review;

b. The name and address of the defending party;

c. The name of the patient;

d. A description of the injury;

e. A description of the medical treatment, services, or costs complained of;

f. Where and when the treatment or services took place;

g. A copy of any other relevant information forming the basis for the request for review.

2. A Notice of Peer Review that shall include:

a. A copy of the request for review;

b. Notice of right of physician, employer, insurer, or counsel, to respond in writing and to appear before the peer review committee at an informal hearing;

c. Notice of requirement that a decision be reached by the peer review committee within 30 days of the informal hearing.

3. A Notice of Informal Hearing that shall include:

a. The date and location of the hearing;

b. Right of physician, employer, insurer, or counsel, to appear before the peer review committee for a period of time not exceeding 20 minutes.

§ 5.2. Reports.

The committee shall prepare and distribute the following reports:

1. A statistical report that shall accumulate regional totals and state totals annually for the following:

a. Number of requests for peer review;

b. Number of informal hearings;

c. Number of decisions favorable to physician;

d. Number of decisions favorable to employer/insurer;

e. Number of appeals to the Virginia Workers' Compensation Commission;

f. Number of appeals to state courts.

2. Special reports that shall be prepared from time to time to:

a. Publicize the availability of the peer review program to physicians, the insurance industry, and employers;

b. Advise persons interested in the program of the mechanics of the program.

VA.R. Doc. No. R93-582; Filed June 28, 1993, 12:32 p.m.

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 regulations.

STATE AIR POLLUTION CONTROL BOARD

Title of Regulation: **VR 120-01. Regulations for the Control and Abatement of Air Pollution (Revision MM, Prevention of Significant Deterioration – VR 120-01-01, VR 120-01-02, VR 120-08-02).**

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

Effective Date: September 1, 1993.

Summary:

The regulation amendments concern provisions covering prevention of significant deterioration (PSD) and are summarized below:

1. Definitions are revised to coincide with federal definitions, or to provide more detail.

2. Procedures are revised to coincide with federal procedures.

3. Procedures appropriate to a federally-managed program are revised to reflect a state-managed program.

4. Transition provisions that are no longer applicable are removed.

The amendments are made in § 120-01-02 in Part I (General Definitions) and § 120-08-02 in Part VIII (Permits for Stationary Sources).

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 Karen Sabasteanski, Department of Environmental Quality, P.O. Box 10089, Richmond, VA 23240, telephone (804) 786-1624. There may be a charge for copies.

VR 120-01. Regulations for the Control and Abatement of Air Pollution (Revision MM, Prevention of Significant Deterioration – VR 120-01-01, VR 120-01-02, VR 120-08-02).

PART I.
GENERAL DEFINITIONS.

§ 120-01-01. General.

A. For the purpose of these regulations and subsequent amendments or any orders issued by the board, the words or terms shall have the meanings given them in § 120-01-02.

B. Unless specifically defined in the Virginia Air Pollution Control Law or in these regulations, terms used shall have the meanings commonly ascribed to them by recognized authorities.

C. In addition to the definitions given in this part, some other major divisions (i.e. parts, rules, etc.) of these regulations have within them definitions for use with that specific major division.

§ 120-01-02. Terms defined.

"Actual emissions rate" means the actual rate of emissions of a pollutant from an emissions unit. In general acutual 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 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 Appendix B.

"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 Part III within a subsequent 10-year period and designated as such in Appendix H.

"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 Part III.

"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 Appendix L.

"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 Appendix L.

"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 Appendix L.

"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 critieria: (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 Part III.

"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 [~~Air Pollution Control~~ *Environmental Quality*], as designated by the [~~executive~~] 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, 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 Parts IV, V or VI 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 § 120-08-02, an excessive concentration alternatively means a maximum 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.

[~~*"Executive director"* means the executive director of the Virginia Department of Air Pollution Control or his designated representative.~~]

"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.

"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.

"Good engineering practice" (GEP) stack height 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 Part VIII,

$$Hg = 2.5H,$$

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

b. For all other stacks,

$$Hg = H + 1.5L,$$

where:

Hg = 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.

"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 Appendix G.

"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 Appendix K.

"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.

"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.

"Prevention of significant deterioration area" means any area not designated as a nonattainment area in Appendix K for a particular pollutant and designated as such in Appendix L.

"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 Part III: 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 Parts IV and V: Appendix A of 40 CFR Part 60.

3. For emission standards in Part VI: Appendix B of 40 CFR Part 61.

"Regional director" means the regional director of an administrative region of the Department of [~~Air Pollution Control~~ *Environmental Quality*] or [~~his~~ *a*] designated representative.

"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 Appendix M).

"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 § 10.1-1309:

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 § 10.1-1309.1 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 Hg (29.92 in. of

Hg).

"Standard of performance" means any provision of Part V 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 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 Section 110 of the federal Clean Air Act, and which implements the requirements of Section 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 Appendix M).

"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 Appendix M). 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 Appendix C.

"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 Appendix M).

"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 (CFC-22);

i. Trifluoromethane (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);

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); and

u. 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 § 120-04-03 or § 120-05-03, 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.

PART VIII.
PERMITS FOR STATIONARY SOURCES.

§ 120-08-02. Permits - major stationary sources and major modifications locating in prevention of significant deterioration areas.

A. Applicability.

1. The provisions of this section apply to the construction of any major stationary source or major modification.

2. The provisions of this section apply in prevention of significant deterioration areas designated in Appendix L.

3. Where a source is constructed or modified in contemporaneous increments which individually are not subject to approval under this section and which are not part of a program of construction or modification in planned incremental phases approved by the board, all such increments shall be added together for determining the applicability of this section. An incremental change is contemporaneous with the particular change only if it occurs between the date five years before construction on the particular change commences and the date that the increase from the particular change occurs.

4. Unless specified otherwise, the provisions of this section are applicable to various sources as follows:

a. Provisions referring to "sources," "new or modified sources" or "stationary sources" are applicable to the construction of all major stationary sources and major modifications.

b. Any emissions units not subject to the provisions of this section may be subject to the provisions of § 120-08-01 or § 120-08-03.

5. Unless otherwise approved by the board or prescribed in these regulations, when this section is amended, the previous provisions of this section shall remain in effect for all applications that are deemed complete under the provisions of subdivision R 1 of this section prior to the effective date of the amended section. Any permit applications that have not been determined to be complete as of the effective date of the amendments shall be subject to the new provisions.

B. Definitions.

1. As used in this section, all words or terms not defined herein shall have the meaning given them in Part I, unless otherwise required by context.

2. For the purpose of this section, § 120-05-0405 and any related use, the words or terms shall have the meaning given them in subdivision B 3 of this section:

3. Terms defined.

"Actual emissions"

(1) Means the actual rate of emissions of a pollutant from an emissions unit, as determined in accordance with subdivisions 3a (2) through 3a (4) of this subsection.

(2) In general, actual emissions as of a particular date shall equal the average rate, in tons per year, at which the unit actually emitted the pollutant during a two-year period which precedes the particular date and which is representative of normal source operation. The board shall allow the use of a different time period upon a determination 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.

(3) The board may presume that source-specific allowable emissions for the unit are equivalent to the actual emissions of the unit.

(4) For any emissions unit which has not begun normal operations on the particular date, actual emissions shall equal the potential to emit of the unit on that date.

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

"Adverse impact on visibility" means visibility impairment which interferes with the management, protection, preservation or enjoyment of the visitor's visual experience of the federal class I area. This determination must be made on a case-by-case basis taking into account the geographic extent, intensity, duration, frequency and time of visibility impairment, and how these factors correlate with (i) times of visitor use of the federal class I areas, and (ii) the frequency and timing of natural conditions that reduce visibility.

"Allowable emissions" means the emissions rate of a stationary source calculated using the maximum rated capacity of the source (unless the source is subject to federally and state enforceable limits which restrict the operating rate, or hours of operation, or both) and the most stringent of the following:

(1) The applicable standards as set forth in 40 CFR Parts 60 and 61;

(2) The applicable State Implementation Plan emissions limitation including those with a future compliance date; or

(3) The emissions rate specified as a federally or state enforceable permit condition, including those with a future compliance date.

"Baseline area"

(1) Means any intrastate area (and every part thereof) designated as attainment or unclassifiable under § 107(d)(1)(C) of the federal Clean Air Act in which the major source or major modification establishing the minor source baseline date would construct or would have an air quality impact equal to or greater than 1 ug/m³ (annual average) of the pollutant for which the minor source baseline date is established.

(2) Area redesignations under § 107(d)(3) of the federal Clean Air Act cannot intersect or be smaller than the area of impact of any major stationary source or major modification which:

(a) Establishes a minor source baseline date; or

(b) Is subject to this section or 40 CFR 52.21 and would be constructed in the same state as the state proposing the redesignation.

"Baseline concentration"

(1) Means that ambient concentration level which exists in the baseline area at the time of the applicable minor source baseline date. A baseline concentration is determined for each pollutant for which a *minor source* baseline date is established and shall include:

(a) The actual emissions representative of sources in existence on the applicable minor source baseline date, except as provided in subdivision (2);

(b) The allowable emissions of major stationary sources which commenced construction before the major source baseline date, but were not in operation by the applicable minor source baseline date.

(2) The following will not be included in the baseline concentration and will affect the applicable maximum allowable increase(s):

(a) Actual emissions from any major stationary source on which construction commenced after the major source baseline date; and

(b) Actual emissions increases and decreases at any stationary source occurring after the minor source baseline date.

"Baseline date"

(1) "Major source baseline date" means:

(a) In the case of particulate matter and sulfur dioxide, January 6, 1975, and

(b) In the case of nitrogen dioxide, February 8, 1988.

(2) "Minor source baseline date" means the earliest date after the trigger date on which a major stationary source or a major modification subject to

this section submits a complete application under this section. The trigger date is:

(a) In the case of particulate matter and sulfur dioxide, August 7, 1977, and

(b) In the case of nitrogen dioxide, February 8, 1988.

(3) The baseline date is established for each pollutant for which increments or other equivalent measures have been established if:

(a) The area in which the proposed source or modification would construct is designated as attainment or unclassifiable under § 107(d)(1)(C) of the federal Clean Air Act for the pollutant on the date of its complete application under this section or 40 CFR 52.21; and

(b) In the case of a major stationary source, the pollutant would be emitted in significant amounts, or, in the case of a major modification, there would be a significant net emissions increase of the pollutant.

"Begin actual construction" means, in general, initiation of physical on-site construction activities on an emissions unit which are of a permanent nature. Such activities include, but are not limited to, installation of building supports and foundations, laying of underground pipework, and construction of permanent storage structures. With respect to a change in method of operation, this term refers to those on-site activities other than preparatory activities which mark the initiation of the change.

"Best available control technology" means an emissions limitation (including a visible emissions standard) based on the maximum degree of reduction for each pollutant subject to regulation under the federal Clean Air Act which would be emitted from any proposed major stationary source or major modification which the board, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable for such source or modification through application of production processes or available methods, systems, and techniques, including fuel cleaning or treatment or innovative fuel combustion techniques for control of such pollutant. In no event shall application of best available control technology result in emissions of any pollutant which would exceed the emissions allowed by any applicable standard under 40 CFR Parts 60 and 61. If the board determines that technological or economic limitations on the application of measurement methodology to a particular emissions unit would make the imposition of an emissions standard infeasible, a design, equipment, work practice, operational standard, or combination thereof, may be prescribed instead to satisfy the requirement for the application of best available control technology. Such standard shall, to the degree possible, set forth the emissions reduction achievable by implementation of such design, equipment, work practice or operation, and shall provide for compliance by means which achieve equivalent results.

"Building, structure, facility or installation" means 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 first two-digit code) as described in the Standard Industrial Classification Manual, as amended by the Supplement (see Appendix M).

"Commence," as applied to construction of a major stationary source or major modification, means that the owner has all necessary preconstruction approvals or permits and either has:

(1) Begun, or caused to begin, a continuous program of actual on-site construction of the source, to be completed within a reasonable time; or

(2) Entered into binding agreements or contractual obligations, which cannot be canceled or modified without substantial loss to the owner, to undertake a program of actual construction of the source, to be completed within a reasonable time.

"Complete" means, in reference to an application for a permit, that the application contains all of the information necessary for processing the application. *Designating an application complete for the purposes of permit processing does not preclude the board from requesting or accepting any additional information.*

"Construction" means any physical change or change in the method of operation (including fabrication, erection, installation, demolition, or modification of an emissions unit) which would result in a change in actual emissions.

"Emissions unit" means any part of a stationary source which emits or would have the potential to emit any pollutant subject to regulation under the federal Clean Air Act.

"Federal land manager" means, with respect to any lands in the United States, the secretary of the department with authority over such lands.

"Federally enforceable" means all limitations and conditions which are enforceable by the administrator, including those requirements developed pursuant to 40 CFR Parts 60 and 61, requirements within the State Implementation Plan, and any permit requirements established pursuant to 40 CFR 52.21 or Part VIII, including operating permits issued under an EPA-approved program that is incorporated into the State Implementation Plan and expressly requires adherence to any permit

issued under such program.

"Fugitive emissions" means those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

"High terrain" means any area having an elevation 900 feet or more above the base of the stack of a source.

"Indian governing body" means the governing body of any tribe, band, or group of Indians subject to the jurisdiction of the United States and recognized by the United States as possessing power of self-government.

"Indian reservation" means any federally recognized reservation established by treaty, agreement, executive order, or act of Congress.

"Innovative control technology" means any system of air pollution control that has not been adequately demonstrated in practice, but would have substantial likelihood of achieving greater continuous emissions reduction than any control system in current practice or of achieving at least comparable reductions at lower cost in terms of energy, economics, or nonair quality environmental impacts.

"Low terrain" means any area other than high terrain.

"Major modification"

(1) Means any physical change in or change in the method of operation of a major stationary source that would result in a significant net emissions increase of any pollutant subject to regulation under the federal Clean Air Act.

(2) Any net emissions increase that is significant for volatile organic compounds shall be considered significant for ozone.

(3) A physical change or change in the method of operation shall not include:

(a) Routine maintenance, repair and replacement;

(b) Use of an alternative fuel or raw material by a stationary source which:

1 The source was capable of accommodating before January 6, 1975, unless such change would be prohibited under any federally and state enforceable permit condition which was established after January 6, 1975, pursuant to 40 CFR 52.21 or Part VIII; or

2 The source is approved to use under any permit issued under 40 CFR 52.21 or Part VIII;

(c) An increase in the hours of operation or in the production rate, unless such change is prohibited under any federally and state enforceable permit condition which was established after January 6, 1975, pursuant to 40 CFR 52.21 or Part VIII.

"Major stationary source"

(1) Means:

(a) Any of the following stationary sources of air pollutants which emits, or has the potential to emit,100 tons per year or more of any pollutant subject to regulation under the federal Clean Air Act:

1 Fossil fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input.

2 Coal cleaning plants (with thermal dryers).

3 Kraft pulp mills.

4 Portland cement plants.

5 Primary zinc smelters.

6 Iron and steel mill plants.

7 Primary aluminum ore reduction plants.

8 Primary copper smelters.

9 Municipal incinerators capable of charging more than 250 tons of refuse per day.

10 Hydrofluoric acid plants.

11 Sulfuric acid plants.

12 Nitric acid plants.

13 Petroleum refineries.

14 Lime plants.

15 Phosphate rock processing plants.

16 Coke oven batteries.

17 Sulfur recovery plants.

18 Carbon black plants (furnace process).

19 Primary lead smelters.

20 Fuel conversion plants.

21 Sintering plants.

22 Secondary metal production plants.

23 Chemical process plants.

24 Fossil fuel boilers (or combinations thereof) totaling more than 250 million British thermal units per hour heat input.

25 Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels.

26 Taconite ore processing plants.

27 Glass fiber processing plants.

28 Charcoal production plants.

(b) Notwithstanding the stationary source size specified in subdivision (1)(a), stationary source which emits, or has the potential to emit, 250 tons per year or more of any air pollutant subject to regulation under the federal Clean Air Act; or

(c) Any physical change that would occur at a stationary source not otherwise qualifying under subdivision (1)(a) or (1)(b) as a major stationary source, if the change would constitute a major stationary source by itself.

(2) A major stationary source that is major for volatile organic compounds shall be considered major for ozone.

(3) The fugitive emissions of a stationary source shall not be included in determining for any of the purposes of this section whether it is a major stationary source, unless the source belongs to one of the following categories of stationary sources:

(a) Coal cleaning plants (with thermal dryers).

(b) Kraft pulp mills.

(c) Portland cement plants.

(d) Primary zinc smelters.

(e) Iron and steel mills.

(f) Primary aluminum ore reduction plants.

(g) Primary copper smelters.

(h) Municipal incinerators capable of charging more than 250 tons of refuse per day.

(i) Hydrofluoric, sulfuric, or nitric acid plants.

(j) Petroleum refineries.

(k) Lime plants.

(l) Phosphate rock processing plants.

(m) Coke oven batteries.

(n) Sulfur recovery plants.

(o) Carbon black plants (furnace process).

(p) Primary lead smelters.

(q) Fuel conversion plants.

(r) Sintering plants.

(s) Secondary metal production plants.

(t) Chemical process plants.

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

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

(w) Taconite ore processing plants.

(x) Glass fiber processing plants.

(y) Charcoal production plants.

(z) Fossil fuel-fired steam electric plants of more that 250 million British thermal units per hour heat input.

(aa) Any other stationary source category which, as of August 7, 1980, is being regulated under Section 111 or 112 of the federal Clean Air Act.

"Necessary preconstruction approvals or permits" means those permits or approvals required under federal air quality control laws and regulations, and those air quality control laws and regulations which are part of the applicable State Implementation Plan.

"Net emissions increase"

(1) Means the amount by which the sum of the following exceeds zero:

(a) Any increase in actual emissions from a particular physical change or change in the method of operation at a stationary source; and

(b) Any other increases and decreases in actual emissions at the source that are contemporaneous with the particular change and are otherwise creditable.

(2) An increase or decrease in actual emissions is contemporaneous with the increase from the particular change only if it occurs between:

(a) The date five years before construction on the particular change commences; and

(b) The date that the increase from the particular change occurs.

(3) An increase or decrease in actual emissions is creditable only if the board has not relied on it in issuing a permit for the source under this section (or the administrator under 40 CFR 52.21), which permit is in effect when the increase in actual emissions from the particular change occurs.

(4) An increase or decrease in actual emissions of sulfur dioxide, particulate matter, or nitrogen oxides which occurs before the applicable minor source baseline date is creditable only if it is required to be considered in calculating the amount of maximum allowable increases remaining available.

(5) An increase in actual emissions is creditable only to the extent that the new level of actual emissions exceeds the old level.

(6) A decrease in actual emissions is creditable only to the extent that:

(a) The old level of actual emissions or the old level of allowable emissions, whichever is lower, exceeds the new level of actual emissions;

(b) It is federally and state enforceable at and after the time that actual construction on the particular change begins; and

(c) It has approximately the same qualitative significance for public health and welfare as that attributed to the increase from the particular change.

(7) An increase that results from a physical change at a source occurs when the emissions unit on which construction occurred becomes operational and begins to emit a particular pollutant. Any replacement unit that requires shakedown becomes operational only after a reasonable shakedown period, not to exceed 180 days.

"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 if the limitation or the effect it would have on emissions is federally and state enforceable. Secondary emissions do not count in determining the potential to emit of a stationary source.

"Secondary emissions" means emissions which would occur as a result of the construction or operation of a major stationary source or major modification, but do not come from the major stationary source or major modification itself. For the purpose of this section, secondary emissions must be specific, well defined, quantifiable ; , and impact the same general area as the stationary source or modification which causes the secondary emissions. Secondary emissions include emissions from any offsite support facility which would not be constructed or increase its emissions except as a result of the construction or operation of the major stationary source or major modification. Secondary emissions do not include any emissions which come directly from a mobile source, such as emissions from the tailpipe of a motor vehicle, from a train, or from a vessel.

"Significant"

(1) Means, in reference to a net emissions increase or the potential of a source to emit any of the following pollutants, a rate of emissions that would equal or exceed any of the following rates:

Pollutant	Emissions Rate
Carbon Monoxide	100 tons per year (tpy)
Nitrogen Oxides	40 tpy
Sulfur Dioxide	40 tpy
Particulate Matter (TSP)	25 tpy
PM10	15 tpy
Ozone	40 tpy of volatile organic compounds
Lead	0.6 tpy
Asbestos	0.007 tpy
Beryllium	0.0004 tpy
Mercury	0.1 tpy
Vinyl Chloride	1 tpy
Fluorides	3 tpy
Sulfuric Acid Mist	7 tpy
Hydrogen Sulfide (H2S)	10 tpy
Total Reduced Sulfur (including H2S)	10 tpy
Reduced Sulfur Compounds (including H2S)	10 tpy
Municipal waste combustor organics (measured as total tetra- through octa-chlorinated dibenzo-p-dioxins and dibenzofurans)	3.5×10^{-8} tpy
Municipal waste combustor metals (measured as particulate matter)	15 tpy
Municipal waste combustor	

acid gases (measured as the sum of SO2 and HCl)	40 tpy

(2) Means, in reference to a net emissions increase or the potential of a source to emit a pollutant subject to regulation under the federal Clean Air Act that subdivision (1) does not list, any emissions rate.

(3) Notwithstanding subdivision (1), means any emissions rate or any net emissions increase associated with a major stationary source or major modification, which would construct within 10 kilometers of a class I area, and have an impact on such area equal to or greater than 1 ug/m³ (24-hour average).

"Stationary source" means any building, structure, facility, or installation which emits or may emit any air pollutant subject to regulation under the federal Clean Air Act.

C. General.

1. No owner or other person shall begin actual construction of any major stationary source or major modification without first obtaining from the board a permit to construct and operate such source.

2. No owner or other person shall relocate any emissions unit subject to the provisions of § 120-02-31 without first obtaining a permit from the board to relocate the unit.

3. Prior to the decision of the board, all permit applications will be subject to a public comment period; a public hearing will be held as provided in subsection R of this section.

4. The board may combine the requirements of and the permits for emissions units within a stationary source subject to §§ 120-08-01, 120-08-02, and 120-08-03 into one permit. Likewise the board may require that applications for permits for emissions units within a stationary source required by §§ 120-08-01, 120-08-02, and 120-08-03 be combined into one application.

D. Ambient air increments.

In areas designated as class I, II or III, increases in pollutant concentration over the baseline concentration shall be limited to the following:

MAXIMUM ALLOWABLE INCREASE
(micrograms per cubic meter)

Class I

Particulate matter:	
TSP, annual geometric mean	5
TSP, 24-hour maximum	10
Sulfur dioxide:	
Annual arithmetic mean	2
24-hour maximum	5
Three-hour maximum	25
Nitrogen dioxide:	
Annual arithmetic mean	2.5

Class II

Particulate matter:	
TSP, annual geometric mean	19
TSP, 24-hour maximum	37
Sulfur dioxide:	
Annual arithmetic mean	20
24-hour maximum	91
Three-hour maximum	512
Nitrogen dioxide:	
Annual arithmetic mean	25

Class III

Particulate matter:	
TSP, annual geometric mean	37
TSP, 24-hour maximum	75
Sulfur dioxide:	
Annual arithmetic mean	40
Twenty-four hour maximum	182
Three-hour maximum	700
Nitrogen dioxide:	
Annual arithmetic mean	50

For any period other than an annual period, the applicable maximum allowable increase may be exceeded during one such period per year at any one location.

E. Ambient air ceilings.

No concentration of a pollutant shall exceed:

1. The concentration permitted under the national secondary ambient air quality standard, or

2. The concentration permitted under the national primary ambient air quality standard, whichever concentration is lowest for the pollutant for a period of exposure.

F. Applications.

1. A single application is required identifying at a minimum each emissions point within the emissions unit subject to this section. The application shall be submitted according to procedures approved by the board. However, where several emissions units are included in one project, a single application covering all units in the project may be submitted. A separate application is required for each location.

2. For projects with phased development, a single application may be submitted covering the entire project.

3. Any application form, report, or compliance certification submitted to the board shall be signed by a responsible official. A responsible official is defined as follows:

a. For a business entity, such as a corporation, association or cooperative, a responsible official is either:

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

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

b. For a partnership or sole proprietorship, a responsible official is a general partner or the proprietor, respectively.

c. For a municipality, state, federal, or other public agency, a responsible official is either a principal executive officer or ranking elected official. A principal executive officer of a federal agency includes the chief executive officer having responsibility for the overall operations of a principal geographic unit ot the agency.

4. Any person signing a document under subdivision F 3 above shall make the following certification:

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

5. As required under § 10.1-1321.1 of the Virginia Air Pollution Control Law, applications shall not be deemed complete unless the applicant has provided a notice from the locality in which the source is located or is to be located that the site and operation of the source are consistent with all local ordinances adopted pursuant to Chapter 11 (§ 15.1-427 et seq.) of Title 15.1 of the Code of Virginia.

G. Compliance with local zoning requirements.

The owner shall comply in all respects with any existing zoning ordinances and regulations in the locality in which the source is located or proposes to be located; provided, however, that such compliance does not relieve the board of its duty under § 120-02-14 of these regulations and § 10.1-1307 E of the Virginia Air Pollution Control Law to independently consider relevant facts and circumstances.

H. Compliance determination and verification by performance testing.

1. For stationary sources other than those specified in subdivision H 2 of this section, compliance with standards of performance shall be determined in accordance with the provisions of § 120-05-02 and shall be verified by performance tests in accordance with the provisions of § 120-05-03.

2. For stationary sources of hazardous air pollutants, compliance with emission standards shall be determined in accordance with the provisions of § 120-06-02 and shall be verified by emission tests in accordance with the provisions of § 120-06-03.

3. Testing required by subdivisions H 1 and 2 of this section shall be conducted within 60 days by the owner after achieving the maximum production rate at which the new or modified source will be operated, but not later than 180 days after initial startup of the

source; and 60 days thereafter the board shall be provided by the owner with two or, upon request, more copies of a written report of the results of the tests.

4. For sources subject to the provisions of Rule 5-5 or 6-1, the requirements of subdivisions H 1 through 3 of this section shall be met in all cases.

5. For sources other than those specified in subdivision H 4 of this section, the requirements of subdivisions H 1 through 3 of this section shall be met unless the board:

a. Specifies or approves, in specific cases, the use of a reference method with minor changes in methodology;

b. Approves the use of an equivalent method;

c. Approves the use of an alternative method, the results of which the board has determined to be adequate for indicating whether a specific source is in compliance;

d. Waives the requirement for testing because, based upon a technical evaluation of the past performance of similar source types, using similar control methods, the board reasonably expects the new or modified source to perform in compliance with applicable standards; or

e. Waives the requirement for testing because the owner of the source has demonstrated by other means to the board's satisfaction that the source is in compliance with the applicable standard.

6. The provisions for the granting of waivers under subdivision H 5 of this section are intended for use in determining the initial compliance status of a source, and the granting of a waiver does not obligate the board to do so for determining compliance once the source has been in operation for more than one year beyond the initial startup date.

I. Stack heights.

~~1. The degree of emission limitation required for control of any air pollutant under this section shall not be affected in any manner by:~~

~~a. So much of the stack height of any source as exceeds good engineering practice, or~~

~~b. Any other dispersion technique.~~

~~2. Subdivision I 1 of this section shall not apply with respect to stack heights in existence before December 31, 1970, or to dispersion techniques implemented before then.~~

The provisions of § 120-05-02 H apply.

J. Review of major stationary sources and major modifications source applicability and exemptions.

1. No stationary source or modification to which the requirements of subsections K through S of this section apply shall begin actual construction without a permit which states that the stationary source or modification would meet those requirements. The board has authority to issue any such permit.

2. The requirements of subsections K through S of this section shall apply to any major stationary source and any major modification with respect to each pollutant subject to regulation under the federal Clean Air Act that it would emit, except as this section otherwise provides.

3. The requirements of subsections K through S of this section apply only to any major stationary source or major modification that would be constructed in an area designated as attainment or unclassifiable under § 107 (d) (1) (C) of the federal Clean Air Act.

4. The requirements of subsections K through S of this section shall not apply to a particular major stationary source or major modification; if:

a. The source or modification would be a nonprofit health or nonprofit educational institution, or a major modification would occur at such an institution ; ~~and the governor submits a request to the administrator that it be exempt from those requirements~~ ; or

b. The source or modification would be a major stationary source or major modification only if fugitive emissions, to the extent quantifiable, are considered in calculating the potential to emit of the stationary source or modification and the source does not belong to any of the following categories:

(1) Coal cleaning plants (with thermal dryers).

(2) Kraft pulp mills.

(3) Portland cement plants.

(4) Primary zinc smelters.

(5) Iron and steel mills.

(6) Primary aluminum ore reduction plants.

(7) Primary copper smelters.

(8) Municipal incinerators capable of charging more than 250 tons of refuse per day.

(9) Hydrofluoric acid plants.

(10) Sulfuric acid plants.

(11) Nitric acid plants.

(12) Petroleum refineries.

(13) Lime plants.

(14) Phosphate rock processing plants.

(15) Coke oven batteries.

(16) Sulfur recovery plants.

(17) Carbon black plants (furnace process).

(18) Primary lead smelters.

(19) Fuel conversion plants.

(20) Sintering plants.

(21) Secondary metal production plants.

(22) Chemical process plants.

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

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

(25) Taconite ore processing plants.

(26) Glass fiber processing plants.

(27) Charcoal production plants.

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

(29) Any other stationary source category which, as of August 7, 1980, is being regulated under Section 111 or 112 of the Federal Clean Air Act; or

c. The source *or modification* is a portable stationary source which has previously received a permit under this section, and

(1) The owner proposes to relocate the source and emissions of the source at the new location would be temporary; and

(2) The emissions from the source would not exceed its allowable emissions; and

(3) The emissions from the source would impact no class I area and no area where an applicable increment is known to be violated; and

(4) Reasonable notice is given to the board prior to the relocation identifying the proposed new location and the probable duration of operation at the new location. Such notice shall be given to the board not less than 10 days in advance of the proposed relocation unless a different time duration is previously approved by the board ; ~~or~~ .

~~d. The source or modification was not subject to this section, with respect to particulate matter, as in effect before July 31, 1987, and the owner:~~

~~(1) Obtained all final federal, state and local preconstruction approvals or permits necessary under Part VIII before July 31, 1987;~~

~~(2) Commenced construction within 18 months after July 31, 1987, or any earlier time required under Part VIII; and~~

~~(3) Did not discontinue construction for a period of 18 months or more and completed construction within a reasonable period of time; or~~

~~e. The source or modification was subject to this section or 40 CFR 52.21, with respect to particulate matter, as in effect before July 31, 1987, and the owner submitted an application for a permit under this section before that date, and the board subsequently determined that the application as submitted was complete with respect to the particulate matter requirements then in effect in this section. Instead, the requirements of subsections K through S of this section that were in effect before July 31, 1987, shall apply to such source or modification.~~

5. The requirements of subsections K through S of this section shall not apply to a major stationary source or major modification with respect to a particular pollutant if the owner demonstrates that, as to that pollutant, the source or modification is located in an area designated as nonattainment under Section 107 of the federal Clean Air Act.

6. The requirements of subsections L, N and P of this section shall not apply to a major stationary source or major modification with respect to a particular pollutant, if the allowable emissions of that pollutant from the source, or the net emissions increase of that pollutant from the modification:

a. Would impact no class I area and no area where an applicable increment is known to be violated, and

b. Would be temporary.

7. The requirements of subsections L, N and P of this section as they relate to any maximum allowable increase for a class II area shall not apply to a major

modification at a stationary source that was in existence on March 1, 1978, if the net increase in allowable emissions of each pollutant subject to regulation under the federal Clean Air Act from the modification after the application of best available control technology would be less than 50 tons per year.

8. The board may exempt a stationary source or modification from the requirements of subsection N of this section with respect to monitoring for a particular pollutant if:

a. The emissions increase of the pollutant from the new source or the net emissions increase of the pollutant from the modification would cause, in any area, air quality impacts less than the following amounts:

Carbon monoxide - 575 ug/m³, 8-hour average

Nitrogen dioxide - 14 ug/m³, annual average

Total suspended particulate - 10 ug/m³, 24-hour average

PM10 - 10 ug/m³, 24-hour average

Sulfur dioxide - 13 ug/m³, 24-hour average

Ozone[1]

Lead - 0.1 ug/m³, 3-month average

Mercury - 0.25 ug/m³, 24-hour average

Beryllium - 0.001 ug/m³, 24-hour average

Fluorides - 0.25 ug/m³, 24-hour average

Vinyl chloride - 15 ug/m³, 24-hour average

Total reduced sulfur - 10 ug/m³, 1-hour average

Hydrogen sulfide - 0.2 ug/m³, 1-hour average

Reduced sulfur compounds - 10 ug/m³, 1-hour average; or

.....

[1] No de minimis air quality level is provided for ozone. However, any net increase of 100 tons per year or more of volatile organic compounds subject to this section would be required to perform an ambient impact analysis including the gathering of ambient air quality data.

.....

b. The concentrations of the pollutant in the area that the source or modification would affect are less than the concentrations listed in subdivision J 8 a of this section, or the pollutant is not listed in subdivision J 8 a of this section.

~~9. a. At the discretion of the board, the requirements for air quality monitoring of PM10 in subdivisions N 1 a through N 1 d of this section may not apply to a particular source or modification when the owner submits an application for a permit under this section on or before June 1, 1988, and the board subsequently determines that the application as submitted before that date was complete, except with respect to the requirements for monitoring particulate matter in subdivisions N 1 a through N 1 d.~~

~~b. The requirements for air quality monitoring of PM10 in subdivisions N 1 e and d and N 3 of this section shall apply to a particular source or modification if the owner submits an application for a permit under this section after June 1, 1988, and no later than December 1, 1988. The data shall have been gathered over at least the period from February 1, 1988, to the date the application becomes otherwise complete in accordance with the provisions set forth under subdivision N 1 h of this section, except that if the board determines that a complete and adequate analysis can be accomplished with monitoring data over a shorter period (not to be less than four months), the data that subdivision N 1 e requires shall have been gathered over that shorter period.~~

~~10. The requirements of subdivision L 2 of this section shall not apply to a stationary source or modification with respect to any maximum allowable increase for nitrogen oxides if the owner of the source or modification submitted an application for a permit under this section before the provisions embodying the maximum allowable increase took effect as part of the applicable State Implementation Plan and the board subsequently determined that the application as submitted before that date was complete.~~

K. Control technology review.

1. A major stationary source or major modification shall meet each applicable emissions limitation under the State Implementation Plan and each applicable emissions standard and standard of performance under 40 CFR Parts 60 and 61.

2. A new major stationary source shall apply best available control technology for each pollutant subject to regulation under the federal Clean Air Act that it would have the potential to emit in significant amounts.

3. A major modification shall apply best available control technology for each pollutant subject to regulation under the federal Clean Air Act for which it would result in a significant net emissions increase at the source. This requirement applies to each proposed emissions unit at which a net emissions

increase in the pollutant would occur as a result of a physical change or change in the method of operation in the unit.

4. For phased construction projects, the determination of best available control technology shall be reviewed and modified as appropriate at the latest reasonable time which occurs no later than 18 months prior to commencement of construction of each independent phase of the project. At such time, the owner of the applicable stationary source may be required to demonstrate the adequacy of any previous determination of best available control technology for the source.

L. Source impact analysis.

The owner of the proposed source or modification shall demonstrate that allowable emission increases from the proposed source or modification, in conjunction with all other applicable emissions increases or reductions (including secondary emissions), would not cause or contribute to air pollution in violation of:

1. Any national ambient air quality standard in any air quality control region; or

2. Any applicable maximum allowable increase over the baseline concentration in any area.

M. Air quality models.

1. All estimates of ambient concentrations required under this section shall be based on the applicable air quality models, data bases, and other requirements specified in the U.S. Environmental Protection Agency Guideline, EPA-450/2-78-027R, Guideline on Air Quality Models (see Appendix M).

2. Where an air quality impact model specified in the Guideline on Air Quality Models is inappropriate, the model may be modified or another model substituted. Such a modification or substitution of a model may be made on a case-by-case basis, or, where appropriate, on a generic basis for a specific state program. Written approval of the administrator must be obtained for any modification or substitution. In addition, use of a modified or substituted model must be subject to notice and opportunity for public comment under procedures developed in accordance with subsection R of this section.

N. Air quality analysis.

1. Preapplication analysis.

a. Any application for a permit under this section shall contain an analysis of ambient air quality in the area that the major stationary source or major modification would affect for each of the following pollutants:

(1) For the source, each pollutant that it would have the potential to emit in a significant amount;

(2) For the modification, each pollutant for which it would result in a significant net emissions increase.

b. With respect to any such pollutant for which no national ambient air quality standard exists, the analysis shall contain such air quality monitoring data as the board determines is necessary to assess ambient air quality for that pollutant in any area that the emissions of that pollutant would affect.

c. With respect to any such pollutant (other than nonmethane hydrocarbons) for which such a standard does exist, the analysis shall contain continuous air quality monitoring data gathered for purposes of determining whether emissions of that pollutant would cause or contribute to a violation of the standard or any maximum allowable increase.

d. In general, the continuous air quality monitoring data that is required shall have been gathered over a period of at least one year and shall represent at least the year preceding receipt of the application, except that, if the board determines that a complete and adequate analysis can be accomplished with monitoring data gathered over a period shorter than one year (but not to be less than four months), the data that is required shall have been gathered over at least that shorter period.

~~e. For any application which becomes complete, except as to the requirements of subdivision N 1 e and d of this section, between June 8, 1981, and February 9, 1982, the data that subdivision N 1 e of this section requires shall have been gathered over at least the period from February 9, 1981 to the date the application becomes otherwise complete, except that:~~

~~(1) If the source or modification would have been major for that pollutant under 40 CFR 52.21 as in effect on June 19, 1978, any monitoring data shall have been gathered over at least the period required by those regulations.~~

~~(2) If the board determines that a complete and adequate analysis can be accomplished with monitoring data over a shorter period (not less than four months), the data that subdivision N 1 e of this section requires shall have been gathered over at least that shorter period.~~

~~(3) If the monitoring data would relate exclusively to ozone and would not have been required under 40 CFR 52.21 as in effect on June 19, 1978, the board may waive the otherwise applicable requirements of this subsection W to the extent that the applicant shows that the monitoring data would be unrepresentative of air quality over a full year.~~

~~f.~~ *e.* The owner of a proposed stationary source or modification of volatile organic compounds who satisfies all conditions of Section IV of Appendix S to 40 CFR Part 51 may provide post-approval monitoring data for ozone in lieu of providing preconstruction data as required under subdivision N 1 of this section.

~~g. For any application that becomes complete, except as to the requirements of subdivision N 1 e and d pertaining to PM10, after December 1, 1988, and no later than August 1, 1989, the data that subdivision N 1 e requires shall have been gathered over at least the period from August 1, 1988, to the date the application becomes otherwise complete, except that if the board determines that a complete and adequate analysis can be accomplished with monitoring data over a shorter period (not to be less than four months), the data that subdivision N 1 e requires shall have been gathered over that shorter period.~~

~~h. With respect to any requirements for air quality monitoring of PM10 under subdivisions J 9 a and b, the owner shall use a monitoring method approved by the board and shall estimate the ambient concentrations of PM10 using the data collected by such approved monitoring method in accordance with estimating procedures approved by the board.~~

2. Post-construction monitoring. The owner of a major stationary source or major modification shall, after construction of the stationary source or modification, conduct such ambient monitoring as the board determines is necessary to determine the effect emissions from the stationary source or modification may have, or are having, on air quality in any area.

3. Operation of monitoring stations. The owner of a major stationary source or major modification shall meet the requirements of Appendix B to 40 CFR Part 58 during the operation of monitoring stations for purposes of satisfying subsection N of this section.

O. Source information.

The owner of a proposed source or modification shall submit all information necessary to perform any analysis or make any determination required under this section.

1. With respect to a source or modification to which subsections K, L, N and P of this section apply, such information shall include:

a. A description of the nature, location, design capacity, and typical operating schedule of the source or modification, including specifications and drawings showing its design and plant layout;

b. A detailed schedule for construction of the source or modification;

c. A detailed description as to what system of continuous emission reduction is planned for the source or modification, emission estimates, and any other information necessary to determine that best available control technology would be applied.

2. Upon request of the board, the owner shall also provide information on:

a. The air quality impact of the source or modification, including meteorological and topographical data necessary to estimate such impact; and

b. The air quality impacts, and the nature and extent of any or all general commercial, residential, industrial, and other growth which has occurred since the baseline date in the area the source or modification would affect.

P. Additional impact analyses.

1. The owner shall provide an analysis of the impairment to visibility, soils and vegetation that would occur as a result of the source or modification and general commercial, residential, industrial and other growth associated with the source or modification. The owner need not provide an analysis of the impact on vegetation having no significant commercial or recreational value.

2. The owner shall provide an analysis of the air quality impact projected for the area as a result of general commercial, residential, industrial and other growth associated with the source or modification.

3. The board may require monitoring of visibility in any federal class I area near the proposed new stationary source or major modification for such purposes and by such means as the board deems necessary and appropriate.

Q. Sources impacting federal class I areas - additional requirements.

1. Notice to administrator. The board shall transmit to the administrator a copy of each permit application relating to a major stationary source or major modification and provide notice to the administrator of the following actions related to the consideration of such permit:

a. Notification of the permit application status as provided in subdivision R 1 of this section.

b. Notification of the public comment period on the application as provided in subdivision R 6 e of this section.

c. Notification of the final determination on the application and issuance of the permit as provided

in subdivision R 6 i of this section.

d. Notification of any other action deemed appropriate by the board.

~~1.~~ *2.* Notice to federal land managers. The board shall provide written notice of any permit application for a proposed major stationary source or major modification, the emissions from which may affect a class I area, to the federal land manager and the federal official charged with direct responsibility for management of any lands within any such area. Such notification shall include a copy of all information relevant to the permit application and shall be given within 30 days of receipt and at least 60 days prior to any public hearing on the application for a permit to construct. Such notification shall include an analysis of the proposed source's anticipated impacts on visibility in the federal class I area. The board shall also provide the federal land manager and such federal officials with a copy of the preliminary determination required under subsection R of this section, and shall make available to them any materials used in making that determination, promptly after the board makes such determination. Finally, the board shall also notify all affected federal land managers within 30 days of receipt of any advance notification of any such permit application.

~~2.~~ *3.* Federal land manager. The federal land manager and the federal official charged with direct responsibility for management of such lands have an affirmative responsibility to protect the air quality related values (including visibility) of such lands and to consider, in consultation with the board, whether a proposed source or modification will have an adverse impact on such values.

~~3.~~ *4.* Visibility analysis. The board shall consider any analysis performed by the federal land manager, provided within 30 days of the notification required by subdivision Q ~~1~~ *2* of this section, that shows that a proposed new major stationary source or major modification may have an adverse impact on visibility in any federal class I area. Where the board finds that such an analysis does not demonstrate to the satisfaction of the board that an adverse impact on visibility will result in the federal class I area, the board must, in the notice of public hearing on the permit application, either explain this decision or give notice as to where the explanation can be obtained.

~~4.~~ *5.* Denial - impact on air quality related values. The federal land manager of any such lands may demonstrate to the board that the emissions from a proposed source or modification would have an adverse impact on the air quality-related values (including visibility) of those lands, notwithstanding that the change in air quality resulting from emissions from such source or modification would not cause or contribute to concentrations which would exceed the maximum allowable increases for a class I area. If the board concurs with such demonstration, then it shall not issue the permit.

~~5.~~ *6.* Class I variances. The owner of a proposed source or modification may demonstrate to the federal land manager that the emissions from such source or modification would have no adverse impact on the air quality related values of any such lands (including visibility), notwithstanding that the change in air quality resulting from emissions from such source or modification would cause or contribute to concentrations which would exceed the maximum allowable increases for a class I area. If the federal land manager concurs with such demonstration and ~~he~~ so certifies, the board may, provided that the applicable requirements of this section are otherwise met, issue the permit with such emission limitations as may be necessary to assure that emissions of sulfur dioxide particulate matter, and nitrogen oxides would not exceed the following maximum allowable increases over minor source baseline concentration for such pollutants:

MAXIMUM ALLOWABLE INCREASE
(micrograms per cubic meter)

Particulate matter:

TSP, annual geometric mean 19

TSP, 24-hour maximum 37

Sulfur dioxide:

Annual arithmetic mean 20

24-hour maximum 91

Three-hour maximum 325

Nitrogen dioxide:

Annual arithmetic mean 25

~~6.~~ *7.* Sulfur dioxide variance by governor with federal land manager's concurrence. The owner of a proposed source or modification which cannot be approved under subdivision Q ~~5~~ *6* of this section may demonstrate to the governor that the source cannot be constructed by reason of any maximum allowable increase for sulfur dioxide for a period of 24 hours or less applicable to any class I area and, in the case of federal mandatory class I areas, that a variance under this clause would not adversely affect the air quality related values of the area (including visibility). The governor, after consideration of the federal land manager's recommendation (if any) and subject to ~~his~~ *the federal land manager's* concurrence, may, after notice and public hearing, grant a variance from such maximum allowable increase. If such variance is

granted, the board shall issue a permit to such source or modification pursuant to the requirements of subdivision Q ~~8~~ *9* , provided that the applicable requirements of this section are otherwise met.

~~7.~~ *8.* Variance by the governor with the president's concurrence. In any case whether the governor recommends a variance in which the federal land manager does not concur, the recommendations of the governor and the federal land manager shall be transmitted to the president. The president may approve the governor's recommendation if he finds that the variance is in the national interest. If the variance is approved, the board shall issue a permit pursuant to the requirements of subdivision Q ~~8~~ *9* of this section, provided that the applicable requirements of this section are otherwise met.

~~8.~~ *9.* Emission limitations for presidential or gubernatorial variance. In the case of a permit issued pursuant to subdivision Q ~~6~~ *7* or ~~7~~ *8* of this section the source or modification shall comply with such emission limitations as may be necessary to assure that emissions of sulfur dioxide from the source or modification would not (during any day on which the otherwise applicable maximum allowable increases are exceeded) cause or contribute to concentrations which would exceed the following maximum allowable increases over the baseline concentration and to assure that such emissions would not cause or contribute to concentrations which exceed the otherwise applicable maximum allowable increases for periods of exposure of 24 hours or less for more than 18 days, not necessarily consecutive, during any annual period:

MAXIMUM ALLOWABLE INCREASE
(micrograms per cubic meter)

Period of exposure	Low terrain areas	High terrain areas
24-hour maximum	36	62
3-hour maximum	130	221

R. Public participation.

1. Within 30 days after receipt of an application the board shall notify the applicant of the status of the application. The notification of the initial determination with regard to the status of the application shall be provided by the board in writing and shall include (i) a determination as to which provisions of Part VIII are applicable, (ii) the identification of any deficiencies, and (iii) a determination as to whether the application contains sufficient information to begin application review. The determination that the application has sufficient information to begin review is not necessarily a determination that it is complete. Within 30 days after receipt of any additional information, the board shall notify the applicant of any deficiencies in such information. The date of receipt of a complete application shall be, for the purpose of this section, the date on which the board received all required information.

2. No later than 30 days after receiving the initial determination notification required under subdivision R 1 of this section, the applicant shall notify the public about the proposed source as required in subdivision R 3 of this section. The applicant shall also provide an informational briefing about the proposed source for the public as required in subdivision R 4 of this section.

3. The public notice required under subdivision R 2 of this section shall be placed by the applicant in at least one newspaper of general circulation in the affected air quality control region. The notice shall be approved by the board and shall include, but not be limited to, the name, location, and type of the source, and the time and place of the information briefing.

4. The informational briefing shall be held in the locality where the source is or will be located and at least 30 days, but no later than 60 days, following the day of the publication of the public notice in the newspaper. The applicant shall inform the public about the operation and potential air quality impact of the source and answer any questions concerning air quality about the proposed source from those in attendance at the briefing. At a minimum, the applicant shall provide information on and answer questions about (i) specific pollutants and the total quantity of each which the applicant estimates will be emitted and (ii) the control technology proposed to be used at the time of the informational briefing. Representatives from the board shall attend and provide information and answer questions on the permit application review process.

5. Upon a determination by the board that it will achieve the desired results in an equally effective manner, an applicant for a permit may implement an alternative plan for notifying the public as required in subdivision R 3 of this section and for providing the informational briefing as required in subdivision R 4 of this section.

6. Within one year after receipt of a complete application, the board shall make a final determination on the application. This involves performing the following actions in a timely manner:

a. Make a preliminary determination whether construction should be approved, approved with conditions, or disapproved.

b. Make available in at least one location in each air quality control region in which the proposed

source or modification would be constructed a copy of all materials the applicant submitted, a copy of the preliminary determination and a copy or summary of other materials, if any, considered in making the preliminary determination.

c. If appropriate, hold a public briefing on the preliminary determination prior to the public comment period but no later than the day before the beginning of the public comment period. The board shall notify the public of the time and place of the briefing, by advertisement in a newspaper of general circulation in the air quality control region in which the proposed source or modification would be constructed. The notification shall be published at least 30 days prior to the day of the briefing.

d. Notify the public, by advertisement in a newspaper of general circulation in each region in which the proposed source or modification would be constructed, of the application, the preliminary determination, the degree of increment consumption that is expected from the source or modification, and the opportunity for comment at a public hearing as well as written public comment. The notification shall be published at least 30 days prior to the day of the hearing.

e. Send a copy of the notice of public comment to the applicant, the administrator and to officials and agencies having cognizance over the location where the proposed construction would occur as follows: ~~state and~~ local air pollution control agencies, the chief executives of the city and county where the source or modification would be located, any comprehensive regional land use planning agency and any state, federal land manager, or indian governing body whose lands may be affected by emissions from the source or modification.

f. Provide opportunity for a public hearing for interested persons to appear and submit written or oral comments on the air quality impact of the source or modification, alternatives to the source or modification, the control technology required, and other appropriate considerations.

g. Consider all written comments submitted within a time specified in the notice of public comment and all comments received at any public hearing(s) in making a final decision on the approvability of the application. No later than 10 days after the close of the public comment period, the applicant may submit a written response to any comments submitted by the public. The board shall consider the applicant's response in making a final decision. The board shall make all comments available for public inspection in the same locations where the board made available preconstruction information relating to the proposed source or modification.

h. Make a final determination whether construction should be approved, approved with conditions, or disapproved pursuant to this section.

i. Notify the applicant in writing of the final determination and make such notification available for public inspection at the same location where the board made available preconstruction information and public comments relating to the source or modification.

S. Source obligation.

1. Any owner who constructs or operates a source or modification not in accordance (i) with the application submitted pursuant to this section or (ii) with the terms and conditions of any permit to construct or operate, or any owner of a source or modification subject to this section who commences construction or operation after the effective date of these regulations without applying for and receiving a permit hereunder, shall be subject to appropriate enforcement action including, but not limited to, any specified in subsection Z of this section.

2. Approval to construct shall become invalid if construction is not commenced within 18 months after receipt of such approval, if construction is discontinued for a period of 18 months or more, or if construction is not completed within a reasonable time. The board may extend the 18-month period upon a satisfactory showing that an extension is justified. This provision does not apply to the time period between construction of the approved phases of a phased construction project; each phase must commence construction within 18 months of the projected and approved commencement date.

3. Approval to construct shall not relieve any owner of the responsibility to comply fully with applicable provisions of the State Implementation Plan and any other requirements under local, state or federal law.

4. At such time that a particular source or modification becomes a major stationary source or major modification solely by virtue of a relaxation in any enforceable limitation which was established after August 7, 1980, on the capacity of the source or modification otherwise to emit a pollutant, such as a restriction on hours of operation, then the requirements of subsections K through S of this section shall apply to the source or modification as though construction had not yet commenced on the source or modification.

T. Environmental impact statements.

Whenever any proposed source or modification is subject to action by a federal agency which might necessitate preparation of an environmental impact statement pursuant to the National Environmental Policy Act (42 U.S.C. 4321),

review conducted pursuant to this section shall be coordinated by the administrator with the broad environmental reviews under that Act and under Section 309 of the federal Clean Air Act to the maximum extent feasible and reasonable.

U. Disputed permits.

If a permit is proposed to be issued for any major stationary source or major modification proposed for construction in any state which the governor of an affected state or indian governing body of an affected tribe determines will cause or contribute to a cumulative change in air quality in excess of that allowed in this part within the affected state or Indian reservation, the governor or indian governing body may request the administrator to enter into negotiations with the persons involved to resolve such dispute. If requested by any state or Indian governing body involved, the administrator shall make a recommendation to resolve the dispute and protect the air quality related values of the lands involved. If the persons involved do not reach agreement, the administrator shall resolve the dispute ~~and his~~ . *The administrator's* determination, or the results of agreements reached through other means, shall become part of the applicable State Implementation Plan and shall be enforceable as part of such plan.

V. Interstate pollution abatement.

1. The owner of each source or modification, which may significantly contribute to levels of air pollution in excess of an ambient air quality standard in any air quality control region outside the Commonwealth, shall provide written notice to all nearby states of the air pollution levels which may be affected by such source at least 60 days prior to the date of commencement of construction.

2. Any state or political subdivision may petition the administrator for a finding that any source or modification emits or would emit any air pollutant in amounts which will prevent attainment or maintenance of any ambient air quality standard or interfere with measures for the prevention of significant deterioration or the protection of visibility in the State Implementation Plan for such state. Within 60 days after receipt of such petition and after a public hearing, the administrator will make such a finding or deny the petition.

3. Notwithstanding any permit granted pursuant to this section, no owner or other person shall commence construction or modification or begin operation of a source to which a finding has been made under the provisions of subdivision V 2 of this section.

W. Innovative control technology.

1. *Prior to the close of the public comment period under subsection R,* an owner of a proposed major stationary source or major modification may request , *in writing, that* the board ~~in writing no later than the close of the public comment period under subsection R to~~ approve a system of innovative control technology.

2. The board , *with the consent of the governor(s) of affected state(s),* shall determine that the source or modification may employ a system of innovative control technology, if:

a. The proposed control system would not cause or contribute to an unreasonable risk to public health, welfare, or safety in its operation or function;

b. The owner agrees to achieve a level of continuous emissions reduction equivalent to that which would have been required under subdivision K 2 of this section by a date specified by the board. Such date shall not be later than four years from the time of startup or seven years from permit issuance;

c. The source or modification would meet the requirements of subsections K and L of this section based on the emissions rate that the stationary source employing the system of innovative control technology would be required to meet on the date specified by the board;

d. The source or modification would not, before the date specified by the board:

(1) Cause or contribute to a violation of an applicable national ambient air quality standard; or

(2) Impact any area where an applicable increment is known to be violated;

e. All other applicable requirements including those for public participation have been met; and

f. The provisions of subsection Q of this section (relating to class I areas) have been satisfied with respect to all periods during the life of the source or modification.

3. The board shall withdraw any approval to employ a system of innovative control technology made under this section, if:

a. The proposed system fails by the specified date to achieve the required continuous emissions reduction rate; or

b. The proposed system fails before the specified date so as to contribute to an unreasonable risk to public health, welfare, or safety; or

c. The board decides at any time that the proposed system is unlikely to achieve the required level of

control or to protect the public health, welfare, or safety.

4. If a source or modification fails to meet the requirement level of continuous emission reduction within the specified time period or the approval is withdrawn in accordance with subdivision W 3 of this section, the board may allow the source or modification up to an additional three years to meet the requirement for the application of best available control technology through use of a demonstrated system of control.

X. Reactivation and permanent shutdown.

1. The reactivation of a stationary source is not subject to provisions of this section unless a decision concerning shutdown has been made pursuant to the provisions of subdivisions X 2 through X 4 of this section or subdivision P 5 of § 120-08-04.

2. Upon a final decision by the board that a stationary source is shut down permanently, the board shall revoke the permit by written notification to the owner and remove the source from the emission inventory or consider its emissions to be zero in any air quality analysis conducted; and the source shall not commence operation without a permit being issued under the applicable provisions of Part VIII.

3. The final decision shall be rendered as follows:

a. Upon a determination that the source has not operated for a year or more, the board shall provide written notification to the owner (i) of its tentative decision that the source is considered to be shut down permanently; (ii) that the decision shall become final if the owner fails to provide, within three months of the notice, written response to the board that the shutdown is not to be considered permanent; and (iii) that the owner has a right to a formal hearing on this issue before the board makes a final decision. The response from the owner shall include the basis for the assertion that the shutdown is not to be considered permanent and a projected date for restart-up of the source and shall include a request for a formal hearing if the owner wishes to exercise that right.

b. If the board should find that the basis for the assertion is not sound or the projected restart-up date allows for an unreasonably long period of inoperation, the board shall ~~hold a formal hearing on the issue if one is requested or, if no hearing is requested, decision to consider the shutdown permanent shall become final~~ *(i) hold a formal hearing on the issue, if one is requested; or (ii) render a final decision to consider the shutdown permanent, if no hearing is requested .*

4. Nothing in these regulations shall be construed to prevent the board and the owner from making a mutual determination that a source is shut down permanently prior to any final decision rendered under subdivision X 3 of this section.

Y. Transfer of permits.

1. No person shall transfer a permit from one location to another, or from one piece of equipment to another.

2. In the case of a transfer of ownership of a stationary source, the new owner shall abide by any current permit issued to the previous owner. The new owner shall notify the board of the change in ownership within 30 days of the transfer.

3. In the case of a name change of a stationary source, the owner shall abide by any current permit issued under the previous source name. The owner shall notify the board of the change in source name within 30 days of the name change.

4. The provisions of this subsection concerning the transfer of a permit from one location to another should not apply to the relocation of portable facilities that are exempt from the provisions of subsections K through S of this section by subdivision J 4 c of this section.

Z. Permit invalidation, revocation, and enforcement.

1. Permits issued under this section shall be subject to such terms and conditions set forth in the permit as the board may deem necessary to ensure compliance with all applicable requirements of the regulations.

2. The board may revoke any permit if the permittee:

a. Knowingly makes material misstatements in the permit application or any amendments thereto;

b. Fails to comply with the terms or conditions of the permit;

c. Fails to comply with any emission standards applicable to an emissions unit included in the permit;

d. Causes emissions from the stationary source which result in violations of, or interfere with the attainment and maintenance of, any ambient air quality standard; or fails to operate in conformance with any applicable control strategy, including any emission standards or emision limitations, in the State Implementation Plan in effect at the time that an application is submitted; or

e. Fails to comply with the applicable provisions of this section.

3. The board may suspend, under such conditions and for such period of time as the board may prescribe, any permit for any of the grounds for revocation contained in subdivision Z 2 of this section or for any other violations of these regulations.

4. Violation of these regulations shall be grounds for revocation of permits issued under this section and are subject to the civil charges, penalties and all other relief contained in Part II of these regulations and the Virginia Air Pollution Control Law.

5. The board shall notify the applicant in writing of its decision, with its reasons, to change, suspend or revoke a permit, or to render a permit invalid.

AA. Circumvention.

Regardless of the exemptions provided in this section, no owner or other person shall circumvent the requirements of this section by causing or allowing a pattern of ownership or development over a geographic area of a source which, except for the pattern of ownership or development, would otherwise require a permit.

APPENDIX L.
PREVENTION OF SIGNIFICANT DETERIORATION AREAS.

I. Prevention of Significant Deterioration Areas are geographically defined below by locality for the following criteria pollutants:

A. Particulate matter.

AQCR 1 through 7	All areas

B. Sulfur dioxide.

AQCR 1 through 7	All areas

C. Carbon monoxide.

1. AQCR 1 through 6	All areas
2. AQCR 7	All areas except Alexandria City Arlington County

D. Ozone (volatile organic compounds):

1. AQCR 1	All areas except the portion of White Top Mountain above 4,500 feet elevation located in Smyth County
2. AQCR 2	All areas
3. AQCR 3	All areas
4. AQCR 4	All areas except Stafford County
5. AQCR 5	All areas except Charles City County Chesterfield County Hanover County Henrico County Colonial Heights City Hopewell City Richmond City
6. AQCR 6	All areas except James City County York County Chesapeake City Hampton City Newport News City Norfolk City Poquoson City Portsmouth City Suffolk City Virginia Beach City Williamsburg City
7. AQCR 7	No area

E. Nitrogen oxides.

AQCR 1 through 7	All areas

F. Lead.

AQCR 1 through 7	All areas

II. All areas of the state are geographically defined as Prevention of Significant Deterioration Areas for the following pollutants:

Mercury

Beryllium

Asbestos

Fluorides

Sulfuric acid mist

Vinyl chloride

Total reduced sulfur:

Hydrogen sulfide
Methyl mercaptan
Dimethyl sulfide
Dimethyl disulfide

Reduced sulfur compounds:

Hydrogen sulfide
Carbon disulfide

Carbonyl sulfide

Municipal waste combustor organics (measured as total tetra- through octa-chlorinated dibenzo-p-dioxins and dibenzofurans)

Municipal waste combustor metals (measured as particulate matter)

Municipal waste combustor acid gases (measured as the sum of S02 and HC1)

III. The classification of Prevention of Significant Deterioration Areas is as follows:

A. Class I.

1. Federal - James River Face Wilderness Area (located in AQCR 2) and Shenandoah National Park (located in AQCR 2 and AQCR 4).

2. State - None

B. Class II - All areas of the state not designated in Class I.

C. Class III - None.

IV. The area classification prescribed in Section III may be redesignated in accordance with 40 CFR 52.21(e), (g), (u) and (t).

VA.R. Doc. No. R93-583; Filed June 28, 1993, 12:26 p.m.

DEPARTMENT OF EDUCATION (STATE BOARD OF)

Title of Regulation: **VR 270-01-0057. Special Education Program Standards.**

Statutory Authority: § 22.1-214 of the Code of Virginia.

Effective Date: August 25, 1993.

Summary:

These regulations set standards for special education programs for children with disabilities in Virginia. The areas in which specific standards are set include teaching assignments, waivers for certain educational interpreters, and program models for school-age and preschool-age students. Criteria are set forth for teacher assignments, caseload maximums, and mixing students with different disabilities together for instruction. In addition, procedures are included for school division superintendents and directors of nonpublic education agencies to request conditional licenses for teachers, waivers for educational interpreters who have not documented their qualifications, and waivers to digress from the program models addressing caseload or mixing students with different disabilities together for instruction.

The final regulations contain two technical amendments which provide the following information:

1. The conditions for requesting a waiver for educational interpreters have been clarified and a waiver request form has been included, to correspond with the revised interpreter certification process.

2. A correction in the value for self-contained students with other health impairments (OHI) when combined with resource students has been corrected to match the allocation of funds.

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 Dr. Patricia Abrams, Virginia Department of Education, P.O. Box 2120, Richmond, VA 23216-2120, telephone (804) 225-2874. There may be a charge for copies.

VR 270-01-0057. Special Education Program Standards.

PART I.
DEFINITIONS.

§ 1.1. Definitions.

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

"Combined self-contained/resource" means programs where some students receive special education services 50% or more of the day and some students receive services less than 50% of their instructional day (excluding lunch). Time in special education is calculated on the basis of special education services defined in the individualized education program (IEP), rather than the location of services. As a result, services may be offered using collaborative, consulting or team teaching models, in a general class setting, in addition to the traditional resource special education classroom.

"Departmentalized program" means programs where several special education teachers subdivide the curriculum, allowing each to teach in fewer content areas. Departmentalized programs may include collaborative, consulting or team teaching models offered in general class settings, in addition to traditional special education classes.

"Early childhood special education programs" means

programs for students of preschool ages (2 - 5 years old) who are eligible for special education.

"Resource" means programs where students receive special education services less than 50% of their instructional school day (excluding lunch). Time in special education is calculated on the basis of special education services defined in the individualized education program (IEP), rather than the location of services. As a result, services may be offered using collaborative, consulting or team teaching models, in a general class setting, in addition to the traditional resource special education classroom.

"Self-contained" means programs where students receive special education services 50% or more of their instructional school day (excluding lunch). Time in special education is calculated on the basis of special education services defined in the individualized education program (IEP), rather than the location of services. As a result, services may be offered using collaborative, consulting or team teaching models, in a general class setting, in addition to the traditional self-contained special education classroom.

PART II.
SPECIAL EDUCATION TEACHERS.

§ 2.1. Special education teachers; license required.

Special education teachers shall hold a current Virginia teaching license. In addition, each special education teacher shall hold specific endorsement(s) which correspond to the area(s) of disability(ies) of students assigned to his classroom or caseload or both (refer to Figure A, Special Education Teacher Assignment Requirements).

§ 2.2. Special education conditional license.

An individual who does not hold an endorsement in the area of disability assigned may be licensed on a two-year special education conditional license if the following criteria are met:

1. The individual is employed as a teacher of special education by a Virginia public or nonpublic school; and

2. The individual holds a current Virginia teaching license (the teaching license must be effective during the two-year validity period of the special education conditional license).

The two-year special education conditional license is a nonrenewable teaching license issued to unendorsed special education teachers in order to provide them an opportunity to attain endorsement while employed in the Commonwealth of Virginia. Individuals issued the special education conditional license will be required to satisfy the special education endorsement requirements in the two-year validity period of the conditional license. However, the license may be extended for one additional year at the request of the school division superintendent or director of nonpublic education agency. Endorsement in special education areas of disability(ies) may be attained by completing the prescribed course work for endorsement through an institution of higher education or by completing the Department of Education's special education teacher endorsement program.

§ 2.3. Conditions for application of conditional license.

Local school division superintendents and directors of nonpublic education agencies shall apply for a special education conditional license for any certified individual who is not endorsed in the area assigned to teach. The conditional license for individuals shall be requested when the individual is the best suited of the applicants for the position, the school division has advertised the position, and has made reasonable efforts to recruit and hire qualified individuals.

§ 2.4. Timeline for application of special education conditional license.

Conditional license applications are to be submitted to the Superintendent of Public Instruction, Virginia Department of Education using the Application for Special Education Conditional License (form number PS-1) within 30 days of assignment in an unendorsed area of disability.

PART III.
EDUCATIONAL INTERPRETERS.

§ 3.1. Qualified educational interpreter requirements.

Requirements for personnel providing interpreting services for students who have hearing impairments, are hard of hearing or are deaf are detailed in the Regulations Governing Special Education Programs for Handicapped Children and Youth in Virginia (VR 270-01-0007).

§ 3.2. Waiver of requirements.

A. Conditions for requesting a waiver.

Local education agency superintendents and directors of nonpublic education agencies shall request a waiver to the requirements for any individual who does not meet the qualifications [~~to serve as an educational interpreter~~ for providing interpreting services to students using sign language or cued speech] . Individuals hired must be in the process of being screened for competency or be completing training to develop their interpreting skills or both. The waiver shall be requested when the individual is the best suited of the applicants for the position, the school division has advertised the position, and has made reasonable efforts to recruit and hire qualified individuals.

[A nonrenewable waiver may be provided for

individuals who have not achieved a Virginia Quality Assurance Screening Level I for one year after the individual's hiring date (or one year after the Regulations Governing Special Education Programs for Children with Disabilities in Virginia are implemented).

A nonrenewable waiver may be provided for one year for individuals who have not attained a Virginia Quality Assurance Screening Level III by the third anniversary of their hiring date (or three years after the Regulations Governing Special Education Programs for Children with Disabilities in Virginia are implemented).]

B. Timeline for requesting a waiver.

Waiver of educational interpreter qualification requirements requests are to be submitted to the [~~*Superintendent of Public Instruction*~~ *Associate Specialist for Hearing Impaired Programs*] *, Virginia Department of Education within 30 days of assignment* [*using the Request for Waiver of Educational Interpreter Qualifications Requirements form*] *.*

PART IV.
SPECIAL EDUCATION PROGRAMS FOR SCHOOL-AGE YOUTH.

§ 4.1. General.

The standards in Part IV specify class mix, caseload, and teacher assignment for special education programs for school-age children and youth. Public and nonpublic education agencies may offer programs for students eligible for special education outside the boundaries of these standards. However, the education agency must receive a waiver from the Virginia Department of Education to offer such programs.

§ 4.2. Self-contained programs.

Students receiving self-contained services have IEPs identifying 50% or more of their instruction each school day (excluding lunch) in special education. Time in special education is calculated on the basis of special education services defined in the IEP, rather than the location of services. As a result, services may be offered using collaborative, consulting or team teaching models, in a general class setting, in addition to the traditional self-contained special education classroom.

1. Class mix. Self-contained programs are for students with the same primary disability category. Programs may include students with different secondary disability categories if the students' primary disability is the same (e.g., student with learning disability, student with learning disability and emotional disturbance and student with learning disability and speech-language impairment). Noncategorical primary (grades K-2) special education programs, for students identified as developmentally delayed (DD) may include certain students with identified disabilities, when student learning needs are similar. Students identified with traumatic brain injury may be placed in any program, in accordance with their IEP.

2. Caseload. Figure B prescribes maximum caseload standards.

3. Teacher assignment. Figure A prescribes teacher assignment standards. The following additional criteria apply:

a. Teachers may provide some services specific to students' IEPs outside of their endorsement areas(s). However, the students must receive the majority of their services from a teacher endorsed to serve their area of disability (e.g., student with educable mental retardation receives social skills instruction from a teacher endorsed in emotional disturbance but receives the majority of services from a teacher endorsed in mental retardation).

b. Teachers providing services to a student with more than one disability (e.g., student with learning disability and emotional disturbance) do not need to be endorsed in all areas of student's disabilities. However, the student must receive some services for each disability from appropriately endorsed personnel (e.g., placed with teacher endorsed in learning disabilities for academic services, with teacher endorsed in emotional disturbance for affective education).

c. Teacher caseloads must include all students to whom they provide special education. Students receiving special education services from more than one special education teacher must be counted on the caseloads of each teacher.

§ 4.3. Resource programs.

Students receiving resource services have IEPs identifying that less than 50% of their instruction each school day (excluding lunch) is in special education. Time in special education is calculated on the basis of special education services defined in the IEP, rather than the location of services. As a result, services may be offered using collaborative, consulting or team teaching models, in a general class setting, in addition to the traditional resource special education classroom. Resource programs include students receiving consultation or monitoring services.

1. Class mix. Resource caseloads may combine students of different disabilities, if students receive services from at least one special education teacher who holds endorsement in the students' area(s) of disability.

2. Caseload. Figure B prescribes caseload standards. Resource caseloads must include students receiving consultation or monitoring services.

3. Teacher assignment. Figure A prescribes teacher assignment standards. The following additional criteria apply:

a. Teachers may provide some services specific to students' IEPs outside of their endorsement areas(s). However, the students must receive the majority of their services from a teacher endorsed to serve their area of disability (e.g., student with educable mental retardation receives social skills instruction from a teacher endorsed in emotional disturbance but receives the majority of services from a teacher endorsed in mental retardation).

b. Teachers providing services to a student with more than one disability (e.g., student with learning disability and emotional disturbance) do not need to be endorsed in all areas of student's disabilities. However, the student must receive some services for each disability from appropriately endorsed personnel (e.g., placed with teacher endorsed in learning disabilities for academic services, with teacher endorsed in emotional disturbance for affective education).

c. Teacher caseloads must include all students to whom they provide special education. Students receiving special education services from more than one special education teacher must be counted on the caseloads of each teacher.

§ 4.4. Combined self-contained resource.

Combined self-contained/resource programs are programs for students of one disability category where some students receive special education services 50% or more of the day and some students receive services less than 50% of the day. Time in special education is calculated on the basis of special education services defined in the IEP, rather than the location of services. As a result, services may be offered using collaborative, consulting or team teaching models, in a general class setting, in addition to the traditional resource special education classroom.

1. Class mix. Combined self-contained/resource programs are for students with one primary disability category. The class mix standards for self-contained programs apply.

a. Students with different secondary disability categories may receive services in combined self-contained/resource settings if their primary disability is the same (e.g., student with learning disability, student with learning disability and emotional disturbance).

b. Noncategorical primary (K-2) special education programs for students identified as developmentally delayed (DD) may include certain students with identified disabilities when student learning needs are similar.

c. Students identified with traumatic brain injury may be placed in any program in accordance with their IEP.

2. Caseload. Caseload maximums for teachers serving students receiving self-contained (S/C) services and students receiving resource (R) services are computed on the basis of a maximum point value of 20. To determine the value for a class, the following procedure should be used (refer to Figure C):

a. Determine the value to be assigned a student receiving self-contained instruction under the disability category (e.g., S/C student with learning disability with paraprofessional = 2).

b. Multiply the number of self-contained students by the assigned value (8 students x 2 = 16).

c. Add this total value for self-contained to the number of resource students (16 points + 3 R students = 19).

d. This total combined value cannot exceed the maximum value of 20.

3. Teacher assignment. Figure A prescribes teacher assignment standards. The following additional criteria apply:

a. Teachers may provide some services specific to students' IEPs outside of their endorsement areas(s). However, the students must receive the majority of their services from a teacher endorsed to serve their area of disability (e.g., student with educable mental retardation receives social skills instruction from a teacher endorsed in emotional disturbance but receives the majority of services from a teacher endorsed in mental retardation).

b. Teachers providing services to a student with more than one disability (e.g., learning disability and emotional disturbance) do not need to be endorsed in all areas of student's disabilities. However, the student must receive some services for each disability from appropriately endorsed personnel (e.g., placed with teacher endorsed in learning disabilities for academic services, with teacher endorsed in emotional disturbance for affective education).

c. Teacher caseloads must include all students to whom they provide special education. Students receiving special education services from more than one special education teacher must be counted on the caseloads of each teacher.

§ 4.5. Departmentalized programs.

A departmentalized program allows several special education teachers to subdivide the curriculum, allowing

each to teach in fewer content areas. Departmentalized programs may include collaborative, consulting or team teaching models offered in general class settings, in addition to traditional special education classes.

1. Departmentalized special education programs shall meet the following standards:

a. The general education program in that building uses a departmentalized model.

b. Teachers are assigned to subject matter on the basis of their expertise (e.g., one endorsed teacher has instructional skills in reading while another has instructional skills in math).

c. Student placements are based upon similar learning needs (as defined in their IEPs).

d. Courses offered for graduation credit must comply with the Standards for Accrediting Public Schools in Virginia (VR 270-01-0012), particularly the number of hours of instruction.

2. Class mix. Departmentalized programs may mix students of different disability categories if students receive services from at least one teacher who holds endorsement in their area(s) of disability.

3. Caseload. Departmentalized models may include students who are considered self-contained and students who are considered resource.

a. If all of the students are considered resource students (e.g., 2 of 6 periods or 3 of 7 periods per day in special education), the maximum caseload is 24 students. Building averages must be 24 students or less per teacher.

b. If the departmentalized model includes students who are considered self-contained students, caseload maximums are computed in the same manner as under combined self-contained/resource. The maximum point value per teacher must be 20. Building averages must be 20 points or less per teacher.

c. The following maximums per class period apply:

(1) 14 students: Similar student/achievement levels: One subject area and level taught to all students (e.g., English 9).

(2) 10 students: Varying student achievement levels: More than one subject area and level taught in one period (e.g., English 7 and 8; English 8 and General Math 8).

d. Special education teachers also may teach in general education, if endorsed in the assigned area(s). However, a reduction in the teacher's special education caseload must be made in proportion to the percentage of school time spent teaching in general education (e.g., 2 of 6 periods per day assigned to general education would reduce the maximum special education caseload allowed by one-third).

4. Teacher assignment. Figure A prescribes teacher assignment standards. The following additional criteria apply:

a. Teachers may provide some services specific to students' IEPs outside of their endorsement areas(s). However, the students must receive services from a teacher endorsed to serve their area of disability.

b. Teachers providing services to a student with more than one disability (e.g., student with learning disability and emotional disturbance) do not need to be endorsed in all areas of student's disabilities. However, the student must receive some services for each disability from appropriately endorsed personnel (e.g., placed with teacher endorsed in learning disabilities for academic services, with teacher endorsed in emotional disturbance for affective education).

PART V.
PROGRAMS FOR EARLY CHILDHOOD SPECIAL EDUCATION.

§ 5.1. Early childhood special education.

Students of preschool ages (2 - 5) eligible for special education receive early childhood special education programs. Preschool aged students with disabilities shall receive the full range and amount of services necessary. A full-day (5 1/2 hours) program should be available to all students. A shorter program may be provided, if determined appropriate by the IEP committee and included in the student's IEP.

1. Class mix. Early childhood special education programs may mix preschool aged students with different disabilities.

2. Caseload. Figure B prescribes caseload standards.

3. Teacher assignment.

a. Figure A prescribes teacher assignment standards.

b. A teacher endorsed in hearing impairment may serve as the primary service provider for preschool-aged students identified as having a hearing impairment or deafness. However, this teacher must have evidence of coursework in the following two areas: normal growth and development from birth to age five and early childhood special education curriculum and program

development.

PART VI.
PROCESS FOR REQUESTING WAIVERS FOR SPECIAL EDUCATION PROGRAMS.

§ 6.1. Conditions.

Local education agency superintendents and directors of nonpublic education agencies must request a waiver of the program standards when the programs provided for students with disabilities are outside the boundaries of these program standards, and must receive the approval from the Virginia Department of Education. This approval is in the form of a waiver of special education program standards.

§ 6.2. Requesting a waiver.

Local education agency superintendents and directors of nonpublic education agencies shall complete a separate request for each class/caseload. The Department of Education grants waivers on a class-by-class (caseload-by-caseload) basis, according to the description of the class provided by education agency. The education agency must notify the Department of Education if the student population in the class changes in any way.

§ 6.3. Timelines.

Waiver of special education program standards requests are to be submitted to the Superintendent of Public Instruction, Virginia Department of Education using the Program Standards Waiver Request (form number PS-2) within 30 days of placement/assignment outside of the boundaries of these standards. Requests for continuation of a model approved in the previous school year should be submitted before September 1 of the school year.

VA.R. Doc. No. R93-709; Filed July 7, 1993, 9:22 a.m.

BOARD OF FUNERAL DIRECTORS AND EMBALMERS

Title of Regulation: **VR 320-01-3. Regulations for Preneed Funeral Planning.**

Statutory Authority: §§ 54.1-2400, 54.1-2803(10) and 54.1-2820 of the Code of Virginia.

Effective Date: August 25, 1993.

Summary:

The final regulations reflect legislative change effective July 1, 1991, which requires insurance policies and annuity contracts which fund preneed contracts to offer a minimum rate of return on the investment. The final regulations require the funeral home to keep written verification of the rate of return on file on the premises and require the funeral home to disclose such information on the preneed contract, a sample copy of which is in the appendix to the regulations.

The board also made a minor revision to the itemization on the preneed contract to bring it in compliance with Federal Trade Commission Requirements.

Summary of Public Comment and Agency Response: No public comments were received by the promulgating agency.

Agency Contact: Copies of the regulation may be obtained from Meredyth P. Partridge, Board of Funeral Directors and Embalmers, 6606 West Broad Street, Richmond, VA 23230-1717, telephone (804) 662-9941. There may be a charge for copies.

VR 320-01-3. Regulations for Preneed Funeral Planning.

PART I.
GENERAL INFORMATION.

§ 1.1. Definitions.

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

"At need" means at the time of death or while death is imminent.

"Board" means the Board of Funeral Directors and Embalmers.

"Capper" means a person who serves as a lure or decoy to entice another to purchase a product. A shill.

"Cash advance item" means any item of service or merchandise described to a purchaser as a "cash advance," "accommodation," "cash disbursement," or similar term. A cash advance item is also any item obtained from a third party and paid for by the funeral provider on the behalf of the contract buyer. Cash advance items may include, but are not limited to, the following items: cemetery or crematory services, pallbearers, public transportation, clergy honoraria, flowers, musicians or singers, nurses, obituary notices, gratuities, and death certificates.

"Consideration" means money, property, or any other thing of value provided to be compensation to a contract seller or contract provider for the funeral services and funeral goods to be performed or furnished under a preneed funeral contract. Consideration does not include late payment penalties, and payments required to be made to a governmental agency at the time the contract is entered into.

"Contract" means a written, preneed funeral contract and all documents pertinent to the terms of the contract under which, for consideration paid to a contract seller or a contract provider by or on behalf of a contract buyer prior to the death of the contract beneficiary, a person promises to furnish, make available, or provide funeral services or funeral goods after the death of a contract beneficiary.

"Contract beneficiary" means the individual for whom the funeral services and supplies are being arranged.

"Contract buyer" means the purchaser of the preneed contract.

"Contract provider" means the funeral establishment designated by the contract buyer and contracting with the contract buyer to provide for funeral services and supplies in the preneed funeral contract.

"Contract seller" means the funeral service licensee who makes the preneed arrangements with the contract buyer for the funeral service and who makes the financial arrangements for the service and the goods and supplies to be provided.

"Contract price" means the same as consideration.

"Department" means the Department of Health Professions.

"Designee" means the individual selected by the contract beneficiary to arrange a preneed funeral plan on behalf of the contract beneficiary.

"Executive director" means the administrator of the Board of Funeral Directors and Embalmers.

"Funding source" means the trust agreement, insurance policy, annuity, personal property, or real estate used to fund the preneed plan.

"Funds" means the same as "consideration."

"Funeral supplies and services" means the items of merchandise sold or offered for sale or lease to consumers which will be used in connection with a funeral or an alternative to a funeral or final disposition of human remains including caskets, combination units, and catafalques. Funeral goods does not mean land or interests in land, crypts, lawn crypts, mausoleum crypts, or niches that are sold by a cemetery which complies with § 57-35.11 et seq. of the Code of Virginia. In addition, "funeral supplies and services" does not mean cemetery burial vaults or other outside containers, markers, monuments, urns, and merchandise items used for the purpose of memorializing a decedent and placed on or in proximity to a place of interment or entombment of a casket, catafalque, or vault or to a place of inurnment which are sold by a cemetery operating in accordance with § 57-35.11 et seq. of the Code of Virginia.

"Funeral service establishment" means any main establishment, branch, or chapel where any part of the profession of funeral directing or the act of Embalmer is performed.

"General advertising" means advertisement directed to a mass market including, but not limited to, direct mailings; advertisements in magazines, flyers, trade journals, newspapers; advertisements on television and radio; bulk mailings; and direct mailing to a mass population.

"Guaranteed contract price" means (i) the amount paid by the contract buyer on a preneed funeral contract, and income derived from that amount, or (ii) the amount paid by a contract buyer for a life insurance policy or annuity as the funding source and its increasing death benefit. These amounts shall be accepted as payment in full for the preselected funeral goods and services.

"Income" means the amount of gain received in a period of time from investment of consideration paid for a preneed contract.

"In-person communication" means face-to-face communication and telephonic communication.

"Nonguaranteed contract price" means the costs of items on a preneed funeral contract that are not fixed for the specified funeral goods or funeral services selected and nonguaranteed costs may increase from the date of the contract to the death of the contract beneficiary and the family or estate will be responsible for paying at the time of need for the services and supplies that were nonguaranteed. Cash advance items are not guaranteed.

"Preneed" means at any time other than at-need.

"Preneed funeral contract" means any agreement where payment is made by the contract buyer prior to the receipt of services or supplies contracted for, which evidences arrangements prior to death for: (i) the providing of funeral services or (ii) the sale of funeral supplies.

"Preneed funeral planning" means the making of arrangements prior to death for: (i) the providing of funeral services or (ii) the sale of funeral supplies.

"Solicitation" means initiating contact with consumers with the intent of influencing their selection of a funeral plan or a funeral service provider.

"Steerer" means an individual used to direct the course of action and choice of the buyer in a preneed funeral contract sale.

§ 1.2. Legal base.

The following legal base describes the responsibility of the Board of Funeral Directors and Embalmers to promulgate regulations governing preneed funeral planning

and plans in the Commonwealth of Virginia:

Title 54.1, Chapter 28, Article 1, § 54.1-2803 and Article 5 (§ 54.1-2820 et seq.) of the Code of Virginia.

§ 1.3. Purpose.

These regulations establish the standards to regulate preneed funeral contracts and preneed funeral trust accounts as prescribed in Chapter 28 of Title 54.1 of the Code of Virginia.

§ 1.4. Applicability.

Subject to these regulations are (i) funeral service licensees, (ii) funeral establishments, and (iii) resident trainees assisting the licensee in the preneed arrangement. All of the above shall be operating in the Commonwealth of Virginia in order to qualify to sell preneed.

Exemptions: These regulations do not apply to the preneed sale of cemetery services or supplies regulated under Article 3.2, Chapter 3, Title 57 (§ 57-35.11 et seq.) of the Code of Virginia.

PART II.
SALE OF PRENEED PLANS.

§ 2.1. Qualifications of seller.

A. A person shall not engage in or hold himself out as engaging in the business of preneed funeral planning unless he is licensed for funeral service by the Board of Funeral Directors and Embalmers.

B. All individuals selling preneed funeral plans shall comply also with the Rules and Regulations for Funeral Directors and Embalmers promulgated by the board.

§ 2.2. Solicitation.

A. A licensee shall not initiate any preneed solicitation using in-person communication by the licensee, his agents, assistants, or employees.

Exception: General advertising and solicitation other than in-person communication is acceptable.

B. After a request to discuss preneed planning is initiated by the contract buyer or interested consumer, any contact and in-person communication shall take place only with a funeral service licensee.

C. A licensee shall not employ persons known as "cappers" or "steerers," or "solicitors," or other such persons to participate in preneed sales.

D. A licensee shall not employ directly or indirectly any agent, employee, or other person, part or full time, or on a commission, for the purpose of calling upon individuals to influence, secure, or otherwise promote preneed sales.

E. Direct or indirect payment or offer of payment of a commission to others by the licensee, his agents, or employees for the purpose of securing preneed sales is prohibited.

F. No licensee engaged in the business of preneed funeral planning or any of his agents shall accept, advertise, or offer enticements, bonuses, rebates, discounts, restrictions to, or otherwise interfere with the freedom of choice of the general public in making preneed funeral plans.

PART III.
OPERATIONAL RESPONSIBILITIES.

§ 3.1. Records: general.

A. A licensee shall keep accurate accounts, books, and records of all transactions required by these regulations.

B. Preneed contracts shall be retained on the premises of the establishment for three years after the death of the contract beneficiary.

C. Required preneed reporting documents shall be retained on the premises of the establishment for three years. (See §§ 3.2A and 6.1D)

D. When insurance or annuity contracts are used to fund preneed arrangements, a licensee shall keep on file a written verification from the insurance company that the insurance or annuity contract complies with § 54.1-2820 B of the Code of Virginia. (See subdivisions 6 a and 6 b of § 5.9 of these regulations.)

~~D.~~ *E.* All preneed records shall be available for inspection by the department.

§ 3.2. Record reporting.

A. A contract provider shall keep a chronological listing of all preneed contracts. The listing shall include the following:

1. Name of contract buyer;

2. Date of contract;

3. How contract was funded;

4. Whether up to 10% of funds are retained by the contract provider for contracts funded through trust; and

5. Whether funeral goods and supplies are stored for the contract buyer.

B. A contract provider who discontinues its business operations shall notify the board and each existing contract buyer in writing.

PART IV.
CONTRACT.

§ 4.1. Content and format.

A. A person residing or doing business within the Commonwealth shall not make, either directly or indirectly by any means, a preneed contract unless the contract:

1. Is made on forms prescribed by the board (see Appendix I); or

2. Is made on forms approved by the board prior to use (see subsection B of this section).

B. Prior to use, contracts or disclosures which are not identical in format, wording, and content to that prescribed in Appendices I and II shall be approved by the board.

C. Contracts and disclosure forms prescribed in Appendices I and II shall be received in the board office no later than 10 days prior to a regularly scheduled meeting of the board to be considered for approval by the board at that meeting.

D. All preneed contracts shall be in writing.

E. All information on a preneed contract and disclosure statement shall be printed in a clear and easy-to-read type, style, and in a type size not smaller than 10 points.

F. Preneed contracts and disclosure statements shall be written in clear, understandable language.

G. The contract shall identify the following:

1. The contract seller;

2. Funeral license number of the contract seller;

3. The contract buyer;

4. The contract beneficiary;

5. The date of the contract;

6. The contract number;

7. A complete description of the supplies or services purchased;

8. Whether the price of the supplies and services purchased is guaranteed;

9. Whether the price of the supplies and services purchased is not guaranteed;

10. Any penalties or restrictions:

a. Geographic restrictions including maximum number of miles traveled without charging an extra fee;

b. Geographic restrictions including maximum number of miles the establishment is willing to travel;

c. The inability of the provider to perform the request of the buyer on merchandise, services, or prearrangement guarantees;

11. All disclosure requirements imposed by the board (see Appendix II); and

12. The designee agreement when applicable.

H. The contract or the disclosure statement as a part of the contract shall contain the name, address, and telephone number of the board and list the board as the regulatory agency which handles consumer complaints.

I. All preneed contracts shall be signed by the contract seller and the contract buyer.

PART V.
FUNDING.

Article 1.
General.

§ 5.1. A licensee shall not charge finance charges on a preneed arrangement.

§ 5.2. Cancellation of contract.

Any person who makes payment under this contract may terminate the agreement at any time prior to the time for which the services or supplies are furnished.

A. Cancellation within 30 days of contract date.

If the contract buyer terminates the contract within 30 days of the execution of the contract, the contract buyer shall be refunded:

1. All consideration paid or delivered; and

2. Any interest or income accrued thereon.

B. Cancellation after 30 days of contract date.

If the purchaser uses a funding source other than an insurance or annuity policy and terminates the contract after 30 days of the execution of the contract, the contract buyer shall be refunded:

1. All consideration paid or delivered on nonguaranteed items;

2. At least 90% of all consideration paid for guaranteed items; and

3. All interest or income accrued thereon.

§ 5.3. Escrow account.

Within two banking days after the day of receipt of any money from the contract buyer and until the time the money is invested in a trust, life insurance, or annuity policy, the contract seller or the contract provider shall deposit the money into an escrow account in a bank or savings institution approved to do business in the Commonwealth.

§ 5.4. Real estate.

When the consideration consists in whole or in part of any real estate, the following shall occur:

1. The preneed contract shall be recorded as an attachment to the deed whereby the real estate is conveyed; and

2. The deed shall be recorded in the clerk's office in the circuit court of the city or county in which the real estate being conveyed is located.

§ 5.5. Personal property.

When the consideration consists in whole or in part of any personal property, the following shall occur:

1. Personal property shall be transferred by:

a. Actual delivery of the personal property; or

b. Transfer of the title to the personal property.

2. Within 30 days of receiving the personal property or the title to the personal property, the licensee or person delivering the property shall:

a. Execute a written declaration of trust setting forth the terms, conditions, and considerations upon which the personal property is delivered; and

b. Record the trust agreement in the clerk's office of the circuit court of the locality in which the person delivering the property is living; or

c. Record the preneed contract in the clerk's office of the circuit court of the locality in which the person delivering the property or trust agreement is living provided that the terms, conditions, and considerations in § 5.4 2 a are included in the preneed contract.

§ 5.6. Right to change contract provider.

The contract buyer shall have the right to change the contract provider and the trustee at any time prior to the furnishing of the services or supplies contracted for under the preneed contract.

§ 5.7. Exemption from levy, garnishment or distress.

Any money, personal property, or real estate paid, delivered, or conveyed subject to §§ 54.1-2822 through 54.1-2823 shall be exempt from levy, garnishment, or distress.

Article 2.
Trust Accounts.

§ 5.8. Trust accounts.

A. If funds are to be trusted, the following information shall be disclosed in writing to the contract buyer:

1. The amount to be trusted;

2. The name of the trustee;

3. The disposition of the interest;

4. The fees, expenses, and taxes which may be deducted from the interest;

5. Whether up to 10% is retained by the contract provider; and

6. A statement of the contract buyer's responsibility for taxes owed on the interest.

B. If the contract buyer chooses a trust account as the funding source, within 30 days following the date of the receipt of any money paid for a trust-funded preneed contract or interest or income accrued (see § 5.3), the licensee shall transfer the money from the escrow account and deposit the following amount in a trust account in a bank or saving institution doing business in Virginia:

1. Nonguaranteed prices. All consideration shall be deposited for a preneed funeral contract in which prices of supplies and services are not guaranteed.

2. Guaranteed prices. At least 90% of all consideration shall be deposited for a preneed contract in which the prices of goods and services are guaranteed.

C. The trust funds shall be deposited in separate, identifiable accounts setting forth:

1. Name of depositor;

2. Contract beneficiary;

3. Trustee for contract beneficiary; and

4. Name of establishment which will provide the goods and services.

Article 3.
Life Insurance or Annuity.

§ 5.9. Life insurance or annuity.

If a life insurance or annuity policy is used to fund the preneed funeral contract, the following shall be disclosed in writing:

1. The fact that a life insurance policy or annuity contract is involved or is being used to fund the preneed contract;

2. The following information:

a. Name of the contract provider;

b. Name of contract seller;

c. Funeral license number of contract seller;

d. Place of employment of contract seller;

e. Name of insurance agent;

f. Identification as to whether the insurance agent is a funeral service licensee, and if so, license number;

g. Insurance agent's insurance license number;

h. Insurance agent's employer;

i. Insurance company represented by insurance agent.

3. The relationship of the life insurance policy or annuity contract to the funding of the preneed contract;

4. The nature and existence of any guarantees relating to the preneed contract from the policy or annuity;

5. The impact on the preneed contract of:

a. Any changes in the life insurance policy or annuity contract including changes in the assignment, contract provider, or use of the proceeds;

b. Any penalties to be incurred by the policy holder as a result of failure to make premium payments;

c. Any penalties to be incurred or moneys to be received as a result of cancellation or surrender of the life insurance policy or annuity contract; and

d. All relevant information concerning what occurs and whether any entitlements or obligations arise if there is a difference between the proceeds of the life insurance policy or annuity contract and the amount actually needed to fund the preneed contract.

6. The fact that the life insurance or annuity contract complies with § 54.1-2820 B of the Code of Virginia which states that the life insurance or annuity contract shall provide that either:

a. The face value thereof shall be adjusted annually by a factor equal to the Consumer Price Index as published by the Office of Management and Budget of the United States; or

b. A benefit payable at death under such contract that will equal or exceed the sum of all premiums paid for such contract plus interest thereon at the annual rate of at least 5.0% compounded annually.

PART VI.
BONDING.

§ 6.1. Bonding.

A. A performance bond shall be required on the following:

1. The contract provider which retains up to 10% of the consideration invested in a trust account; or

2. The retail price of funeral goods and supplies which are stored by the contract provider for the contract beneficiary prior to the death of the contract beneficiary.

B. The establishments described in subsection A of this section shall arrange for their own bonding.

C. The amount of bond required shall be based upon the risk of loss determined by the bonding company.

D. The following information concerning the bond shall be maintained at the funeral establishment: (See § 3.1 A, C and D)

1. Amount of the bond;

2. Company holding the bond;

3. Documentation that company holding the bond is duly authorized to issue such bond in the Commonwealth ; and

4. Renewal requirements of the bond.

PART VII.
SUPPLIES AND SERVICES.

§ 7.1. General.

A. If the contract seller will not be responsible for furnishing the supplies and services to the contract buyer, the contract seller shall attach to the preneed funeral contract a copy of the contract seller's agreement with the contract provider.

B. If any funeral supplies are sold and delivered prior to the death of the contract beneficiary, and the contract seller, contract provider, or any legal entity in which the contract provider or a member of his family has an interest thereafter stores these supplies, the risk of loss or damage shall be upon the contract seller or contract provider during such period of storage.

C. If the particular supplies and services specified in the contract are unavailable at the time of delivery, the contract provider shall be required to furnish supplies and services similar in style and at least equal in quality of material and workmanship.

D. The representative of the deceased shall have the right to choose the supplies or services to be substituted in subsection C of this section.

PART VIII.
DESIGNEE AGREEMENT.

§ 8.1. Designee.

A. A designee agreement shall be used only when the contract beneficiary is mentally alert and capable of appointing his own designee.

B. Any person may designate through the use of the designee agreement a designee who shall make arrangements for the contract beneficiary's burial or the disposition of his body for burial.

C. The designee agreement shall be:

1. In writing;

2. Accepted in writing by designee and the designee's signature notarized; and

3. Attached to the preneed contract as a valid part of the contract.

APPENDIX I.

PRENEED FUNERAL CONTRACT PRESCRIBED BY THE BOARD.

.....
.....
.....

PRENEED FUNERAL CONTRACT
for

(Name of Recipient of Services)
.....
.. (Zip) ..

I. SUPPLIES AND SERVICES PURCHASED

The prices of goods and services below MAY BE GUARANTEED provided the total is paid in full and all interest earned is allowed to accumulate in your account. If any of the prices are guaranteed, no additional cost will incur for your family or estate even though the actual prices of goods and services may increase between the date of this contract and the time of need. (Please see the disclosure document).

Services Purchased

Minimum services of staff	$.....
Optional services	$.....
Basic facilities	$.....
Facilities for viewing	$.....
Facilities for ceremony	$.....
Other facilities/equipment	$.....
Embalmer	$.....
Other preparation of body	$.....
Alternate care	$.....
Transfer of remains	$.....
Funeral coach	$.....
Flower car	$.....
Lead/service car	$.....
Mileage @ $..... (Outside service area)	
Other	$.....

(Direct Cremation)

(Immediate Burial)

(Forwarding to Another Funeral Home)

(Receiving from Another Funeral Home)

Sub-Total Cost of (Guaranteed) Services Purchased: $.....

Supplies Purchased

Casket (Describe)	$.....
Outer burial container (Describe)	$.....
Alternative container	$.....

Cremation urn $.....

Shipping container $.....

Clothing $.....

Temporary marker $.....

Acknowledgment cards $.....
@.....

Register/attendance books $.....
@.....

Memorial folders $.....
@.....

Other $.....

Sub-Total Cost of (Guaranteed) Supplies Purchased:
$.....

The actual prices of goods and services below are NOT GUARANTEED. These items may include, but not be limited to, obituary notices; death certificates; cemetery fees; flowers; sales tax; etc. The prices are estimated and the estimates will be included in the Grand Total Contract Price. The differences between the estimated prices below and the actual cost will be settled with your family or estate at the time of need:

..... $.....
..... $.....
..... $.....
..... $.....
..... $.....
..... $.....
..... $.....
..... $.....
..... $.....
..... $.....

Sub-Total estimated cost of Non-guaranteed items

$.....

GRAND TOTAL FOR PRENEED ARRANGEMENTS

1. Total cost of (Guaranteed) Services Purchased (Total taken from p 1)
$.....

2. Total cost of (Guaranteed) Supplies Purchased (Total taken from p 2)
$.....

3. Total Estimated cost of non-guaranteed Items (Total taken from p 2)
$.....

GRAND TOTAL
$.....

The only warranties, express or implied, granted in connection with the goods sold in this preneed funeral contract, are the express written warranties, if any, extended by the manufacturers thereof. No other warranties and no warranties of MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE are extended by the (funeral home).....

II. GENERAL INFORMATION

In order that the Buyer may understand the relationship of all parties involved in this preneed arrangement and contract, the following is provided:

A. Buyer: .....

B. Funeral Home Providing Services: .....

C. Preneed Arranger: .....

Employed by: (Funeral Home) .....

Licensed Funeral Director in Virginia:
.....yes.....no

Funeral Director License Number: .....

The following information will be given if an insurance policy or annuity contract is used to fund this agreement:

A. Buyer: .....

B. Insurance Company: .....

C. Insurance Agent: .....

Employed by: (Insurance Company) .....

Licensed Funeral Director in Virginia:
....yes..... no

Funeral Director License Number
(If Applicable): .....

Employed by (If Applicable):
(Funeral Home).....

D. The life insurance or annuity contract provides either that:

..... The face value thereof shall be adjusted annually by a factor equal to the Consumer Price Index as published by the Office of Management and Budget of the United States; or

..... A benefit payable at death under such contract

that will be equal or exceed the sum of all premiums paid for such contract plus thereon at the annual rate of at least five percent, compounded annually.

Method of Funding

A. Insurance .....

B. Trust .....

1. Amount to be trusted: .....

2. Name of trustee: .....

3. Disposition of Interest: .....

4. Fees, expenses, taxes deducted from earned interest: .....

5. Buyer's responsibility for taxes owned on interest: ..

III. CONSUMER INFORMATION

The Board of Funeral Directors and Embalmers is authorized by § 54.1-2800 et. seq. of the Code of Virginia to regulate the practice of preneed funeral planning. Consumer complaints should be directed to:

The Board of Funeral Directors and Embalmers
1601 Rolling Hills Drive
Suite 200
Richmond, Virginia 23229-5005
Telephone Number 804-662-9907
Toll Free Number 1-800-533-1560

IV. DISCLOSURES

The Disclosure statements will be available for your review. The General Price List shall be furnished to you by the preneed arranger. These contain information that you must receive by law and/or the authority of the Board of Funeral Directors and Embalmers. You are entitled to receive all information in clear and simple language including the language of the funding agreement for this preneed arrangement.

If any law, cemetery, or crematory requires the purchase of any of those items listed in Part I, the requirements will be explained in writing.

By signing this contract, buyer acknowledges availability of and opportunity to read a copy of all of the required documents.

V. TERMINATION OF CONTRACT

This person who funds this contract through a trust agreement may terminate this preneed contract at any time prior to the furnishing of the services or supplies contracted for:

Within 30 days

If you terminate this preneed contract within thirty days of the date of this contract, you will be refunded all payments of whatever type you have made, plus any interest or income you may have earned.

More than 30 days

If you terminate this preneed contract more than thirty days after the date on this contract, you will be refunded whatever amount was required to be placed in a revocable trust fund, plus any interest or income it has earned.

Any person who funds this contract through a trust fund which is irrevocable or through an insurance/annuity policy or through the transfer of real estate/personal property may not be eligible for a refund.

VI. STATEMENT OF GUARANTEE

By signing this contract, (Funeral Home) ..... agrees to the statement checked below (check one):

..... Pre-financing guarantees that no additional payment will be required from the family or estate for guaranteed services and supplies provided the Grand Total of these arrangements is paid in full and the interest is allowed to accumulate in your account (see page 4 for Grand Total amount). Payment of the difference will be required for the non-guaranteed estimated items if they increase in price.

..... The prices for items under supplies and services are not guaranteed.

VII. AGREEMENT

In witness whereof, the Buyer and the Funeral Home have executed this contract, intending its terms to be in accordance with the Code of Virginia and any regulations implementing the Code. By signing this contract you acknowlege that you have been provided access to and the opportunity to read the Disclosure Statements.

.....
(Designee of Funeral Home) (Buyer)

....
(Funeral Home) (Contract Date)

VIII. PENALTIES OR RESTRICTIONS

The (funeral home)....., has the following penalties or restrictions on the provisions of this contract.

1. (Insert geographic restrictions);

2. (Insert an explanation of the Funeral Home's

inability to perform the request(s) of the Buyer);

3. (Insert a description of any other circumstances which apply).

4. (Insert information that if particular goods and services specified in the contract are unavailable at the time of need):

A. The funeral home shall be required to furnish supplies and services similar in style and at least equal in quality of material and workmanship and

B. The representative of the deceased shall have the right to choose the supplies or services to be substituted.

Addendum to Preneed Contract

DESIGNEE AGREEMENT

I designate..... of (address)..... to assist with the preneed arrangements in my behalf. This individual is also authorized to work with the funeral home after my death to ensure that these arrangements are fulfilled. The relationship of my designee to me is.....

Buyer:..... Date:.....

I accept the request of (buyer)..... to assist with his/her preneed arrangements and to work with the funeral home after his/her death to ensure that these arrangements are fulfilled.

Designee:..... Date:.....

The foregoing was acknowledged before me this..... day of ....., 19....

Notary:.....

Date Commission Expires:.....

APPENDIX II.

DISCLOSURE STATEMENTS PRESCRIBED BY THE BOARD.

DISCLOSURES

We are required by law and/or the Virginia Board of Funeral Directors and Embalmers to provide access to and the opportunity for you to read the following information to assist you in preplanning. A question and answer format is used for clarity and includes the most commonly asked questions.

PRENEED CONTRACTS

– Is there more than one type of preneed agreement?

Yes.

Guaranteed contracts mean that the costs of certain individual items or the cost of the total package will never be more to your family or estate. Non-guaranteed means just the opposite. (See the section entitled "General Funding Information" for more information on guaranteed and non-guaranteed costs.)

Contracts may be funded by insurance/annuity policies, trusts, or transfer of real estate/personal property.

– What are my protections?

You should take your completed preneed contract home before you sign it and review it with your family or your legal advisor. You have a right to this review before you sign the contract or pay any money.

You should also read carefully the information in this disclosure statement. If you have any questions, contact the seller for more information or contact your legal advisor.

CANCELLATION

– Can I cancel my preneed agreement if I change my mind? Will I get my money back?

You may cancel payment for supplies or services within 30 days after signing the agreement. If you funded your preneed arrangement through a trust, the preneed arranger will refund all the money you have paid plus any interest or income you have earned.

If you funded your preneed arrangement through a revocable trust and you cancel the preneed contract AFTER the 30 day deadline, you will be refunded all of your money on the items that are not guaranteed and 90% of all your money on the items that are guaranteed. You will also receive any interest or income on that amount. A revocable trust is a trust that you can cancel.

There may be a penalty to withdraw money from a revocable trust account which has already been established in your name. If there is, your contract will give you this information. (See the first question under the section entitled "Payment" below.)

If you have funded your preneed arrangement through an irrevocable trust you will not be able to cancel the trust agreement or receive a refund. An irrevocable trust is one that cannot be cancelled.

If you funded your preneed arrangement through an insurance policy/annuity contract which will be used at the time of your death to purchase the supplies and services you have selected, you will need to pay careful attention to the cancellation terms and conditions of the policy. You may not be eligible for a refund.

PAYMENT

– What happens to my money after the contract is signed?

Your money will be handled in one of several ways. It may be deposited in a separate trust account in your name. The trust account will list a trustee who will be responsible for handling your account. The funeral home you have selected as your beneficiary will also be listed. You have the right to change the funeral home and the trustee of your account prior to receiving the supplies and services under the preneed contract.

Your money may be used to purchase a preneed life insurance policy which may be used to pay for your arrangements upon your death. The proceeds of the policy will be assigned to the funeral home of your choice. You may change the funeral home assignment at any time prior to receiving the supplies and services under the preneed contract.

You may decide to choose a life insurance policy or a trust account that requires regular premium payments and not have to make an up-front, lump sum payment.

– May I pay for goods and services with real estate or personal property?

Yes. When you pay for these supplies and services in whole or in part with any real estate you may own, the preneed contract that you sign will be attached to the deed on the real estate and the deed will be recorded in the clerk's office of the circuit court in the city or county where the real estate is located.

If you pay for goods and services with personal property other than cash or real estate, the preneed arranger, will declare in writing that the property will be placed in a trust until the time of your death and will give you written information on all the terms, conditions, and considerations surrounding the trust. The preneed arranger will confirm in writing that he has received property.

You may decide not to transfer the title of the personal property to the preneed arranger of your preneed contract. In this situation, you will have to submit information to the preneed arranger in writing that you are giving him the property without a title, and describe the property and where it will be kept until the time of your death.

In either case, the written statements will be recorded in the clerk's office of the circuit court of the city or county in which you live. The written statement does not have to be separate document.

GENERAL FUNDING INFORMATION

– If the prices of the goods and services are affected by inflation between now and my death, will the funding I choose be adjusted accordingly?

There is a possibility that the funding may fail to keep up with inflation. This could mean that the funding you choose could have insufficient value to cover all expenses.

– What happens if my funding is not enough to cover the full cost of these arrangements?

If the entire funeral or specific items in the agreement are guaranteed by the preneed arranger, you family or estate will not have to pay any more for those items provided that you have paid the Grand Total in full and all interest earned is allowed to accumulate in your account. However, if you have not paid the account in full and have not allowed the interest to accumulate in the account, and any items increase in price, your family or estate would be responsible for the extra amount if the funds are not sufficient. In some situations where you pay toward your funding with regular premiums rather than in one lump sum, your account may not be enough at the time of your death to cover everything.

– What happens to the extra money if my funding is more than what is needed to pay for these arrangements?

Sometimes, as explained in the answer above, your funding account may not have had the time to grow sufficiently before your death to cover items which are guaranteed in price to you, yet have increased in price for the funeral home.

Sometimes after funeral expenses are paid, there may be money left over. Because of the on-going risk that a funeral home takes in guaranteeing prices for you, the funeral home may not be required to return this excess money.

Some funding agreements and funeral homes, however, require that extra money be returned to the estate or family. Others do not. You should obtain information concerning this in writing before signing the preneed contract.

The answers to the following questions will depend upon the terms and conditions of the individual's funding and preneed agreements. Please review your preneed contract and/or funding agreement for answers to these questions.

– What happens to my preneed contract if I change my assignment from one funeral home to another?
(Place answer here)

– What happens to my preneed contract if I change the beneficiary of my funding or the use of my proceeds from the funding.

If you make such changes, it could void your contract. You should request specific information from the preneed arranger and the funding arrangement.

– What will happen to may preneed contract if I fail to make agreed to premium payments to my funding source?

(Place ansewer here)

– Do I get any money back if I surrender or cancel my funding arrangements?
(Place answer here)

TRUST ACCOUNT

– If my money goes into a trust account, what information will I receive about that account?

If you want your money to go into a trust fund, the trust agreement must furnish you with information about the amount to be deposited into the account; the name of the trustee; information about what happens to the interest your trust account will earn; and information about your responsibility to file and pay taxes on that interest.

If there are filing expenses connected with your trust account, you will be notified as to what the expenses are and whether you or the preneed arranger is the responsible party for paying those.

– What happens to the interest earned by the trust?

You should be aware that the interest earned by the trust may be handled in different ways by different trust arrangements. The interest may have to go back into your account if items on your contract are guaranteed. You may be responsible for reporting that interest to the Internal Revenue Serice and paying taxes on it. You will be responsible to pay any taxes on the interest earned even if you cancel your trust account. Some trust accounts cannot be cancelled.

There may be special fees deducted from your interest. However, you may still be responsible for paying taxes on the entire amount of interest earned before the fees were deducted. Please ask your preneed arranger for a written list of any fees so you will have a clear understanding about them before you sign the contract.

– If I pay my trust in premium payments, what happens if I die before the Grand Total of the funeral has been placed in trust?
(Place answer here)

LIFE INSURANCE POLICY OR ANNUITY CONTRACT

The following question applicable to your policy will be answered in writing. The answer will depend upon the terms and conditions of the individual's policy and/or preneed contract.

– If I die during the period of time when my insurance policy only guarantees to pay back my premiums plus the interest, will that amount be considered payment in full for my preneed contract?
(Place answer here)

CLAIMS AGAINST THIS CONTRACT

– Can someone to whom I owe money make a claim against the money, personal property, or real estate that I have used to pay for this contract?

No. This money or property cannot be used to settle a debt, a bankruptcy, or resolve a claim. These funds cannot be garnished.

– Can the money or property be taxed?

No. Currently, interest earned on the money you deposit in a trust, savings account, or the value of the property you used for payment can be taxed but not the original amount which you invested. Interest earned on annuities is generally deferred until withdrawal.

GENERAL GOODS AND SERVICES

– If I choose goods and services that might not be available at the time of my death, what is the provider required to do?

The funeral home which you selected is required to furnish supplies and services that are similar in style and equal in value and quality if what you choose is no longer made or is not available at the time of your death. Your representative or next-of-kin will have the right to choose the supplies or services to be substituted. However, if the substitute is more expensive than the item originally selected by you, your designee or next-of-kin would be responsible for paying the difference. Under no circumstances will the funeral establishment be allowed to substitute lesser goods and services than the ones you chose.

If, before your death, the funeral home were to go out of business or were otherwise unable to fulfill their obligation to you under the preneed contract, you have the right to use the proceeds at the funeral home of your choice.

If the inability to provide services does not become apparent until the time of your death, the individual that you named as your designee could use the funds for services at another funeral home.

– May I choose the exact item I want now and have the funeral home store it until my death?

If the funeral home or supplier has a storage policy you may ask for this service. If the funeral home or preneed arranger agrees to store these items, the risk of loss or damage shall be upon the funeral home during the storage period.

For example, what would happen if you select a casket which is in-stock at the time you make these arrangements and the funeral home or supplier agrees to store it for you in their warehouse and: (1) damage occurs, (2) the funeral home or supplier goes out of business (3) the funeral home or supplier is sold, etc? You need to be

assured in writing of protection in these types of situations.

– What happens if I choose to have a unique service that is not customary or routine in my community? Must the funeral home comply with my wishes?

The funeral home which you have chosen to conduct your service may be able to only provide certain types of services. They may not be able to fulfill your request. If there is a restriction on what they can provide, you will be notified in writing before you sign the preneed contract.

If the funeral home agrees in writing before you sign the contract to perform such services, the funeral home shall provide you a written, itemized statement of penalties (fees) which you will be charged.

– Will the funeral home agree to transport my body to another area for burial?

Again, the funeral home may have restrictions on the distance they are willing to travel to conduct a burial. If restictions apply, you will be notified in writing.

If the funeral home agrees in writing before you sign the contract to honor your wishes, the funeral home shall provide you a written, itemized statement of any penalties (fees) which you will be charged.

– I may die and be buried in a city other than one where the funeral home that I select for my goods and services is located. Will the funeral home that I select under this contract deliver my merchandise to the city where I die and am to be buried?

This is entirely up to the funeral home to decide. If the funeral home has restrictions on this, they will notify you in writing. If they agree to ship merchandise to another area for your funeral, you will be notified before signing this contract of the penalties (fees) involved if they can be determined and guaranteed at this time.

However, the preneed contract arrangements and funding may be considered portable. This means that they are usually available for transfer from one locality to another. It is unusual for actual goods and merchandise to be transferred.

PRICING

– How will I know that the prices of items which I select are the same for everyone?

The funeral home maintains a general price list and a casket and outer burial container price list. Your preneed arranger will give this to you before you begin talking about arrangements. After your discussion is finished, you will be given a copy of your preneed contract on which charges will be listed. Charges will only be made for the items you select. If there are any legal or other requirements that mandate that you must buy any items you did not specifically ask for, the preneed arranger will explain the reason for the charges to you in writing.

You may ask a funeral home to purchase certain items or make special arrangements for you. If the funeral home charges you for these services, you will receive an explanation in writing. The charges to you for these services may be higher than if you or your family purchased them directly.

At the time of your death, you family or estate will be given an itemized statement which will list all of the specific charges. This is a requirement of the Federal Trade Commission. Although not required to do so, some funeral homes may also choose to give you an itemized statement when you make these arrangements.

– What is meant by guaranteed and non-guaranteed prices?

Some preneed arrangers may agree that certain prices are guaranteed. Some may guarantee the price of the total package. Other funeral homes may not guarantee any prices.

Guaranteed prices are those that will not increase for your family or estate at the time of your death. Basically, this means that your funeral arrangement for those items will be covered by and will not exceed your funding and the interest it earns. Non-guarnateed prices are those which might increase or decrease. The non-guaranteed prices may be written in at the time of this contract with you understanding that the price is an estimate only and may increase or decrease. A settlement to that effect may have to be made with your family or representative after your death.

– Can the preneed arranger and I negotiate a projected charge for the non-guaranteed items based on the rate of inflation?

It is entirely up to the preneed arranger to inform you of the funeral home policy in that regard.

CASKETS AND CONTAINERS

– Do I have to buy a vault or a container to surround the casket in the grave?

In most areas of the country, state and local laws do not require that you buy a container to surround the casket in the grave. However, many cemeteries ask that you have such a container to support the earth above the grave. Either a burial vault or a grave liner will satisfy if such requirements exist.

– Is a casket required?

A casket is not required for direct cremation. If you

want to arrange a direct cremation, you may use an unfinished wood box or an alternative container made of heavy cardboard or composition materials. You may choose a canvas pouch.

– Do certain cemeteries and crematoriums have special requirements?

Particular cemeteries and crematoriums may have policies requiring that certain goods and services be purchased. If you decide not to purchase goods and services required by a particular cemetery or crematorium, you have the right to select another location that has no such policy.

Embalmer

– Is Embalmer always required?

Except in certain special cases, Embalmer is not required by law. Embalmer may be necessary, however, if you select certain funeral arangements such as viewing or visitation with an open casket. You do not have to pay for Embalmer you did not approve if you selected arrangements such as a direct cremation or immediate burial. If the funeral home must charge to conduct an Embalmer, your designee will be notified of the reasons in writing.

ASSISTANCE

– This is all very confusing to me. May I pick someone close to me to help with all of this? May this person also work with the funeral home to ensure that my wishes as written in the preneed contract are carried out?

You may designate in writing a person of your choice to work with the funeral home and preneed arranger either before or after your death to ensure that your wishes are fulfilled. You must sign the statement and have it notarized. The person that you designate must agree to this in writing. Under the laws governing preneed contracts, the individual whom you designate has final authority at the time of your death.

- Where can I complain if I have a problem concerning my preneed contract, the preneed arranger, or the funeral home?

You may direct your complaints or concerns to:

The Board of Funeral Directors and Embalmers
Department of Health Professions
[~~1601 Rolling Hills Drive, Suite 200~~ *6606 West Broad Street*]
Richmond, Virginia [~~23229-5005~~ *23230-1717*]
Telephone Number (804) 662-9941
Toll Free Number 1-800-533-1560

VA.R. Doc. No. R93-684; Filed June 30, 1993, 1:48 p.m.

DEPARTMENT OF GAME AND INLAND FISHERIES (BOARD OF)

NOTICE: The Board of Game and Inland Fisheries is exempt from the Administrative Process Act pursuant to § 9-6.14:4.1 A of the Code of Virginia; however, it is required by § 9-6.14:22 to publish all proposed and final regulations.

Title of Regulations:

VR 325-01. Definitions and Miscellaneous.
VR 325-01-1. In General.
VR 325-02. Game.
VR 325-02-1. In General.
VR 325-02-2. Bear.
VR 325-02-3. Beaver.
VR 325-02-6. Deer.
VR 325-02-9. Grouse.
VR 325-02-11. Mountain Lion.
VR 325-02-14. Oppossum.
VR 325-02-16. Pheasant.
VR 325-02-17. Quail.
VR 325-02-18. Rabbit and Hares.
VR 325-02-19. Raccoon.
VR 325-02-21. Squirrel.
VR 325-02-22. Turkey.
VR 325-02-25. Firearms.
VR 325-04. Watercraft.
VR 325-04-1. In General.

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

Effective Date: August 26, 1993.

Summary:

Summaries are not provided since, in most instances, the summary would be as long or longer than the full text.

VR 325-01. DEFINITIONS AND MISCELLANEOUS.

VR 325-01-1. In General.

§ 12. Appointment of new consignment agents for sale of hunting and fishing licenses.

[~~Rescind this section in its entirety and replace it with new sections numbered §§ 12.1, 12.2, 12.3, 12.4, 12.5 and 12.6.~~ NOTICE: The board declined to take final action. Section 12 remains in effect.

~~*§ 12.1. For the purposes of these regulations, the following terms shall have the meanings ascribed to them by this section.*~~

~~*"Back dating" means indicating on any license a date or time of issue which precedes the actual date or time of issue.*~~

~~*"Cash agent" means a duly appointed license agent*~~

~~from whom a cash deposit shall be required.~~

~~"Consignment agent" means a duly appointed license agent from whom a cash deposit is not required.~~

~~"Locality" means the county or incorporated city or township within which a given license agent or applicant is located.~~

~~§ 12.2. Appointment of agents for the sale of hunting and fishing licenses.~~

~~A. All applicants who apply to be an agent to sell hunting and fishing licenses shall be appointed pursuant to the provisions of § 29.1-327 of the Code of Virginia and applicable regulations adopted by the board.~~

~~1. The following criteria shall be used to determine eligibility for appointment as a license agent:~~

~~a. The applicant has an established place of business at the location where hunting and fishing licenses are to be sold which has been in operation for at least 12 consecutive months;~~

~~b. The type of business and method and hours of operation are in concert with the mission of the Department of Game and Inland Fisheries and the provision of hunting, fishing, and trapping opportunities to the public;~~

~~c. The applicant receives a satisfactory credit rating from a recognized credit bureau; and~~

~~d. The applicant is approved for a surety bond through the bonding company then being used by the department.~~

~~2. For purposes of these regulations, license agent privileges do not automatically transfer from one owner to another owner upon the sale of a business which is serving as a license agent. A person who buys a business from an existing license agent may be appointed as a cash agent upon completion of the sale of the business.~~

~~B. Except as provided in subsection C of this section, all persons appointed as a license agent must serve at least one year as a cash agent.~~

~~1. For the purposes of these regulations, a cash agent is required to place with the department a cash deposit in the amount of $2,000. The deposit will be refunded to the agent upon resignation as a license agent and full settling of account or conversion to a consignment agent. The deposit shall be subject to forfeiture for failure to report sales or to remit fees due the department in accordance with established operating procedures.~~

~~2. Before conversion to a consignment agent, a cash agent must demonstrate through actual sales the ability to sell at least 90% of the average hunting and fishing license sales of all agents in the locality.~~

~~3. If a cash agent sells the required number of licenses and has served as a cash agent for the required time period, he may be converted to a consignment agent provided that he meets all other applicable requirements.~~

~~C. The director is authorized to appoint consignment agents as needed to provide for a minimum of two consignment agents within a given locality, not including the clerk of the court.~~

~~The director is authorized to appoint as consignment agents operators at state-owned or state-leased facilities, facilities operated by units of local or federal governmental entities, or licensed shooting preserves.~~

~~D. All persons appointed as license agents must make available for sale all hunting, fishing, and trapping licenses, stamps, and permits sold by the department unless specifically granted an exception by the director.~~

~~E. Any person who has been convicted of a Class 3 or Class 4 misdemeanor wildlife violation may not be appointed as a license agent within two years of the date of the last conviction. Any person who has been convicted of a Class 1 or Class 2 misdemeanor wildlife violation, any felony wildlife violation, or any federal wildlife violation may not be appointed as a license agent within five years of the date of the last conviction.~~

~~§ 12.3. Revocation and suspension of license agent privileges.~~

~~A. Any agent who is located within 10 miles of any other agent, not including a clerk of the court, and whose combined net sales volume of hunting and fishing licenses (not including agent fees) does not equal at least $5,000 per combined license year for two consecutive combined license years (beginning with the effective date of this regulation), will be removed as a license agent for a period of at least three years.~~

~~1. For purposes of these regulations, "10 miles" shall be determined by the most direct automobile route on public streets or highways.~~

~~2. In the event that two or more license agents do not meet the minimum sales volume as required by this section, the agent with the greatest sales volume for the area being impacted by this section shall be retained as a license agent.~~

~~3. This subsection shall not apply to clerks of the court or agents appointed pursuant to VR 325-01-1, § 12.1 C 2 or VR 325-01-1 § 12.1 D.~~

~~B. Any agent who does not abide by these regulations~~

~~or operating procedures issued pursuant thereto or to applicable provisions of law will be removed as a license agent; however, the director may in his discretion first suspend license agent privileges for a period of time not to exceed two years.~~

~~C. Conviction of wildlife law violations.~~

~~1. In addition to penalties prescribed by law, the license agent privileges of any agent who has been convicted of a Class 3 or Class 4 misdemeanor wildlife violation will be suspended for a period not to exceed two years from the date of the last conviction.~~

~~2. In addition to penalties prescribed by law, the license agent privileges of any agent who has been convicted of a Class 1 or Class 2 misdemeanor wildlife violation, any felony wildlife violation, or any federal wildlife violation will be suspended for a period not to exceed five years from the date of the last conviction.~~

~~D. Late reporting of license sales or late remittance of sales receipts or other fees to the department subjects the license agent to suspension or revocation of license agent privileges.~~

~~1. The first time a report or remittance is late, the agent will be sent a letter which tells him that the report or remittance is late and gives him until the fifth of the following month to send them in. If the report or money or both is not received by the fifth of the following month, the agent's fees are to be forfeited and an officer will be sent to pick up the agent's books for an audit. If the audit is satisfactory and all outstanding remittances are paid in full, the license books will be returned to the agent with a caution not to be late again. The agent will be informed of the consequences of future late reporting.~~

~~2. If an agent submits either a report or remittance late a second time within 12 months, the agent will be sent a second notice. The second notice will inform the agent that his report or remittance or both is late, that he has until the fifth of the following month to send them in, and that his books will be picked up for an audit. If the audit is satisfactory and any outstanding remittances are paid in full, the books will be returned to the agent after a conference with staff. The agent will be informed verbally and in writing that future late reporting will lead to revocation of license agent privileges.~~

~~3. If an agent submits either a report or remittance late a third time within 12 months, the agent will be sent a third and final notice and shall have his license agent privileges revoked for a period of up to five years. The final notice will inform the agent that his report or remittance or both is late, that an officer will pick up all license books, and that his license agent privileges are being revoked. The books will be audited and the agent sent a bill for any outstanding remittances. If outstanding remittances are not paid in a timely manner, the account will be turned over to the agency's bonding company for collection.~~

~~§ 12.4. Issuance of an improper or falsified license.~~

~~1. It shall be unlawful to falsify or alter any hunting, trapping, or fishing license or to issue to any person an improper, falsified, or altered license.~~

~~2. For purposes of these regulations, an improper license shall include but not be limited to a license that has been back dated, a resident license issued to a nonresident, a license issued to a person who has not satisfied the hunter safety certification requirements, and a saltwater sport fishing recreational boat license issued to a person who is not the registered owner of the boat or for a boat which is not of the size specified on the license.~~

~~3. In addition to any penalties prescribed by law, upon conviction of a license agent of a violation of this section, the director shall revoke the agent's license agent privileges for a period up to five years.~~

~~§ 12.5. Suspension or revocation appeal.~~

~~A. Any action taken to suspend or revoke license agent privileges pursuant to these regulations may be appealed to the Board of Game and Inland Fisheries at its next regularly scheduled meeting and in accordance with policies and procedures adopted by the board for appearances by the public. Decisions by the board may be appealed as provided by operation of law.~~

~~§ 12.6. Operating procedures.~~

~~The director shall develop and disseminate procedures for the implementation of these regulations and any applicable provisions of law.~~

§ 15. Structures on department-owned lands *and national forest lands* .

A. It shall be unlawful to construct, maintain or occupy any permanent structure, except by permit, on department-owned lands *and national forest lands* . This provision shall not apply to structures, stands or blinds provided by the department.

B. It shall be unlawful to maintain any temporary dwelling on department-owned lands for a period greater than 14 consecutive days. Any person constructing or occupying any temporary structure shall be responsible for complete removal of such structures when vacating the site.

C. It shall be unlawful to construct, maintain or occupy

any tree stand on department-owned lands *and national forest lands* ; provided, that portable tree stands which are not permanently affixed may be used.

VR 325-02. GAME.

VR 325-02-1. In General.

§ 6. Hunting with dogs or possession of weapons in certain locations during closed season.

A. National forests and ~~department~~ *department-owned* lands.

It shall be unlawful to ~~hunt with dogs~~ *have in possession a bow* or a gun ~~or to have in possession a strung bow, or a gun~~ which is not unloaded and cased or dismantled, in the national forests and on department-owned lands and on lands managed by the department under cooperative agreement except during the period when it is lawful to ~~hunt~~ *take* bear, deer, grouse, pheasant, quail, rabbit, raccoon, squirrel, turkey, waterfowl, in all counties west of the Blue Ridge Mountains *and on national forest lands east of the Blue Ridge Mountains* and ; ~~in addition,~~ migratory game birds in all counties east of the Blue Ridge Mountains. The provisions of this section shall not prohibit the conduct of any activities authorized by the board or the establishment and operation of archery and shooting ranges on the above-mentioned lands. The use of firearms and bows in such ranges during the closed season period will be restricted to the area within established range boundaries. Such weapons shall be required to be unloaded and cased or dismantled in all areas other than the range boundaries. The use of firearms or bows during the closed hunting period in such ranges shall be restricted to target ~~practice~~ *shooting* only and no birds or animals shall be molested.

B. Certain counties.

Except as otherwise provided in VR 325-02-1, § 6-1, it shall be unlawful to have either a shotgun or a rifle in one's possession when accompanied by a dog in the daytime in the fields, forests or waters of the counties of Augusta, Clarke, Frederick, Page, Shenandoah and Warren, and in the counties east of the Blue Ridge Mountains, except Patrick, at any time except the periods prescribed by law to hunt game birds and animals.

C. Meaning of "possession" of bow or firearm.

For the purpose of this section the word "possession" shall include *, but not be limited to,* having any bow or firearm in *or on* one's ~~car~~ *person, vehicle* or conveyance.

D. It shall be unlawful to chase with a dog or train dogs on national forest lands or department-owned lands except during authorized hunting, chase, or training seasons that specifically permit these activities on these lands.

E. It shall be unlawful to possess or transport a loaded gun in or on any vehicle at any time on national forest lands or department-owned lands. For the purpose of this section a "loaded gun" shall be defined as a firearm in which ammunition is chambered or loaded in the magazine or clip, when such magazine or slip is found engaged or partially engaged in a firearm. The definition of a loaded muzzleloading gun will include a gun which is capped or has a charged pan.

§ 6-1. Open dog training season.

A. Private lands and certain military areas.

It shall be lawful to train dogs during daylight hours on rabbits and nonmigratory game birds on private lands, Fort A.P. Hill and Fort Pickett. Participants in this dog training season shall not have any weapons other than starter pistols in their possession, must comply with all regulations and laws pertaining to hunting and no game shall be taken; provided, however, that weapons may be in possession when training dogs on captive waterfowl and pigeons so that they may be immediately shot or recovered, except on Sunday.

B. Designated portions of certain department-owned lands.

It shall be lawful to train dogs on quail on designated portions of the Amelia Wildlife Management Area, Chester F. Phelps Wildlife Management Area, Chickahominy Wildlife Management Area and Dick Cross Wildlife Management Area from September 1 to the day prior to the opening date of the quail hunting season, both dates inclusive. Participants in this dog training season shall not have any weapons other than starter pistols in their possession, shall not release pen-raised birds, must comply with all regulations and laws pertaining to hunting and no game shall be taken.

§ 24. Wanton waste.

No person shall kill or cripple and knowingly allow any nonmigratory game bird or game animal to be wasted without making a reasonable effort to retrieve the animal and retain it in their possession. Nothing in this section shall permit a person to trespass or violate any state, federal, city or county law, ordinance or regulation.

§ 25. Sunday hunting on controlled shooting areas.

A. Except as otherwise provided in the sections appearing in this regulation, it shall be lawful to hunt pen-raised game birds seven days a week as provided by § 29.1-514 of the Code of Virginia. The length of the hunting season on such preserves and the size of the bag limit shall be in accordance with rules of the board. For the purpose of this regulation, controlled shooting areas shall be defined as licensed shooting preserves.

B. It shall be unlawful to hunt pen-raised game birds on

Sunday on controlled shooting areas in those counties having a population of not less than 54,000, nor more than 55,000, or in any county or city which prohibits Sunday operation by ordinance.

[NOTICE: The board postponed action on § 25 until the July 16, 1993, meeting.]

VR 325-02-2. Bear.

§ 8. Tagging bear and obtaining official game tag; by licensee.

A. Detaching game tag from license.

It shall be unlawful for any person to detach the game tag from any license to hunt bear prior to the killing of a bear and tagging same. Any detached tag shall be subject to confiscation by any representative of the department.

B. Immediate tagging of carcass.

Any person killing a bear shall, before removing the carcass from the place of kill, detach from his special license for hunting bear the appropriate tag and shall attach such tag to the carcass of his kill. *Place of kill shall be defined as the location where the animal is first reduced to possession.*

C. Presentation of tagged carcass for checking; obtaining official game ~~tag~~ *check card* .

Upon killing a bear and tagging same, as provided above, the licensee shall, ~~on the date of kill,~~ *upon vehicle transport of the carcass or at the conclusion of legal hunting hours, whichever occurs first, and without unnecessary delay,* present the tagged carcass ~~of his kill~~ to an authorized bear checking station or to an appropriate representative of the department in the county or adjoining county in which the bear was killed. Upon presentation of the tagged carcass to the bear checking station, the licensee shall surrender or allow to be removed one premolar tooth from the carcass *and have a seal, furnished by the department, permanently attached by the check station operator* . At such time, the tag ~~previously~~ attached to the carcass shall be exchanged for an official game ~~tag~~ *check card* , which shall be ~~furnished by the department, and securely attached to the carcass. Upon checking, a seal furnished by the department shall be permanently affixed to the carcass by the checking station operator.~~ *securely attached to the carcass and remain attached until the carcass is processed* .

D. Destruction of identity of bear prior to tagging; forfeiture of untagged bear.

It shall be unlawful for any person to destroy the identity (sex) of any bear killed unless and until tagged and checked as required by this section. Any bear not tagged as required by this section found in the possession of any person shall be forfeited to the Commonwealth to be disposed of as provided by law.

§ 9. Tagging bear and obtaining official game tag; by person exempt from license requirement.

Upon killing a bear, any person exempt from license requirement as prescribed in § 29.1-301 of the Code of Virginia, or issued a complimentary license as prescribed in § 29.1-339, or the holder of a permanent license issued pursuant to § 29.1-301 E, shall ~~on the day of kill~~ , *upon vehicle transport of the carcass or at the conclusion of legal hunting hours, whichever occurs first, and without unnecessary delay,* present the carcass ~~of his kill~~ to an authorized bear checking station or to any appropriate representative of the department in the county or adjoining county in which the bear was killed. Upon presentation of the ~~tagged~~ carcass to the bear checking station, the licensee shall surrender or allow to be removed one premolar tooth from the carcass *and have a seal, furnished by the department, permanently attached by the check station operator* . At such time, the person shall be given an official game ~~tag~~ *check card* furnished by the department, which ~~tag~~ shall be securely attached to the carcass *and remain attached until the carcass is processed* . ~~Upon checking, a seal furnished by the department shall be permanently affixed to the carcass by the checking station operator.~~

VR 325-02-3. Beaver.

§ 1. ~~Continuous closed hunting season~~ *Hunting or shooting of beaver* .

A. Public lands or waters.

There shall be a continuous closed season for the hunting or shooting of beaver *on all public lands and waters of the Commonwealth* .

B. Private lands or waters.

There shall be a continuous open season on private lands and waters for a landowner or their designated agent to shoot beaver when beaver are causing damage on the private landowner's property.

VR 325-02-6. Deer.

§ 2. Open season; *cities and* counties west of Blue Ridge Mountains and certain *cities and* counties or parts thereof east of Blue Ridge Mountains.

It shall be lawful to hunt deer on the third Monday in November and for 11 consecutive hunting days following in the *cities and* counties west of the Blue Ridge Mountains (except on the Radford Army Ammunition Plant in Pulaski County), and in the counties *(including cities within)* of Amherst (west of U.S. Route 29), Bedford, Campbell (west of Norfolk Southern Railroad except in the City of Lynchburg), Franklin, Henry, Nelson (west of Route 151), Patrick and Pittsylvania (west of Norfolk

Southern Railroad), and on the Chester F. Phelps and G. Richard Thompson Wildlife Management areas.

§ 2.2. Same – Isle of Wight County and City of Suffolk west of Dismal Swamp Line.

Rescind this section in its entirety.

§ 4. Bow and arrow hunting.

A. ~~Season generally~~ *Early special archery* .

It shall be lawful to hunt deer with bow and arrow from the ~~second~~ *first* Saturday in October through the Saturday prior to the third Monday in November, both dates inclusive, except where there is a closed general hunting season on deer.

B. ~~Additional~~ *Late special archery* season west of Blue Ridge Mountains and certain *cities and* counties east of Blue Ridge Mountains.

In addition to the season provided in subsection A of this section, it shall be lawful to hunt deer with bow and arrow *from the Monday following the close of the general firearms season on deer west of the Blue Ridge Mountains through the first Saturday in January, both dates inclusive,* in all *cities and* counties west of the Blue Ridge Mountains and in the counties of *(including cities within)* Amherst (west of U.S. Route 29), Bedford, Campbell (west of Norfolk Southern Railroad), Franklin, Henry, Nelson (west of Route 151), Patrick and Pittsylvania (west of Norfolk Southern Railroad) ~~from the Monday following the close of the regular firearms season on deer west of the Blue Ridge Mountains~~ and from December 1 ~~in the Cities of Chesapeake, Suffolk (east of the Dismal Swamp line) and Virginia Beach~~ through the first Saturday in January, ~~all~~ *both* dates inclusive, *in the cities of Chesapeake, Suffolk (east of the Dismal Swamp line) and Virginia Beach* .

~~C. Bag limit.~~

~~The bag limit shall be two a day, two a license year, one of which must be an antlerless deer; either sex full season during the special archery seasons as provided in subsections A and B of this section. Deer tags issued with the special archery license shall be valid only during the special archery seasons. Tags from the bear-deer-turkey license shall be valid for use during the special archery seasons provided that the taking of such deer is within the total daily and seasonal bag limits provided for deer. Bonus deer permits shall be valid for use during special archery seasons in all counties east of the Blue Ridge Mountains and in the counties of Botetourt, Clarke, Frederick and Warren.~~

C. Either-sex deer hunting days.

Deer of either sex may be taken full season during the special archery seasons as provided in subsections A and B of this section.

D. Carrying firearms prohibited.

It shall be unlawful to carry firearms while hunting with bow and arrow *during the special archery season* .

E. Requirements for bow and arrow.

Arrows used for hunting big game must have a minimum width head of 7/8 of an inch and the bow used for such hunting must be capable of casting a broadhead arrow a minimum of 125 yards.

F. Use of dogs prohibited during bow season.

It shall be unlawful to use dogs when hunting with bow and arrow from the second Saturday in October through the Saturday prior to the second Monday in November, both dates inclusive.

§ 5. ~~Muzzle-loading~~ *Muzzleloading* gun hunting.

A. *Early special muzzleloading* season ~~generally~~ .

~~Except as otherwise specifically provided by the sections appearing in this regulation,~~ It shall be lawful to hunt deer with ~~primitive weapons (muzzle-loading~~ *muzzleloading* guns ~~)~~ from the ~~second Monday in November and for five consecutive hunting days following~~ [~~*Saturday prior to the*~~] *first Monday in November through the Saturday prior to the third Monday in November, both dates inclusive,* in all *cities and* counties where hunting with a rifle or ~~muzzle-loading~~ *muzzleloading* gun is permitted, except in the cities of Chesapeake, Suffolk (east of the Dismal Swamp Line) and Virginia Beach ~~and in the counties of Lee, Russell, Scott, Tazewell, Washington and Wise~~ .

B. ~~Additional~~ *Late special muzzleloading* season west of Blue Ridge *Mountains* and in certain *cities and* counties east of Blue Ridge *Mountains* .

It shall be lawful to hunt deer with ~~primitive weapons (muzzle-loading~~ *muzzleloading* guns ~~)~~ from the third Monday in December through the first Saturday in January, both dates inclusive, in all *cities and* counties west of the Blue Ridge Mountains, and east of the Blue Ridge Mountains in the counties of *(including the cities within)* Amherst (west of U.S. Route 29), Bedford, Campbell (west of Norfolk Southern Railroad), Franklin, Henry, Nelson (west of Route 151), Patrick and Pittsylvania (west of Norfolk Southern Railroad).

~~C. Bag limits; limitations on deer tags.~~

~~The bag limit shall be one a day, one a license year, during the special muzzle-loader season as provided in subsections A and B of this section. Antlerless deer may only be taken during the last six days of the late special muzzle-loader season in those counties permitting either~~

~~sex hunting during the general firearms season west of the Blue Ridge Mountains and in the counties or portions of counties east of the Blue Ridge Mountains listed in subsection B of this section. It shall be lawful to hunt deer of either sex on the last day only of the late special muzzle-loader season in the counties of Lee, Scott, Tazewell and Washington and on the Clinch Mountain Wildlife Management Area, and there shall be no either sex deer hunting days in the counties of Dickenson, Russell and Wise. Deer tags issued with the special muzzle-loader gun license shall be valid only during the special muzzle-loader seasons. Deer tags from the bear-deer-turkey license shall be valid for use only during the late special muzzle-loader seasons. Bonus deer permits shall be valid for use during special muzzle-loader seasons in all counties east of the Blue Ridge Mountains and in the counties of Botetourt, Clarke, Frederick and Warren.~~

C. Either-sex deer hunting days.

Deer of either sex may be taken during the entire early special muzzleloading season in all cities and counties east of the Blue Ridge Mountains (except on national forest lands, state forest lands, state park lands, department-owned lands and Philpott Reservoir) and on the [~~second~~ first] Saturday only [~~on~~ in all cities and counties west of the Blue Ridge (except Buchanan, Dickenson, Lee, Russell (except the Clinch Mountain Wildlife Management Area), Scott, Tazewell (except the Clinch Mountain Wildlife Management Area), Washington (except the Clinch Mountain Wildlife Management Area), Wise and on national forest lands in Page, Rockingham, Shenandoah, and Smyth) and on the Clinch Mountain Wildlife Management Area and east of the Blue Ridge Mountains on national forest lands,] state forest lands, state park lands, [~~and~~] department-owned lands [~~lying east of the Blue Ridge Mountains~~] and on Philpott Reservoir. It shall be lawful to hunt deer of either sex during the last six days of the late special muzzleloading season in all cities and counties west of the Blue Ridge Mountains (except Buchanan, Dickenson, Lee, Russell, Scott, Tazewell, Washington, Wise and on national forest lands in Smyth and on the Clinch Mountain Wildlife Management Area) and in the counties (including cities within) or portions of counties east of the Blue Ridge Mountains listed in subsection B of this section. Provided further it shall be lawful to hunt deer of either sex during the last day only of the last special muzzleloading season in the cities and counties within Dickenson (north of Pound River and west of Russell Fork River), Lee, Russell, Scott, Tazewell, Washington, Wise and on national forest lands in Smyth and on the Clinch Mountain Wildlife Management Area.

D. Use of dogs prohibited.

It shall be unlawful to hunt deer with dogs during any special season for hunting with ~~muzzle-loading~~ *muzzleloading* guns.

E. ~~Muzzle-loading~~ *Muzzleloading* gun defined.

A ~~muzzle-loading~~ *muzzleloading* gun, for the purpose of this regulation, means a single shot flintlock or percussion weapon, excluding ~~muzzle-loading~~ *muzzleloading* pistols, .45 caliber or larger, firing a single lead projectile *or sabot (with a .38 caliber or larger nonjacketed lead projectile)* of the same caliber loaded from the muzzle of the weapon and propelled by at least 50 grains of black powder (or black powder equivalent). Open or peep sights only (iron sights) are permitted during special ~~muzzle-loading~~ *muzzleloading* seasons.

F. Unlawful to have other firearms in possession.

It shall be unlawful to have in immediate possession any firearm other than a ~~muzzle-loading~~ *muzzleloading* gun while hunting with a ~~muzzle-loading~~ *muzzleloading* gun in a special ~~muzzle-loading~~ *muzzleloading* season.

§ 6. Bag limit; ~~General firearms season~~ *generally* ; bonus deer permits *and tag usage* .

~~Except with the specific exceptions provided in the sections appearing in this regulation, the general firearms season~~ *The* bag limit for deer *statewide* shall be *two a day,* three ~~deer~~ a license year, one of which must be antlerless. Antlerless deer may be taken only during designated either-sex deer hunting days *during the special archery season, special muzzleloading seasons, and the general firearms season* . Bonus deer permits shall be valid ~~for use during the general firearms seasons in all counties east of the Blue Ridge Mountains and in the counties of Botetourt, Clarke, Frederick and Warren; provided, that no more than two deer per license year, one of which must be an antlerless deer, may be taken with bonus deer permits in~~ [~~only~~] *on private land in counties and cities where deer hunting is permitted* [*and on Fort Belvoir and other special deer problem and harvest management areas identified and so posted by the Department of Game and Inland Fisheries*] *during* the special archery, special ~~muzzle-loader~~ *muzzleloading* gun ~~or~~ *and* the general firearms seasons ~~only in designated areas~~ . *Deer taken on bonus permits shall count against the daily bag limit but are in addition to the seasonal bag limit.*

§ 7. ~~Bag limit; Two a day, three a license year, one of which must be an antlerless deer; Either sex Saturday following third Monday in November and last two days.~~ *General firearms season either-sex deer hunting days; Saturday following third Monday in November and last two hunting days.*

~~The general firearms bag limit for deer shall be two a day, three a license year, one of which must be an antlerless deer,~~ *During the general firearms season, deer of* either sex *may be taken* on the Saturday immediately following the third Monday in November and the last two hunting days only, in the counties of *(including cities within)* Alleghany, ~~Appomattox,~~ Augusta, Bath, Bland, Carroll, ~~Chesterfield,~~ Craig, Giles, ~~Goochland,~~ Grayson, ~~Hanover, Henrico,~~ Highland, ~~Mathews, Middlesex,~~

Montgomery, Page *(except on national forest lands)* , Pulaski (except on the Radford Army Ammunition Plant), [Roanoke,] Rockbridge, Rockingham *(except national forest lands)* , Shenandoah *(except national forest lands)* , Smyth (except on *national forest lands and* Clinch Mountain Wildlife Management Area), ~~Spotsylvania and~~ Wythe *and on Fairystone Farms Wildlife Management Area, Fairystone State Park,* [~~*Havens Wildlife Management Area,*~~] *Philpott Reservoir, and Turkeycock Mountain Wildlife Management Area* [~~*and national forest lands in Roanoke County*~~].

§ 10. ~~Bag limit; same; either sex, full season~~ *Same; full season* .

~~The general firearms bag limit for deer shall be two a day, three a license year, one of which must be an antlerless~~ *During the general firearms season,* deer ; *of* either sex *may be taken* full season, in the counties of *(including cities within) Amherst (west of U.S. Route 29, except on national forest lands),* Bedford, *Botetourt (except on national forest lands),* Campbell (~~only~~ *west of Norfolk Southern Railroad and* in the City of Lynchburg ; *only on private lands for which a special permit has been issued by the chief of police)* , *Clarke,* Fairfax *(restricted to certain parcels of land by special permit), Floyd, Franklin (except Philpott Reservoir and Turkeycock Mountain Wildlife Management Area), Frederick (except on national forest lands), Henry (except on Fairystone Farms Wildlife Management Area, Fairystone State Park, Philpott Reservoir, and Turkeycock Mountain Wildlife Management Area),* Loudoun, *Nelson (west of Route 151, except on national forest lands), Patrick (except Fairystone Farms Wildlife Management Area, Fairystone State Park and Philpott Reservoir),* Pittsylvania (west of Norfolk Southern Railroad), [~~*Roanoke (except on national forest lands and Havens Wildlife Management Area),*~~] Warren (except on national forest lands) and on Back Bay National Wildlife Refuge, *Fort A.P. Hill,* Caledon Natural Area, Camp Peary, Cheatham Annex, Chincoteague National Wildlife Refuge, Dahlgren Surface Warfare Center Base, Dam Neck Amphibious Training Base, Dismal Swamp National Wildlife Refuge, Eastern Shore of Virginia National Wildlife Refuge, False Cape State Park, Fentress Naval Auxiliary Landing Field, Fisherman's Island National Wildlife Refuge, Fort Belvoir, Fort Eustis, Fort Lee, Fort Pickett, Harry Diamond Laboratory, Langley Air Force Base, Naval Air Station Oceana, Northwest Naval Security Group, Presquile National Wildlife Refuge, Quantico Marine Corps Reservation, Radford Army Ammunition Plant, Sky Meadows State Park, York River State Park ~~and~~ , Yorktown Naval Weapons Station *and Hog Island Wildlife Management Area (except on the Carlisle Tract)* .

§ 11. ~~Bag limit; Same; either sex Saturday following third Monday in November.~~ *Same; first Saturday immediately following third Monday in November and last six days.*

~~The general firearms bag limit for deer shall be two a day and three a license year, one of which must be an antlerless deer, either sex the Saturday immediately following the third Monday in November, on the Buckingham-Appomattox State Forest, Chickahominy Wildlife Management Area, Clinch Mountain Wildlife Management Area, Cumberland State Forest, Fairystone Wildlife Management Area, Fairystone State Park, Philpott Reservoir and Prince Edward State Forest; provided, that the general firearms bag limit for deer shall be two a day and three a license year, one of which must be an antlerless deer, in the counties of Lee, Scott, Tazewell (except on Clinch Mountain Wildlife Management Area) and Washington (except on the Clinch Mountain Wildlife Management Area).~~

During the general firearms season, deer of either sex may be taken the Saturday immediately following the third Monday in November in the counties (including cities within) of Lee, Russell, Scott, Tazewell, Washington, Wise, and on the Clinch Mountain Wildlife Management Area, Buckingham-Appomattox State Forest, Cumberland State Forest and Pocahontas State Forest [, *Prince Edward State Forest*] *and on national forest lands in Frederick, Page, Shenandoah, Smyth, Rockingham and Warren counties.*

§ 13. ~~Bag limit; Same; either sex Saturday following third Monday in November and last six days.~~ *Same; first Saturday immediately following third Monday in November and last six days.*

~~The general firearms bag limit for deer shall be two a day, three a license year, one of which must be an antlerless deer,~~ *During the general firearms season, deer of* either sex *may be taken* on the *first* Saturday immediately following the third Monday in November and the last six hunting days, in the counties of *(including cities within)* ~~Amherst, Botetourt, Brunswick (except on Fort Pickett), Buckingham (except on Buckingham-Appomattox State Forest), Campbell, Caroline, Charles City (except on Chickahominy Wildlife Management Area), Charlotte, Clarke, Culpeper (except on Chester F. Phelps Wildlife Management Area), Cumberland (except on Cumberland State Forest), Dinwiddie (except on Fort Pickett), Floyd, Fluvanna, Franklin (except on Philpott Reservoir), Frederick, Gloucester, Green, Halifax, Henry (except on Fairystone Wildlife Management Area and Philpott Reservoir), James City, Louisa, Lunenburg, Madison, Mecklenburg, Nelson, New Kent, Nottoway (except on Fort Pickett), Orange, Patrick (except on Fairystone Park), Pittsylvania (east of the Norfolk Southern Railroad), Powhatan, Prince George (except on Fort Lee), Prince William (except on Harry Diamond Laboratory and Quantico Marine Reservation), Stafford (except on Quantico Marine Reservation)~~ *Middlesex, Mathews* , Warren and York (except on Camp Peary, Cheatham Annex and Naval Weapons Station) *and on the Horsepen Lake Wildlife Management Area, James River Wildlife Management Area, Occoneechee State Park, Amelia Wildlife Management Area, Briery Creek Wildlife Management Area, Dick Cross Wildlife Management Area, White Oak Mountain Wildlife Management Area and Powhatan Wildlife Management Area and on national*

forest lands in Amherst, Botetourt and Nelson counties ; and in the Cities of Chesapeake (except on Dismal Swamp National Wildlife Refuge, Fentress Naval Auxiliary Landing Field and on the Northwest Naval Security Group [~~*and Presquile National Wildlife Refuge*~~]), ~~Hampton (except on Langley Air Force Base),~~ ~~Newport~~ News ~~(except on Fort Eustis),~~ and Virginia Beach (except on Back Bay National Wildlife Refuge, Dam Neck Amphibious Training Base, Naval Air Station Oceana and , False Cape State Park *and Fentress Naval Auxiliary Landing Field)* ~~and on Fort A.P. Hill (training areas)~~ .

§ 14. ~~Bag limit; Same; either sex Saturday following third Monday in November and last 24 days.~~ *Same; first three Saturdays following third Monday in November and last 24 hunting days.*

~~The general firearms bag limit for deer shall be two a day, three a license year, one of which must be an antlerless deer,~~ *During the general firearms season, deer of* either sex *may be taken* on the *first three* ~~Saturday~~ *Saturdays* immediately following the third Monday in November and on the last 24 hunting days, in the counties of *(including cities within) Accomack (except Chincoteague National Wildlife Refuge),* Greensville, Isle of Wight, *Northhampton (except Eastern Shore of Virginia National Wildlife Refuge and Fisherman's Island National Wildlife Refuge),* Southampton, Surry *(except Hog Island Wildlife Management Area)* , and Sussex, and in the City of Suffolk (except on the Dismal Swamp National Wildlife Refuge).

§ 14.1. ~~Bag limit; Same; either sex Saturday following third Monday in November and last 12 days.~~ *Same; first two Saturdays immediately following third Monday in November and last 12 hunting days.*

~~The general firearms bag limit for deer shall be two a day, three a license year, one of which must be an antlerless deer,~~ *During the general firearms season, deer of* either sex *may be taken* on the ~~Saturday~~ *first two Saturdays* immediately following the third Monday in November and on the last 12 hunting days, in the counties of *(including the cities within)* ~~Accomack,~~ Albemarle, Amelia ; *(except Amelia Wildlife Management Area), Amherst (east of U.S. Route 29), Appomattox (except Buckingham-Appomattox State Forest* [~~*and Horsepen Lake Wildlife Management Area*~~] *), Brunswick (except Fort Pickett), Buckingham (except on Buckingham-Appomattox State Forest and Horsepen Lake Wildlife Management Area, Campbell (east of Norfolk Southern Railroad except City of Lynchburg), Caroline (except Fort A.P. Hill), Charles City (except on Chickahominy Wildlife Management Area), Charlotte, Chesterfield (except Pocahontas State Forest* [*and Presquile National Wildlife Refuge*] *), Culpeper (except on Chester F. Phelps Wildlife Management Area), Cumberland (except on Cumberland State Forest), Dinwiddie (except on Fort Pickett)* , Essex, Fauquier (except on the G. Richard Thompson and Chester F. Phelps Wildlife Management Areas , *Sky Meadows State Park and Quantico Marine Reservation*), *Fluvanna, Gloucester, Goochland, Greene, Halifax, Hampton (except on Langley Air Force Base), Hanover, Henrico* [*(except Presquile National Wildlife Refuge),*] *James City* [*(except York River State Park)*], King and Queen, King George *(except Caledon Natural Area and Dahlgren Surface Warfare Center)* , King William, Lancaster, *Louisa, Lunenburg, Madison, Mecklenburg (except Dick Cross Wildlife Management Area, Occoneechee State Park), Nelson (east of Route 151 except James River Wildlife Management Area), New Kent, Newport News (except Fort Eustis),* ~~Northampton (except Eastern Shore of Virginia National Wildlife Refuge and Fisherman's Island National Wildlife Refuge),~~ Northumberland, *Nottoway (except on Fort Pickett), Orange, Pittsylvania (east of Norfolk Southern Railroad except White Oak Mountain Wildlife Management Area), Powhatan (except* [~~Pocahontas State Forest and~~] *Powhatan Wildlife Management Area),* Prince Edward (except on Prince Edward State Forest *and Briery Creek Wildlife Management Area*), *Prince George (except on Fort Lee), Prince William (except on Harry Diamond Laboratory and Quantico Marine Reservation),* Rappahannock, Richmond , *Spotsylvania, Stafford (except on Quantico Marine Reservation),* ~~and~~ Westmoreland, and ~~on Fort A.P. Hill (controlled access area)~~ *York (except on Camp Peary, Cheatham Annex and Yorktown Naval Weapons Station)* .

§ 14-2. ~~Bag limit; One a day, one a license year, bucks only.~~ *General firearms season; bucks only.*

~~The general firearms bag limit for deer shall be one a day, one a license year,~~ *During the general firearms season, only deer with antlers visible above the hairline may be taken* in that portion of Dickenson County lying north of the Pound River and west of the Russell Fork River ~~and in the counties of Russell (except on the Clinch Mountain Wildlife Management Area) and Wise,~~ and on the Chester F. Phelps ~~and~~ *Wildlife Management Area,* G. Richard Thompson Wildlife Management ~~Areas. Only bucks may be taken in the counties and areas controlled by this section~~ *Area, Chickahominy Wildlife Management Area and on the Carlisle Tract of Hog Island Wildlife Management Area* .

§ 15. Tagging deer and obtaining official game tag; by licensee.

A. Detaching game tag from license.

It shall be unlawful for any person to detach the game tag from any license to hunt deer prior to the killing of a deer and tagging same. Any detached tag shall be subject to confiscation by any representative of the department.

B. Immediate tagging of carcass.

Any person killing a deer shall, before removing the carcass from the place of kill, detach from his special license for hunting deer the appropriate tag and shall attach such tag to the carcass of his kill. *Place of kill shall be defined as the location where the animal is first*

reduced to possession.

C. Presentation of tagging carcass for checking; obtaining official game ~~tag~~ *check card* .

Upon killing a deer and tagging same, as provided above, the licensee shall, ~~by 9 p.m. on the date of kill,~~ *upon vehicle transport of the carcass or at the conclusion of legal hunting hours, whichever occurs first, and without unnecessary delay,* present the tagged carcass ~~of his kill~~ to an authorized checking station or to an appropriate representative of the department in the county or adjoining county in which the deer was killed. At such time, the tag ~~previously~~ attached to the carcass shall be exchanged for an official game ~~tag~~ *check card* , which shall be ~~furnished by the department, and~~ securely attached to the carcass *and remain attached until the carcass is processed* .

D. Destruction of deer prior to tagging; forfeiture of untagged deer.

It shall be unlawful for any person to destroy the identity (sex) of any deer killed unless and until tagged and checked as required by this section. Any deer not tagged as required by this section found in the possession of any person shall be forfeited to the Commonwealth to be disposed of as provided by law.

§ 16. Tagging deer and obtaining official game tag; by person exempt from license requirement.

Upon killing a deer, any person exempt from license requirement as prescribed in § 29.1-301 of the Code of Virginia, or issued a complimentary license as prescribed in § 29.1-339, or the holder of a permanent license issued pursuant to § 29.1-301 E, shall, ~~by 9 p.m. on the date of kill,~~ *upon vehicle transport of the carcass or at the conclusion of legal hunting hours, whichever occurs first, and without unnecessary delay,* present the carcass ~~of his kill~~ to an authorized checking station or to any appropriate representative of the department in the county or adjoining county in which the deer was killed. At such time, the person shall be given an official game ~~tag~~ *check card* furnished by the department, which ~~tag~~ shall be securely attached to the carcass *and remain attached until the carcass is processed* .

VR 325-02-9. Grouse.

§ 1. Open season.

Except as otherwise specifically provided in the sections appearing in this regulation, it shall be lawful to hunt grouse from the ~~first Monday in November~~ *last Monday in October* through [~~*January 31*~~ the second Saturday in February] both dates inclusive.

VR 325-02-11. Mountain Lion.

§ 1. Hunting, trapping, possession, importation or destruction prohibited.

Rescind this section in its entirety.

VR 325-02-14. Opossum.

PART I.
HUNTING.

§ 1.1. Open season; counties east of the Blue Ridge Mountains.

Except as otherwise specifically provided by the sections appearing in this regulation, it shall be lawful to hunt opossum in all counties east of the Blue Ridge Mountains *(except on national forest lands east of the Blue Ridge Mountains)* from ~~November~~ *October* 15 through March 10, both dates inclusive.

§ 1.2. Open season; counties west of Blue Ridge Mountains *and national forest lands east of the Blue Ridge Mountains* .

It shall be lawful to hunt opossum in all counties west of the Blue Ridge Mountains *and national forest lands east of the Blue Ridge Mountains* from October 15 through January 31, both dates inclusive.

VR 325-02-16. Pheasant.

§ 1. Open season; ~~counties east of Blue Ridge Mountains~~ *generally* .

~~A. East of U.S. Route I-95.~~

Except as otherwise specifically provided in the sections appearing in this regulation, it shall be lawful to hunt pheasant ~~in all counties and portions of counties east of the Blue Ridge Mountains and east of U.S. Route I-95 from the second Monday in November through the second Saturday in February, both dates inclusive~~ *during the period when it is lawful to take quail* .

~~B. West of U.S. Route I-95.~~

~~Except as otherwise specifically provided in the sections appearing in this regulation, it shall be lawful to hunt pheasant in all counties and portions of counties east of the Blue Ridge Mountains and west of U.S. Route I-95 from the second Monday in November through January 31, both dates inclusive.~~

§ 2. Same; counties west of Blue Ridge Mountains.

Rescind this section in its entirety.

VR 325-02-17. Quail.

§ 2. Same; counties east of U.S. Route I-95.

Rescind this section in its entirety.

§ 4. Bag limit.

The bag limit for quail shall be ~~eight~~ *six* a day ; ~~provided, that the bag limit for quail shall be four per day on the Elm Hill Wildlife Management Area~~ .

VR 325-02-18. Rabbit and Hares.

§ 5. Sale prohibited.

Rescind this section in its entirety.

VR 325-02-19. Raccoon.

PART I.
CHASING.

§ 1.1. Open season; counties east of Blue Ridge Mountains; possession of certain devices unlawful.

Except as otherwise specifically provided in the sections appearing in this regulation, it shall be lawful to chase raccoon with dogs, without capturing or taking, in all counties east of the Blue Ridge Mountains (except on the George Washington and Jefferson National Forests) from August 1 through May 31, both dates inclusive. It shall be unlawful to have in ~~immediate~~ possession a firearm, bow, axe, saw, or any tree climbing device while hunting during this chase season. *The meaning of "possession" for the purpose of this section shall include, but not be limited to, having these devices in or on one's person, vehicle or conveyance while engaged in the act of chasing.*

§ 1.2. Open season; counties west of Blue Ridge Mountains; possession of certain devices unlawful.

It shall be lawful to chase raccoon with dogs, without capturing or taking, on private lands in all counties west of the Blue Ridge Mountains from August 1 through May 31, both dates inclusive. It shall be unlawful to have in ~~immediate~~ possession a firearm, bow, axe, saw, or any tree climbing device while hunting during this chase season. *The meaning of "possession" for the purpose of this section shall include, but not be limited to, having these devices in or on one's person, vehicle or conveyance while engaged in the act of chasing.*

PART II.
HUNTING AND TRAPPING.

§ 2.1. Open season for hunting; counties east of the Blue Ridge Mountains.

Except as otherwise provided by local legislation and with the specific exceptions provided in the sections appearing in this regulation, it shall be lawful to take raccoon by hunting in all counties east of the Blue Ridge Mountains *(except on national forest lands east of the Blue Ridge Mountains)* from October 15 through March 10, both dates inclusive.

§ 2.2. Open season for hunting; counties west of the Blue Ridge Mountains *and national forest lands east of the Blue Ridge Mountains* .

It shall be lawful to take raccoon by hunting in all counties west of the Blue Ridge Mountains *and on national forest lands east of the Blue Ridge Mountains* from October 15 through January 31, both dates inclusive.

VR 325-02-21. Squirrel.

PART I.
GRAY AND RED SQUIRREL.

§ 1.8. Bow and arrow hunting.

A. Season.

It shall be lawful to hunt squirrel with bow and arrow from the ~~second~~ *first* Saturday in October through the Saturday prior to the second Monday in November, both dates inclusive.

B. Carrying firearms prohibited.

It shall be unlawful to carry firearms while hunting with bow and arrow *during the special archery* [~~season~~ *seasons*].

C. Use of dogs prohibited during bow season.

It shall be unlawful to use dogs when hunting with bow and arrow from the ~~second~~ *first* Saturday in October through the Saturday prior to the second Monday in November, both dates inclusive.

§ 1.9. Sale prohibited.

Rescind this section in its entirety.

VR 325-02-22. Turkey.

§ 3. Open season; spring season for bearded turkeys.

It shall be lawful to hunt bearded turkeys only from the Saturday nearest the 15th of April and for 30 consecutive hunting days following, both dates inclusive, from 1/2 hour before sunrise to 12:00 noon prevailing time. Bearded turkeys may be hunted by calling. It shall be unlawful to use dogs or organized drives for the purpose of hunting. [~~*It shall be unlawful to use or have in possession any rifle, pistol, or weapon capable of firing rifle or pistol ammunition when hunting turkeys during the spring season.*~~] It shall be unlawful to use or have in possession any shot larger than number 2 fine shot when hunting turkeys with a shotgun.

§ 5. Bow and arrow hunting.

A. Season.

It shall be lawful to hunt turkey with bow and arrow in those counties and ~~area~~ *areas* open to fall turkey hunting from the ~~second~~ *first* Saturday in October through the Saturday prior to the second Monday in November, both dates inclusive.

B. Bag limit.

The daily and seasonal bag limit for hunting turkey with bow and arrow shall be the same as permitted during the general turkey season in those counties and ~~area~~ *areas* open to fall turkey hunting, and any turkey taken shall apply toward the total season bag limit.

C. Carrying firearms prohibited.

It shall be unlawful to carry firearms while hunting with bow and arrow *during special archery season* .

D. Requirements for bow and arrow.

Arrows used for hunting turkey must have a minimum width head of 7/8 of an inch, and the bow used for such hunting must be capable of casting a broadhead arrow a minimum of 125 yards.

E. Use of dogs prohibited during bow season.

It shall be unlawful to use dogs when hunting with bow and arrow from the ~~second~~ *first* Saturday in October through the Saturday prior to the second Monday in November, both dates inclusive.

§ 7. Tagging turkey and obtaining official game ~~tag~~ *check card* ; by licensee.

A. Detaching game tag from license.

It shall be unlawful for any person to detach the game tag from any license to hunt turkey prior to the killing of a turkey and tagging same. Any detached tag shall be subject to confiscation by any representative of the department.

B. Immediate tagging of carcass.

Any person killing a turkey shall, before removing the carcass from the place of kill, detach from his special license for hunting turkey the appropriate tag and shall attach such tag to the carcass of his kill. *Place of kill shall be defined as the location where the animal is first reduced to possession.*

C. Presentation of tagged carcass for checking; obtaining official game ~~tag~~ *check card* .

Upon killing a turkey and tagging same, as provided above, the licensee shall, ~~by 9 p.m. on the date of kill,~~ *upon vehicle transport of the carcass or at the conclusion of legal hunting hours, whichever occurs first, and without unnecessary delay,* present the tagged carcass ~~of his kill~~ to an authorized checking station or to an appropriate representative of the department in the county or adjoining county in which the turkey was killed. At such time, the tag ~~previously~~ attached to the carcass shall be exchanged for an official game ~~tag~~ *check card* , which shall be ~~furnished by the department, and~~ securely attached to the carcass *and remain attached until the carcass is processed* .

D. Destruction of identity of turkey prior to tagging; forfeiture of untagged turkey.

It shall be unlawful for any person to destroy the identity (sex) of any turkey killed unless and until tagged and checked as required by this section. Any turkey not tagged as required by this section found in the possession of any person shall be forfeited to the Commonwealth to be disposed of as provided by law.

§ 8. Tagging turkey and obtaining official game tag; by person exempt from license requirement.

Upon killing a turkey, any person exempt from the license requirement as described in § 29.1-301 of the Code of Virginia, or issued a complimentary license as prescribed in § 29.1-339, or the holder of a permanent license issued pursuant to § 29.1-301 E, shall, ~~by 9 p.m. on the date of kill,~~ *upon vehicle transport of the carcass or at the conclusion of legal hunting hours, whichever occurs first, and without unnecessary delay,* present the carcass ~~of his kill~~ to an authorized checking station or to any appropriate representative of the department in the county or adjoining county in which the turkey was killed. At such time, the person shall be given an official game ~~tag~~ *check card* furnished by the department, which ~~tag~~ shall be securely attached to the carcass *and remain so attached until the carcass is processed* .

VR 325-02-25. Firearms.

§ 2. Rifles prohibited in hunting bear and deer in certain counties and cities.

Except as otherwise provided in § 3 of this regulation *or by local ordinance* , it shall be unlawful to use a rifle of any ~~calibre~~ *caliber* for the hunting ~~or killing~~ of bear and deer in the counties of Chesterfield, Isle of Wight, New Kent, Southampton and Sussex and in the cities of Chesapeake and Suffolk (that portion formerly Nansemond County).

VR 325-04. WATERCRAFT.

VR 325-04-1. In General.

§ 5. Regulatory markers *and aids to navigation* .

Under the provisions of Chapter 7 of Title 29.1 of the Code of Virginia a system of regulatory markers ~~is~~ *and a lateral buoyage marking system of aids to navigation are* hereby adopted on all public waters of the Commonwealth

not marked by an agency of the United States. Regulatory markers will be a combination of international orange and white, a diamond shape with white center denoting danger, a diamond shape with inside cross denoting prohibition of all vessels, a circle with white center denoting a control or restriction, and a rectangular shape denoting information other than a danger, control or restriction. Explanatory words may be added to all *regulatory* markers and the operation of all vessels shall be governed by any such *regulatory* marker authorized by the department. No regulatory marker, *aid to navigation* or other waterway marker affecting the safety, health or well-being of a boat operator, excepting those placed by an agency of the United States, shall be placed in, on or near the water unless authorized by the department and such authorized *regulatory* markers *and aids to navigation* shall be designed, placed and maintained according to rules prescribed by the board.

VA.R. Doc. No. R93-713; Filed July 7, 1993, 11:43 a.m.

DEPARTMENT OF LABOR AND INDUSTRY

Safety and Health Codes Board

REGISTRAR'S NOTICE: This regulation is excluded from Article 2 of the Administrative Process Act in accordance with § 9-6.14:4.1 C 4 (a) of the Code of Virginia, which excludes regulations that are necessary to conform to changes in Virginia statutory law where no agency discretion is involved. The Safety and Health Codes Board will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: **VR 425-01-74. Regulation Concerning Licensed Asbestos Contractor Notification, Asbestos Project Permits, and Permit Fees.**

Statutory Authority: §§ 40.1-22(5) and 40.1-51.20 of the Code of Virginia.

Effective Date: September 1, 1993.

Summary:

Chapter 660 of the 1993 Acts of Assembly became effective July 1, 1993. Among the changes made by this legislation were amendments to the definition section found in § 54.1-500 of the Code of Virginia that deals with asbestos contractors and workers. These changes necessitated the amendment to the VOSH regulation concerning Licensed Asbestos Contractor Notification, Asbestos Project Permits, and Permit Fees as follows:

"Asbestos project" was amended to recognize the Environmental Protection Agency (EPA) policy and the National Emissions Standard for Hazardous Air Pollutants (NESHAP) regulation which does not include nonfriable roofing, flooring and siding materials which remain as nonfriable within the definition of an "asbestos project or response action." "Friable" was amended to mirror the definition found in NESHAP. "RFS contractor license" was amended to reflect the requirement that the RFS contractors may only remove nonfriable asbestos containing materials which remain nonfriable throughout the entire abatement process.

VR 425-01-74. Regulation Concerning Licensing Asbestos Contractor Notification, Asbestos Project Permits, and Permit Fees.

§ 1. Definitions.

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

"Activity" means from the set-up of negative air containment through the breakdown of that containment. Work within a single structure or building shall be considered as one "activity" so long as such work is not interrupted except for weekends, holidays, or delays due to inclement weather. Where containment is not required, all work within single structure or building shall be considered as one "activity."

"Asbestos" means any material containing more than 1.0% asbestos by area as determined by microscopy.

"Asbestos contractor's license" means an authorization issued by the Department of Commerce permitting a person to enter into contracts to perform an asbestos abatement project.

"Asbestos project" means an activity involving job set-up for containment, removal, encapsulation, enclosure, encasement, renovation, repair, ~~demolition,~~ construction or alteration of an asbestos-containing material. *An asbestos project or asbestos abatement project shall not include nonfriable asbestos-containing material roofing, flooring and siding materials which when installed, encapsulated or removed do not become friable.*

"Asbestos supervisor" means any person so designated by an abestos contractor who provides on-site supervision and direction to the workers engaged in asbestos projects.

"Building" means a combination of any materials, whether portable or fixed including part or parts and fixed equipment thereof, that forms a structure for use or occupancy by persons or property.

~~"Commissioner" means the Commissioner of Labor and Industry.~~

"Construction" means all the on-site work done in

building or altering structures from land clearance through completion, including excavation, erection, and the assembly and installation of components and equipment.

"Department" means the Department of Labor and Industry.

"Friable" means *that the* material ~~which is capable of being~~ *when dry, may be* crumbled, pulverized, or reduced to powder by hand pressure ~~or which under normal use emits or can be expected to emit fiberts into the air.~~ *and includes previously nonfriable material after such previously nonfriable material becomes damaged to the extent that when dry it may be crumbled, pulverized, or reduced to powder by hand pressure.*

"Person" means a corporation, partnership, sole proprietorship, firm, enterprise, franchise, association, or any other individual or entity.

"Residential buildings" means site-built homes, modular homes, condominium units, mobile homes, manufactured housing, and duplexes, or other multi-unit dwelling consisting of four units or less which are currently in use or intended for use only for residential purposes. Demolitions of any of the above structures which are to be replaced by other than a residential building shall not fall within this definition.

"RFS contractor's license" means an authorization issued by the Department of ~~Commerce~~ *Professional and Occupational Regulation* permitting a person to enter into contracts to ~~perform an asbestos abatement project on~~ *install, remove or encapsulate nonfriable* asbestos-containing roofing, flooring, and siding materials.

"Site" means a specific geographically contiguous area with defined limits owned by a single entity on which asbestos removal will occur.

"Structure" means an assembly of materials, or part or parts thereof, forming a construction.

§ 2. Authority and application.

A. This regulation is established in accordance with § 40.1-51.20 of the Code of Virginia.

B. This regulation shall apply to all licensed asbestos contractors or RFS contractors who engage in asbestos projects.

C. The application of this regulation to contractors who work on federal property will be decided by the department based on a review of the facts in each case. The contractor shall contact the department to determine the applicability of the regulations to a specific project.

D. This regulation shall not affect the reporting requirements under § 40.1-51.20 C or any other notices or inspection requirements under any other provision of the Code of Virginia.

§ 3. Notification and permit fee.

A. Written notification of any asbestos project of 10 linear feet or more or 10 square feet or more shall be made to the department on a department form. Such notification shall be sent by facsimile transmission as set out in § 3 J, certified mail, or hand-delivered to the department. Notification shall be postmarked or made 20 days before the beginning of any asbestos project.

B. The department form shall include the following information:

1. Name, address, telephone number, and Virginia asbestos contractor's license number of persons intending to engage in an asbestos project.

2. Name, address, and telephone number of facility owner or operator.

3. Type of notification; amended, emergency, renovation, or demolition.

4. Description of building, structure, facility, installation, vehicle, or vessel to be demolished or renovated including present use, prior use or uses, age, and address.

5. Estimate of amount of friable asbestos and method of estimation.

6. Amount of the asbestos project fee submitted.

7. Schedule set-up date, removal date, and completion date of asbestos abatement work and times of removal.

8. Name and Virginia asbestos supervisor's license number of the project supervisor on site.

9. Name, address, telephone number, contact person, and landfill permit number of the waste disposal site where the asbestos containing material will be disposed.

10. Detailed description of the demoliton or removal methods to be used.

11. Procedures and equipment to control emissions and protect public health during removal, transit, loading, and unloading. Including the monitoring plan.

12. Credit card number, expiration date, and signature of cardholder if a facsimile transmission is to be made pursuant to § 3 J.

13. Any other information requested on the department form.

C. An asbestos project permit fee shall be submitted with the completed project notification. The fee shall be in accordance with the following schedule unless a blanket notification is granted under subsection D of this section:

1. $50 for each project equal to or greater than 10 linear feet or 10 square feet up to and including 260 linear feet or 160 square feet.

2. $160 for each project of more than 260 linear feet or 160 square feet up to and including 2600 linear feet or 1600 square feet.

3. $470 for each project or more than 2600 linear feet or 1600 square feet.

4. If the amount of asbestos is reported in both linear feet and square feet the amounts will be added and treated as if the total were all in square feet for the purposes of this subsection.

D. A blanket notification, valid for a period of one year, may be granted to a contractor who enters into a contract for asbestos removal or encapsulation on a specific site which is expected to last for one year or longer.

1. The contractor shall submit the notification required in § 3 A to the department 20 days prior to the start of the requested blanket notification period. The notification submitted shall contain the following additional information:

a. The dates of work required by subdivision B 7 shall be every workday during the blanket notification period excluding weekends or state holidays.

b. The estimate of asbestos to be removed required under subdivision B 5 shall be signed by the owner and the owner's signature authenticated by a notary.

c. A copy of the contract shall be submitted with the notification.

2. The asbestos project permit fee shall be 0.5% of the contract price or $470 whichever is greater. For contracts which require payments per square or linear foot of asbestos removed or encapsulated the contract price shall be the amount of asbestos estimated pursuant to subdivision B 5 times the per foot charge in the contract.

3. The contractor shall submit an amended notification at least one day prior to each time the contractor will not be on site. The fee for each amended notification shall be $15.

4. A contractor shall submit an amended notification whenever the actual amount of asbestos removed or encapsulated exceeds the original estimate. If the contract was for a fixed cost regardless of the amount of asbestos the amendment fee shall be $15. If the contract was based on a price per square or linear foot the amendment fee shall be the difference between the actual amount removed and the estimated amount times the contract price per foot times 0.5% plus $15.

5. Cancellation of a blanket notification may be made at any time by submitting a notarized notice of cancellation signed by the owner. The notice of cancellation must include the actual amount of asbestos removed and the actual amount of payments made under the contract. The refund shall be the difference between the original asbestos permit fee paid and either the actual amount of payments made under the contract times 0.5% or $470 whichever is greater.

E. Notification of less than 20 days may be allowed in case of an emergency involving protection of life, health, or property, including but not limited to: leaking or ruptured pipes; accidentally damaged or fallen asbestos that could expose nonasbestos workers or the public; unplanned mechanical outages or repairs essential to a work process that require asbestos removal and could only be removed safely during the mechanical outage. Notification and asbestos permit fee shall be submitted within five working days after the start of the emergency abatement. A description of the emergency situation shall be included when filing an emergency notification.

F. No notification shall be effective if an incomplete form is submitted, or if the proper permit fee is not enclosed with the completed form or if the credit card payment required for facsimile transmission in § 3 J is not approved.

G. On the basis of the information submitted in the asbestos notification, the department shall issue a permit to the contractor within seven working days of the receipt of a completed notification form and permit fee.

1. The permit shall be effective for the dates entered on the notification.

2. The permit or a copy of the permit shall be kept on site during work on the project.

H. Amended notifications may be submitted for modification of § 3 B 3 through 11. No amendments to § 3 B 1 or 2 shall be allowed. A copy of the original notification form with the amended items circled and the permit number entered shall be submitted at any time prior to the removal date on the original notification.

1. No amended notification shall be effective if any incomplete form is submitted or if the proper permit amendment fee is not enclosed with the completed notification.

2. A permit amendment fee shall be submitted with

the amended otification form. The fee shall be in accordance with the following schedule:

a. For modification to §§ 3 B 3, 3 B 4, and 3 B 6 through 3 B 10 - $15;

b. For modifications to § 3 B 5:

(1) the difference between the permit fee in § 3 C for the amended amount of asbestos and the original permit fee submitted, plus

(2) $15.

3. Modifications to the completion date may be made at any time up to the completion date on the original notification.

4. If the amended notification is complete and the required fee is included, the department will issue an amended permit if necessary.

I. The department must be notified prior to any cancellation. A copy of the original notification form marked cancelled must be received no later than the scheduled removal date. Cancellation of a project may also be done by facsimile transmission. Refunds of the asbestos project permit fee will be made for timely cancellations when a notarized notice of cancellation signed by the owner is submitted. Fifteen dollars for processing for the original notification, $15 for each amendment filed and $15 for processing the refund payment will be deducted from the refund payment.

J. Notification for any project, emergency notification, or amendment to notification may be done by facsimile transmission if the required fees are paid by credit card.

§ 4. Exemption.

No asbestos project fees will be required for residential buildings. Notification for asbestos projects in residential buildings shall otherwise be in accordance with applicable portions of this regulation.

VA.R. Doc. No. R93-700; Filed June 30, 1993 4:39 p.m.

ASBESTOS PERMIT APPLICATION AND NOTIFICATION
FOR DEMOLITION/RENOVATION

1. TYPE OF NOTIFICATION: ☐ ORIGINAL ☐ AMENDED ☐ CANCEL ☐ RE-NOTIFICATION

2. FACILITY INFORMATION: (facility owner, removal, demolition & other contractors)

OWNER:

ADDRESS:

CITY: STATE: ZIP CODE:

CONTACT: TELEPHONE #:

REMOVAL CONTRACTOR: LICENSE #:

FEDERAL EMPLOYER IDENTIFICATION NUMBER:

ADDRESS:

CITY: STATE: ZIP CODE:

CONTACT: TELEPHONE #:

DEMOLITION CONTRACTOR:

ADDRESS:

CITY: STATE: ZIP CODE:

CONTACT: TELEPHONE #:

OTHER OPERATOR:

ADDRESS:

CITY: STATE: ZIP CODE:

CONTACT: TELEPHONE #:

3. TYPE OF OPERATION ☐ DEMO ☐ RENO ☐ EMER.-RENO ☐ ENCAPSULATE

4. IS ASBESTOS PRESENT ☐ YES ☐ NO

5. FACILITY DESCRIPTION (INCLUDE BUILDING NAME, NUMBER AND FLOOR OR ROOM NUMBER)

BUILDING NAME:

STREET ADDRESS: COUNTY:

CITY: STATE: ZIP CODE:

SITE LOCATION:

BUILDING SIZE: # FLOORS: AGE IN YEARS:

PRESENT USE: PRIOR USE:

6. SCHEDULED DATES: REMOVAL START: ___/___/___ FINISH: ___/___/___

REMOVAL TIMES: DAYS OF OPERATION (MONDAY - SUNDAY)

WORK SHIFT HOURS: (MONDAY - FRIDAY)

(SATURDAY - SUNDAY)

7. SCHEDULED DATES: DEMOLITION/RENOVATION START: ___/___/___ FINISH: ___/___/___

** FOR DEPT. OF LABOR AND INDUSTRY USE ONLY **

DLI PERMIT NUMBER: NESHAP ID NUMBER:

APPROVING SIGNATURE: DATE:

ASBESTOS PERMIT APPLICATION AND NOTIFICATION
FOR DEMOLITION/RENOVATION

8. PROCEDURE, INCLUDING ANALYTICAL METHOD, USED TO DETECT THE PRESENCE OF ASBESTOS:

INSPECTOR: VA. CERTIFICATION #:

9. APPROXIMATE AMOUNT OF ACM TO BE REMOVED:		10. APPROXIMATE AMOUNT OF ACM NOT TO BE REMOVED	
DESCRIPTION	AMOUNT	DESCRIPTION	AMOUNT
PIPES	LNFT	FRIABLE:	LNFT
SURFACE AREA	SQFT	NON-FRIBLE: CATEGORY I	SQFT
VOL. ACM OFF FACILITY COMPONENT	CUFT	CATEGORY II	
OTHER			SQFT

11. DESCRIPTION OF PLANNED DEMOLITION OR RENOVATION WORK, AND METHOD(S) TO BE USED:

12. DESCRIPTION OF WORK PRACTICES AND ENGINEERING CONTROLS TO BE USED TO PREVENT EMISSIONS OF ASBESTOS AT THE DEMOLITION AND RENOVATION SITE:

13. WASTE TRANSPORTER #1: NAME:

ADDRESS:

CITY: STATE: ZIP CODE:

CONTACT: TELEPHONE:

WASTE TRANSPORTER #2: NAME:

ADDRESS:

CITY: STATE: ZIP CODE:

CONTACT: TELEPHONE:

14. WASTE DISPOSAL SITE: NAME:

LOCATION:

CITY: STATE: ZIP CODE:

TELEPHONE: LANDFILL PERMIT #:

15. IF DEMOLITION ORDERED BY A GOVERNMENT AGENCY, IDENTIFY THE AGENCY BELOW AND

NAME: TITLE:

AUTHORITY:

DATE OF ORDER: ___/___/___ DATE ORDERED TO BEGIN: ___/___/___

16. FOR EMERGENCY RENOVATIONS

DATE AND HOUR OF EMERGENCY: ___/___/___ TIME:

DESCRIPTION OF THE SUDDEN, UNEXPECTED EVENT:

EXPLANATION OF HOW THE EVENT CAUSED UNSAFE CONDITIONS OR WOULD CAUSE EQUIPMENT DAMAGE OR AN UNREASONABLE FINANCIAL BURDEN:

FOR DEMOLITION/RENOVATION

17. DESCRIPTION OF PROCEDURES TO BE FOLLOWED IN THE EVENT THAT UNEXPECTED ASBESTOS IS FOUND OR PREVIOUSLY NONFRIABLE ASBESTOS MATERIAL BECOMES CRUMBLED, PULVERIZED, OR REDUCED TO POWDER.

18. I CERTIFY THAT AN INDIVIDUAL TRAINED IN THE PROVISIONS OF THE NESHAP REGULATIONS WILL BE ON-SITE DURING THE DEMOLITION OR RENOVATION AND EVIDENCE THAT THE REQUIRED TRAINING HAS BEEN ACCOMPLISHED BY THIS PERSON WILL BE AVAILABLE AT THE PROJECT SITE FOR INSPECTION. (40 CFR PART 61, SUBPART M, REQUIRED AFTER NOVEMBER 20, 1991)

SUPERVISOR: _____ LICENSE #: _____

PROJECT MONITOR: _____ LICENSE #: _____

PROJECT DESIGNER: _____ LICENSE #: _____

LABORATORY: _____ LICENSE #: _____

SIGNATURE OF OWNER/OPERATOR: _____ DATE: ___/___/___

19. I CERTIFY THAT THE INFORMATION SUBMITTED IS ACCURATE TO THE BEST OF MY KNOWLEDGE AND THAT ACCREDITED PERSONS ARE BEING USED ON THIS PROJECT.

NAME: _____ TITLE: _____

SIGNATURE: _____ DATE: ___/___/___

AMOUNT OF ASBESTOS PROJECT FEE SUBMITTED: $ _____

An asbestos project permit fee shall be submitted with the completed project notification. The fee shall be in accordance with the following schedule unless a blanket notification is granted under Section D. Below:

1. $50 for each project equal to or greater than 10 linear feet or 10 square feet up to and including 260 linear feet or 160 square feet.
2. $160 for each project of more than 260 linear feet or 160 square feet up to and including 2600 linear feet or 1600 square feet.
3. $470 for each project of more than 2600 linear feet or 1600 square feet.
4. If the amount of the asbestos is reported in both linear feet and square feet the amounts will be added and treated as if the total were all in square feet for this subsection.
5. $15 for each amended notification.

A blanket notification, valid for a period of one year, may be granted to a contractor who enters into a contract for asbestos removal or encapsulation on a specific site which is expected to last one year or longer.

Address all notifications as described below:

ASBESTOS PROGRAM SUPPORT TECHNICIAN
DEPARTMENT OF LABOR AND INDUSTRY
POWERS-TAYLOR BUILDING
13 SOUTH THIRTEENTH STREET
RICHMOND, VA. 23219

FAX (804) 371-7634

CREDIT CARD TYPE: (CHECK ONE)

☐ VISA CARD #: _____ EXP. DATE: ___/___/___

☐ MASTER CARD AUTHORIZED SIGNATURE: _____

3

* * * * * * * *

REGISTRAR'S NOTICE: This regulation is excluded from Article 2 of the Administrative Process Act in accordance with § 9-6.14:4.1 C 4(a) of the Code of Virginia, which excludes regulations that are necessary to conform to changes in Virginia statutory law where no agency discretion is involved. The Safety and Health Codes Board will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Due to its length, the final regulation entitled, "VR 425-01-75, Boiler and Pressure Vessel Regulations," filed by the Department of Labor and Industry is not being published. However, in accordance with § 9-6.14:22 of the Code of Virginia, the summary is being published in lieu of the full text. The full text of the regulation is available for public inspection at the office of the Registar of Regulations, General Assembly Building, 910 Capitol Square, Room 262, Richmond, Virginia 23219, and at the Department of Labor and Industry, Powers-Taylor Building, 13 South 13th Street, Richmond, Virginia 23219.

Title of Regulation: **VR 425-01-75. Boiler and Pressure Vessel Regulations.**

Statutory Authority: § 40.1-22(5) of the Code of Virginia.

Effective Date: September 1, 1993.

Summary:

The amendments to the Boiler and Pressure Vessel Regulations adopted by the board consist of changes to comply with Virginia statutory law as amended by the 1993 Virginia General Assembly where no agency discretion is involved: and the addition of language advising, but not requiring. the submission of specific documentation in a certain circumstance.

The regulatory changes to comply with the 1993 legislative revisions to the Boiler and Pressure Vessel Safety Act within Title 40.1 of the Code of Virginia include:

1. The addition of a separate definition for "water heater";

2. An increase of the certification and recertification fee for an object from $15 to $20;

3. Allowing the Chief Inspector, under certain circumstances, to extend the two-month grace period between certifications for up to an additional three months; and

4. The requirement of a $600 fee for any review or survey for national accredititation.

The board also added language to the regulation which details a list of 12 documents recommended for submission when requesting a variance for a boiler or pressure vessel. The list of documents is not all inclusive nor is their submission required. Such documentation, preferably in the English language and in current U.S. standard units of measure, would be useful in providing evidence of safety equivalent to ASME Code construction.

VA.R. Doc. No. R93-696; Filed June 30, 1993, 4:37 p.m.

* * * * * * * *

REGISTRAR'S NOTICE: This regulation is excluded from Article 2 of the Administrative Process Act in accordance with § 9-6.14:4.1 C 4(a) of the Code of Virginia, which excludes regulations that are necessary to conform to changes in Virginia statutory law where no agency discretion is involved. The Safety and Health Codes Board will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Due to its length, the following regulation (VR 425-02-11) filed by the Department of Labor and Industry is not being published. However, in accordance with § 9-6.14:22 of the Code of Virginia, the summary is being published in lieu of the full text. The full text of the regulation is available for public inspection at the office of the Registrar of Regulations, General Assembly Building, 910 Capitol Square, Room 262, Richmond, Virginia 23219, and at the Department of Labor and Industry, Powers-Taylor Building, 13 South 13th Street, Richmond, Virginia 23219.

Title of Regulation: **VR 425-02-11. Virginia Occupational Safety and Health Administrative Regulations Manual.**

Statutory Authority: §§ 40.1-2.1, 40.1-6(3), 40.1-6(7), 40.1-6(9), 40.1-22(4), 40.1-22(5), 40.1-22(6a), 40.1-49.4D, and 40.1-51 of the Code of Virginia.

Effective Date: September 1, 1993.

Summary:

The 1992 and 1993 sessions of the Virginia General Assembly enacted bills which altered the contest process and the court of jurisdiction for the enforcement of occupational safety and health laws. The changes to the Administrative Regulations Manual (ARM) reflect the changes to the Code of Virginia resulting from such legislation.

Chapter 777 of the 1992 session of the Virginia General Assembly amended the Code of Virginia by raising the maximum penalty levels under the VOSH program seven-fold and changed the original court of jurisdiction from district court to circuit court.

Chapter 526 of the 1993 session amended the Code of Virginia by requiring that appeals from an order of the circuit court shall lie to the Court of Appeals. Chapter 777 previously had such appeals lie directly to the Supreme Court which may choose not to consider the case, thereby, eliminating any avenue for appeal of the decision of the circuit court.

These code conforming changes are in addition to the change made by emergency regulations which became effective on June 30, 1993. These amendments do not affect the section of the Administrative Regulations Manual which was amended by emergency regulation, effective on June 30, 1993. Thus, the emergency regulation remains in effect until a final regulation is promulgated through the APA process or until June 30, 1994.

VA.R. Doc. No. R93-698; Filed June 30, 1993, 4:38 p.m.

* * * * * * * * *

NOTICE: The Virginia state plan agreement with federal OSHA for the enforcement of occupational safety and health within the Commonwealth commits the Safety and Health Codes Board in § 40.1-22 of the Code of Virginia to adopt occupational safety and health standards for the Commonwealth that are at least as stringent as those promulgated by federal OSHA.

In 1987, the board promulgated a Virginia unique regulation as an occupational safety and health standard to control the entry of individuals into confined spaces. This subject was not regulated by federal OSHA. This regulatory standard approved by the board, VR 425-02-12, was applicable to both the general industry sector and the construction industry.

On January 14, 1993, federal OSHA finally promulgated a confined space standard applicable only to the general industry sector. The construction industry sector remains unregulated at the federal level. As the federal general industry standard has been determined by the department to be more stringent than the Virginia standard promulgated by the board in 1987, the board was statutorily required to adopt the more stringent federal standard for the general industry sector. In order to do so, it has been determined by the Office of the Attorney General, that the existing Virginia standard, VR 425-02-12, must be amended to delete its applicability to general industry.

Pursuant to § 9-6.14:4.1 C 4(c) of the Code of Virginia, the adoption of this amendment is excluded from the notice and comment rulemaking requirements of Article 2 of the Administrative Process Act if the Registrar of Regulations determines that the adoption is necessary to meet the requirements of federal law or regulations and that the regulations as adopted by the board do not differ materially from those required by federal law or regulation.

Title of Regulation: VR 425-02-12. ~~Virginia Occupational Safety and Health Standards for General Industry~~ **Virginia Confined Space Standard - ~~1910.146~~** *for the Construction Industry .*

Statutory Authority: § 40.1-22(5) of the Code of Virginia.

Effective Date: September 1, 1993.

Summary:

The scope of the existing Virginia Confined Space standard extended to both general industry and the construction industry. On June 21, 1993, the Safety and Health Codes Board adopted the new federal identical Permit-Required Confined Spaces Standard for general industry, § 1910.146 (VR 425-02-92). As a result, the existing Virginia standard is renamed the "Virginia Confined Space Standard for the Construction Industry" and remains in effect for the construction industry only.

Explanatory Note:

In Virginia, confined spaces for telecommunications work are generally regulated under the Virginia Confined Space Standard for the Telecommunications Industry, VR 425-02-30, more commonly referred to as 1910.268(t). This regulation supersedes the less stringent 1910.268(o) for telecommunications work. Such work will continue to be covered under 1910.268(t) and the provisions of 1910.146 would not apply as long as the provisions of 1910.268(t) protect against the hazards within the manhole.

Although it is rare, manholes can become overwhelmingly contaminated with toxins or other hazardous chemicals which could result in an Immediately Dangerous to Life or Health (IDLH) atmosphere. In such circumstances, if the work area cannot be made safe before entry, as required by 1910.268(t), entry would have to be performed under the provisions of 1910.146.

VR 425-02-12. Virginia Confined Space Standard for the Construction Industry.

§ 1. Definitions.

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

"Attendant" means an individual assigned to remain immediately outside the entrance to the confined space and who may render assistance as needed to employees inside the space.

inside the space.

"Blind" or *"blinding"* or *"blanking"* means the absolute closure of a pipe, line or duct, to prevent passage of any material (e.g., by fastening a solid plate or "cap" across the pipe).

"Calibration" or *"recalibration"* means a laboratory or bench-top resetting of alarm points, spans and zeros, if applicable, according to manufacturer's specifications. "Calibration" or "recalibration" shall be conducted by a factory authorized service center, a factory trained technician, or a trained company technician.

"Confined space" means any space not intended for continuous employee occupancy, having a limited means of egress, and which is also subject to either the accumulation of an actual or potentially hazardous atmosphere as defined in this subsection or a potential for engulfment as defined in this subsection. Confined spaces generally include, but are not limited to, storage tanks, process vessels, bins, boilers, ventilation or exhaust ducts, sewers, manholes, underground utility vaults, acid tanks, digesters, ovens, kiers, pulpers, tunnels, and pipelines. Open top spaces more than four feet in depth such as pits, tubs, vaults and vessels may also be confined spaces if the three criteria above are met.

"Engulfment" means the surrounding and effective capture of a person by finely divided particulate matter or a liquid. There is a potential for engulfment when such particulate matter or liquid exists in a sufficient quantity or at a sufficient pressure to surround a person before normal exit can be effected.

"Entrant" means any employee who enters a confined space.

"Entry" means any action resulting in any part of the employee's face breaking the plane of any opening of the confined space, and includes any ensuing work activities inside the confined space.

"Entry permit" means the employer's written authorization for employee entry into a confined space under defined conditions for a stated purpose during a specified time.

"Field checked" means a method of checking an instrument for a proper response in the field. It is a check of the instrument's functionality and is a pass-fail or go/no-go check. When an adequate response is not obtained then the equipment should be removed from service and adjusted or repaired by a factory-authorized service center or factory-trained technician or a trained company technician.

"Ground-fault circuit-interrupter" means a device whose function is to interrupt the electric circuit to the load when a fault current to ground exceeds a predetermined value that is less than that required to operate the overcurrent protective device of the supply circuit.

"Hazardous atmosphere" means an atmosphere presenting a potential for death, disablement, injury, or acute illness from one or more of the following causes:

1. A flammable gas, vapor, or mist in excess of 10% of its lower explosive limit (LEL);

2. An oxygen-deficient atmosphere containing less than 19.5% oxygen by volume or an oxygen-enriched atmosphere containing more than 23% oxygen by volume;

3. An atmospheric concentration of any substance listed in Subpart Z of Part 1910 Standards above the listed numerical value of the permissible exposure limit (PEL); or

4. A condition immediately dangerous to life or health as defined in this subsection.

"Immediately dangerous to life or health (IDLH)" means any condition that poses an immediate threat to life, or which is likely to result in acute or immediately severe health effects. See Appendix A for concentrations at which several chemicals exhibit IDLH effects.

"Immediate severe health effects" means that an acute clinical sign of serious, exposure-related reaction is manifested within 72 hours of exposure.

"Lockout or tagging" means placing locks or tags on the energy-isolating device in accordance with § 3 B of this standard. Tags shall indicate that the energy-isolated device shall not be operated until the removal of the tag.

"Qualified person" means a person who is trained to recognize the hazard(s) of the confined space and how to evaluate those anticipated hazards and shall be capable of specifying necessary control measures to insure worker safety. The employer may designate an employee as employer representative for the purpose of assuring safe confined space entry procedures and practices at a specific site. The qualified person may also be the entrant when permissible according to § 5 A of this standard.

"Rescue team" means those persons whom the employer has designated prior to any confined space entry to perform rescues from confined spaces. A rescue team may consist of outside emergency personnel, provided the training requirements of § 7 A.2 of this standard have been met.

"Retrieval line" means a line or rope secured at one end to a worker's safety belt, chest or body harness, or wristlets with the other end secured to an anchor point or lifting device located outside the entry portal. The anchor point shall not be a motor vehicle. Retrieval lines must be of sufficient strength to remove an entrant when necessary.

"Zero mechanical state" means that the mechanical potential energy of all portions of the machine or equipment is set so that the opening of the pipe(s), tube(s), hose(s), or actuation of any valve, lever, or button, will not produce a movement which could cause injury.

§ 2. Scope and application.

A. This section prescribes basic mandatory practices and procedures which employers must establish and use for employee entry into and work within confined spaces.

B. This section applies to all employers with employees covered by ~~Virginia Standards for General Industry (Part 1910) and~~ Virginia Standards for Construction Industry (Part 1926) except for employers with employees covered by the telecommunications standards in 1910.268.

C. Natural Gas Companies governed by the Federal Pipeline Safety Act who have confined space entry procedures approved by and in accordance with guidelines established by the Virginia State Corporation Commission shall be exempt from the requirements of this standard.

§ 3. Preparation.

Entry into a confined space shall not be made unless the qualified person has assured that the following procedures have first been completed.

A. All pumps or lines which may convey flammable, injurious, or incapacitating substances into a space shall be disconnected, blinded, double blocked or bled, or effectively isolated by other means to prevent the development of dangerous levels of air contamination or oxygen deficiency within the space. The closing of valves alone, or the closing of valves and locking or tagging them, is not considered effective protection. The disconnection or blind shall be so located or done in such a manner that inadvertent reconnection of the line or removal of the blind are effectively prevented.

1. This does not apply to public utility gas distribution systems.

2. This does not require blocking of all laterals to sewers or storm drains unless experience or knowledge of industrial use indicates materials resulting in dangerous air contamination may be dumped into an occupied sewer.

B. All fixed mechanical devices and equipment that are capable of causing injury shall be placed at zero mechanical state (ZMS). Electrical equipment, excluding lighting, shall be locked out in the open (off) position with a key-type padlock except in cases where locking is impossible; in such cases equipment shall be properly tagged in accordance with 1910.145(f). The key shall remain with the person working inside the confined space. Installations under the exclusive control of electric utilities and companies performing the same functions as electric utilities on their own property for the purpose of communication, or metering, or for the generation, control, transformation, transmission, and distribution of electric energy located in buildings used exclusively by utilities for such purposes or located outdoors on property owned or leased by the utility or such companies or on public highways, streets, roads, etc., or outdoors by established rights on private property, are exempt from the requirements of this paragraph.

C. All confined spaces shall be emptied, flushed, or otherwise purged of flammable, injurious, or incapacitating substances to the extent feasible. Initial cleaning shall be done from outside the confined space to the extent feasible.

D. Where the existence of a hazardous atmosphere is demonstrated by tests performed by the qualified person, the confined space shall be mechanically ventilated until the concentration of the hazardous substance(s) is reduced to a safe level, and ventilation shall be continued as long as the recurrence of the hazard(s) is possible or appropriate personal protective equipment, as defined in ~~Subpart I of the Virginia Standards for General Industry (Part 1910) and~~ Subpart E of the Virginia Standards for Construction Industry (Part 1926), shall be used by all employees during entry.

§ 4. Atmosphere testing.

A. The qualified person shall assure that each confined space into which an employee may be required to enter is tested immediately prior to entry by a qualified person using direct reading instruments with remote sampling capacity for the following conditions:

1. Oxygen level;

2. Potential flammable hazard; and

3. Toxic materials known or expected to be present.

The testing of the atmosphere for a particular toxic material is not necessary where the presence of that material is known by virtue of a previous test and appropriate personal protective equipment to protect against that material is utilized.

B. When an attendant has been assigned, as prescribed by § 5 A, a qualified person shall perform atmospheric testing during occupancy at intervals dependent on the possibility of changing conditions, but in no case less frequently than hourly. Atmospheric test results must be recorded on the permit at least hourly in accordance with § 6 B.

C. When a nonattendant entry is permitted, as allowed by § 5 A, at least one entrant shall wear a continuous monitoring device equipped with an alarm and capable of evaluating oxygen concentrations and combustible gas

concentrations in the confined space. When large confined spaces are entered, a sufficient number of monitoring devices shall be either worn or located in the work area to adequately monitor the atmosphere. The qualified person shall assess the need for mechanical ventilation in all confined spaces in accordance with the written permit system.

D. Each atmospheric testing instrument shall be calibrated according to the manufacturer's instructions or, if no manufacturer's specifications exist, at least yearly, and field checked immediately prior to its use. Instruments which are out of calibration or fail a field check cannot be used until they are properly calibrated.

§ 5. Attendants and rescue teams.

A. The qualified person shall evaluate each confined space that an employee may be required to enter by identifying and evaluating the hazards and potential hazards of that space. The qualified person then may allow an employee to make an unaccompanied, nonattendant entry into a confined space which has no potential for engulfment or IDLH atmosphere, and only low potential for hazardous atmosphere, provided the requirements of § 4 C are met.

B. An attendant shall be stationed immediately outside every confined space which has been found to have an IDLH atmosphere, a hazardous atmosphere or a potential for engulfment. The attendant shall be trained as directed by § 7 A 2, be within sight or call of the entrant, and have the means available to summon assistance.

C. Rescue teams shall be available where the confined space has been found to have an IDLH atmosphere, a hazardous atmosphere or a potential for engulfment.

§ 6. Permit systems.

A. The employer shall develop and implement a written entry permit system for all confined space entries which includes a written permit procedure that provides the following minimum information:

1. The minimum acceptable environmental conditions which are acceptable to the employer for entry and work in the confined space;

2. A record of atmospheric test results conducted prior to entry and at least hourly thereafter when an attendant is required;

3. The last calibration date(s) for the oxygen detector and combustible gas indicator being used;

4. The signature of the qualified person responsible for securing the permit and reviewing conditions prior to entry;

5. A written description of the location and type of work to be done;

6. Each permit shall be dated and carry an expiration time of not more than 12 hours; the permit may be extended for another 12-hour period pending recertification of acceptable conditions.

B. Entry permit forms shall be retained until the corresponding entry has been successfully completed.

§ 7. Training.

A. The employer shall inform his employees of the hazards of working in confined spaces by providing specific training to employees before they may be authorized to enter a confined space.

1. General. The employer shall assure that the qualified person and all employees who may be required to enter a confined space have received training covering the following subjects:

a. Hazard recognition;

b. Use of respiratory protection equipment if the use of such equipment will be required. Training requirements are specified in 1910.134;

c. Use of atmospheric testing devices for those employees required to perform atmospheric tests. Training shall cover field checks as specified by the manufacturer, normal use, and specific limitations of the equipment;

d. Lockout and tagging procedures;

e. Use of special equipment and tools;

f. Emergency and rescue methods and procedures.

2. Rescue teams. Rescue teams shall be trained to use the equipment they may need to perform rescue functions assigned to them.

a. At least annually rescue teams shall practice removing victims through openings and portals of the same size, configuration and accessibility as those of spaces from which an actual rescue could be required.

b. The attendant or at least one member of each rescue team shall hold current certification in basic first aid and CPR (Cardio-Pulmunary Resuscitation).

B. The employer shall maintain the records of the most recent training program conducted. These records shall include the date(s) of the training program, the instructor(s) of the training program, and the employee(s) to whom the training was given.

§ 8. Special equipment and tools.

A. No sources of ignition shall be introduced into a confined space until the implementation of the appropriate provision of this section has ensured that dangerous air contamination due to flammable or explosive substances does not exist.

B. All electrical cords, tools, and equipment shall be inspected for visually detectable defects before use in a confined space. In the absence of low voltage circuits and equipment or double insulated tools, equipment shall be of the heavy duty insulation type or ground fault circuit interrupters shall be used. Temporary lighting shall conform with 1926.405(a)(2)(ii)(G).

C. No fan or other equipment used for removing flammable gases or vapors shall create an ignition hazard.

D. Cylinders of compressed gases shall never be taken into a confined space, and shall be turned off at the cylinder valve when not in use. When to be left unattended the torch and hose shall be removed from the confined space. Open end fuel gas and oxygen hoses shall be immediately removed from enclosed spaces when they are disconnected from the torch or other gas-consuming device. Exempt from this rule are cylinders that are part of self-contained breathing apparatus or resusitation equipment.

§ 9. Tripods, safety harnesses, retrieval lines and respiratory protection.

A. Where the existence of an IDLH atmosphere, a hazardous atmosphere or potential for engulfment has been demonstrated by the qualified person, the following requirements shall also apply:

1. An appropriate retrieval device with retrieval line shall be used by any entrant(s), except where the retrieval lines themselves could cause a hazard because of structures, equipment, or becoming entangled with other lines inside the confined space. Where a retrieval line is used, the free end of the retrieval line shall be secured outside the entry opening either by another person holding the line or by securing it in some other manner.

2. When entry is made through a top opening, a hoisting device such as a tripod shall be provided for lifting employees out of the space.

B. When a person is required to enter a confined space which has either an IDLH atmosphere or a hazardous atmosphere there shall be either a positive-pressure self-contained breathing apparatus or a combination positive-pressure air-line respirator with an auxiliary self-contained air supply immediately outside the entrance to the confined space.

C. When a person(s) must enter a confined space which contains either an IDLH atmosphere or a hazardous atmosphere without a retrieval line attached, then each entrant shall be supplied with and wear a MSHA/NIOSH approved positive pressure self-contained breathing apparatus.

~~§ 10. Effective date and start-up date.~~

~~A. Effective date. July 1, 1987.~~

~~B. Start-up date. Enforcement of all portions of 1910.146 will begin on January 1, 1988.~~

APPENDIX A

Concentrations At Which Some Common Substances Exhibit Immediately Dangerous to Life or Health (IDLH) Effects

Appendix A is a nonmandatory appendix. According to the National Institute for Occupational Safety and Health (NIOSH) the levels listed below represent a maximum concentration from which one could escape within 30 minutes without any escape-impairing symptoms or any irreversable health effects. These levels were published by NIOSH in September 1985 and are subject to frequent change. This list is not meant to be all inclusive but rather is meant to list some of the more frequently encountered chemicals in confined spaces.

CHEMICAL NAME	IDLH LEVELS*
Ammonia	500 ppm
Benzene	2,000 ppm
Butadiene	20,000 ppm
2 - Butanone	3,000 ppm
Carbon dioxide	50,000 ppm
Carbon monoxide	1,500 ppm
Carbon tetrachloride	300 ppm
Chlorine	25ppm
Chlorobromomethane	5,000 ppm
Chloroform	1,000 ppm
Cresol	250 ppm
Cyclohexane	10,000 ppm
Dichlorodifluoromethane	50,000 ppm
Dichloromonofluoromethane	50,000 ppm
Ethyl acetate	10,000 ppm
Fluorotrichloromethane	10,000 ppm

Heptane	4,250 ppm
Hexane	5,000 ppm
2 - Hexanone	5,000 ppm
Hydrogen chloride	
Hydrogen sulfide	300 ppm
Isopropyl alcohol	20,000 ppm
Liquified petroleum gas	19,000 ppm
Methyl alcohol	25,000 ppm
Methyl cellosolve	2,000 ppm
Methyl cellosolve acetate	4,500 ppm
Methyl chloroform	1,000 ppm
Methylene chloride	5,000 ppm
Nitric oxide	100 ppm
Nitrogen dioxide	50 ppm
Octane	3,750 ppm
Ozone	10 ppm
Pentane	5,000 ppm
Petroleum distillates mixture	10,000 ppm
Phenol	100 ppm
Phosgene	2 ppm
Propane	20,000 ppm
Sodium hydroxide	200 mg/M³
Stoddard solvent	5,000 ppm
Styrene	5,000 ppm
Sulfur dioxide	100 ppm
1,1,2,2, - Tetrachloro-1, 2 - difluroethane	15,000 ppm
Toluene	2,000 ppm
Toluene-2,4-diisocyanate	10 ppm
Trifluoromonobromomethane	50,000 ppm
Turpentine	1,900 ppm
Xylene	10,000 ppm

*Reference NIOSH/OSHA Pocket Guide to Chemical Hazards DHEW (NIOSH) Publication No. 78-210

~~APPENDIX B~~

~~Amendments and Deletions to VOSH Standards for General Industry to become effective January 1, 1988 and to coincide with the start-up date of the Virginia Cofined Space Standard~~

~~Ventilation, 1910.94~~	
~~1910.94(d)(11)(ii)~~	~~Amended to apply 1910.146 to the inspection, maintenance and installation of tanks, except for emergency situations such as rescue operations~~
~~1910.94(d)(11)(iii)~~	~~Deleted~~
~~1910.94(d)(11)(iv)~~	~~Deleted~~
~~1910.94(d)(11)(vi)~~	~~Amended to apply 1910.146 to maintenance work~~
~~Welding, Cutting and Brazing, 1910.252~~	
~~1910.252(d)(2)(vi)(c)~~	~~Deleted~~
~~1910.252(d)(4)(ii)~~	~~Deleted~~
~~1910.252(e)(4)(i)~~	~~Deleted~~
~~1910.252(e)(4)(ii)~~	~~Deleted~~
~~1910.252(e)(4)(iii)~~	~~Deleted~~
~~1910.252(e)(4)(iv)~~	~~Deleted~~
~~1910.252(e)(4)(vi)~~	~~Deleted~~
~~1910.252(f)(2)(i)~~	~~Amended to apply 1910.146 to welding or cutting in confined spaces~~
~~1910.252(f)(2)(i)(c)~~	~~Amended to eliminate a reference to confined space~~
~~1910.252(f)(4)(i)~~	~~Deleted~~
~~1910.252(f)(4)(ii)~~	~~Deleted~~
~~1910.252(f)(4)(iii)~~	~~Deleted~~
~~1910.252(f)(4)(iv)~~	~~Deleted~~
~~1910.252(f)(5)(i)~~	~~Amended to apply 1910.146 to~~

	welding with flourine compounds in confined spaces
1910.252(f)(6)(i)	Amended to apply 1910.146 to welding with zinc in confined spaces
1910.252(f)(7)(i)	Amended to apply 1910.146 to welding with lead in confined spaces
1910.252(f)(7)(iii)	Amended to eliminate a reference to confined spaces
1910.252(f)(8)	Amended to apply 1910.146 to welding with beryllium in confined spaces
1910.252(f)(9)(i)	Amended to eliminate a reference to confined spaces
1910.252(f)(9)(ii)	Amended to apply 1910.146 to welding with cadmium in confined spaces
1910.252(f)(10)	Amended to apply 1910.146 to welding with cadmium in confined spaces

Pulp, Paper and Paperboard Mills, 1910.261

1910.261(b)(5)	Amended to apply 1910.146 to working in closed vessels, tanks, chip bins, and similar equipment
1910.261(e)(12)(iii)	Deleted
1910.261(f)(6)(i)	Amended to apply 1910.146 to cleaning, inspection or other work in rag cookers
1910.261(f)(6)(ii)	Amended to provide that standby person shall be in a position to summon assistance in case of an emergency
1910.261(g)(2)(iii)	Deleted
1910.261(g)(4)(i)	Deleted
1910.261(g)(4)(ii)	Deleted
1910.261(g)(6)	Deleted
1910.216(g)(8)	Amended to apply 1910.146 to work in chip and sawdust bins
1910.261(g)(15)	Amended to apply 1910.146 to work in digesters
1910.261(g)(15)(i)	Deleted
1910.261(g)(15)(ii)	Deleted
1910.261(g)(15)(iii)	Deleted
1910.262(g)(15)(iv)	Deleted
1910.261(j)(5)(ii)	Deleted
1910.261(j)(5)(iii)	Amended to apply 1910.146 to cleaning, inspecting or other work in pulpers
1910.261(j)(6)(i)	Deleted
1910.261(j)(6)(iii)	Amended to apply 1910.146 to cleaning, inspecting or other work in stock chests

Textiles, 1910.262

1910.262(p)(1)	Deleted
1910.262(q)(2)	Deleted

Bakery Equipment, 1910.263

1910.263(l)(3)(iii)(b)	Amended to apply 1910.146 to work in ovens

APPENDIX C B

Amendments and Deletions to VOSH Standards for the Construction Industry to become effective January 1, 1988 and to coincide with the start-up date of the Virginia Confined Space Standard.

Safety Training and Education, 1926.21

1926.21(b)(6)(i)	Deleted
1926.21(b)(6)(ii)	Deleted

General Requirement for Storage, 1926.250

1926.250(b)(2)	Amended to apply 1910.146 to work on stored materials

	in silos, hoppers, tanks and similar storage areas
Gas Welding and Cutting, 1926.350	
1926.350(b)(4)	Deleted
Fire Prevention, 1926.352	
1926.352(g)	Deleted
Ventilation and Protection in Welding, Cutting and Heating, 1926.353	
1926.353(b)	Amended to apply 1910.146 to welding, cutting and heating in confined spaces
1926.353(b)(1)	Deleted
1926.353(b)(2)	Deleted
1926.353(c)	Amended to apply 1910.146 to welding, cutting, or heating of metals of toxic significance in confined spaces
1926.353(c)(1)	Deleted
1926.353(c)(1)(i)	Deleted
1926.353(c)(1)(ii)	Deleted
1926.353(c)(1)(iii)	Deleted
1926.353(c)(1)(iv)	Deleted
1926.353(c)(2)	Deleted
1926.353(c)(2)(i)	Deleted
1926.353(c)(2)(ii)	Deleted
1926.353(c)(2)(iii)	Deleted
1926.353(c)(2)(iv)	Deleted
Specific Excavation Requirements, 1926.651	
1926.651(v)	Amended to apply 1910.146 to work in confined space excavations
Underground Lines, 1926.956	
1926.956(a)(3)	Amended to apply 1910.146 to work in a manhole or unvented vault
1926.956(a)(3)(i)	Deleted
1926.956(a)(3)(ii)	Deleted
1926.956(a)(3)(iii)	Deleted
1926.956(b)(1)	Deleted
1926.956(b)(2)	Deleted
1926.956(b)(3)	Deleted

VA.R. Doc. No. R93-699; Filed June 30, 1993, 4:38 p.m.

COMMONWEALTH of VIRGINIA

JOAN W. SMITH
REGISTRAR OF REGULATIONS

VIRGINIA CODE COMMISSION
General Assembly Building

910 CAPITOL STREET
RICHMOND, VIRGINIA 23219
(804) 786-3591

July 12, 1993

Mr. Thomas A. Bryant, Chairman
Virginia Safety and Health Codes Board
C/o The Department of Labor and Industry
13 South Thirteenth Street
Richmond, Virginia 23219

RE: VR 425-02-12 - Virginia Confined Space Standard for the Construction Industry

Dear Mr. Bryant:

This will acknowledge receipt of the above-referenced regulations from the Department of Labor and Industry.

As required by § 9-6.14:4.1 C.4.(c). of the Code of Virginia, I have determined that these regulations are exempt from the operation of Article 2 of the Administrative Process Act, since they do not differ materially from those required by federal law.

Sincerely,

Joan W. Smith
Registrar of Regulations

JWS:jbc

* * * * * * * * *

REGISTRAR'S NOTICE: The following regulation filed by the Department of Labor and Industry is excluded from Article 2 of the Administrative Process Act in accordance with § 9-6.14:4.1 C 4 (c) of the Code of Virginia, which excludes regulations that are necessary to meet the requirements of federal law or regulations, provided such regulations do not differ materially from those required by federal law or regulation. The Safety and Health Codes Board will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: **VR 425-02-36. Virginia Occupational Safety and Health Standards for the General Industry - Air Contaminants Standard (1910.1000).**

Statutory Authority: § 40.1-22(5) of the Code of Virginia.

Effective Date: September 1, 1993.

Summary:

The Air Contaminants Standard, 1910.1000, contained technical errors, omissions and ambiguities which may have been misleading or unclear. This amendment corrected the errors which appeared in Tables Z-1-A and Z-2.

Note on Incorporation By Reference

Pursuant to § 9-6.18 of the Code of Virginia, the General Industry Standard for Air Contaminants (1910.1900) is declared a document generally available to the public and appropriate for incorporation by reference. For this reason, the entire document will not be printed in The Virginia Register of Regulations. Copies of the document are available for inspection at the Department of Labor and Industry, 13 South 13th Street, Richmond, Virginia, and in the Office of the Registrar of Regulations, Room 262, General Assembly Building, Capitol Square, Richmond, Virginia.

On June 21, 1993, the Safety and Health Codes Board adopted an identical version of federal OSHA's amendment to the Air Contaminants Standard, 29 CFR 1910.1000, as published in the Federal Register, Vol. 58, No. 77, pp. 21780-21781, Friday, April 23, 1993. The amended standard was jointly published with the Agriculture Standard for Occupational Exposure to Cadmium, 29 CFR 1928.1027, and amendments to the general industry and construction industry standards for the Occupational Exposure to Cadmium, 29 CFR 1910.1027 and 29 CFR 1926.63, respectively, in the Federal Register on April 23, 1993 (58 Fed. Reg. 21780). The amendments as adopted are not set out.

When the regulations as set forth in the amendments to the General Industry Standard for Air Contaminants, § 1910.1000, are applied to the Commissioner of the Department of Labor and Industry or to Virginia employers, the following federal terms shall be considered to read as follows:

Federal Terms	VOSH Equivalent
29 CFR	VOSH Standard

VA.R. Doc. No. R93-690; Filed June 30, 1993, 4:39 p.m.

COMMONWEALTH of VIRGINIA

JOAN W. SMITH
REGISTRAR OF REGULATIONS

VIRGINIA CODE COMMISSION
General Assembly Building

910 CAPITOL STREET
RICHMOND, VIRGINIA 23219
(804) 786-3591

July 12, 1993

Mr. Thomas A. Bryant, Chairman
Virginia Safety and Health Codes Board
C/o The Department of Labor and Industry
13 South Thirteenth Street
Richmond, Virginia 23219

RE: & VR 425-02-36 - General Industry Standard for Air Contaminants
(Amendment to the Air Contaminants Standard;
Sec. 1910-1000)

Dear Mr. Bryant:

This will acknowledge receipt of the above-referenced regulations from the Department of Labor and Industry.

As required by § 9-6.14:4.1 C.4.(c). of the Code of Virginia, I have determined that these regulations are exempt from the operation of Article 2 of the Administrative Process Act, since they do not differ materially from those required by federal law.

Sincerely,

Joan W. Smith

Joan W. Smith
Registrar of Regulations

JWS:jbc

* * * * * * * * *

REGISTRAR'S NOTICE: The following regulation filed by the Department of Labor and Industry is excluded from Article 2 of the Administrative Process Act in accordance with § 9-6.14:4.1 C 4 (c) of the Code of Virginia, which excludes regulations that are necessary to meet the requirements of federal law or regulations, provided such regulations do not differ materially from those required by federal law or regulation. The Safety and Health Codes Board will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: **VR 425-02-36. Virginia Occupational Safety and Health Standards for the General Industry - Air Contaminants Standard (1910.1000).**

Statutory Authority: § 40.1-22(5) of the Code of Virginia.

Effective Date: September 1, 1993.

Summary:

In 1989, federal OSHA amended the Air Contaminants Standard, § 1910.1000, Permissible Exposure Limits (PELs), which impacted 376 of the 428 substances under consideration. The amendment revised 212 existing PELs and established 164 new PELs for substances not then regulated.

In July 1992, the U.S. Court of Appeals for the Eleventh Circuit concluded that federal OSHA had failed to adequately explain through "substantial evidence" that each permissible exposure limit (PEL) under the Air Contaminants Standard reduced a significant risk to worker health or that the PELs were feasible for affected industries.

Federal OSHA decided not to appeal the court's decision and OSHA decided to begin enforcing the pre-1989 exposure limits. The vacating of the 1989 PELs by federal OSHA presented legal concerns for Virginia Occupational Safety and Health (VOSH) as to the continued enforceability and viability of the PELs, although the Virginia Safety and Health Codes Board (Board) had adopted the federal identical PELs in compliance with the Virginia Administrative Process Act (APA) and § 9-6.14:4.1 C 4(c) of the Code of Virginia.

To eliminate possible concerns of improper promulgation, the board amended the Air Contaminants Standard for General Industry, § 1910.1000, by revoking the 1989 amendments for the revised PELs, published in the Federal Register on January 19, 1989 (54 Fed. Reg. 2332), and readopting the § 1910.1000 PELs which were in effect prior to the March 13, 1989, board action which adopted the revised PELs. The effective date of these actions is September 1, 1993.

Note on Incorporation by Reference

Pursuant to § 9-6.18 of the Code of Virginia, the General Industry Standard for Air Contaminants (1910.1900) is declared a document generally available to the public and appropriate for incorporation by reference. For this reason, the entire document will not be printed in The Virginia Register of Regulations. Copies of the document are available for inspection at the Department of Labor and Industry, 13 South 13th Street, Richmond, Virginia, and in the Office of the Registrar of Regulations, Room 262, General Assembly Building, Capitol Square, Richmond, Virginia.

On June 21, 1993, the Safety and Health Codes Board, in accordance with similar action taken by federal OSHA, revoked the 1989 revision to the Permissible Exposure Limits (PELs) to the 1989 General Industry Standard for Air Contaminants, 29 CFR 1910.1000 (VR 425-02-36). At this time, the board also readopted the PELs which had been in effect prior to its adoption of the 1989 revised limits.

The 1989 PELs were originally published in the Federal Register on January 19, 1989 (54 Fed. Reg. 2332) and subsequently adopted by the board on March 13, 1989, as an amendment to VR 425-02-36.

The pre-1989 PELs become effective September 1, 1993, and are currently specified in the Transitional Limits Columns of Table Z-1-A, Table Z-2, and Table Z-3 of the General Industry Standard for Air Contaminants, 1910.1000 (VR 425-02-36).

The standard as adopted is not set out.

When the regulations as set forth in the amendments to the General Industry Standard for Air Contaminants, § 1910.1000, are applied to the Commissioner of the Department of Labor and Industry or to Virginia employers, the following federal terms shall be considered to read as follows:

Federal Terms	VOSH Equivalanet
Assistant Secretary	Commissioner of Labor and Industry
29 CFR 1910.1000	1910.1000

VA.R. Doc. No. R93-694; Filed June 30, 1993, 4:36 p.m.

COMMONWEALTH of VIRGINIA

JOAN W. SMITH
REGISTRAR OF REGULATIONS

VIRGINIA CODE COMMISSION
General Assembly Building

910 CAPITOL STREET
RICHMOND, VIRGINIA 23219
(804) 786-3591

July 12, 1993

Mr. Thomas A. Bryant, Chairman
Virginia Safety and Health Codes Board
C/o The Department of Labor and Industry
13 South Thirteenth Street
Richmond, Virginia 23219

RE: VR 425-02-36 - General Industry Standard for Air Contaminants (Revocation of 1989 Revised Permissable Exposure Limits, Etc.; Sec. 1910-1000, and Readoption of Previous PELs)

Dear Mr. Bryant:

This will acknowledge receipt of the above-referenced regulations from the Department of Labor and Industry.

As required by § 9-6.14:4.1 C.4.(c). of the Code of Virginia, I have determined that these regulations are exempt from the operation of Article 2 of the Administrative Process Act, since they do not differ materially from those required by federal law.

Sincerely,

Joan W. Smith
Registrar of Regulations

JWS:jbc

* * * * * * * *

REGISTRAR'S NOTICE: The following regulation filed by the Department of Labor and Industry is excluded from Article 2 of the Administrative Process Act in accordance with § 9-6.14:4.1 C 4 (c) of the Code of Virginia, which excludes regulations that are necesary to meet the requirements of federal law or regulations, provided such regulations do not differ materially from those required by federal law or regulation. The Safety and Health Codes Board will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: **VR 425-02-90. General Industry Standard for Occupational Exposure to Cadmium (1910.1027).**

Statutory Authority: § 40.1-22(5) of the Code of Virginia.

Effective Date: September 1, 1993.

Summary:

The General Industry Standard for Occupational Exposure to Cadmium, 1910.1027, contained typographical and technical errors, omissions and ambiguities which may have been misleading or unclear. These amendments corrected these problems and clarified the intent of certain areas of the standards.

Note on Incorporation By Reference

Pursuant to § 9-6.18 of the Code of Virginia, the General Industry Standard for Occupational Exposure to Cadmium (1910.1027) is declared a document generally available to the public and appropriate for incorporation by reference. For this reason the entire document will not be printed in The Virginia Register of Regulations. Copies of the document are available for inspection at the Department of Labor and Industry, 13 South 13th Street, Richmond, Virginia, and in the Office of the Registrar of Regulations, General Assembly Building, Capitol Square, Room 262, Richmond, Virginia.

On June 21, 1993, the Safety and Health Codes Board adopted an identical version of federal OSHA's amendment to the General Industry Standard for Occupational Exposure to Cadmium, 29 CFR 1910.1027, as published in the Federal Register, Vol. 58, No. 77, pp. 21780-21787, Friday, April 23, 1993. The amendments as adopted are not set out.

When the regulations, as set forth in the General Industry Standard for Occupational Exposure to Cadmium, § 1910.1027, are applied to the Commissioner of the Department of Labor and Industry or to Virginia employers, the following federal terms shall be considered to read as follows:

Federal Terms	VOSH Equivalent
Assistant Secretary	Commissioner of Labor and Industry
29 CFR 1910.1027	1910.1027
29 CFR 1928.1027	1928.1027
29 CFR 1926.63	1926.63
29 CFR 1910.1000	1910.1000
12/14/92	9/1/93
2/12/93	9/1/93
3/14/93	9/1/93
4/13/93	9/1/93
5/13/93	9/1/93
6/12/93	9/1/93
8/11/93	10/27/93
12/14/93	3/1/94
12/14/94	3/1/95

VA.R. Doc. No. R93-692; Filed June 30, 1993, 4:35 p.m.

COMMONWEALTH of VIRGINIA

JOAN W. SMITH
REGISTRAR OF REGULATIONS

VIRGINIA CODE COMMISSION
General Assembly Building

910 CAPITOL STREET
RICHMOND, VIRGINIA 23219
(804) 786-3591

July 12, 1993

Mr. Thomas A. Bryant, Chairman
Virginia Safety and Health Codes Board
C/o The Department of Labor and Industry
13 South Thirteenth Street
Richmond, Virginia 23219

RE: VR 425-02-90 - General Industry Standard for the Occupational Exposure to Cadmium.

Dear Mr. Bryant:

This will acknowledge receipt of the above-referenced regulations from the Department of Labor and Industry.

As required by § 9-6.14:4.1 C.4.(c). of the Code of Virginia, I have determined that these regulations are exempt from the operation of Article 2 of the Administrative Process Act, since they do not differ materially from those required by federal law.

Sincerely,

Joan W. Smith
Registrar of Regulations

JWS:jbc

* * * * * * * * *

REGISTRAR'S NOTICE: The following regulation filed by the Department of Labor and Industry is excluded from Article 2 of the Administrative Process Act in accordance with § 9-6.14:4.1 C 4 (c) of the Code of Virginia, which excludes regulations that are necessary to meet the requirements of federal law or regulations, provided such regulations do not differ materially from those required by federal law or regulation. The Safety and Health Codes Board will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: **VR 425-02-91. Construction Industry Standard for Occupational Exposure to Cadmium (1926.63).**

Statutory Authority: § 40.1-22(5) of the Code of Virginia.

Effective Date: September 1, 1993.

Summary:

The Construction Industry Standard for Occupational Exposure to Cadmium, 1926.63, contained typographical and technical errors, omissions and ambiguities which may have been misleading or unclear. These amendments corrected the problems and clarified the intent of certain areas of the standards.

Note on Incorporation By Reference

Pursuant to § 9-6.18 of the Code of Virginia, the Construction Industry Standard for Occupational Exposure to Cadmium (1926.63) is declared a document generally available to the public and appropriate for incorporation by reference. For this reason the entire document will not be printed in The Virginia Register of Regulations. Copies of the document are available for inspection at the Department of Labor and Industry, 13 South 13th Street, Richmond, Virginia, and in the Office of the Registrar of Regulations, General Assembly Building, Capitol Square, Room 262, Richmond, Virginia.

On June 21, 1993, the Safety and Health Codes Board adopted an identical version of federal OSHA's amended standard entitled, "Amendment to the Construction Standard for Occupational Exposure to Cadmium," 29 CFR 1926.63, as published in the Federal Register, Vol. 58, No. 77, p. 21787, Friday, April 23, 1993. The amended standard was jointly published with the Agriculture Standard for Occupational Exposure to Cadmium, 29 CFR 1928.1027, and the Amendment to the General Industry Standard for the Occupational Exposure to Cadmium, 29 CFR 1910.1027 in the Federal Register on April 23, 1993 (58 Fed. Reg. 21780). The amendments as adopted are not set out.

When the regulations, as set forth in the Construction Industry Standard for Occupational Exposure to Cadmium, § 1926.63, are applied to the Commissioner of the Department of Labor and Industry or to Virginia employers, the following federal terms shall be considered to read as follows:

Federal Terms	VOSH Equivalent
Assistant Secretary	Commissioner of Labor and Industry
29 CFR 1910.1027	1910.1027
29 CFR 1928.1027	1928.1027
29 CFR 1926.63	1926.63
29 CFR 1910.1000	1910.1000
12/14/92	9/1/93
2/12/93	9/1/93
3/14/93	9/1/93
4/13/93	9/1/93
5/13/93	9/1/93
6/12/93	9/1/93
8/11/93	10/27/93
12/14/93	3/1/94
12/14/94	3/1/95

VA.R. Doc. No. R93-691; Filed June 30, 1993, 4:35 p.m.

COMMONWEALTH of VIRGINIA

JOAN W. SMITH
REGISTRAR OF REGULATIONS

VIRGINIA CODE COMMISSION
General Assembly Building

910 CAPITOL STREET
RICHMOND, VIRGINIA 23219
(804) 786-3591

July 12, 1993

Mr. Thomas A. Bryant, Chairman
Virginia Safety and Health Codes Board
C/o The Department of Labor and Industry
13 South Thirteenth Street
Richmond, Virginia 23219

RE: VR 425-02-91 - Construction Industry Standard for the Occupational Exposure to Cadmium.

Dear Mr. Bryant:

This will acknowledge receipt of the above-referenced regulations from the Department of Labor and Industry.

As required by § 9-6.14:4.1 C.4.(c). of the Code of Virginia, I have determined that these regulations are exempt from the operation of Article 2 of the Administrative Process Act, since they do not differ materially from those required by federal law.

Sincerely,

Joan W. Smith
Registrar of Regulations

JWS:jbc

* * * * * * * * *

REGISTRAR'S NOTICE: The following regulation filed by the Department of Labor and Industry is excluded from Article 2 of the Administrative Process Act in accordance with § 9-6.14:4.1 C 4 (c) of the Code of Virginia, which excludes regulations that are necessary to meet the requirements of federal law or regulations, provided such regulations do not differ materially from those required by federal law or regulation. The Safety and Health Codes Board will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: **VR 425-02-92. Permit-Required Confined Spaces Standard for General Industry (1910.146).**

Statutory Authority: § 40.1-22(5) of the Code of Virginia.

Effective Date: September 1, 1993.

Summary:

The new federal general industry standard defines a confined space as any space which is large enough and so configured that an employee can bodily enter and perform assigned work, has a limited means of entry or exit, and is not intended for continuous employee occupancy.

"Permit-required confined spaces," also referred to as "permit spaces," are those spaces which meet the definition of "confined space" and also pose health or safety hazards.

In general, employers must evaluate the workplace to determine if spaces are permit-required confined spaces. If such spaces exist, the employer must inform exposed employees regarding such spaces.

This standard requires employers to develop, implement and make available to employees a written permit space program. The employer must take effective measures to prevent unauthorized entry.

If testing and inspection data prove that a permit-required space no longer poses hazards, that space may be reclassified as a nonpermit confined space. Contractors must also be informed of permit spaces and entry requirements as well as the employers experience with the permit space.

A permit system, requiring the entry supervisor's signature verifying completion of required preparations and verifying the permit space is safe to enter, must be posted at entrances or otherwise be made available to employees who enter such spaces. Such permits are to be cancelled upon completion of entry or when new conditions exist. The standard also requires that the employer retain all cancelled permits for at least one year.

Before initial work assignment begins, the employer must provide training for all workers who are required to work in permit spaces. Upon completion of training, the employer must ensure that employees have acquired the understanding, knowledge, and skills necessary for the safe performance of their duties. Specific duties are detailed for the authorized entrant, the attendant, and the entry supervisor.

The new federal standard requires the employer to ensure that rescue service personnel are both provided with and trained in the proper use of personal protective and rescue equipment.

Note on Incorporation By Reference

Pursuant to § 9-6.18 of the Code of Virginia, the Permit-Required Confined Spaces Standard for General Industry (1910.146) is declared a document generally available to the public and appropriate for incorporation by reference. For this reason the entire document will not be printed in The Virginia Register of Regulations. Copies of the document are available for public inspection at the Department of Labor and Industry, 13 South 13th Street, Richmond, Virginia, and in the office of the Registrar of Regulations, General Assembly Building, Capitol Square, Room 262, Richmond, Virginia.

On June 21, 1993, the Safety and Health Codes Board adopted an identical version of federal OSHA's final rule entitled: "Permit-Required Confined Spaces for General Industry," 29 CFR 1910.146, as published in the Federal Register, Vol. 58, No. 9, pp. 4549-4563, Thursday, January 14, 1993. The standard as adopted is not set out.

Also in that same action, the Safety and Health Codes Board adopted amendments to the Virginia standard entitled, "Virginia Confined Space Standard for General Industry and the Construction Industry," VR 425-02-12. These amendments deleted the applicability of the Virginia Confined Space standard to the general industry, necessitated by the adoption of the above federal Permit-Required Confined Spaces standard. Thus, the scope of the Virginia Confined Space standard is now restricted to the construction industry.

Explanatory note: In Virginia, confined spaces for telecommunications work are generally regulated under the Virginia Confined Space Standard for the Telecommunications Industry, VR 425-02-30, more commonly referred to as 1910.268(t). This regulation supersedes the less stringent 1910.268(o) for telecommunications work. Such work will continue to be covered under 1910.268(t) and the provisions of 1910.146 would not apply as long as the provisions of 1910.268(t) protect against the hazards within the manhole.

Although it is rare, manholes can become overwhelmingly contaminated with toxins or other hazardous chemicals which could result in an Immediately Dangerous to Life or Health (IDLH) atmosphere. In such circumstances, if the work area cannot be made safe before entry, as required by 1910.268(t), entry would have to be performed under

the provisions of 1910.146.

When the regulations, as set forth in the Permit-Required Confined Spaces, Final Rule, § 1910.146, are applied to the Commissioner of the Department of Labor and Industry or to Virginia employers, the following federal terms shall be considered to read as below:

Federal Terms	VOSH Equivalent
Assistant Secretary	Commissioner of Labor and Industry
29 CFR 1910.146	1910.146
4/15/93	9/1/93

VA.R. Doc. No. R93-695; Filed June 30, 1993, 4:37 p.m.

COMMONWEALTH of VIRGINIA

JOAN W. SMITH
REGISTRAR OF REGULATIONS

VIRGINIA CODE COMMISSION
General Assembly Building

910 CAPITOL STREET
RICHMOND, VIRGINIA 23219
(804) 786-3591

July 12, 1993

Mr. Thomas A. Bryant, Chairman
Virginia Safety and Health Codes Board
C/o The Department of Labor and Industry
13 South Thirteenth Street
Richmond, Virginia 23219

RE: VR 425-02-92 - Permit-Required Confined Spaces Standard for General Industry

Dear Mr. Bryant:

This will acknowledge receipt of the above-referenced regulations from the Department of Labor and Industry.

As required by § 9-6.14:4.1 C.4.(c). of the Code of Virginia, I have determined that these regulations are exempt from the operation of Article 2 of the Administrative Process Act, since they do not differ materially from those required by federal law.

Sincerely,

Joan W. Smith
Registrar of Regulations

JWS:jbc

* * * * * * * *

REGISTRAR'S NOTICE: The following regulation filed by the Department of Labor and Industry is excluded from Article 2 of the Administrative Process Act in accordance with § 9-6.14:4.1 C 4 (c) of the Code of Virginia, which excludes regulations that are necessary to meet the requirements of federal law or regulations, provided such regulations do not differ materially from those required by federal law or regulation. The Safety and Health Codes Board will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: **VR 425-02-93. Lead Exposure in Construction (1926.62)**

Statutory Authority: § 40.1-22(5) of the Code of Virginia.

Effective Date: September 1, 1993.

Summary:

This new standard, § 1926.62, contains employee protection requirements for construction workers exposed to lead. The new lead standard for construction industry has requirements similar to the existing VOSH lead standard for general industry, § 1910.1025, VR 425-02-66.

The new standard applies to all construction work excluded from coverage by the general industry standard for lead, Part 1910.1025. "Construction work" means work involving construction, alteration or repair, including painting and decorating. Lead exposure is most common among types of projects that involve the disturbance of lead or lead-containing materials during additions, alterations, reconstruction, demolition, repairs and maintenance.

This standard reduces the permitted level of exposure to lead for construction workers from 200 micrograms per cubic meter of air (200 ug/m³) as an 8-hour time-weighted average (TWA) to an 8-hour TWL of 50 ug/m³.

An action level of 30 ug/m³ as an 8-hour TWA is established as the level at which employers must initiate certain compliance activities.

The standard also requires employers to provide (i) employee monitoring; (ii) employee notification of monitoring results; (iii) a written compliance program; (iv) respiratory protection; (v) hygiene facilities; (vi) medical surveillance; and (vii) employee information and training.

Note on Incorporation By Reference

Pursuant to § 9-6.18 of the Code of Virginia, the Lead Exposure in Construction, Interim Final Rule (1926.62) is declared a document generally available to the public and appropriate for incorporation by reference. For this reason the entire document will not be printed in The Virginia Register of Regulations. Copies of the document are available for public inspection at the Department of Labor and Industry, 13 South 13th Street, Richmond, Virginia, and in the office of the Registrar of Regulations, General Assembly Building, Capitol Square, Room 262, Richmond, Virginia.

On June 21, 1993, the Safety and Health Codes Board adopted an identical version of the federal OSHA standard entitled: "Lead Exposure in Construction; Interim Final Rule," 29 CFR 1926.62, as published in the Federal Register, Vol. 58, No. 84, pp. 26627-26649, Tuesday, May 4, 1993. The standard as adopted is not set out.

When the regulations, as set forth in the Lead Exposure in Construction Industry; Interim Final Rule, § 1926.62, are applied to the Commissioner of the Department of Labor and Industry or to Virginia employers, the following federal terms shall be considered to read as below:

Federal Terms	VOSH Equivalant
Assistant Secretary	Commissioner of Labor and Industry
29 CFR 1926.62	1926.62
29 CFR 1910.1025	1019.1025

Implementation Schedule

	Federal	Virginia
Adoption date	05/04/93	06/21/93
Effective date	06/03/93	09/01/93
Effective date for paragraphs (c) through (o)		
As soon as possible but no later than 60 days from effective date; complete by	08/03/93	11/01/93
Effective date for feasible engineering controls [paragraph (e)]		
As soon as possible but no later than 120 days from effective date; complete by	10/03/93	01/01/94

VA.R. Doc. No. R93-693; Filed June 30, 1993, 4:42 p.m.

COMMONWEALTH of VIRGINIA

JOAN W. SMITH
REGISTRAR OF REGULATIONS

VIRGINIA CODE COMMISSION
General Assembly Building

910 CAPITOL STREET
RICHMOND, VIRGINIA 23219
(804) 786-3591

July 12, 1993

Mr. Thomas A. Bryant, Chairman
Virginia Safety and Health Codes Board
C/o The Department of Labor and Industry
13 South Thirteenth Street
Richmond, Virginia 23219

RE: VR 425-02-93 - Lead Exposure in Construction

Dear Mr. Bryant:

This will acknowledge receipt of the above-referenced regulations from the Department of Labor and Industry.

As required by § 9-6.14:4.1 C.4.(c). of the Code of Virginia, I have determined that these regulations are exempt from the operation of Article 2 of the Administrative Process Act, since they do not differ materially from those required by federal law.

Sincerely,

Joan W. Smith
Registrar of Regulations

JWS:jbc

* * * * * * * *

REGISTRAR'S NOTICE: The following regulation filed by the Department of Labor and Industry is excluded from Article 2 of the Administrative Process Act in accordance with § 9-6.14:4.1 C 4 (c) of the Code of Virginia, which excludes regulations that are necessary to meet the requirements of federal law or regulations, provided such regulations do not differ materially from those required by federal law or regulation. The Safety and Health Codes Board will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: **VR 425-02-94. Agriculture Standard for Occupational Exposure to Cadmium (1928.1027).**

Statutory Authority: § 40.1-22(5) of the Code of Virginia.

Effective Date: September 1, 1993.

Summary:

New provisions to the Cadmium standard have been added at Part 1928.1027 to cover the agriculture industry.

This standard will reduce occupational exposure to all forms of cadmium in the agriculture industry. The standard establishes a time-weighted average permissible exposure limit (TWA PEL) of 5 micrograms per cubic meter of air (5 ug/m³) and an action level (AL) of 2.5 ug/m³.

Employers are required to comply with these control limits primarily by establishing and implementing a written compliance program to reduce employee exposure to or below the PEL by means of engineering and work practice controls.

The agriculture industry cadmium standards require the following:

1. Establishment of an eight-hour time-weighted average (TWA) permissible exposure limit (PEL) of five micrograms of cadmium (any form) per cubic meter air (5 ug/m³) for all cadmium compounds, including dust and fumes;

2. Establishment of an action level of 2.5 ug/m³ as the level at and above which employers must initiate certain compliance activities, such as exposure monitoring and medical surveillance;

3. Regulated areas;

4. Engineering and work practice controls;

5. Written compliance programs;

6. Respiratory protection;

7. Written action plan in emergency situations;

8. Protective work clothing and equipment;

9. Hygiene facilities and practices;

10. Housekeeping practices;

11. Medical surveillance;

12. Hazard communication; and

13. Recordkeeping.

Note on Incorporation By Reference

Pursuant to § 9-6.18 of the Code of Virginia, the Agriculture Standard for Occupational Exposure to Cadmium (1928.1027) is declared a document generally available to the public and appropriate for incorporation by reference. For this reason the entire document will not be printed in The Virginia Register of Regulations. Copies of the document are available for public inspection at the Department of Labor and Industry, 13 South 13th Street, Richmond, Virginia, and in the office of the Registrar of Regulations, General Assembly Building, Capitol Square, Room 262, Richmond, Virginia.

On June 21, 1993, the Safety and Health Codes Board adopted an identical version of federal OSHA's standard entitled: "Agriculture Standard for Occupational Exposure to Cadmium," 29 CFR 1928.1027, as published in the Federal Register, Vol. 58, No. 77, pp. 21787-21850, Friday, April 23, 1993. The standard as adopted is not set out.

When the regulations as set forth in the final rule for Occupational Exposure to Cadmium, 1928.1027, are applied to the Commissioner of the Department of Labor and Industry or Virginia employers, the following federal terms shall be considered to read as below:

Federal Terms	Vosh Equivalent
Assistant Secretary	Commissioner of Labor and Industry
29 CFR 1910.1027	1910.1027
29 CFR 1928.1027	1928.1027
29 CFR 1926.63	1926.63
29 CFR 1910.1000	1910.1000
12/14/92	9/1/93
2/12/93	9/1/93
3/14/93	9/1/93
4/13/93	9/1/93
5/13/93	9/1/93
6/12/93	9/1/93
8/11/93	10/27/93
12/14/93	3/1/94
12/14/94	3/1/95

VA.R. Doc. No. R93-697; Filed June 30, 1993, 4:38 p.m.

COMMONWEALTH of VIRGINIA

JOAN W. SMITH
REGISTRAR OF REGULATIONS

VIRGINIA CODE COMMISSION
General Assembly Building

910 CAPITOL STREET
RICHMOND, VIRGINIA 23219
(804) 786-3591

July 12, 1993

Mr. Thomas A. Bryant, Chairman
Virginia Safety and Health Codes Board
C/o The Department of Labor and Industry
13 South Thirteenth Street
Richmond, Virginia 23219

RE: VR 425-02-94 - Agriculture Standard for Occupational Exposure to Cadmium.

Dear Mr. Bryant:

This will acknowledge receipt of the above-referenced regulations from the Department of Labor and Industry.

As required by § 9-6.14:4.1 C.4.(c). of the Code of Virginia, I have determined that these regulations are exempt from the operation of Article 2 of the Administrative Process Act, since they do not differ materially from those required by federal law.

Sincerely,

Joan W. Smith
Registrar of Regulations

JWS:jbc

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES (BOARD OF)

Title of Regulation: **VR 460-03-4.1940:1. Nursing Home Payment System: Indirect Patient Care Ceiling.**

The Department of Medical Assistance Services has **withdrawn** its final regulation entitled, "VR 460-03-4.1940:1, Nursing Home Payment System: Indirect Patient Care Ceiling" as of June 30, 1993. This regulation was due to become effective on July 1, 1993; however, the agency filed an emergency regulation relating to "Limitation of XIX Payment of XVIII Part A Coinsurance, Nursing Facility 95% Rule," which contains policies that replace the final regulation. The emergency regulation became effective on June 29, 1993. The final regulation that has been withdrawn was published in 9:18 VA.R. 3196-3216 May 31, 1993.

VA.R. Doc. No. R93-710; Filed June 30, 1993, 2:54 p.m.

DEPARTMENT OF SOCIAL SERVICES (BOARD OF)

Title of Regulation: **VR 615-01-47. Disability Advocacy Project.**

Statutory Authority: §§ 63.1-25 and 63.1-89.1 of the Code of Virginia.

Effective Date: August 25, 1993.

Summary:

This regulation establishes the Disability Advocacy Project in which local departments of social services may refer recipients of the interim assistance component of general relief or state and local foster care children for legal representation during the federal disability benefit appeal process. When this representation results in approved disability claims, the local agency receives the recipients' initial checks for retroactive Supplemental Security Income benefits. The agency may recoup the amount of state and local financial assistance given the individuals while the Supplemental Security Income claims were pending approval. From this recoupment, the agency pays a fixed amount for the legal services provided.

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 Margaret J. Friedenberg, Department of Social Services, 730 East Broad Street, Richmond, VA 23219, telephone (804) 692-1820. There may be a charge for copies.

VR 615-01-47. Disability Advocacy Project.

§ 1. Definitions.

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

"Advocacy services" means legal services to help establish eligibility for federal disability benefits.

"Agency" means the local department of social services.

"Appeal process" means a review of the decision on the disability claim which can involve four steps– reconsideration, hearing before an administrative law judge, review by the Appeals Council, hearing in a federal court.

"Bar association" means a professional association for attorneys.

"Disability" means a physical or mental condition rendering a person unable to perform any meaningful work and this condition is expected to last at least 12 months or result in death.

"Disability Determination Services" means a program administered by the Virginia Department of Rehabilitative Services which makes decisions on disability claims for the Social Security Administration.

"Disability insurance benefits" means Title II of the Social Security Act which provides benefits to disabled persons who have worked for a substantial period in employment covered by Social Security.

"Equal Access to Justice Act" means an act which allows a federal court to grant an attorney a fee for proceedings before an administrative agency.

"Federal disability benefits" means disability insurance benefits or Supplemental Security Income or both.

"Foster child" means a child entrusted or committed to foster care for whom the cost of maintenance is funded by state and local foster care funds.

"General Relief Program" means an optional program financed by state and local funds to provide maintenance or emergency assistance to individuals who do not qualify for aid in a federal category. The program is supervised by the state Department of Social Services and administered by local agencies.

"Hearing before an administrative law judge" means the first level formal fair hearing of decisions of the Social Security Administration to deny federal disability benefits. The hearing is conducted by an attorney who is an

official of the Social Security Administration.

"Interim assistance" means a component of the General Relief Program that can provide assistance to individuals who have applied for Supplemental Security Income (SSI), who must apply for SSI, or are appealing an SSI decision. Individuals receiving interim assistance must sign an authorization allowing the Social Security Administration to send their initial back-due Supplemental Security Income benefits to the local agency which then reimburses its general relief budget for the amount of financial assistance given the individuals while their Supplemental Security Income benefits were pending approval.

"Legal aid attorney" means an attorney who provides legal services at no cost to people within certain income guidelines.

"Private attorney" means an attorney engaged in the private practice of law for which a fee is charged.

"Provider" means an attorney, or an individual working under the supervision of an attorney legally allowed to do so, who provides assistance in establishing an individual's eligibility for federal disability benefits.

"Recipient" means an individual who is receiving interim assistance.

"Reconsideration" means a review of the disability claim by the Disability Determination Services.

"Recoupment" means the amount reimbursed to the general relief or state and local foster care funds from an individual's back-due Supplemental Security Income benefits for assistance to that individual while approval for federal disability benefits was pending approval.

"Representative" means a person acting on behalf of a foster child.

"Review by the Appeals Council" means a review of the decisions of the administrative law judge by a review unit of the Social Security Administration. The Appeals Council either decides the case or issues an order returning it to an administrative law judge for further review.

"State and local foster care" means a method of funding the costs of maintenance for foster children not eligible for federal (Title IV-E) payments.

"Supplemental Security Income" means Title XVI of the Social Security Act which provides benefits to a disabled person based on financial need.

§ 2. Referral.

The agency electing to provide disability advocacy services will identify recipients of the interim assistance component of general relief or children receiving state and local foster care who have received written notification from the Social Security Administration that their disability claims at the application or reconsideration level have been denied. Within five working days after the identification, the agency will send letters to the interim assistance recipients explaining advocacy services, offering to refer them to advocacy providers for legal representation during the appeal process, providing information on how the appeal would affect their general relief benefits, and advising them that they have five days from the receipt of this letter to contact the agency requesting advocacy services.

If the interim assistance recipient or the foster child's representative chooses to participate in the Disability Advocacy Project, he will be allowed to select a provider from a list of qualified advocacy providers with whom the agency has contracts or be allowed to select another provider if that provider meets the qualifications and agrees to enter into a contract with the agency.

The agency will have the interim assistance recipient sign a Confidentiality Form (VDSS Form 032-01-040/2) giving the agency permission to refer the recipient to the selected provider.

Within five working days after the selection, a referral letter will be sent by the agency to the selected advocacy provider.

§ 3. Duties of advocacy provider.

Advocacy providers will perform the following services:

1. Within five working days of receipt of a referral letter from the agency, send a letter to the interim assistance recipient or the child's representative, acknowledging the referral and instructing the recipient or child's representative to protect the filing date by filing a Request for Reconsideration or Request for a Hearing with the Social Security Administration within 60 days of the date of his denial notice,

2. Contact the interim assistance recipient or child's representative by mail and telephone, if necessary, to schedule an appointment for an interview. If the provider cannot contact the recipient or the recipient does not keep the appointment, the provider will promptly notify the agency.

3. During the interview with the interim assistance recipient or child's representative, provide legal advice and counsel regarding federal disability benefits and the appeal process. The provider will assess the potential eligibility of the recipient or child for federal disability benefits. The decision whether to proceed or not proceed in the appeal process must be made by the recipient or the child's representative after receiving legal advice from the provider. The recipient or the child's representative must request the services

of the advocacy provider by signing the Social Security Form SSA-1696-U4 under the Appointment of Representative section.

4. Within 15 working days of the initial interview with the recipient or child's representative, send a notification letter to the recipient or child's representative with a copy to the agency stating whether or not the provider will accept this case for legal representation.

5. If the provider agrees to provide advocacy services, sign Social Security Form SSA-1696-U4 under the Acceptance of Appointment and Waiver of Fee sections. Copies of the form will be sent within five working days to the Social Security Administration and to the agency.

6. Assist in the completion and timely filing of any necessary Social Security forms requesting a reconsideration, hearing, or review of the hearing decision.

7. Assist in obtaining and using medical, social, vocational evidence, or expert testimony which may substantiate the presence and severity of the disability.

8. Assist the recipient in making and keeping appointments for examinations.

9. Prepare for and adequately represent the recipient or child at interviews, hearings, or appeals related to application for Supplemental Security Income.

10. Notify the recipient or the child's representative of any denial and the right to appeal to the next level in the appeal process.

11. Notify the agency of any denial and the recipient's or child's representative's decision to proceed or not proceed to the next level in the appeal process.

12. Notify the recipient, the child's representative, and the agency when advocacy services have ended.

§ 4. Contracts.

Agencies shall contract with licensed legal aid or private attorneys, or advocates working under the supervision of an attorney who may lawfully do so to provide legal representation in the appeal process. The providers must have previously provided successful representation to disability claimants during the reconsideration, administrative law judge hearing, Appeals Council, or federal district court levels of the federal disability adjudication process.

Qualified attorneys will be recruited by agencies giving written notice to their local legal aid and bar associations that contracts for legal representation of interim assistance recipients and foster children in the federal disability benefits appeal process will be available.

§ 5. Disbursement.

To receive payment, the advocacy provider must submit a petition and copy of the favorable Social Security Administration decision to the agency within 60 days of such a decision. Disbursement for legal representation will be made by the agency within 20 working days after the agency receives the initial Supplemental Security Income payment due the recipient or child.

No disbursement will be made unless the following have occurred:

1. The agency referred the recipient or child's representative for legal representation;

2. The recipient or child's representative requested the legal representation by signing the Appointment of Representative section of Social Security Form SSA-1696-U4;

3. The advocacy provider signed the Acceptance of Appointment and Waiver of Fee sections of Social Security Form SSA-1696-U4; and

4. The agency received the initial Supplemental Security Income payment for the recipient or child.

No disbursement will be made for legal services given before the date of the agency's referral letter. Providers shall not require from the recipient or child's representative prepayment of any fees, costs, or disbursement.

The disbursement made by the agency will represent payment in full for all legal services to the recipient or child in this process with no further obligation on the part of the state or local Department of Social Services, the recipient, nor the child's representative.

Neither the recipient, the child's representative, the state Department of Social Services, nor local agency shall be obligated to pay any additional fees, costs, or disbursement related to the provision of legal services in the appeal process including, but not limited to, payment for medical, psychological, or vocational consultations obtained to substantiate the disability claim. Under most circumstances, if pre-approved by Disability Determination Services, the Social Security Administration will cover the cost of these consultations.

Contracting attorneys will agree to waive their right to legal fees paid by the Social Security Administration from the initial check for retroactive disability insurance benefits due the recipient or child should he be found eligible for both disability insurance benefits and Supplemental Security Income. An award for attorney's

fees under the Equal Access to Justice Act will not be required to be waived.

The provider's fee will be paid entirely from the recoupment from the initial Supplemental Security Income payment for state and local financial assistance given the recipient or child while the Supplemental Security Income application was pending approval. The fee per favorable decision at the reconsideration level will be $300; at the hearing before an administrative law judge, $600; and at the Appeals Council or federal district court, $750. The fee may in no event exceed the recoupment for the state and local assistance paid.

VA.R. Doc. No. R93-584; Filed June 25, 1993, 4:35 p.m.

DISABILITY ADVOCACY PROJECT

Date: ____/____/____

_____
Customer Name

_____
Street and Apartment Number

_____
City, State, and Zip

Dear_____:

Your Supplemental Security Income (SSI) disability claim has been "Denied" by the Social Security Administration. You have the right to appeal this decision and we can help you with your appeal.

It is important that you call me within five (5) days at (____)_____ to make an appointment to talk about appealing the denial of your claim.

If you do not appeal the decision on your Supplemental Security Income disability claim, your General Relief benefits will _____

_____.

I look forward to hearing from you.

Sincerely,

_____/_____
Name of Worker Worker#

_____
Title

_____
Department of Social Services

_____
Address

_____

CASE #
SS#
FIPS CODE
DENIED AT: ____INIT. ____RECON. ____ALJ

DISABILITY ADVOCACY PROJECT
REFERRAL FORM

TO:

ADVOCACY PROVIDER	WORKER	WORKER ID#
	AGENCY	FIPS
ADDRESS	ADDRESS	
	TELEPHONE	

DATE OF REFERRAL ____/____/____

FROM:

THE PERSON NAMED BELOW OR HIS/HER FOSTER CARE WORKER HAS SELECTED YOU TO PROVIDE ADVOCACY SERVICES FOR HIM/HER IN APPEALING SOCIAL SECURITY'S DENIAL OF SSI DISABILITY BENEFITS. PLEASE CONTACT THE INTERIM ASSISTANCE RECIPIENT OR THE CHILD'S FOSTER CARE WORKER TO SCHEDULE AN APPOINTMENT TO DISCUSS THE APPEAL.

CUSTOMER'S NAME	DSS CASE#	CLIENT ID#(FC)
ADDRESS	SOCIAL SECURITY #	
	PROGRAM CATEGORY	
TELEPHONE	DATE OF INITIAL SSI APPLICATION ____/____/____	

DISABILITY CLAIM DENIED BY SOCIAL SECURITY ADMINISTRATION:

LEVEL	DATE OF DENIAL	DENIAL CODE
INITIAL APPLICATION	____/____/____	_____
RECONSIDERATION	____/____/____	_____
ALJ	____/____/____	_____

PROBABLE BASIS FOR SSI DISABILITY ELIGIBILITY: ___PHYSICAL ___PSYCHOLOGICAL ___BEHAVIORAL ___OTHER
EXPLAIN:

COPIES OF DOCUMENTS RELATING TO THE FOLLOWING ARE ATTACHED:
SOCIAL HISTORY _____
EMPLOYMENT HISTORY _____
MEDICAL RECORDS _____
NO SUPPORTING DOCUMENTATION AVAILABLE _____

DISABILITY ADVOCACY PROJECT
REPORTING FORM

TO:

FROM:

DATE ____/____/____

WORKER	WORKER ID#	ADVOCACY PROVIDER
AGENCY	FIPS	ADDRESS
ADDRESS		TELEPHONE

PROVIDER TYPE: ___LEGAL AID ___PRIVATE ATTY. ___OTHER(SPECIFY)

CUSTOMER'S NAME	CASE #	CLIENT ID# (FC)
ADDRESS	SOCIAL SECURITY #	
	PROGRAM CAT/CODE	

INITIAL APPOINTMENT DATE: ____/____/____ APPOINTMENT KEPT? ___YES ___NO
WILL APPEAL SSI DENIAL: ___YES ___NO IF YES, COPY OF SSA FORM 1696-U4 ATTACHED ___
IF NO, EXPLAIN WHY NOT APPEALING:

SSA DECISION AT RECONSIDERATION: ____APPROVED ____ DENIED DATE ____/____/____
PROCEEDING TO NEXT STAGE OF APPEAL PROCESS: ____ YES ____ NO

ALJ DECISION: ____ APPROVED ____ DENIED DATE ____/____/____
PROCEEDING TO NEXT STAGE OF APPEAL PROCESS: ____ YES ____ NO

APPEALS COUNCIL DECISION: ____ APPROVED ____ DENIED DATE ____/____/____
PROCEEDING TO NEXT STAGE OF APPEAL PROCESS: ____ YES ____ NO

DATE ADVOCACY SERVICES TERMINATED ____/____/____	REASON:

DSS USE ONLY | AMOUNT OF RECOUPMENT FROM INITIAL SSI CHECK: $ _____ DATE ____/____/____
AMOUNT OF RECOUPMENT USED TO PAY ADVOCATE: $ _____ DATE ____/____/____

DEPARTMENT OF TRANSPORTATION
(COMMONWEALTH TRANSPORTATION BOARD)

REGISTRAR'S NOTICE: The following regulation entitled "VR 385-01-23, Underground Utility Policy" filed by the Department of Transportation is exempt from the Administrative Process Act in accordance with § 9-6.14:4.1 B 3 of the Code of Virginia, which exempts the location, design, specifications or construction of public buildings or other facilities.

Title of Regulation: **VR 385-01-23. Underground Utility Policy.**

Statutory Authority: § 33.1-44 of the Code of Virginia.

Effective Date: July 7, 1993.

Summary:

The Underground Utility Policy establishes the conditions under which transportation funds shall be used to reimburse a portion of the additional cost involved to place overhead utility facilities underground in connection with new transportation improvement construction. The policy applies to projects for the urban system of highways which are created and constructed in accordance with § 33.1-44 of the Code of Virginia. It is elective to local jurisdictions, which must also satisfy other criteria.

VR 385-01-23. Underground Utility Policy.

§ 1. Purpose.

The purpose of this policy is to prescribe the policies, procedures and reimbursement provisions for the underground relocation of existing overhead utility facilities on selected transportation improvement projects.

§ 2. Definitions.

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

"Betterment" means any upgrading of the utility facility being relocated that is not attributable to the highway construction or the placing of the facility underground and is made solely for the benefit of and at the election of the utility. Any materials or items of work determined by the department to be the standard underground replacement for a functionally similar overhead material or item of work shall not be considered betterment.

"Relocation" means the adjustment of a utility facility required by the highway project. It includes removing and reinstalling the facility, including necessary temporary facilities, acquiring necessary rights of way on the new location, moving, rearranging or changing the type of existing facilities and taking any necessary safety and protective measures. It shall also mean constructing a replacement facility that is both functionally equivalent to the existing facility and necessary to continuous operation of the utility service, the project economy or sequence of highway construction.

"Theoretical Replacement Facility" means a preliminary utility relocation engineering design, of sufficient detail, which shows the necessary utility relocations required for the most economical adjustments necessitated by highway project construction. This design shall be based on the standard of practice prevalent across the state and the latest design criteria of the department.

"Theoretical Replacement Facility Cost" means an engineering cost estimate prepared for the theoretical replacement facility.

"Utility" means a privately, publicly or cooperatively owned line, facility or system for producing, transmitting, or distributing communications, cable television, power, electricity, light, heat, gas, oil, crude products, water, steam, waste, storm water not connnected with highway drainage, or other similar commodity, including any firm or police signal system or street lighting system, which directly or indirectly serves the public. The term utility shall also mean a wholly owned or controlled subsidiary of a utility company.

§ 3. Authority.

In accordance with § 33.1-12(3) of the Code of Virginia, the Commonwealth Transportation Board is authorized to adopt and promulgate rules and regulations regarding the operation and safety of the State Highway Systems.

In accordance with §§ 33.1-44 and 33.1-96 of the Code of Virginia and judicial rulings and legal opinions, the Commissioner of the Virginia Department of Transportation shall reimburse utility companies for the nonbetterment relocation of their facilities affected by a transportation project, where the facilities are located on private property, the utility company has a real property interest/right or by a prior agreement.

§ 4. Applicability.

This policy applies to transportation projects which are created and constructed in accordance with § 33.1-44 of the Code of Virginia, which covers the Urban System of Highways. This policy shall not apply to overhead electric transmission facilities which operate at a phase-to-phase voltage in excess of 40 KV due to excessive costs and potential operational problems. Where placing a telecommunications facility underground will cause a potential operational problem, an analysis shall be made to determine if the undergrounding is warranted.

§ 5. Policy.

Since by tradition and practice, highway and utility

facilities frequently coexist within common rights of way or along the same transportation corridors, it is essential in such situations that these public service facilities be compatibly designed and operated.

The potential impact on the highway and its users should be considered in the design and location of utility facilities on or along highway rights of way. The manner in which utility facilities are located with respect to the traveled roadway can materially affect the highway, its safe operation, aesthetic quality and maintenance.

Similarly, due to replacement cost theories, most utility relocation plans are developed based on a similar replacement facility. Existing overhead utility facilities are usually placed in a new overhead position which is compatible with the proposed roadway features and the clear roadside recovery policy. Existing overhead utility facilities have previously been placed underground when project design features left no other choice.

Therefore, in the applicable situations as outlined in § 3 and when the requirements as outlined in § 6 have been met, the commissioner is authorized to reimburse the utility company for a portion of the additional costs to replace existing overhead utility facilities with underground facilities. This shall include customer service lines which are located between the distribution facility and the building or meter point.

Whenever the geographic features of the highway corridor would permit an offsite overhead relocation of the existing utility facilities, the locality, utility owner and the department may agree to such a relocation plan, instead of placing the facilities underground, so long as the offsite overhead relocation is the most cost effective alternative.

When overhead utility facilities are replaced with underground facilities, certain appurtenances which are normally installed aboveground in accordance with accepted utility practices may be so installed. These include equipment such as electric distribution transformer, switch gears, meter pedestals, telephone and cable television pedestals, and terminals and other similar equipment. Meters and service connections attached to buildings may continue to be attached above ground.

Within the selected project area, for placement of the facilities underground in accordance with this policy, the underground facilities shall extend a maximum of 150 feet beyond the end of the proposed construction, for a connecting side street or roadway, unless it is determined to be necessary from an engineering standpoint to extend beyond this limit.

In no instance shall any betterment cost, as determined in accordance with the department's Utility Relocation Procedures Manual, which is incorporated by reference and made a part of this policy, be paid by the Commissioner.

When necessary to facilitate the project construction sequencing or the physical characteristics of the project site, temporary overhead lines may be installed in connection with projects selected for replacement with underground facilities in accordance with this policy. The cost of this temporary work shall be apportioned among the locality, utility owner and the department in accordance with the cost responsibility determination. If temporary work is accomplished solely to accelerate the construction of the highway project, the cost of the temporary work for this purpose shall be paid as a project cost.

§ 6. General requirements.

The local governing body shall enact or have enacted an ordinance or regulation establishing an underground utility district, corridor, or area. The ordinance shall require that all new utility facilities, publicly or privately owned, be installed underground and should include criteria where modifications to existing overhead facilities will necessitate placing the replacement utility facilities underground. The boundaries of the underground utility district, corridor or area should be based on logical termini points at which changes in physical characteristics occur.

The local governing body shall provide the department with a resolution, in connection with a proposed transportation project, requesting that the department have the utility relocations placed underground as a part of the project. They may choose to include all or a portion of the project area, provided the previously described ordinance or regulation is effective within the selected limits. A copy of the locality's ordinance or regulation shall be provided with the resolution.

The resolution or ordinance shall also include assurances that future utility facilities required for any proposed improvement, including street lighting, shall not be permitted to be placed overhead within any section of a street or roadway where the utility facility was placed underground in accordance with this policy. In addition, assurances shall be included in the resolution that the local governing body has the financial resources available to pay its share of the costs to place facilities underground as defined in § 7. and the appropriate official shall be authorized to sign an agreement with the department and the utility owner for the necessary utility relocation.

The commissioner shall determine which projects are eligible for federal funding and shall utilize the available federal funds on those projects which meet the department's overall program objectives. The decision to utilize or not utilize federal funds shall, in no way, affect the commissioner's financial participation under this policy. The locality shall not directly request federal funds for the payment of its share of any additional costs, as defined in § 7.

§ 7. Cost development and reimbursement.

The utility owner will prepare a plan for the theoretical replacement facility of sufficient detail that a cost estimate can be prepared. The plan may be red-lined on the highway plan sheets and a copy is to be submitted to the department. An engineering estimate of the theoretical replacement facility cost shall be prepared by the utility owner using the cost estimating system approved for use on highway relocation projects. This estimate shall include all customary overhead loadings.

The department shall prepare the cost responsibility determination form (UT-9) in accordance with the department's Utility Relocation Procedures Manual, based on the existing facilities in conflict with the proposed construction and those that would be relocated based on the theoretical replacement facility plan. In accordance with the procedures, the utility owner shall provide any additional compensable rights documentation to the department in order that final cost reimbursement can be developed. This proration of cost shall be defined as a percentage and shall be applicable to the theoretical replacement facility cost.

The utility owner shall prepare a plan and estimate assembly, as defined in the Utility Relocation Procedures Manual, for the utility relocations proposed to be constructed in connection with the highway project. The plan and estimate shall be based on placing utility facilities underground for the portion of the project selected by the locality in accordance with this policy. Whenever it is in the best interests of all involved parties, a portion or all of the utility relocation work (such as conduits, manholes, etc.) may be included in the highway contract as work to be performed by the highway contractor. Any work included in the highway contract shall be constructed to the standards and specifications of the utility owner. Appropriate special provisions should be prepared regarding coordination of the contract work with work to be performed by the utility owner. The necessary changes to the customer service line between the distribution facility and the meter base shall be included in the utility owner's plan and estimate as a part of the additional project expense. Any necessary conversion of the customer's premise wiring or service cable location shall be included in the additional cost to place utility facilities underground. The locality, utility owner and the department shall agree on the method to facilitate any necessary changes to the customer's service location.

The cost of the replacement easements required for the theoretical replacement facility will be a normal project cost in accordance with the Utility Relocation Procedures Manual. The department may include a portion or all of the cost of the acquisition of additional replacement utility easements required by placing the facilities underground in the cost of the project.

The cost estimate prepared for the proposed utility relocation shall include a breakout and deduction of any betterment cost resulting from any upgrading included at the election of the utility owner. In addition, the final estimated relocation cost shall be allocated to the appropriate responsible party in accordance with the following reimbursement schedule. If it is elected that utilities be placed underground in accordance with this policy, the Commissioner shall reimburse the utility companies for nonbetterment utility relocation work as follows:

1. Part A Cost. The theoretical replacement facility cost developed by the utility owner and accepted by the department.

Reimbursed by:

Project funds - 98% of the portion of the prorate percentage shown as state cost on the cost responsibility determination form (UT-9) prepared for the project.

Locality - 2.0% of the portion of the prorate percentage shown as state cost on the cost responsibility determination form (UT-9) prepared for the project.

Utility Company - that portion of the prorate percentages shown as utility cost on the cost responsibility determination form (UT-9) prepared for the project.

2. Part B Cost. The additional cost to place the utility facilities underground in accordance with this policy. This is the mathematical difference between the proposed estimated underground relocation cost, accepted by the department, and the theoretical replacement facility cost.

Reimbursed by:

Project Funds - 50% of the additional cost. The maximum reimbursement to utility companies from project funds for any Part B cost shall not exceed $3,000,000 on any project.

Locality - 50% of the additional cost.

Utility Company - None.

After all parties' share of the reimbursement cost has been determined in accordance with the above, the sum of all parts shall be computed for each party. The utility company's portion of the total estimated cost shall be established as a flat charge to be deducted from the actual costs accumulated for the project. The remaining portion of the estimated cost shall be computed as a percentage to be borne by project funds and a percentage to be borne by the locality. The proposed plan and estimate shall be approved and authorized by the department.

The utility owner shall submit billings to the department, deducting any betterment credit and any applicable flat charge, indicating each party's share of the actual relocation cost. The department shall reimburse the utility company for work performed and shall charge the locality's Part B costs to an accounts receivable code. The department will bill the locality as charges are accumulated and the locality shall reimburse the department within 30 days upon receipt of an invoice. A final billing shall be prepared in accordance with the Utility Relocation Procedures Manual, and will be subject to the audits as outlined in the agreement.

§ 8. Effective date.

This policy shall not be retroactive to utility relocation work which was authorized for construction before the effective date of this policy.

§ 9. Commonwealth Transportation Board's direction.

The Commonwealth Transportation Board, due to its concern with the overall availability of transportation funds, established a ceiling on how much project funds should be expended for the purpose of placing utility facilities underground. It directed that new transportation projects be established based on need and logical termini points and not in a manner to bypass the maximum expenditure per project ceiling.

VA.R. Doc. No. R93-714; Filed July 7, 1993, 9:47 a.m.

DEPARTMENT OF GENERAL SERVICES

Title of Regulation: **VR 330-04-04. Standards for Devices Used to Measure Light Transmittance through Vehicle Windshields.**

Statutory Authority: §§ 46.2-1052 and 46.2-1053 of the Code of Virginia.

Effective Dates: June 24, 1993, through June 23, 1994.

Preamble:

The Division of Purchases and Supply recommends approval of the request to adopt an Emergency Regulation Standard for devices used to measure light transmittance through vehicle windshields by windows. This standard was developed to comply with the regulatory requirements enacted by House Bill 1990 to revised §§ 46.2-1052 and 46.2-1053 of the Code of Virginia, which becomes effective July 1, 1993 These revisions to the Code of Virginia provide specific light transmittance requirements that are directly measurable on the vehicle by Law Enforcement Officers with a calibrated light transmittance instrument.

The current law is not effectively enforceable since tinting films of various light transmittance are approved in advance by the Superintendent of State Police. Subsequently, tinting films with minimum light transmittance are incorrectly placed on the front driver and passenger side windows causing a safety hazard to the driver during night driving. This also presents a serious safety problem to Law Enforcement Officers due to the inability to see any hostile threats from the driver and passengers.

These revisions to the Code of Virginia eliminate requirements that vehicle window tinting films be approved by the Superintendent of State Police. This Code revision requires that front side windows have a light transmittance of at least 50 percent and rear side windows and rear windows have at least 35 percent light transmittance. This Code revision also limits reflectance to no more than 20 percent, permits vehicles operating with medical waivers to have windshields with light transmittance of 70 percent or more and other windows with a light transmittance of 35 percent or more, and provides for determination by the Division of Purchases and Supply of standards for instruments used to measure light transmittance. Virginia Standard No. 493-72-010 has been developed to cover such instruments.

The Department of State Police has planned a public relations campaign for June 1993 to alert citizens to the revisions in the Code. The State Police proposes to provide free inspections during this period to check vehicle tinted windows for compliance with the new limits. In order for the State Police to check vehicle tinted windows, instruments must be purchased that provide the accuracy and reliability for future court testimony. Therefore, Virginia Standard 493-72-010 must be implemented on an emergency basis in order to purchase the light measuring instruments.

The Governor's approval of this emergency regulation standard will allow the Division of Purchases and Supply to implement this standard and approve light transmittance instruments for use by the Department of State Police and all other Law Enforcement Officers to assure the proper safety of the general public. As provided in the Code of Virginia, § 9-6.14:4.1, subsection C, paragraph 5, the Agency shall receive, consider, and respond to petition by any interested person at any time with respect to reconsideration or revision.

VR 330-04-04. Standards for Devices Used to Measure Light Transmittance through Vehicle Windshields.

§ 1. Scope.

This standard covers portable devices used within the Commonwealth of Virginia to measure light transmittance through vehicle windshields and windows pursuant to Sections 46.2-1052 and 46.2-1053 of the Code of Virginia. These devices may be a single unit or a two-piece unit. Such devices shall be provided with two standardized reference samples with light transmittance in the range of 30% and the range of 65%. The device light source shall be approximately midrange in the visible spectrum and shall exclude the ultraviolet and infrared spectrum.

§ 2. Definitions.

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

"Light Transmittance Measuring Device" means an instrument with a calibrated photo cell capable of measuring transmittance of light

§ 3. References.

The standardization of reference samples shall be traceable to the National Institute of Standards and Technology (NIST).

§ 4. Design configurations.

A. Single unit light transmittance measuring devices shall be compact with automatic on/off switch, digital readout to nearest percent, and suitable for sliding onto rolled down window with up to 1/4 inch glass thickness.

B. Two-piece unit light transmittance measuring devices shall be designed to be operated by one person on front windows, non-roll-down side windows and rear windows with up to 3/8 inch glass thickness. Two-piece unit shall

have digital readout to nearest percent and an alignment aide feature to maintain stable alignment throughout the period of measurement. Activation may be manual or automatic.

§ 5. Performance requirements.

A. Light transmittance measuring devices shall maintain unit accuracy within + or - 2.0 percentage points of reference samples, and shall maintain repeatability within + or - 1.0 percentage point. If the supply voltage is outside of the device's operating range, the device shall either produce a low battery signal or shall not produce an output reading, or both.

B. References sample shall be either glass or plastic based with a thickness of 1/8 inch to 1/4 inch and stable for at least one year. Reference samples shall provide a uniform surface reading with a variation not to exceed 1.0 percentage point as measured by a calibrated Spectrophotometer. Reference samples shall be permanently labeled or inscribed with the manufacturer's name and address, specific identification number, percent of light transmittance, and preparation date. Reference samples shall be recalibrated at least once per year by the manufacturer's qualified laboratory, the Division of Consolidated Laboratory Services (DCLS), or other laboratories certified by DCLS.

C. All devices used within the Commonwealth of Virginia to measure light transmittance through vehicle windshields and windows shall comply with this standard as approved by the Division of Purchases and Supply (DPS).

§ 6. Reconsideration or revision of regulation.

The Agency will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision of this regulation.

SUBMITTED BY:

/s/ Linwood G. Spindle for
Donald F. Moore, Director
DGS, Division of Purchases & Supply
Date: June 9, 1993.

THROUGH:

/s/ Ruby G. Martin
Secretary of Administration
Date: June 11, 1993

APPROVED BY:

/s/ Lawrence Douglas Wilder
Governor
Date: June 23, 1993

FILED WITH:

/s/ Joan W. Smith
Registrar of Reguations
Date: June 24, 1993

VA.R. Doc. No. R93-612; Filed June 24, 1993, 12:15 p.m.

BOARD OF HISTORIC RESOURCES

Title of Regulation: **VR 390-01-03.1. Evaluation Criteria and Procedures for Designations by the Board of Historic Resources.**

Statutory Authority: § 10.1-2205 of the Code of Virginia.

Effective Dates: June 25, 1993, through June 24, 1994.

Preamble:

Pursuant to new statutory requirements that became effective on July 1, 1992 the Board promulgated emergency regulation VR 390-01-03, Evaluation Criteria and Procedures for Designations by the Board, currently in effect. The Board has under consideration a permanent regulation that will supersede the emergency regulation. However, the Board will not have completed the promulgation of that permanent regulation by July 1, 1993. Legislation enacted by the General Assembly which goes into effect on July 1, 1993, imposes new requirements on agencies of state government for processing rulemakings under the Administrative Process Act (Act).

One of the new requirements of the amended Act mandates that agencies include in any notice of intended regulatory action (NOIRA) a statement of their intent to hold at least one public hearing or informational proceeding on the proposed regulation following the publication of that proposal for public comment. The NOIRA previously published by the Board did not contain such statement.

Because the permanent regulation must meet the new requirements of the Act, the Board will begin anew the process of promulgating a permanent regulation. Because the existing emergency regulation will expire before that new process can be completed, it is important that a new emergency regulation be in place during the additional time required by the new mandates of the Act.

In addition, the Board now has the benefit of the advice offered by the ad hoc advisory group previously formed to assist in the preparation of the permanent regulation. As a result, this emergency regulation includes improvements suggested by that group. For example, this emergency regulation includes guidelines on drawing boundaries for nominated properties, and it clarifies which properties qualify as adjacent to nominated property for the

purpose of notification.

Nature of Emergency:

The Board proposes to adopt this emergency regulation in order to ensure the Board's ability to carry out its statutory responsibility for the designation of historic landmarks after July 1, 1993. Because the Board is required by statute to promulgate its evaluation criteria and procedures in regulation, and because changes in the Act effective July 1, 1993 will delay promulgation of that permanent regulation beyond the expiration of current emergency regulations, this emergency regulation is necessary to avoid suspension of the Board's designation program.

Necessity for Action:

The adoption of this emergency regulation is critical to the Board's ability to designate property for inclusion in the Virginia Landmarks Register. The designation process is open to all interested persons, and the Board must meet regularly throughout the year to provide a timely response to applicants for designation. Further, inclusion of property in the Virginia Landmarks Register is a principal guideline for use by local governments and property owners in making land-use decisions that affect the significant historic resources of the Commonwealth. The new procedures and requirements of the Administrative Process Act do not allow for the promulgation of the permanent regulation in time to prevent serious disruption of the Board's orderly conduct of statutory responsibilities or to avoid significant inconvenience and hardship to interested persons.

Summary:

This emergency regulation is based on, provides amendments to, and supersedes emergency regulation VR 390-01-03 currently in effect. It will allow the Board to carry out its responsibility for designation of property while it promulgates a permanent regulation pursuant to the new requirements of the Act.

This emergency regulation will be enforced under applicable statutes and remain in full force and effect for one year from the effective date, unless sooner modified or vacated or superseded by permanent regulation adopted pursuant to the Act.

The Board will receive, consider, and respond to petitions by any interested persons at any time for the reconsideration of this regulation.

It is so ordered.

BY:

/s/ Hugh C. Miller
Director, Department of Historic Resources

Date: June 23, 1993

APPROVED BY:

/s/ Elizabeth H. Haskell
Secretary of Natural Resources
Date: June 17, 1993

APPROVED BY:

/s/ Lawrence Douglas Wilder
Governor of the Commonwealth
Date: June 22, 1993

FILED WITH:

/s/ Joan W. Smith
Registrar of Regulations
Date: June 25, 1993

VR 390-01-03.1. Evaluation Criteria and Procedures for Designations by the Board of Historic Resources.

PART I
DEFINITIONS; APPLICABILITY

§ 1.1. Definitions.

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

"Board" means the Virginia Board of Historic Resources.

"Building" means a structure created to shelter any form of human activity, such as a house, barn, church, hotel, or similar structure. Building may also refer to a historically related complex such as a courthouse and jail or a house and barn.

"Chief elected local official" means the mayor of the city or town or the chairman of the Board of Supervisors of the county in which the property is located.

"Department" means the Department of Historic Resources.

"Designation" means an act of official recognition by the Board of Historic Resources designed to educate the public to the significance of the designated resource and to encourage local governments and property owners to take the designated property's historic, architectural, archaeological and cultural significance into account in their planning, the local government comprehensive plan, and their decision making. Designation, itself, shall not regulate the action of local governments or property owners with regard to the designated property.

"Director" means the Director of the Department of Historic Resources.

"District" means a geographically definable area possessing a significant concentration, linkage, or continuity of sites, buildings, structures, or objects united by past events or aesthetically by plan or physical development. A district may also comprise individual elements separated geographically but linked by association or history. A district includes local tax parcels that have separate owners. *For purposes of this regulation, a historic district does not mean a locally established historic zoning district pursuant to § 15.1-503.2 of the Code.*

"Nomination form" means the form prescribed by the Board for use by any person in presenting a property to the Board for designation by the Board.

"Object" means a material thing of functional, aesthetic, cultural, historical or scientific value that may be, by nature or design, movable yet related to a specific setting or environment. Examples of objects include boats, monuments, and fixed pieces of sculpture.

"Owner or Owners" means those individuals, partnerships, corporations or public agencies holding fee simple title to property. Owner or owners does not include individuals, partnerships, corporations or public agencies holding easements or less than fee interests (including leaseholds) of any nature.

"Site" means the location of a significant event, a prehistoric or historic occupation or activity, or a building or structure, whether standing, ruined, or vanished, where the location itself maintains historical or archeological value regardless of the value of any existing structure.

"Structure" means a man-made work composed of interdependent and interrelated parts in a definite pattern of organization. In addition to buildings, structures include bridges, dams, canals, docks, walls, and other engineering works.

"Virginia Landmarks Register" means the official list of properties designated by the Board pursuant to § 10.1-2204(1) of the Code of Virginia, or by the Board's predecessor boards, as constituting the principal historical, architectural, and archaeological resources that are of local, statewide, or national significance.

§ 1.2. Applicability.

This regulation pertains specifically to the designation of property by the Board for inclusion in the Virginia Landmarks Register. Parallel evaluation criteria and administrative procedures applicable to nominations of properties to the National Park Service by the Department Director are set out in a separate regulation.

PART II
GENERAL PROVISIONS

§ 2. General provisions.

The Board is solely responsible for designating eligible properties for inclusion in the Virginia Landmarks Register.

Any person or organization may submit a completed nomination form to the Director for consideration by the Board. The form shall include the descriptive and analytical information necessary for the Board to determine whether the property meets the evaluation criteria for designation. Any person or organization may also request the Board's consideration of any previously prepared nomination form on record with the Department.

In determining whether to include a property in the Virginia Landmarks Register, the Board shall evaluate the property according to the Virginia Landmarks Register Criteria for Evaluation, as set out in § 3.1 of this regulation.

Prior to the formal designation of property by the Board, the Director shall follow the procedures set out in § 4.1 of this regulation concerning notification to property owners and chief local elected officials. Prior to the formal designation by the Board of a historic district, the Director shall also follow the procedures set out in § 4.2 of this regulation for conducting a public hearing.

PART III
RESOURCE EVALUATION CRITERIA

§ 3.1. Virginia Landmarks Register criteria for evaluation.

A. Historic significance.

In determining whether to designate a district, site, building, structure or object to the Virginia Landmarks Register, the Board must determine whether the district, site, building, structure, or object has historic significance. A resource shall be deemed to have historic significance if it meets one or more of the following four criteria:

(i) the resource is associated with events that have made a significant contribution to the broad patterns of our history; or

(ii) the resource is associated with the lives of persons significant in our past; or

(iii) the resource embodies the distinctive characteristics of a type, period, or method of construction or design, or represents the work of a master (for example, an individual of generally recognized greatness in a field such as architecture, engineering, art, or planning or a craftsman whose work is distinctive in skill or style), or possesses high artistic values, or is a district that taken as a whole embodies one or more of the preceding characteristics, even though its components may lack individual distinction; or

(iv) the resource has yielded or is likely to yield,

normally through archaeological investigation, information important in understanding the broad patterns or major events of prehistory or history.

A Virginia Landmarks Register resource can be of national historic significance, of statewide historic significance, or of local historic significance. The Board shall use the following criteria in determining the level of significance appropriate to the resource:

(i) A property of national significance offers an understanding of the history of the nation by illustrating the nationwide impact of events or persons associated with the property, its architectural type or style, or information potential.

(ii) A property of statewide historic significance represents an aspect of the history of Virginia as a whole.

(iii) A property of local historic significance represents an important aspect of the history of a county, city, town, cultural area, or region or any portions thereof.

B. Integrity.

In addition to determining a property's significance, the Board shall also determine the property's integrity. A property has integrity if it retains the identity for which it is significant. In order to designate a property, the Board must determine both that the property is significant and that it retains integrity. To determine whether a property retains integrity, the Board shall consider the seven aspects set out here. Based on the reasons for a property's significance the Board shall evaluate the property against those aspects that are the most critical measures of the property's integrity. The seven aspects are:

(i) Location - the place where the historic property was constructed or the place where the historic event occurred. In cases such as sites of historic events, the location itself, complemented by the setting, is what people can use to visualize or recall the event.

(ii) Design - the combination of elements that create the form, plan, space, structure, and style of the property. Design results from the conscious decisions in the conception and planning of a property and may apply to areas as diverse as community planning, engineering, architecture, and landscape architecture. Principal aspects of design include organization of space, proportion, scale, technology, and ornament.

(iii) Setting - the physical environment of the historic property, as distinct from the specific place where the property was built or the event occurred. The physical features that constitute setting may be natural or man-made, and may include topographic features, vegetation, simple man-made features such as paths or fences, and relationships of a building to other features or to open space.

(iv) Materials - the physical elements that were combined or deposited during a particular period of time and in a particular pattern or configuration to form a historic property. The integrity of materials determines whether or not an authentic historic resource still exists.

(v) Workmanship the physical evidence of the crafts of a particular culture or people during any given period in history or prehistory. Workmanship may be expressed in vernacular methods of construction and plain finishes or in highly sophisticated configurations and ornamental detailing. It may be based on common traditions or innovative period techniques. Examples of workmanship include tooling, carving, painting, graining, turning, or joinery.

(vi) Feeling - the property's expression of the aesthetic or historic sense of a particular period of time. Although it is itself intangible, feeling depends upon the presence of physical characteristics to convey the historic qualities that evoke feeling. Because it is dependent upon the perception of each individual, integrity of feeling alone will never be sufficient to support designation for inclusion in the Virginia Landmarks Register.

(vii) Association - the direct link between an important historic event or person and a historic property. If a property has integrity of association, then the property is the place where the event or activity occurred and is sufficiently intact that it can convey that relationship.

C. Boundaries for historic properties.

Boundaries for a historic district, property, building, structure, object or site are selected to encompass, but not to exceed, the full extent of the significant resources or land area making up the resources. The area should be large enough to include all historic features of the property, but should not include "buffer zones" or acreage not directly contributing to the significance of the property. The following features are to be used to mark the boundaries, as they reflect the resources: (i) legally recorded boundary lines; or (ii) natural topographic features such as ridges, valleys, rivers, and forests; or (iii) man-made features such as stone walls, hedgerows, the curblines of highways, streets, and roads; or (iv) areas of new construction.

D. Additional criteria considerations.

Criteria considerations. Ordinarily cemeteries, birthplaces, or graves of historical figures, properties owned by religious institutions or used for religious

purposes, structures that have been moved from their original locations, reconstructed historic buildings, properties primarily commemorative in nature, and properties that are less than 50 years old shall not be considered eligible for the Virginia Landmarks Register. However, such properties will qualify if they are integral parts of districts that do meet the criteria or if they fall within one or more of the following categories:

(i) a religious property deriving primary significance from architectural or artistic distinction or historical importance: a religious property shall be judged solely on these secular terms to avoid any appearance of judgment by government about the merit of any religion or belief; or

(ii) a building or structure removed from its original location but which is significant primarily for architectural value, or which is the surviving structure most importantly associated with a historic person or event; or

(iii) a birthplace or grave of a historical figure of outstanding importance if there is no appropriate site or building directly associated with his productive life; or

(iv) a cemetery which derives its primary significance from graves of persons of transcendent importance, from age, from distinctive design features, or from association with historic events, or

(v) a reconstructed building when accurately executed in a suitable environment and presented in a dignified manner as part of a restoration master plan, and when no other building or structure with the same association has survived; or

(vi) a property primarily commemorative in intent if design, age, tradition, or symbolic value has invested it with its own exceptional significance, or

(vii) a property less than 50 years old if it is of exceptional importance.

E. Revisions to Properties Listed in the Virginia Landmarks Register.

Four justifications exist for altering a boundary of a property previously listed in the Virginia Landmarks Register:

(i) professional error in the initial nomination;

(ii) loss of historic integrity;

(iii) recognition of additional significance;

(iv) additional research documenting that a larger or smaller area should be listed.

The Board shall approve no enlargement of a boundary unless the additional area possesses previously unrecognized significance in American history, architecture, archeology, engineering or culture. The Board shall approve no diminution of a boundary unless the properties being removed do not meet the Virginia Landmarks Register criteria for evaluation.

F. Removing Properties from the Virginia Landmarks Register.

Grounds for removing properties from the Virginia Register are as follows:

(i) the property has ceased to meet the criteria for listing in the Virginia Landmarks Register because the qualities which caused it to be originally listed have been lost or destroyed, or such qualities were lost subsequent to nomination and prior to listing;

(ii) additional information shows that the property does not meet the Virginia Landmarks Register criteria for evaluation;

(iii) error in professional judgment as to whether the property meets the criteria for evaluation; or

(iv) prejudicial procedural error in the designation process.

PART IV
PUBLIC NOTICE AND PUBLIC HEARINGS

§ 4.1. Written notice of proposed nominations.

In any county, city, or town where the Board proposes to designate property for inclusion in the Virginia Landmarks Register, the Department shall give written notice of the proposal to the governing body and to the owner, owners, or the owner's agent, of property proposed to be designated as a historic landmark building, structure, object, or site, or to be included in a historic district, and to the owners, or their agents, of all abutting property and property immediately across the street or road *or across any railroad or waterway less than 300 feet wide* .

§ 4.2. Public hearing for historic district; notice of hearing.

Prior to the designation by the Board of a historic district, the Department shall hold a public hearing at the seat of government of the county, city, or town in which the proposed historic district is located or within the proposed historic district. The public hearing shall be for the purpose of supplying additional information to the Board. The time and place of such hearing shall be determined in consultation with a duly authorized representative of the local governing body, and shall be scheduled at a time and place that will reasonably allow for the attendance of the affected property owners. The Department shall publish notice of the public hearing once a week for two successive weeks in a newspaper published

or having general circulation in the county, city, or town. Such notice shall specify the time and place of the public hearing at which persons affected may appear and present their views, not less than six days or more than twenty-one days after the second publication of the notice in such newspaper. In addition to publishing the notice, the Department shall give written notice of the public hearing at least five days before such hearing to the owner, owners, or the owner's agent, of each parcel of real property to be included in the proposed historic district, and to the owners, or their agents, of all abutting property and property immediately across the street or road *or across any railroad or waterway less than 300 feet wide* . Notice required to be given to owners by this subsection may be given concurrently with the notice required to be given to the owners by § 4.1 of this regulation. *A complete copy of the nomination report and a map of the historic district showing the boundaries shall be sent to the local jurisdiction for public inspection at the time of notice. The notice shall include a synopsis of why the district is significant.* The Department shall make and maintain an appropriate record of all public hearings held pursuant to this section.

§ 4.3. Mailings and affidavits; concurrent state and federal notice.

The Department shall send the required notices by first class mail to the last known address of each person entitled to notice, as shown on the current real estate tax assessment books. A representative of the Department shall make an affidavit that the required mailings have been made. In the case where property is also proposed for inclusion in the National Register of Historic Places pursuant to nomination by the Director, the Department may provide concurrent notice of and hold a single public hearing on the proposed state designation and the proposed nomination to the National Register.

§ 4.4. Public comment period.

The local governing body and property owners shall have at least thirty days from the date of the notice required by § 4.1, or, in the case of a historic district, thirty days from the date of the public hearing required by § 4.2 to provide comments and recommendations, if any, to the Director. The Director shall bring all comments received to the attention of the Board.

PART V
REVIEW AND ACTION BY THE DIRECTOR AND THE BOARD ON VIRGINIA LANDMARKS REGISTER PROPOSALS

§ 5.1. Requests for designations.

In addition to directing the preparation of Virginia Landmarks Register nominations by the Department, the Director shall act according to this section to ensure on behalf of the Board that the Virginia Landmarks Register nomination process is open to any person or organization.

The Director shall respond in writing within 60 days to any person or organization submitting a completed Virginia Landmarks Register nomination form or requesting Board consideration for any previously prepared nomination form on record with the Department. The response shall indicate whether or not the information on the nomination form is complete, whether or not the nomination form adequately evaluates the property according to the criteria set out in Part III of this regulation, and whether or not the property appears to meet the Virginia Landmarks Register criteria for evaluation set out in Part III. If the Director determines that the nomination form is deficient or incomplete, the Director shall provide the applicant with an explanation of the reasons for that determination, so that the applicant may provide the necessary additional documentation.

If the nomination form appears to be sufficient and complete, and if the property appears to meet the Virginia Landmarks Register criteria for evaluation, the Director shall comply with the notification requirements in Part IV of this regulation and schedule the property for presentation to the Board. The Director may require the applicant to provide a complete, accurate, and up-to-date list and annotated tax parcel map indicating all property owners entitled to written notification pursuant to Part IV of this regulation. Within 60 days of receipt of a sufficient and complete nomination and of all information necessary to comply with Part IV of this regulation, the Director shall notify the applicant of the proposed schedule for consideration of the nomination form by the Board.

If the nomination form is sufficient and complete, but the Director determines that the property does not appear to meet Virginia Landmarks Register criteria for evaluation, the Director shall notify the applicant, *the owner, and the Board* of his determination within 60 days of receipt of the nomination form. The Director need not process the nomination further, unless directed to do so by the Board pursuant to the Appeals process set out in § 6 of this regulation.

§ 5.2. Consideration by the Board.

The Director shall submit completed nomination forms and comments concerning the significance of a property and its eligibility for the Virginia Landmarks Register to the Board. Any person or organization which supports or opposes the designation of a property by the Board may petition the Board in writing *or orally* either to accept or reject a proposed designation. The Board shall review the nomination form and any comments received concerning the property's significance and eligibility for the Virginia Landmarks Register. The Board shall determine whether or not the property meets the Virginia Landmarks Register criteria for evaluation set out in Part III of this regulation. Upon determining that the property meets the criteria, the Board may proceed to designate the property, unless the owner or majority of owners object to the designation pursuant to § 5.3 of this regulation and § 10.1-2206.2 of the Code of Virginia.

§ 5.3. Owner Objections.

Upon receiving the notification required by § 4.1 of this regulation, any owner or owners of property proposed for designation by the Board shall have the opportunity to concur in or object to that designation. Property owners who wish to object to designation shall submit to the Director a notarized statement certifying that the party is the sole or partial owner of the property, as appropriate, and objects to the designation. If the owner of a property, *or the majority of the owners of a single property with multiple owners,* or the majority of the owners for a district or single property with multiple owners have objected to the designation prior to the meeting of the Board at which the property is considered for designation, the Board shall take no formal action to designate the property or district for inclusion in the Virginia Landmarks Register. Where formal designation has been prevented by owner objection, the Board may reconsider the property for designation upon presentation of notarized statements sufficient to indicate that the owner or majority of owners no longer object to the designation. *In the case of a reconsideration, the notification procedures set out in Part IV shall apply.*

Each owner of property in a district has one vote regardless of how many properties or what part of one property that party owns and regardless of whether the property contributes to the significance of the district.

§ 5.4. Boundary Changes.

The Director or the Board may initiate the process for changing the boundaries of a previously listed Virginia Landmarks Register property upon concluding that one or more of the conditions set out in § 3.1 D. of this regulation has been met. In addition, any person or organization may petition in writing to have a boundary changed.

A boundary alteration shall be considered as a new property nomination. In the case of boundary enlargements the notification procedures set out in Part IV of this regulation shall apply. However, only the additional area proposed for inclusion in the Virginia Landmarks Register shall be used to determine the property owners and the adjacent property owners to receive notification pursuant to § 4.1 and § 4.2 of this regulation. Only the owners of the property in the additional area shall be counted in determining whether a majority of owners object to listing in the Virginia Landmarks Register. In the case of a proposed diminution of a boundary, the Director shall notify the property owners and the chief elected local official and give them at least thirty days to comment prior to formal action by the Board.

§ 5.5. Removal of property from the Virginia Landmarks Register.

The Director or the Board may initiate the process for removing property from the Virginia Landmarks Register upon concluding that one or more of the conditions set out in § 3.1 E of this regulation have been met. Where the Director or the Board initiates the process, the Director shall notify the property owner(s) and the chief elected local official and give them at least thirty days to comment prior to formal action by the Board. In addition, any person or organization may petition in writing for removal of a property from the Virginia Landmarks Register by setting forth the reasons the property should be removed on the grounds established in § 3.1 E of this regulation.

Upon receipt of a petition for removal of property from the Virginia Landmarks Register, the Director shall notify the petitioner within forty-five days as to whether the petition demonstrates that one or more of the conditions set out in § 3.1 E above have been met. Upon finding that one or more of those conditions have been met, the Director shall notify the property owners and the chief elected local official and give them at least thirty days to comment prior to formal action by the Board. Upon a finding by the Director that none of those conditions have been met, the petitioner may appeal to the Board as set out in § 6 of this regulation.

PART VI
APPEALS

§ 6. Appeals.

Any person or local government may appeal to the Board the failure or refusal of the Director to present a property to the Board, upon decision of the Director not to present the property for any reason when a completed nomination form or a petition for removal of property from the Register had been submitted to the Director pursuant to § 5.1 or § 5.5 of this regulation. The failure of the Director to respond to an applicant within the schedule set out in § 5.1 of this regulation for completed nominations or the schedule set out in § 5.5 for removal petitions may be deemed a failure or refusal to present the property to the Board. Upon the request of the Board, the Director shall complete the applicable notification and hearing requirements of this regulation and shall present the nomination form or the petition for removal to the Board for its consideration.

Subject to the provisions of the Code of Virginia and of this regulation, the Board has all final decision-making authority for adding properties to the Virginia Landmarks Register, for revising previous designations, and for removing properties from the Virginia Landmarks Register.

VA.R. Doc. No. R93-597; Filed June 25, 1993, 12:51 p.m.

DEPARTMENT OF HISTORIC RESOURCES

Title of Regulation: **VR 392-01-02.1. Evaluation Criteria and Procedures for Nominations of Property to the National Park Service.**

Statutory Authority: § 10.1-2202 of the Code of Virginia.

Effective Dates: June 25, 1993, through June 24, 1994.

Preamble:

Pursuant to new statutory requirements that became effective on July 1, 1992 the Department promulgated emergency regulation VR 392-01-02, Evaluation Criteria and Procedures for Nominations of Property to the National Park Service, currently in effect. The Department has under consideration a permanent regulation that will supersede the emergency regulation. However, the Department will not have completed the promulgation of that permanent regulation by July 1, 1993. Legislation enacted by the General Assembly which goes into effect on July 1, 1993, imposes new requirements on agencies of state government for processing rulemakings under the Administrative Process Act (Act).

One of the new requirements of the amended Act mandates that agencies include in any notice of intended regulatory action (NOIRA) a statement of their intent to hold at least one public hearing or informational proceeding on the proposed regulation following the publication of that proposal for public comment. The NOIRA previously published by the Department did not contain such a statement.

Because the permanent regulation must meet the new requirements of the Act, the Department will begin anew the process of promulgating a permanent regulation. Because the existing emergency regulation will expire before that new process can be completed, it is important that a new emergency regulation be in place during the additional time required by the new mandates of the Act.

In addition, the Department now has the benefit of the advice offered by the ad hoc advisory group previously formed to assist in the preparation of the permanent regulation. As a result, this emergency regulation includes guidelines on drawing boundaries for nominated properties, and it clarifies which properties qualify as adjacent to nominated property for the purpose of notification.

Nature of Emergency:

The Department proposes to adopt this emergency regulation in order to ensure the Director's ability to carry out his statutory responsibility for the nomination of property to the National Park Service for inclusion in the National Register of Historic Places after July 1, 1993. Because the Director must promulgate his evaluation criteria and procedures in regulation, and because changes in the Act effective July 1, 1993 will delay promulgation of that permanent regulation beyond the expiration of current emergency regulations, this emergency regulation is necessary to avoid suspension of the Department's nomination program.

Necessity for Action:

The adoption of this emergency regulation is critical to the Department's ability to nominate property for inclusion in the National Register of Historic Places. The nomination process is open to all interested persons, and the Director must process nominations regularly throughout the year to provide a timely response to applicants for designation. Further, inclusion of property in the National Register of Historic Places is a principal guideline for use by local governments, federal agencies, and property owners in making decisions that affect the significant historic resources of the Commonwealth. The new procedures and requirements of the Administrative Process Act do not allow for the promulgation of the permanent regulation in time to prevent serious disruption of the Department's orderly conduct of statutory responsibilities or to avoid significant inconvenience and hardship to interested persons.

Summary:

This emergency regulation is based on, provides amendments to, and supersedes emergency regulation VR 390-01-02 currently in effect. It will allow the Department to carry out its responsibility for designation of property while it promulgates a permanent regulation pursuant to the new requirements of the Act.

This emergency regulation will be enforced under applicable statutes and remain in full force and effect for one year from the effective date, unless sooner modified or vacated or superseded by permanent regulation adopted pursuant to the Act.

The Director will receive, consider, and respond to petitions by any interested persons at any time for the reconsideration of this regulation.

It is so ordered.

BY:

/s/ Hugh C. Miller
Director, Department of Historic Resources
Date: June 23, 1993

APPROVED BY:

/s/ Elizabeth H. Haskell
Secretary of Natural Resources
Date: June 17, 1993

APPROVED BY:

/s/ Lawrence Douglas Wilder

Governor of the Commonwealth
Date: June 23, 1993

FILED WITH:

/s/ Joan W. Smith
Registrar of Regulations
Date: June 25, 1993

VR 392-01-02.1. Evaluation Criteria and Procedures for Nomination of Property to the National Park Service.

PART I
DEFINITIONS; APPLICABILITY

§ 1.1. Definitions.

"Building" means a structure created to shelter any form of human activity, such as a house, barn, church, hotel, or similar structure. Building may also refer to a historically related complex such as a courthouse and jail or a house and barn.

"Chief elected local official" means the mayor of the city or town or the chairman of the Board of Supervisors of the county in which the property is located.

"Department" means the Department of Historic Resources.

"Determination of eligibility" means a decision by the Department of the Interior that a district, site, building, structure or object meets the National Register criteria for evaluation although the property is not formally listed on the National Register.

"Director" means the Director of the Department of Historic Resources. The Director of the Department is the State Historic Preservation Officer (SHPO) for Virginia.

"District" means a geographically definable area possessing a significant concentration, linkage, or continuity of sites, buildings, structures, or objects united by past events or aesthetically by plan or physical development. A district may also comprise individual elements separated geographically but linked by association or history. A district includes local tax parcels that have separate owners. *For purposes of this regulation, a historic district does not mean a locally established historic zoning district pursuant to § 15.1-503.2 of the Code.*

"Keeper of the National Register of Historic Places" or "Keeper" means the individual who has been delegated the authority by the National Park Service to list properties and determine their eligibility for the National Register.

"National Register of Historic Places" or "National Register" means the list established by the National Historic Preservation Act of 1966 for the purpose of identifying properties of value for their significance in history, architecture, archaeology, engineering, or culture.

"National Historic Landmark" is a resource designated by the Secretary of the Interior as having national significance.

"Nominate" means to propose that a district, site, building, structure, or object be listed in or determined eligible for listing in the National Register of Historic Places by preparing and submitting to the Keeper a nomination form, with accompanying maps and photographs which adequately document the property and are technically and professionally correct and sufficient. The nomination form shall be the National Register nomination form prescribed by the Keeper.

"Object" means a material thing of functional, aesthetic, cultural, historical or scientific value that may be, by nature or design, movable yet related to a specific setting or environment. Examples of objects include boats, monuments, and fixed pieces of sculpture.

"Owner or Owners" means those individuals, partnerships, corporations or public agencies holding fee simple title to property. Owner or owners does not include individuals, partnerships, corporations or public agencies holding easements or less than fee interests (including leaseholds) of any nature.

"Site" means the location of a significant event, a prehistoric or historic occupation or activity, or a building or structure, whether standing, ruined, or vanished, where the location itself maintains historical or archeological value regardless of the value of any existing structure.

"State Review Board" means that body, appointed by the State Historic Preservation Officer pursuant to the National Historic Preservation Act (P.L. 89-665), whose members represent the professional fields of American history, architectural history, historic architecture, prehistoric and historic archaeology, and other professional disciplines, and may include citizen members. The State Review Board reviews and approves National Register nominations concerning whether or not they meet the criteria for evaluation prior to their submittal to the National Park Service.

"Structure" means a man-made work composed of interdependent and interrelated parts in a definite pattern of organization. In addition to buildings, structures include bridges, dams, canals, docks, walls, and other engineering works.

§ 1.2. Applicability.

This regulation pertains specifically to the Director's nomination of property to the National Park Service for inclusion in the National Register of Historic Places or for designation as a National Historic Landmark. Parallel evaluation criteria and administrative procedures applicable to the designation of properties by the Virginia

Board of Historic Resources are set out in a separate regulation.

PART II
GENERAL PROVISIONS

§ 2. General provisions.

The Director, as State Historic Preservation Officer, is responsible for identifying and nominating eligible properties to the National Register of Historic Places. The State Historic Preservation Officer supervises the preparation of nomination forms for submission to the National Park Service.

Any person or organization may submit a completed National Register nomination form to the Director; any person or organization may also request the Director's consideration of any previously prepared nomination form on record with the Department.

In determining whether to nominate a property to the National Register, the Director shall evaluate the property according to the National Park Service's National Register Criteria for Evaluation, as set out in § 3.1 of this regulation. In determining whether to nominate a property for designation as a National Historic Landmark, the Director shall evaluate the property according to the National Park Service's National Historic Landmark Criteria, as set out in § 3.2 of this regulation.

Prior to submitting a nomination of property to the National Park Service, the Director shall follow the procedures set out in § 4.1 of this regulation concerning notification to property owners and chief local elected officials. Prior to submitting a nomination for a historic district, the Director shall also follow the procedures set out in § 4.2 of this regulation for conducting a public hearing.

The Director shall also conduct the nomination process pursuant to all applicable federal regulations as set out in 36 Code of Federal Regulations, Part 60 and in accordance with additional guidance issued by the National Park Service. Where this regulation establishes a more rigorous standard for public notification than does the corresponding federal regulation, this regulation shall apply. However, pursuant to § 10.1-2202 of the Code of Virginia, no provision of this regulation shall be construed to require the Director to conduct the National Register nomination process or the National Historic Landmark nomination process in a manner that is inconsistent with the requirements of federal law or regulation.

PART III
RESOURCE EVALUATION CRITERIA

§ 3.1. National Register criteria for evaluation.

A. Historic significance.

In determining whether to nominate a district, site, building, structure or object to the National Register, the Director must determine whether the district, site, building, structure or object has historic significance. A resource shall be deemed to have historic significance if it meets one or more of the following four criteria:

(i) the resource is associated with events that have made a significant contribution to the broad patterns of our history; or

(ii) the resource is associated with the lives of persons significant in our past; or

(iii) the resource embodies the distinctive characteristics of a type, period, design, or method of construction, or represents the work of a master (for example, an individual of generally recognized greatness in a field such as architecture, engineering, art, or planning, or a craftsman whose work is distinctive in skill or style), or possesses high artistic values, or is a district that taken as a whole embodies one or more of the preceding characteristics, even though its components may lack individual distinction; or

(iv) the resource has yielded, or is likely to yield, normally through archaeological investigation, information important in understanding the broad patterns or major events of prehistory or history.

A National Register resource can be of national historic significance, of statewide historic significance, or of local historic significance. The Director shall use the following criteria in determining the level of significance appropriate to the resource:

(i) A property of national significance offers an understanding of history of the nation by illustrating the nationwide impact of events or persons associated with the property, its architectural type or style, or information potential.

(ii) A property of statewide historic significance represents an aspect of the history of Virginia as a whole.

(iii) A property of local historic significance represents an important aspect of the history of a county, city, town, cultural area, or region or any portions thereof.

B. Integrity.

In addition to determining a property's significance, the Director shall also determine the property's integrity. A property has integrity if it retains the identity for which it is significant. In order to nominate a property to the National Register, the Director must determine both that the property is significant and that it retains integrity. To determine whether a property retains integrity, the

Director shall consider the seven aspects set out here. Based on the reasons for a property's significance the Director shall evaluate the property against those aspects that are the most critical measures of the property's integrity. The seven aspects are:

(i) Location - the place where the historic property was constructed or the place where the historic event occurred. In cases such as sites of historic events, the location itself, complemented by the setting, is what people can use to visualize or recall the event.

(ii) Design - the combination of elements that create the form, plan, space, structure, and style of the property. Design results from the conscious decisions in the conception and planning of a property and may apply to areas as diverse as community planning, engineering, architecture, and landscape architecture. Principal aspects of design include organization of space, proportion, scale, technology, and ornament.

(iii) Setting - the physical environment of the historic property, as distinct from the specific place where the property was built or the event occurred. The physical features that constitute setting may be natural or man-made, and may include topographic features, vegetation, simple man-made features such as paths or fences, and relationships of a building to other features or to open space.

(iv) Materials - the physical elements that were combined or deposited during a particular period of time and in a particular pattern or configuration to form a historic property. The integrity of materials determines whether or not an authentic historic resource still exists.

(v) Workmanship - the physical evidence of the crafts of a particular culture or people during any given period in history or prehistory. Workmanship may be expressed in vernacular methods of construction and plain finishes or in highly sophisticated configurations and ornamental detailing. It may be based on common traditions or innovative period techniques. Examples of workmanship include tooling, carving, painting, graining, turning, or joinery.

(vi) Feeling - the property's expression of the aesthetic or historic sense of a particular period of time. Although it is itself intangible, feeling depends upon the presence of physical characteristics to convey the historic qualities that evoke feeling. Because it is dependent upon the perception of each individual, integrity of feeling alone will never be sufficient to support nomination to the National Register.

(vii) Association - the direct link between an important historic event or person and a historic property. If a property has integrity of association, then the property is the place where the event or activity occurred and is sufficiently intact that it can convey that relationship.

C. Boundaries for historic properties.

Boundaries for a historic district, property, building, structure, object or site are selected to encompass, but not to exceed, the full extent of the significant resources or land area making up the resource. The area should be large enough to include all historic features of the property, but should not include "buffer zones" or acreage not directly contributing to the significance of the property. The following features are to be used to mark the boundaries, as they reflect the resources: (i) legally recorded boundary lines; or (ii) natural topographic features such as ridges, valleys, rivers, and forests; or (iii) man-made features such as stone walls, hedgerows, the curblines of highways, streets, and roads; or (iv) areas of new construction.

D. Additional criteria considerations.

Criteria considerations. Ordinarily cemeteries, birthplaces, or graves of historical figures, properties owned by religious institutions or used for religious purposes, structures that have been moved from their original locations, reconstructed historic buildings, properties primarily commemorative in nature, and properties that are less than fifty years old shall not be considered eligible for the National Register. However, such properties will qualify if they are integral parts of districts that do meet the criteria or if they fall within one or more of the following categories:

(i) a religious property deriving primary significance from architectural or artistic distinction or historical importance: a religious property shall be judged solely on these secular terms to avoid any appearance of judgment by government about the merit of any religion or belief; or

(ii) a building or structure removed from its original location but which is significant primarily for architectural value, or which is the surviving structure most importantly associated with a historic person or event; or

(iii) a birthplace or grave of a historical figure of outstanding importance if there is no appropriate site or building directly associated with his productive life, or

(iv) a cemetery which derives its primary significance from graves of persons of transcendent importance, from age, from distinctive design features, or from association with historic events, or

(v) a reconstructed building when accurately

executed in a suitable environment and presented in a dignified manner as part of a restoration master plan, and when no other building or structure with the same association has survived; or

(vi) a property primarily commemorative in intent if design, age, tradition, or symbolic value has invested it with its own exceptional significance, or

(vii) a property less than 50 years old if it is of exceptional importance.

E. Revisions to Properties Listed in the National Register.

Four justifications exist for altering a boundary of a property previously listed in the National Register:

(i) professional error in the initial nomination;

(ii) loss of historic integrity;

(iii) recognition of additional significance;

(iv) additional research documenting that a larger or smaller area should be listed.

The Director shall recommend no enlargement of a boundary unless the additional area possesses previously unrecognized significance in American history, architecture, archeology, engineering or culture. The Director shall recommend no diminution of a boundary unless the properties recommended for removal do not meet the National Register criteria for evaluation.

F. Removing Properties from the National Register

Grounds for removing properties from the National Register are as follows:

(i) the property has ceased to meet the criteria for listing in the National Register because the qualities which caused it to be originally listed have been lost or destroyed, or such qualities were lost subsequent to nomination and prior to listing;

(ii) additional information shows that the property does not meet the National Register criteria for evaluation;

(iii) error in professional judgment as to whether the property meets the criteria for evaluation; or

(iv) prejudicial procedural error in the nomination or listing process.

§ 3.2. National Historic Landmark criteria for evaluation.

A. Historic significance.

In determining whether to nominate a resource for designation as a National Historic Landmark, the Director must determine whether the resource has national significance. The quality of national significance is ascribed to districts, sites, buildings, structures and objects that possess exceptional value or quality in illustrating or interpreting the heritage of the United States in history, architecture, archeology, engineering and culture. A resource shall be deemed to have national significance for the purpose of this section if it meets one or more of the following six criteria:

(i) the resource is associated with events that have made a significant contribution to, and are identified with, or that outstandingly represent, the broad national patterns of United States history and from which an understanding and appreciation of those patterns may be gained; or

(ii) the resource is associated importantly with the lives of persons nationally significant in the history of the United States; or

(iii) the resource represents some great idea or ideal of the American people; or

(iv) the resource embodies he distinguishing characteristics of an architectural type specimen exceptionally valuable for a study of a period, style or method of construction, or that represent a significant, distinctive and exceptional entity whose components may lack individual distinction; or

(v) the resource is composed of integral parts of the environment not sufficiently significant by reason of historical association or artistic merit to warrant individual recognition but collectively compose an entity of exceptional historical or artistic significance, or outstandingly commemorate or illustrate a way of life or culture; or

(vi) the resource has yielded or may be likely to yield information of major scientific importance by revealing new cultures, or by shedding light upon periods of occupation over large areas of the United States. Such sites are those which have yielded, or which may reasonably be expected to yield, data affecting theories, concepts and ideas to a major degree.

B. Integrity.

In addition to determining the property's significance, the Director shall determine its integrity. As set out in § 3.1 B. of this regulation, a property's integrity is assessed by examining its location, design, setting, materials, workmanship, feeling, and association. A property nominated for designation as a National Historic Landmark must retain a high degree of integrity.

C. Additional National Historic Landmark criteria considerations.

Ordinarily, cemeteries, birthplaces, graves of historical figures, properties owned by religious institutions or used for religious purposes, structures that have been moved from their original locations, reconstructed historic buildings and properties less than 50 years old are not eligible for designation. Such properties, however, will qualify if they fall within the following categories:

(i) a religious property deriving its primary national significance from architectural or artistic distinction or historical importance; or

(ii) a building or structure removed from its original location but which is nationally significant primarily for its architectural merit, or for association with persons or events of transcendent importance in the nation's history and the association consequential; or

(iii) a site of a building or structure no longer standing but the person or event associated with it is of transcendent importance in the nation's history and the association consequential; or

(iv) a birthplace, grave or burial if it is of a historical figure of transcendent national significance and no other appropriate site, building or structure directly associated with the productive life of that person exists; or

(v) a cemetery that derives its primary national significance from graves of persons of transcendent importance, or from an exceptionally distinctive design or from an exceptionally significant event; or

(vi) a reconstructed building or ensemble of buildings of extraordinary national significance when accurately executed in a suitable environment and presented in a dignified manner as part of a restoration master plan, and when no other buildings or structures with the same association have survived; or

(vii) a property primarily commemorative in intent if design, age, tradition, or symbolic value has invested it with its own national historical significance; or

(viii) a property less than 50 years old, if it is of extraordinary national importance.

PART IV
PUBLIC NOTICE AND PUBLIC HEARINGS

§ 4.1. Written notice of proposed nominations.

In any county, city, or town where the Director proposes to nominate property to the National Park Service for inclusion in the National Register of Historic Places or for designation as a National Historic Landmark, the Department shall give written notice of the proposal to the governing body and to the owner, owners, or the owner's agent, of property proposed to be nominated as a historic landmark building, structure, object, or site, or to be included in a historic district, and to the owners, or their agents, of all abutting property and property immediately across the street or road *or across any railroad or waterway less than 300 feet wide* . The Department shall send this written notice at least 30 but not more than 75 days before the State Review Board meeting at which the nomination will be considered.

§ 4.2. Public hearing for historic district; notice of hearing.

Prior to the nomination of a historic district, the Department shall hold a public hearing at the seat of government of the county, city, or town in which the proposed historic district is located or within the proposed historic district. The public hearing shall be for the purpose of supplying additional information to the Director. The time and place of such hearing shall be determined in consultation with a duly authorized representative of the local governing body, and shall be scheduled at a time and place that will reasonably allow for the attendance of the affected property owners. The Department shall publish notice of the public hearing once a week for two successive weeks in a newspaper published or having general circulation in the county, city, or town. Such notice shall specify the time and place of the public hearing at which persons affected may appear and present their views, not less than six days or more than twenty-one days after the second publication of the notice in such newspaper. In addition to publishing the notice, the Department shall give written notice of the public hearing at least five days before such hearing to the owner, owners, or the owner's agent, of each parcel of real property to be included in the proposed historic district, and to the owners, or their agents, of all abutting property and property immediately across the street or road *or across any railroad or waterway less than 300 feet wide* . Notice required be given to owners by this subsection may be given concurrently with the notice required to be given to the owners by § 4.1 of this regulation. *A complete copy of the nomination report and a map of the historic district showing the boundaries shall be sent to the local jurisdiction for public inspection at the time of notice. The notice shall include a synopsis of why the district is significant.*

The Department shall make and maintain an appropriate record of all public hearings held pursuant to this section

§ 4.3. Mailings and affidavits; concurrent state and federal notice. The Department shall send the required notices by first class mail to the last known address of each person entitled to notice, as shown on the current real estate tax assessment books. A representative of the Department shall make an affidavit that the required mailings have been made. In the case where property is also proposed for inclusion in the Virginia Landmarks Register pursuant to designation by the Virginia Board of Historic Resources, the Department may provide concurrent notice of the

proposed state designation and the proposed nomination to the National Register.

§ 4.4. Public comment period.

The local governing body and property owners shall have at least thirty days from the date of the notice required by § 4.1, or, in the case of a historic district, thirty days from the date of the public hearing required by § 4.2 to provide comments and recommendations, if any, to the Director.

PART V
REVIEW AND SUBMISSION OF NOMINATIONS TO THE NATIONAL REGISTER

§ 5.1. Requests for nominations.

In addition to directing the preparation of National Register nominations by the Department, the Director shall act according to this section to ensure that, in accordance with federal regulations, the National Register nomination process is open to any person or organization.

The Director shall respond in writing within 60 days to any person or organization submitting a completed National Register nomination form or requesting consideration of any previously prepared nomination form on record with the Department. The response shall indicate whether or not the information on the nomination form is complete, whether or not the nomination form adequately evaluates the property according to the criteria set out in Part III of this regulation, and whether or not the property appears to meet the National Register criteria for evaluation set out in Part III. If the Director determines that the nomination form is deficient or incomplete, the Director shall provide the applicant with an explanation of the reasons for that determination, so that the applicant may provide the necessary additional documentation.

If the nomination form appears to be sufficient and complete, and if the property appears to meet the National Register criteria for evaluation, the Director shall comply with the notification requirements in Part IV of this regulation and schedule the property for presentation to the State Review Board. The Director may require the applicant to provide a complete, accurate, and up-to-date list and annotated tax parcel map indicating all property owners entitled to written notification pursuant to Part IV of this regulation. Within 60 days of receipt of a sufficient and complete nomination form and of all information necessary to comply with Part IV of this regulation, the Director shall notify the applicant of the proposed schedule for consideration of the nomination form by the State Review Board.

If the Director determines that the nomination form is sufficient and complete, but that the property does not appear to meet National Register criteria for evaluation, the Director need not process the nomination, unless requested to do so by the Keeper of the National Register pursuant to the appeals process set out in § 6 of this regulation.

Upon action on a nomination by the State Review Board, the Director shall, within 90 days, submit the nomination to the National Park Service, or, if the Director does not consider the property eligible for the National Register, so advise the applicant within 45 days.

§ 5.2. Consideration by the State Review Board.

The Director shall submit completed nomination forms or the documentation proposed for submission on the nomination forms and comments concerning the significance of a property and its eligibility for the National Register to the State Review Board. The State Review Board shall review the nomination forms or documentation proposed for submission on the nomination forms and any comments received concerning the property's significance and eligibility for the National Register. The State Review Board shall determine whether or not the property meets the National Register criteria for evaluation and make a recommendation to the Director to approve or disapprove the nomination.

§ 5.3. Submission of nominations to the National Park Service.

The Director shall review nominations approved by the State Review Board, along with all comments received. If the Director finds the nominations to be adequately documented and technically, professionally, and procedurally correct and sufficient and in conformance with National Register criteria for evaluation, the Director may submit them to the Keeper of the National Register of Historic Places, National Park Service, United States Department of the Interior, Washington, D.C. 20240. The Director shall include all written comments received and all notarized statements of objection with the nomination when it is submitted to the Keeper.

If the Director and the State Review Board disagree on whether a property meets the National Register criteria for evaluation, the Director may submit the nomination with his opinion concerning whether or not the property meets the criteria for evaluation and the opinion of the State Review Board to the Keeper of the National Register for a final decision on the listing of the property. The Director shall submit such disputed nominations if so requested within 45 days of the State Review Board meeting by the State Review Board or the chief elected local official of the county, city, or town in which the property is located but need not otherwise do so.

Any person or organization which supports or opposes the nomination of a property by a State Historic Preservation Officer may petition the Keeper during the nomination process either to accept or reject a nomination. The petitioner must state the grounds of the petition and request in writing that the Keeper substantively review the

nomination.

§ 5.4. Owner Objections.

Upon receiving the notification required by § 4.1 of this regulation, the owners of property proposed for nomination shall have the opportunity to concur in or object to the nomination. Any owner or owners of a private property who wish to object shall submit to the Director a notarized statement certifying that the party is the sole or partial owner of the private property, as appropriate, and objects to the listing.

If the owner of a private property, *or the majority of the owners of a single private property with multiple owners,* or the majority of the owners for a district or single property with multiple owners have objected to the nomination prior to the submittal of a nomination, the Director shall submit the nomination to the Keeper only for a determination of eligibility for the National Register. In accordance with the National Historic Preservation Act, the Keeper shall determine whether the property meets the National Register criteria for evaluation, but shall not add the property to the Register.

Each owner of private property in a district has one vote regardless of how many properties or what part of one property that party owns and regardless of whether the property contributes to the significance of the district.

§ 5.5. Boundary Changes.

The Director may initiate the process for changing the boundaries of a previously listed National Register property upon concluding that one or more of the conditions set out in §3.1 D. of this regulation has been met. In addition, any person or organization may petition in writing to have a boundary changed.

A boundary alteration shall be considered as a new property nomination. In the case of boundary enlargements the notification procedures set out in Part IV of this regulation shall apply. However, only the additional area proposed for nomination to the National Register shall be used to determine the property owners and the adjacent property owners to receive notification pursuant to § 4.1 and § 4.2 of this regulation. Only the owners of the property in the additional area shall be counted in determining whether a majority of private owners object to listing in the National Register. In the case of a proposed diminution of a boundary, the Director shall notify the property owners and the chief elected local official and give them an opportunity to comment prior to submitting any proposal to the Keeper of the National Register.

§ 5.6. Removal of property from the National Register.

The Director may initiate the process for removing property from the National Register upon concluding that one or more of the conditions set out in § 3.1 E of this regulation have been met. In addition, any person or organization may petition in writing for removal of a property from the National Register by setting forth the reasons the property should be removed on the grounds established in § 3.1 E of this regulation. With respect to nominations determined eligible for the National Register because the owners of private property object to listing, anyone may petition for reconsideration of whether or not the property meets the criteria for evaluation using these procedures.

The Director shall notify the affected owner(s) and chief elected local official and give them an opportunity to comment prior to submitting a petition for removal.

The Director shall respond in writing within 45 days of receipt to petitions for removal of property from the National Register. The response shall advise the petitioner of the Director's views on the petition. A petitioner desiring to pursue his removal request must notify the Director in writing within 45 days of receipt of the written views on the petition.

Within 15 days after receipt of the petitioner's notification of intent to pursue his removal request, the Director shall notify the petitioner in writing either that the State Review Board will consider the petition on a specified date or that the petition will be forwarded to the Keeper after notification requirements have been completed. The Director shall forward the petitions to the Keeper for review within 15 days after notification requirements or Review Board consideration, if applicable, have been completed. The Director shall also forward all comments received.

PART VI
NOMINATION APPEALS

§ 6. Appeals.

Any person or local government may appeal to the Keeper the failure or refusal of the Director to nominate a property, upon decision of the Director not to nominate a property for any reason when a National Register nomination form had been submitted to the Director pursuant to § 5.1 of this regulation, or upon failure of the Director to submit a nomination recommended by the State Review Board.

VA.R. Doc. No. R93-598; Filed June 25, 1993, 12:50 p.m.

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES (BOARD OF)

Title of Regulations: **Emergency Regulation for Limitation of XIX Payment of Medicare Part A Coinsurance; Nursing Facility 95% Rule.**
VR 460-03-4.1922. Methods and Standards for Establishing Payment Rates--Other Types of Care.
VR 460-03-4.1940:1. Nursing Home Payment System.

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

Effective Dates: June 29, 1993, through June 28, 1994.

Summary:

1. REQUEST: The Governor is hereby requested to approve this agency's adoption of the emergency regulation entitled Limitation of XIX Payment of Medicare Part A Coinsurance; Nursing Facility 95% Rule.

2. RECOMMENDATION: Recommend approval of the Department's request to take an emergency adoption action regarding Limitation of XIX Payment of Medicare Part A Coinsurance; Nursing Facility 95% Rule. 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 for
Bruce U. Kozlowski
Director
Date: June 23, 1993

3. CONCURRENCES:

/s/ Howard M. Cullum
Secretary of Health and Human Resources
Date: June 23, 1993

4. GOVERNOR'S ACTION:

/s/ Lawrence Douglas Wilder
Governor
Date: June 24, 1993

5. FILED WITH:

/s/ Joan W. Smith
Registrar of Regulations
Date: June 29, 1993

DISCUSSION

6. BACKGROUND: This State Plan for Medical Assistance amendment affects Attachment 4.19 B, Supplement 2, and the Nursing Home Payment System, Supplement to Attachment 4.19 D.

MEDICARE PART A COINSURANCE

The Department of Medical Assistance Services (DMAS) pays Medicare premiums for individuals who are eligible for both Medicare and Medicaid. This policy results in Medicare's coverage of their medical care, allowing for the use of 100% federal Medicare dollars, thereby reducing the demand for General Fund dollars.

Medicare pays inpatient skilled nursing under Medicare Part A (hospital insurance). Part A pays for all covered services in a skilled nursing facility for the first 20 days. For the next 80 days, it pays for all covered services except for a specific amount determined at the beginning of each calendar year. (i.e., Medicare pays for all covered services except for $84.50 per day which is the responsibility of the patient; in the case of the Medicaid recipient it is the responsibility of DMAS.

Federal statute and regulations allow DMAS to limit its coinsurance payments to the Medicaid maximum instead of the Medicare maximum allowable payment. Therefore, this emergency regulation and the accompanying State Plan Amendment 93-24 limit the payment of the Medicare Part A coinsurance amount paid by the Department so that the combined payments of Medicare and Medicaid do not exceed the Medicaid per diem rate for the specific nursing facility of the Medicare/Medicaid recipient's residence.

NURSING FACILITY 95% RULE

Currently, the DMAS sets a nursing facility's ("NF") interim plant rate for the year in approximately the ninth month of the NF's fiscal year. This could result in a new provider receiving substantial overpayment during the first nine months of the second fiscal year. The overpayment would be collected during the ninth month of the second year. This proposed amendment provides that the 95% occupancy rule will be applied on the first day of a new provider's second fiscal year. The effect of this amendment will be to eliminate any potential overpayments in the first nine months of the provider's second fiscal year.

7. AUTHORITY TO ACT: The Code of Virginia (1950) as amended, § 32.1-324, grants to the Director of the Department of Medical Assistance Services 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.

The Social Security Act § 1902(n) allows the payment for eligible individuals at the Medicaid maximum rate rather than the Medicare maximum payment.

Without an emergency regulation, this amendment to the State Plan 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 June 30, 1993, effective date.

8. FISCAL/BUDGETARY IMPACT: These issues are discussed in the order established above.

MEDICARE PART A COINSURANCE

This change affects approximately 150 providers who bill Medicaid for the Medicare Part A skilled nursing coinsurance. It should have no impact on Medicaid recipients since providers are required to accept Medicaid payment as payment in full. There are approximately 1,800 Medicaid recipients for whom Medicaid pays the Medicare Part A coinsurance. DMAS expects to save $1.6 million ($800,000 GF; and $800,000 NGF) in FY 94.

NURSING FACILITY 95% RULE

The DMAS expects this amendment to eliminate the potential overpayment of approximately $350,000 ($175,000 GF; $175,000 NGF) in fiscal year '94.

9. RECOMMENDATION: Recommend approval of this request to adopt this emergency regulation to become effective June 30, 1993. From its effective date, this regulation is to remain in force for one full year or until superseded by final regulations promulgated through the APA, whichever occurs first.

10. Approval Sought for VR 460-03-4.1922 and VR 460-03-4.1940:1.

Approval of the Governor is sought for an emergency modification of the Medicaid State Plan in accordance with the Code of Virginia § 9-6.14:4.1 (C)(5) to adopt the following regulation:

VR 460-03-4.1922. Methods and Standards for Establishing Payment Rates–Other Types of Care.

Item j. Payment of Title XVIII Part A and Part B Deductible/Coinsurance

Except for a nominal recipient copayment, if applicable, the Medicaid agency uses the following method:

	Medicare-Medicaid	Medicare-Medicaid/QMB	Medicare-QMB
Part A Deductible	☐ limited to State plan rates*	☐ limited to State plan rates*	☐ limited to State plan rates*
	☒ full amount	☒ full amount	☒ full amount
Part A** Coinsurance	☐ limited to State plan rates*	☐ limited to State plan rates*	☐ limited to State plan rates*
	☐ full amount	☐ full amount	☐ full amount

** This payment rate applies only to SNF patients only for XVIII Part A coinsurance.

Part B Deductible	☐ limited to State plan rates*	☐ limited to State plan rates*	☐ limited to State plan rates*
	☒ full amount	☒ full amount	☒ full amount
Part B Coinsurance	☒ limited to State plan rates*	☒ limited to State plan rates*	☒ limited to State plan rates*
	☐ full amount	☐ full amount	☐ full amount

*For those title XVIII services not otherwise covered by the title XIX state plan, the Medicaid agency has established reimbursement methodologies that are described in Attachment 4.19-B, Item(s) j.

VR 460-03-4.1940:1 Nursing Home Payment System.

E. On the first day of its second cost reporting period, a new nursing facilities interim plant rate shall be converted to a per diem amount by dividing it by the number of patient days computed as 95% of the daily licensed bed complement during the first cost reporting period.

~~E.~~ *F.* Any NF receiving reimbursement under new NF status shall not be eligible to receive the blended phase-in period rate under § 2.8.

~~F.~~ *G.* During its first semi-annual period of operation, a newly constructed or newly enrolled NF shall have an assigned SII based upon its peer group's average SII for direct patient care. An expanded NF receiving new NF treatment, shall receive the SII calculated for its last semi-annual period prior to obtaining new NF status.

§ 2.19. Final rate. The DMAS shall reimburse the lower of the appropriate operating ceilings, charges, or actual allowable operating cost for new NF's first cost reporting period of operation, subject to the procedures outlined above in § 2.18 A, C, E, and F.

Upon determination of the actual allowable operating cost for direct patient care and indirect patient care the per diem amounts shall be used to set its interim rate. If costs are below those ceilings, an efficiency incentive shall be paid at settlement of the first year cost report.

This incentive will allow a NF to be paid up to 25% of the difference between its actual allowable operating cost and the peer group ceiling used to set the interim rate. (Refer to 2.7.F)

Article 5.
Cost Reports.

§ 2.20. Cost report submission

A. Cost reports are due not later than 90 days after the provider's fiscal year end. If a complete cost report is not received within 90 days after the end of the provider's fiscal year, it is considered delinquent. The cost report shall be deemed complete when DMAS has received all of the following:

1. Completed cost reporting form(s) provided by DMAS, with signed certification(s);

2. The provider's trial balance showing adjusting journal entries;

VA.R. Doc. No. R93-653; Filed June 29, 1993, 4:11 p.m.

* * * * * * * * *

Title of Regulations: **Emergency Regulation for Home Health Agency Reimbursement; Criminal Record Checks for Nursing Facility Employees.**
VR 460-03-4.1923. Establishment of Rate Per Visit.
VR 460-03-4.1940:1. Nursing Home Payment System.
VR 460-03-4.1941. Uniform Expense Classification.

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

Effective Dates: July 1, 1993, through June 30, 1994.

Summary:

1. REQUEST: The Governor is hereby requested to approve this agency's adoption of the emergency regulation entitled Home Health Agency Reimbursement; Criminal Record Checks for Nursing Facility Employees. This regulation will provide the agency with the regulatory authority to conform the State Plan to the General Assembly's mandate in the Appropriations Act (Chapter 994, Items 313 P and T, respectively).

2. RECOMMENDATION: Recommend approval of the Department's request to take an emergency adoption action regarding Home Health Agency Reimbursement; Criminal Record Checks for Nursing Facility Employees. The Department intends to initiate the public notice and comment requirements contained in the Code of Virginia § 9-6.14:7.1.

/s/ Pat Godbout for
Bruce U. Kozlowski, Director
Date: May 27, 1993

3. CONCURRENCES:

/s/ Howard M. Cullum
Secretary of Health and Human Resources
Date: June 21, 1993

4. GOVERNOR'S ACTION:

/s/ Lawrence Douglas Wilder
Governor
Date: June 24, 1993

5. FILED WITH:

/s/ Joan W. Smith
Registrar of Regulations
Date: June 29, 1993

DISCUSSION

6. BACKGROUND: The sections of the State Plan for Medical Assistance affected by this action are: Supplement 3 to Attachment 4.19 B, Methods and Standards for Establishing Payment Rates – Other Types of Care, Supplement to Attachment 4.19 D, Methods and Standards for Establishing Payment Rates – Long-Term Care.

HOME HEALTH AGENCY REIMBURSEMENT

The 1993 General Assembly, in the Appropriations Act (Item 313.P), directed the Board of Medical Assistance Services to adopt revised regulations governing home health agency reimbursement methodologies, effective July 1, 1993, that would (i) eliminate the distinction between urban and rural peer groups; (ii) utilize the weighted median cost per service from 1989 for freestanding agencies as a basis for establishing rates; and (iii) reimburse hospital-based home health agencies at the rate set for freestanding home health agencies. The General Assembly also required that the adopted regulations comply with federal regulations regarding access to care. In addition, the Joint Legislative Audit and Review Commission recommended that a revision be made to the existing statistical methodology.

The agency's current policy, adopted effective July 1, 1991, changed the reimbursement methodology for home health services from cost-reimbursed to fee-based. It reimburses home health agencies (HHAs) at a flat rate per visit for each type of service rendered and for each level of service for each of three peer groups (urban, rural and Northern Virginia). It further divides the three peer groups into freestanding and hospital-based HHAs and establishes the Department of Health's agencies as a separate peer group.

By virtue of the 1993 General Assembly mandate, the peer groups will no longer distinguish between freestanding and hospital-based HHAs and there no longer will be urban and rural peer groups. The basis for establishing rates will be the weighted median cost per service from the 1989 cost-settled Medicaid cost reports filed by freestanding HHAs. Based on certain JLARC recommendations, the agency will modify its statistical approach by eliminating the adjustment to remove outliers before determining the peer group medians.

CRIMINAL RECORDS CHECK for NURSING FACILITY EMPLOYEES

The 1993 General Assembly, in Chapter 994 of the Acts of Assembly of 1993 (Item 313.T), directed the Department of Medical Assistance Services (DMAS) to adopt revised regulations and forms governing nursing facilities that would reimburse providers for the costs of complying with the requirement of obtaining criminal record background checks on nursing facility employees, as implemented by § 32.1-126.01 of the Code of Virginia.

Currently, nursing facilities are required, by § 32.1-126.01 of the Code of Virginia, to obtain, within 30 days of employment, an original criminal record clearance or an original criminal history record from the Central Criminal Records Exchange. The nursing facility is prohibited fro

hiring an individual who has been convicted of any of the crimes enumerated in § 32.1-126.01 of the Code of Virginia.

The providers record the cost of obtaining the criminal records check as an administrative and general cost and such costs are subject to the operating ceilings.

The 1993 General Assembly, in Chapter 994 of the Acts of Assembly of 1993 (Item 313.T) requires that the provider be reimbursed for the cost of obtaining the criminal records check, made by the Central Criminal Records Exchange, by a pass-through methodology similar to that used to reimburse plant costs. Reimbursement will be accomplished through completion of Cost Report Schedule J-2 by the provider. This form is being developed by the Department.

The requirements of § 32.1-126.01 of the Code of Virginia are being incorporated into the Nursing Home Payment System in Part VIII, § 8.1.

7. AUTHORITY TO ACT: The Code of Virginia (1950) as amended, § 32.1-324, grants to the Director of 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, these amendments to the State Plan 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, 1993, effective date established by the General Assembly.

8. FISCAL/BUDGETARY IMPACT: These two issues are discussed in the order established above.

HOME HEALTH AGENCY REIMBURSEMENT

Chapter 994 of the Acts of the Assembly item 313.P. directed the Department to take this action. DMAS funding has been reduced by $500,000 GF for this program change. The Department's calculation shows that, under the current HHA reimbursement methodology, it would pay an estimated $5.0 million in General Funds for fiscal year 1994. This amount is estimated to be reduced to $4.5 million in General Funds by (i) eliminating the distinction between urban and rural peer groups; (ii) utilizing the weighted median cost per service from 1989 for freestanding agencies as a basis for establishing rates; (iii) reimbursing hospital-based home health agencies at the rate set for freestanding home health agencies; and (iv) eliminating the adjustment to remove outliers. Therefore, the Department estimates that this amendment will result in a reduction in budgeted General Funds of approximately $500,000 for fiscal year 1994, the reduction is reflected in the FY 94 appropriation.

CRIMINAL RECORDS CHECK for NURSING FACILITY EMPLOYEES

The Appropriations Act, Chapter 994 of the Acts of the Assembly Item 313.T, provides $33,000 General Fund and directs the Department to take this action.

9. RECOMMENDATION: Recommend approval of this request to adopt this emergency regulation to become effective on July 1, 1993. From its effective date, this regulation is to remain in force for one full year or until superseded by final regulations promulgated through the APA, whichever occurs first. Without an effective emergency regulation, the Department would lack the authority to implement the 1993 General Assembly mandates on a timely basis.

10. APPROVAL SOUGHT for VR 460-03-4.1923, 460-03-4.1940:1 and 460-03-4.1941:1.

Approval of the Governor is sought for an emergency modification of the Medicaid State Plan in accordance with the Code of Virginia § 9-6.14:4.1(C)(5) to adopt the following regulation:

VR 460-03-4.1923. Establishment of Rate Per Visit.

§ 1. Effective for dates of services on and after July 1, 1991, the Department of Medical Assistance Services (DMAS) shall reimburse home health agencies (HHAs) at a flat rate per visit for each type of service rendered by HHAs (i.e., nursing, physical therapy, occupational therapy, speech-language pathology services, and home health aide services.) In addition, supplies left in the home and extraordinary transportation costs will be paid at specific rates.

§ 2. *Effective for dates of services on and after July 1, 1993,* DMAS shall establish a flat rate for each level of service for HHAs ~~located in~~ *by* ~~three~~ peer ~~groups~~ *group* . ~~These peer groups shall be determined by the geographic location of the HHA's operating office and shall be classified as: URBAN, RURAL, or NORTHERN VIRGINIA.~~ *There shall be three peer groups: (i) the Department of Health's HHAs, (ii) non-Department of Health HHAs whose operating office is located in the Virginia portion of the Washington DC-MD-VA metropolitan statistical area, and (iii) non-Department of Health HHAs whose operating office is located in the rest of Virginia.* The use of the Health Care Financing Administration (HCFA) designation of urban metropolitan statistical areas (MSAs) shall be incorporated in determining the appropriate peer group for these classifications.

~~§ 3. A separate grouping shall be established within each of the three peer groups to distinguish between~~

~~freestanding and hospital-based HHAs. This shall account for the higher costs of hospital-based agencies resulting from Medicare cost allocation requirements.~~ The Department of Health's agencies ~~shall be established~~ *are being placed* in ~~another~~ *a separate* peer group due to their unique cost characteristics (only one consolidated cost report is filed for all Department of Health agencies).

§ 3. Rates shall be calculated as follows:

1. Each home health agency shall be placed in its appropriate peer group.

2. Home health agencies' Medicaid cost per visit (exclusive of medical supplies costs) shall be obtained from the 1989 cost-settled Medicaid Cost Reports *filed by freestanding HHAs* . Costs shall be inflated to a common point in time (June 30, 1991) by using the percent of change in the moving average factor of the Data Resources, Inc. (DRI), National Forecast Tables for the Home Health Agency Market Basket.

3. To determine the flat rate per visit effective July 1, ~~1991~~ *1993* , the following methodology shall be utilized.

~~a. Each HHA's per visit rate shall be normalized for those peer groups that have different wage indexes as determined by Medicare for the MSAs in Virginia.~~

~~b. The normalized HHA peer group rates and visits shall be adjusted to remove any HHA per visit rates that are outside of plus or minus one standard deviation from the peer group mean to eliminate any data that might distort the median rate per visit determination.~~

~~c.~~ *a.* The peer group HHA's per visit rates shall be ranked and weighted by the number of Medicaid visits per discipline to determine a median rate per visit for each peer group at July 1, 1991.

~~d. The HHA's rate effective July 1, 1991, shall be the lower of the peer group median or the Medicare upper limit per visit for each discipline.~~

b. The HHA's peer group median rate per visit for each peer group at July 1, 1991 shall be the interim peer group rate for calculating the update through January 1, 1992. The interim peer group rate shall be updated by 100 percent of historical inflation from July 1, 1991 through December 31, 1992 and shall become the final interim peer group rate which shall be updated by 50 percent of the forecasted inflation to the end of December 31, 1993, to establish the final peer group rates. The lower of the final peer group rates or the Medicare upper limit at January 1, 1993, will be effective for payments from July 1, 1993 through December 1993.

~~e.~~ *c.* Separate rates shall be provided for the initial assessment, follow-up, and comprehensive visits for skilled nursing and for the initial assessment and follow-up visits for physical therapy, occupational therapy, and speech therapy. The comprehensive rate shall be 200% of the follow-up rate, and the initial assessment rates shall be $15 higher than the follow-up rates. The lower of the peer group median or Medicare upper limits shall be adjusted as appropriate to assure budget neutrality when the higher rates for the comprehensive and initial assessment visits are calculated.

4. The fee schedule shall be adjusted annually on or about January 1, based on the percent of change in the moving average of Data Resources, Inc., National Forecast Tables for the Home Health Agency Market Basket determined in the third quarter of the previous calendar year. The method to calculate the annual update shall be:

~~a. The HHA's peer group rate effective July 1, 1991, shall become the final peer group rate for the first partial year ending December 31, 1991, and shall be the interim peer group rate for calculating the update January 1, 1992. For all HHA peer groups the interim peer group rate shall be updated for 100% of historical inflation from July 1, 1991, through December 31, 1991, and shall become the final interim peer group rate which shall be updated by 50% of the forecasted inflation to the end of December 31, 1992, to establish the final peer group rate. The lower of the final peer group rates or the Medicare upper limit at January 1, 1992, will be effective for payments from January 1, 1992, through December 31, 1992.~~

~~There will be a one time adjustment made for those HHA final peer group rates that were established at July 1, 1991, based on the Medicare upper limits. The peer group median and the Medicare upper limit at July 1, 1991, shall be updated by 100% of historical inflation from July 1, 1991, through December 31, 1991. The final interim peer group rate shall be the lower of the two which shall be updated by 50% of the forecasted inflation to the end of December 31, 1992, to establish the final peer group. For these peer groups the lower of the final peer group rate or the Medicare upper limit at January 1, 1992, will be effective from July 1, 1992, through December 31, 1992.~~

~~b.~~ *a.* All subsequent year peer group rates shall be calculated utilizing ~~this same method with~~ the previous final interim peer group rate established on January 1 becoming the interim peer group rate at December 31 each year. The interim peer group rate shall be updated for 100% of historical inflation for the previous twelve months, January 1 through December 31, and shall become the final interim peer group rate which shall be updated by 50% of

the forecasted inflation for the subsequent 12 months, January 1 through December 31.

~~c.~~ *b.* The annual update shall be compared to the Medicare upper limit per visit in effect on each January 1, and the HHA's shall receive the lower of the annual update or the Medicare upper limit per visit as the final peer group rate.

VR 460-03-4.1940:1. Nursing Home Payment System.

PART VIII.

CRIMINAL RECORDS CHECKS FOR NURSING FACILITY EMPLOYEES.

§ 8.1 This section implements the requirements of § 32.1-126.01 of the Code of Virginia and Chapter 994 of the Acts of Assembly of 1993 (Item 313. T)

A. A licensed nursing facility shall not hire for compensated employment, persons who have been convicted of:

1. Murder,

2. Abduction for immoral purposes as set out in § 18.2-48, Code of Virginia,

3. Assaults and bodily woundings as set out in Article 4 (§ 18.2-51 et seq.) of Chapter 4 of Title 18.2,

4. Arson as set out in Article 1 (§ 18.2-77 et seq.) of Chapter 5 of Title 18.2,

5. Pandering as set out in § 18.2-355,

6. Crimes against nature involving children as set out in § 18.2-361,

7. Taking indecent liberties with children as set out in §§ 18.2-370 or 18.2-370.1,

8. Abuse and neglect of children as set out in § 18.2-371.1,

9. Failure to secure medical attention for an injured child as set out in § 18.2-314,

10. Obscenity offenses as set out in § 18.2-374.1, or

11. Abuse or neglect of an incapacitated adult as set out in § 18.2-369.

B. The provider shall obtain a sworn statement or affirmation from every applicant disclosing any criminal convictions or pending criminal charges for any of the offenses specified in section A above regardless of whether the conviction or charges occurred in the Commonwealth.

C. The provider shall obtain an original criminal record clearance or an original criminal record history from the Central Criminal Records Exchange for every person hired. This information shall be obtained within 30 days from the date of employment and maintained in the employees' files during the term of employment and for a minimum of five years after employment terminates whatever reason.

D. The provider may hire an applicant whose misdemeanor conviction is more than five years old and whose conviction did not involve abuse or neglect or moral turpitude.

E. Reimbursement to the provider will be limited to the actual charges made by the Central Criminal Records Exchange for the records requested. Such actual will be a pass-through cost which is not a part of the operating or plant cost components.

PART IX.
USE OF MMR-240.

All providers must use the data from computer printout MMR-240 based upon a 60-day accrual period.

PART X.
COMMINGLED INVESTMENT INCOME.

DMAS shall treat funds commingled for investment purposes in accordance with PRM-15, § 202.6.

PART XI.
PROVIDER NOTIFICATION.

DMAS shall notify providers of State Plan changes affecting reimbursement 30 days prior to the enactment of such changes.

PART XII.
START-UP COSTS AND ORGANIZATIONAL COSTS.

§ 12.1. Start-up costs.

A. In the period of developing a provider's ability to furnish patient care services, certain costs are incurred. The costs incurred during this time of preparation are referred to as start-up costs. Since these costs are related to patient care services rendered after the time of preparation, they shall be capitalized as deferred charges and amortized over a 60 month time frame.

VR 460-03-4.1941. Uniform Expense Classification.

7. Maintenance and Operation of Plant. Maintenance and operation of plant as defined in § 3.1.F. above, for NFs which dedicate space in the facility to NATCEPs activities one hundred percent (100%).

Maintenance and operation of plant expense shall be allocated to the NATCEPs operations in accordance with Medicare Principles of Reimbursement.

8. Other Direct Expenses. Any other direct costs associated with the operation of the NATCEPs. There shall be no allocation of indirect patient care operating costs as defined in § 3.1., except housekeeping and maintenance and operation of plant expenses.

B. Non Facility-Based NATCEPs Costs.

1. Contract Services. Cost of training and competency evaluation of nurse aides paid to an outside State approved nurse aide education program.

2. Supplies. Cost of supplies of textbooks and other required course materials provided during the nurse aide education programs by the NF.

3. License Fees. Cost of nurse aide registry application fees and competency evaluation testing fee paid by the NF on behalf of the certified nurse aides.

4. Travel. Cost for transportation provided to the nurse aides to the training or competency evaluation testing site.

§ 7.1. Criminal Records Background Check.

Cost of obtaining criminal records checks from the Central Criminal Records Exchange for all persons hired for compensated employment after July 1, 1993.

VA.R. Doc. No. R93-649; Filed June 29, 1993, 4:14 p.m.

DEPARTMENT OF SOCIAL SERVICES (BOARD OF)

Title of Regulation: **VR 615-01-47. Disability Advocacy Project.**

Statutory Authority: §§ 63.1-25 and 63.1-89.1 of the Code of Virginia.

Effective Dates: September 1, 1993, through August 31, 1994.

Preamble:

The Social Security Administration has two programs that provide monthly payments to persons with disabilities - Disability Insurance Benefits, Title II of the Social Security Act, and Supplemental Security Income. Title XVI of the Social Security Act. Disability Insurance Benefits are available to disabled persons who have worked for a substantial period of employment covered by Social Security. Supplemental Security Income is based on financial need and a disabled person need not have worked under Social Security to qualify. Individuals can receive both Disability Insurance Benefits and Supplemental Security Income.

Recipients of General Relief or State and Local Foste. Care assistance who are approved for federal disability benefits receive larger monthly benefits than the average General Relief or foster care payments. Their approval for these benefits reduces State and local government costs by transferring the individuals to programs funded entirely with federal dollars.

The Disability Determination Services program administered by the Virginia Department of Rehabilitative Services makes decisions on initial disability claims for the Social Security Administration.

If the applicant's disability claim is denied, there are three levels of administrative appeal: 1) reconsideration by Disability Determination Services if the initial application is denied; 2) Administrative Law Judge Hearing if the case is denied at the reconsideration; and 3) Appeals Council review if the claim is denied by the Administrative Law Judge. If these administrative appeals are unsuccessful, the applicant may then file a lawsuit in a Federal District Court.

Many individuals whose claims are denied are eligible for and entitled to receive disability benefits, but do not pursue the appeal or are not able to, on their own, fully develop the evidence necessary to prove their disability. Legal representation during the appeal process helps them to properly prepare and present their claims and receive sooner the federal disability benefits to which they are entitled.

When an individual who receives either the Interim Assistance component of the General Relief Program or State and Local Foster Care is found eligible for Supplemental Security Income, the initial check is sent by the Social Security Administration to the local department of social services. The agency in this way recoups money paid for assistance to the applicant from General Relief or State and Local Foster Care while the applicant's Supplemental Security Income claim was pending.

Approval of this emergency regulation by the Governor will allow agencies to determine and refer appropriate potential Supplemental Security Income claimants in the General Relief and Foster Care Programs to attorneys or advocates for legal representation during the appeal stages of the federal disability adjudication process.

Summary:

This regulation continues the Disability Advocacy Project established by emergency regulation and implemented in seven localities September 1, 1993 and allows for statewide implementation of the project. The Disability Advocacy Project is a program in which local departments of social services may refer

recipients of the Interim Assistance component of General Relief or State and Local Foster Care children for legal representation during the federal disability benefit appeal process. When this representation results in approved disability claims, the local agency receives the recipients' initial check for retroactive Supplemental Security Income benefits. The agency may recoup the amount of state and local financial assistance given the individuals while the Supplemental Security Income claims were pending approval. From this recoupment, the agency pays a fixed amount for the legal services given.

VR 615-01-47. Disability Advocacy Project.

§ 1. Definitions.

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

"Advocacy services" means legal services to help establish eligibility for federal disability benefits.

"Agency" means the local department of social services.

"Appeal process" means a review of the decision on the disability claim which can involve four steps– reconsideration, hearing before an administrative law judge, review by the Appeals Council, hearing in a federal court.

"Bar association" means a professional association for attorneys.

"Disability" means a physical or mental condition rendering a person unable to perform any meaningful work and this condition is expected to last at least 12 months or result in death.

"Disability Determination Services" means a program administered by the Virginia Department of Rehabilitative Services which makes decisions on disability claims for the Social Security Administration.

"Disability insurance benefits" means Title II of the Social Security Act which provides benefits to disabled persons who have worked for a substantial period in employment covered by Social Security.

"Equal Access to Justice Act" means an act which allows a federal court to grant an attorney a fee for proceedings before an administrative agency.

"Federal disability benefits" means disability insurance benefits or Supplemental Security Income or both.

"Foster child" means a child entrusted or committed to foster care for whom the cost of maintenance is funded by state and local foster care funds.

"General Relief Program" means an optional program financed by state and local funds to provide maintenance or emergency assistance to individuals who do not qualify for aid in a federal category. The program is supervised by the state Department of Social Services and administered by local agencies.

"Hearing before an administrative law judge" means the first level formal fair hearing of decisions of the Social Security Administration to deny federal disability benefits. The hearing is conducted by an attorney who is an official of the Social Security Administration.

"Interim assistance" means a component of the General Relief Program that can provide assistance to individuals who have applied for Supplemental Security Income (SSI), who must apply for SSI, or are appealing an SSI decision. Individuals receiving interim assistance must sign an authorization allowing the Social Security Administration to send their initial back-due Supplemental Security Income benefits to the local agency which then reimburses its general relief budget for the amount of financial assistance given the individuals while their Supplemental Security Income benefits were pending approval.

"Legal aid attorney" means an attorney who provides legal services at no cost to people within certain income guidelines.

"Private attorney" means an attorney engaged in the private practice of law for which a fee is charged.

"Provider" means an attorney, or an individual working under the supervision of an attorney legally allowed to do so, who provides assistance in establishing an individual's eligibility for federal disability benefits.

"Recipient" means an individual who is receiving interim assistance.

"Reconsideration" means a review of the disability claim by the Disability Determination Services.

"Recoupment" means the amount reimbursed to the general relief or state and local foster care funds from an individual's back-due Supplemental Security Income benefits for assistance to that individual while approval for federal disability benefits was pending approval.

"Representative" means a person acting on behalf of a foster child.

"Review by the Appeals Council" means a review of the decisions of the administrative law judge by a review unit of the Social Security Administration. The Appeals Council either decides the case or issues an order returning it to an administrative law judge for further review.

"State and local foster care" means a method of funding the costs of maintenance for foster children not

eligible for federal (Title IV-E) payments.

"Supplemental Security Income" means Title XVI of the Social Security Act which provides benefits to a disabled person based on financial need.

§ 2. Referral.

The agency electing to provide disability advocacy services will identify recipients of the interim assistance component of general relief or children receiving state and local foster care who have received written notification from the Social Security Administration that their disability claims at the application or reconsideration level have been denied. Within five working days after the identification, the agency will send letters to the interim assistance recipients explaining advocacy services, offering to refer them to advocacy providers for legal representation during the appeal process, providing information on how the appeal would affect their general relief benefits, and advising them that they have five days from the receipt of this letter to contact the agency requesting advocacy services.

If the interim assistance recipient or the foster child's representative chooses to participate in the Disability Advocacy Project, he will be allowed to select a provider from a list of qualified advocacy providers with whom the agency has contracts or be allowed to select another provider if that provider meets the qualifications and agrees to enter into a contract with the agency.

The agency will have the interim assistance recipient sign a confidentiality form giving the agency permission to refer the recipient to the selected provider.

Within five working days after the selection, a referral letter will be sent by the agency to the selected advocacy provider.

§ 3. Duties of advocacy provider.

Advocacy providers will perform the following services:

1. Within five working days of receipt of a referral letter from the agency, send a letter to the interim assistance recipient or the child's representative, acknowledging the referral and instructing the recipient or child's representative to protect the filing date by filing a Request for Reconsideration or Request for a Hearing with the Social Security Administration within 60 days of the date of his denial notice.

2. Contact the interim assistance recipient or child's representative by mail and telephone, if necessary, to schedule an appointment for an interview. If the provider cannot contact the recipient or the recipient does not keep the appointment, the provider will promptly notify the agency.

3. During the interview with the interim assistance recipient or child's representative, provide legal advice and counsel regarding federal disability benefits and the appeal process. The provider will assess the potential eligibility of the recipient or child for federal disability benefits. The decision whether to proceed or not proceed in the appeal process must be made by the recipient or the child's representative after receiving legal advice from the provider. The recipient or the child's representative must request the services of the advocacy provider by signing the Social Security Form SSA-1696-U4 under the Appointment of Representative section.

4. Within 15 working days of the initial interview with the recipient or child's representative, send a notification letter to the recipient or child's representative with a copy to the agency stating whether or not the provider will accept this case for legal representation.

5. If the provider agrees to provide advocacy services, sign Social Security Form SSA-1696-U4 under the Acceptance of Appointment and Waiver of Fee sections. Copies of the form will be sent within five working days to the Social Security Administration and to the agency.

6. Assist in the completion and timely filing of any necessary Social Security forms requesting a reconsideration, hearing, or review of the hearing decision

7. Assist in obtaining and using medical, social, vocational evidence, or expert testimony which may substantiate the presence and severity of the disability.

8. Assist the recipient in making and keeping appointments for examinations.

9. Prepare for and adequately represent the recipient or child at interviews, hearings, or appeals related to application for Supplemental Security Income.

10. Notify the recipient or the child's representative of any denial and the right to appeal to the next level in the appeal process.

11. Notify the agency of any denial and the recipient's or child's representative's decision to proceed or not proceed to the next level in the appeal process.

12. Notify the recipient, the child's representative, and the agency when advocacy services have ended.

§ 4. Contracts.

Agencies shall contract with licensed legal aid or private attorneys, or advocates working under the

supervision of an attorney who may lawfully do so to provide legal representation in the appeal process. The providers must have previously provided successful representation to disability claimants during the reconsideration, administrative law judge hearing, Appeals Council, or federal district court levels of the federal disability adjudication process.

Qualified attorneys will be recruited by agencies giving written notice to their local legal aid and bar associations that contracts for legal representation of interim assistance recipients and foster children in the federal disability benefits appeal process will be available.

§ 5. Disbursement.

To receive payment, the advocacy provider must submit a petition and copy of the favorable Social Security Administration decision to the agency within 60 days of such a decision. Disbursement for legal representation will be made by the agency within 20 working days after the agency receives the initial Supplemental Security Income payment due the recipient or child.

No disbursement will be made unless the following have occurred:

1. The agency referred the recipient or child's representative for legal representation;

2. The recipient or child's representative requested the legal representation by signing the Appointment of Representative section of Social Security Form SSA-1696-U4;

3. The advocacy provider signed the Acceptance of Appointment and Waiver of Fee sections of Social Security Form SSA-1696-U4; and

4. The agency received the initial Supplemental Security Income payment for the recipient or child.

No disbursement will be made for legal services given before the date of the agency's referral letter. Providers shall not require from the recipient or child's representative prepayment of any fees, costs, or disbursement.

The disbursement made by the agency will represent payment in full for all legal services to the recipient or child in this process with no further obligation on the part of the state or local Department of Social Services, the recipient, nor the child's representative.

Neither the recipient, the child's representative, the state Department of Social Services, nor local agency shall be obligated to pay any additional fees, costs, or disbursement related to the provision of legal services in the appeal process including, but not limited to, payment for medical, psychological, or vocational consultations obtained to substantiate the disability claim. Under most circumstances, if pre-approved by Disability Determination Services, the Social Security Administration will cover the cost of these consultations.

Contracting attorneys will agree to waive their right to legal fees paid by the Social Security Administration from the initial check for retroactive disability insurance benefits due the recipient or child should he be found eligible for both disability insurance benefits and Supplemental Security Income. An award for attorney's fees under the Equal Access to Justice Act will not be required to be waived.

The provider's fee will be paid entirely from the recoupment from the initial Supplemental Security Income payment for state and local financial assistance given the recipient or child while the Supplemental Security Income application was pending approval. The fee per favorable decision at the reconsideration level will be $300; at the hearing before an administrative law judge, $600; and at the Appeals Council or federal district court, $750. The fee may in no event exceed the recoupment for the state and local assistance paid.

/s/ Larry D. Jackson
Commissioner
Date: June 22, 1993

/s/ Lawrence Douglas Wilder
Governor
Date: June 24, 1993

/s/ Joan W. Smith
Registrar of Regulations
Date: June 29, 1993

VA.R. Doc. No. R93-633; Filed June 29, 1993, 1:51 p.m.

VIRGINIA WASTE MANAGEMENT BOARD

Title of Regulation: **VR 672-40-01. ~~Infectious~~** *Regulated Medical* **Waste Management Regulations.**

Statutory Authority: § 10.1-1402 of the Code of Virginia and Chapters 751, 773, and 774 of the 1993 Acts of Assembly.

Effective Dates: June 30, 1993, through June 29, 1994.

Preamble:

The Virginia Waste Management Board adopted VR 672-40-01, Virginia Infectious Waste Management Regulations on November 2, 1989, with an effective date of May 2, 1990. This was the first regulation to specifically address the requirements for medical waste management in Virginia. They included regulations for packaging, transportation, storage, treatment and disposal of medical waste; including

permitting of facilities for treatment, storage, and disposal and registration of transporters.

During the period since May 2, 1990, developments and innovations in the treatment methods for medical waste have been frustrated by the language of the regulations. Also, development of management techniques, such as mail-back programs for sharps, have become practical and offer great economic savings; however, they were not anticipated by the regulations. While the regulations overall have been successful, it became clear that these items needed to be addressed.

The 1992 General Assembly, in response to the attempted siting of several medical waste incinerators in Virginia, instituted a moratorium on permitting of off-site infectious waste incineration facilities. As part of the moratorium action, the General Assembly directed the Virginia Waste Management Board and the State Air Pollution Control Board to adopt rules to appropriately regulate the incineration of medical waste no later than September 1, 1993. The General Assembly directed that these regulations be adopted to protect the human health and the environment from the threat of inadequately regulated incinerator development.

The State Air Pollution Control Board has been engaged in the promulgation of new source performance standards for medical waste incinerators as a result of the direction of the General Assembly. The Virginia Waste Management Board has proposed new Regulated Medical Waste Management Regulations to amend and supersede existing regulations, Infectious Waste Management Regulations, as a response to the General Assembly direction. The promulgations of both Boards have been coordinated by sharing an advisory committee, holding joint events, and adopting parallel schedules for regulation development.

The schedule for the development of these regulations projects promulgation in late August, 1993, with an effective date soon thereafter. The schedule was developed prior to the amendment of the Administrative Process Act (APA) by the 1993 General Assembly. The revised APA requires that all regulatory development in progress and not complete by July 1, 1993, begin anew and conform to the new APA directions. Since the regulation development process for the two medical waste regulations will not result in promulgation before July 1, 1993: they must begin anew. The General Assembly direction to promulgate these regulations by September 1, 1993, cannot be met if the process begins anew.

Further, the moratorium ends December 1, 1993, and applications whose permits are being held by the moratorium will expect to receive a permit. Since the regulatory development process of the amended APA will not be complete before that date, only existing regulations would apply. The new and amended regulations appropriate for the regulation of medical waste incinerators would not be in effect as was required by the General Assembly's moratorium.

Nature of the Emergency

Amendment of the Administrative Process Act makes it impossible for the Virginia Waste Management Board to promulgate regulations for the appropriate management of medical waste incinerators before September 1, 1993. On that date, the moratorium on processing medical waste incinerator permit applications will end and the five existing permit applications and any new applications received would then be reviewed by the Department of Environmental Quality. Regulation revisions would not be final on December 1, 1993, when the moratorium on medical waste permit issuance would end, and permits for construction of incinerators could be issued.

Not only will the Waste Management Board fail to adopt appropriate regulations as directed by the General Assembly, but current regulations continue and are inadequate in at least two respects. First, the details of the regulations that specify the design and operational requirements for medical waste incinerators are not appropriate. Second, the current regulations offer only steam sterilization as an alternate to incineration of medical waste. The current regulations do not allow the three alternate technologies for treatment contained in the proposed regulations, nor do they provide a review mechanism for adopting other alternatives to incineration.

Necessity For Action:

In order to conform by September 1, 1993 to the direction of the General Assembly in its legislation for the moratorium on medical waste incinerators, regulations must be adopted that will supersede current regulations with regulations that adequately protect public health and the environment. The promulgation cannot be completed by September 1, 1993, under the amended APA which becomes effective July 1, 1993. As the amended APA requires redoing the public participation and promulgation effort, the emergency promulgation is the only recourse to assure protection of health and safety while meeting the legislative mandate.

Issuance of this emergency action will provide by September 1, 1993, the appropriate regulations for the management of medical waste incinerators as required by the General Assembly. The actions will provide alternative treatment methods that can be approved. This will allow the regulated community to select non-burn technology to manage their medical waste with equal or better protection of health and

environment. Several amendments to the regulations are included that more fairly deal with small clinic settings and home health care providers. Many small offices will be allowed to use sharps' mail back programs for the first time, and the total savings in waste management costs could be several million dollars.

Summary:

The adoption of the proposed regulations under the current Administrative Process Act as an emergency action will allow the Waste Management Board to adopt appropriate rules for the management of medical waste incinerators by September 1, 1993, the deadline established by the General Assembly. In the process, the regulations would be improved in several actions and will offer more choices to the regulated community in treating and managing medical waste which may result in less incineration. Promulgation of permanent regulations will proceed in accordance with the amended APA as rapidly as practicable.

These emergency regulations will be enforced under applicable statutes and will remain in full force and effect for one year from the effective date, unless sooner modified or vacated or superseded by other emergency or permanent regulations adopted pursuant to the Administrative Process Act.

The Waste Management Board will receive, consider, and respond to petitions by any interested person at any time for the reconsideration or revision of these regulations.

It is so ordered.

BY:

/s/ Richard N. Burton
Director, Department of Environmental Quality
Date: June 25, 1993

APPROVED BY:

/s/ Elizabeth H. Haskell
Secretary of Natural Resources
Date: June 17, 1993

/s/ Lawrence Douglas Wilder
Governor of the Commonwealth
Date: June 24, 1993

FILED WITH:

/s/ Ann M. Brown
Deputy Registrar of Regulations
Date: June 30, 1993

VR 672-40-01. Regulated Medical Waste Management Regulations.

PART I.
DEFINITIONS.

§ 1.1. *Definitions.*

The following words and terms, when used in these regulations, shall have the following meanings unless the context clearly indicates otherwise : . *Chapter 14 (§ 10.1-1400 et seq.) of Title 10.1 of the Code of Virginia defines words and terms which supplement those in these regulations. The Virginia Solid Waste Management Regulations, VR 672-20-10, define additional words and terms which supplement those in the statute and these regulations. When the statute, as cited, and the solid waste management regulations, as cited, each define a word or term, the definition of the statute is controlling.*

~~*"Abandoned materials"* means any material that is:~~

~~1. Disposed of;~~

~~3. Accumulated, stored or treated before or in lieu of being~~

"Act" or *"regulations"* means the federal or state law or regulation last cited in the context unless otherwise indicated.

~~*"Active life"* of a facility means the period from the initial receipt of waste at the facility until the executive director receives certification of final closure.~~

"Alternative treatment method" means a method for the treatment of regulated medical waste that is not incineration or steam

"Approved sanitary sewer system" means a network of sewers serving a facility which has been approved in writing by the Virginia Department of Health, including affiliated local health departments, on-site treatment systems; or they may be a part of a collection system served by a NPDES permitted treatment works.

"Ash" means the residual waste material produced from an incineration process or any combustion.

"ASTM" means the American Society for Testing and Materials.

"Authorized representative" means the manager, superintendent, or person of equivalent responsibility responsible for the overall operation of a facility or an operational unit (i.e., part of a facility). striped when subjected to temperatures that will provide sterilization of materials during treatment in an autoclave or similar device.

"Board" means the Virginia Waste Management Board.

"Certification" means statement of professional opinion based on knowledge and belief.

"Clean Air Act" means 42 USC 1857 et seq. of 1963 as amended by PL 89-272, PL 89-675, PL 90-148, PL 91-604, PL 92-157, PL 93-319, PL 95-95 ~~and~~ , PL 95-190 . *PL 95-623, PL 96-209, PL 96-300, PL 97-23, PL 97-375, PL 98-45, PL 98-213, and PL 100-202* .

"Closure" means the act of securing a *solid* waste management facility pursuant to the requirements of these regulations.

"Closure plan" means the plan for closure prepared in accordance with the requirements of these regulations.

"Commonwealth" means the Commonwealth of Virginia.

~~*"Compliance schedule"* means a time schedule of remedial measures to be employed on a solid waste management facility which will ultimately upgrade it to conform to these regulations.~~

"Conflict" means that provisions of two documents, such as regulations or a permit, do not agree and both provisions cannot be complied with simultaneously. If it is possible for both provisions to be complied with, no conflict exists.

"Container" means any portable enclosure in which a material is stored, transported, treated, disposed of, or otherwise handled.

"Contamination" means the degradation of naturally occurring water, air, or soil quality either directly or indirectly as a result of human activity; or the transfer of disease organisms, blood or other matter that may contain disease organisms from one material or object to another.

"Contingency plan" means a document setting out an organized, planned and coordinated course of action to be followed in the event of a fire, explosion, or release of *solid* waste or *solid* waste constituents which could threaten human health or the environment.

"CWA" means the Clean Water Act (formerly referred to as the Federal Water Pollution Control Act) ; ~~Pub. L. 92-500, as amended by Pub. L. 95-217 and Pub. L. 95-576~~ , 33 USC 1251 et seq. *; PL 92-500, PL 93-207, PL 93-243, PL 93-592, PL 94-238, PL 94-273, PL 94-558, PL 95-217, PL 95-576, PL 96-148, PL 96-478, PL 96-483, PL 96-510, PL 96-561, PL 97-35, PL 97-117, PL 97-164, PL 97-216, PL 97-272, PL 97-440, PL 98-45, PL 100-4, PL 100-202, PL 100-404, and PL 100-668* .

"Department" means the Virginia Department of ~~Waste Management~~ *Environmental Quality* .

"Director" means the director of the Department of Environmental Quality.

~~*"Discarded material"* means a material which is abandoned, recycled, or considered inherently waste-like (as determined by the Executive Director on a case by case evaluation).~~

"Discharge" or *"waste discharge"* means the accidental or intentional spilling, leaking, pumping, pouring, emitting, emptying, or dumping of *solid* waste into or on any land or state waters.

"Disposal" means the discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste ~~or waste~~ into or on any land or water so that such solid waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including ground waters.

"Disposal facility" means a facility or part of a facility at which *solid* waste is intentionally placed into or on any land or water, and at which the *solid* waste will remain after closure.

"Domestic sewage" means untreated sanitary wastes that pass through a sewer system.

~~*"Draft permit"* means a document prepared under § 9.18 of these regulations indicating the executive director's tentative decision to issue or deny, modify, revoke and reissue, terminate, or reissue a permit.~~

~~"Emergency permit" means a permit issued where an imminent and substantial endangerment to human health or the environment is determined to exist by the executive director.~~

"EPA" means the U.S. Environmental Protection Agency.

"Etiologic agents" means organisms defined to be etiologic agents in Title 49 of the U.S. Code of Federal Regulations at § 173.386.

~~"Executive director" means the executive director of the Department of Waste Management.~~

~~"Facility (activity)" means waste management facility as defined.~~

"Federal agency" means any department, agency, or other instrumentality of the federal government, any independent agency, or establishment of the federal government including any government corporation and the Government Printing Office.

~~*"Free liquids"* means liquids which readily separate from the solid portion of a waste under ambient temperature and pressure.~~

"Generator" means any person, by site location, whose act or process produces *solid* waste identified or listed in Part III of these regulations or whose act first causes a *solid* waste to become subject to these regulations.

"Hazardous material" means a substance or material which has been determined by the *United States* Secretary

of Transportation to be capable of posing an unreasonable risk to health, safety, and property when transported in commerce, and which has been so designated under 49 CFR 171 and 173.

"Hazardous waste" means any solid waste defined as a "hazardous waste" by the Virginia Hazardous Waste Management Regulations.

"Highly leak resistant" means that leaks will not occur in the container even if the container receives severe abuse and stress, but remains substantially intact.

"Highly puncture resistant" means that punctures will not penetrate the container even if the container receives severe abuse and stress, but remains substantially intact.

~~*"Incinerator"* means any enclosed device using controlled flame combustion.~~

~~*"Infectious waste"* means solid wastes defined to be infectious wastes in Part III of these regulations.~~

"Inherently waste like" means having one or more characteristics that are associated with *solid* waste materials and determined by the ~~executive~~ director to be a solid waste , *as prescribed in Part III of the Solid Waste Management Regulations, VR 672-20-10* .

~~*"In operation"* means facilities that are treating, storing, or disposing of waste.~~

~~*"Landfill"* means a disposal facility or part of a facility where waste is placed in or on land and which is not a land treatment facility, a surface impoundment, or an injection well.~~

"Limited small clinic" means an office where fewer than 10 health care professionals practice, where no surgical procedures are performed, and that is under the total administrative control of one or more of those practitioners. A person practicing under a license issued by the Department of Health Professions is a health care pofessional.

~~*"Mode (of transportation)"* means any of the following transportation methods: rail, highway, air, or water.~~

~~*"Monitoring" means all procedures used to systematically inspect and collect data on operational parameters of the facility or on the quality of the air, ground water, surface water, or soils.~~

"Motor vehicle" means a vehicle, machine, tractor, trailer, or semitrailer, or any combination thereof, propelled or drawn by mechanical power and used in transportation or designed for such use.

"Nonstationary health care providers" means those persons who routinely provide health care at locations that change each day or frequently. This term includes traveling doctors, nurses, midwives, and others providing care in patients' homes, first aid providers operating from emergency vehicles, and mobile blood service collection stations.

"NPDES" or *"National Pollutant Discharge Elimination System"* means the national program for issuing, modifying, revoking, reissuing, terminating, monitoring, and enforcing permits pursuant to §§ *307*, 402, 318, and 405 of CWA. The term includes any state or interstate program which has been approved by the administrator *of the United States Environmental Protection Agency* .

"Off-site" means any site that does not meet the definition of on-site as defined in this part.

"On-site" means the same or geographically contiguous property which may be divided by public or private right-of-way, provided the entrance and exit between the properties is at a crossroads intersection, and access is by crossing as opposed to going along, the right-of-way. Noncontiguous properties owned by the same person but connected by a right-of-way which he controls and to which the public does not have access, is also considered on-site property.

~~*"Operator"* means the person responsible for the overall operation of a waste management facility.~~

"Owner" means the person who owns a *solid* waste management facility or part of a *solid* waste management facility.

"Package" or *"outside package"* means a packaging plus its contents.

"Packaging" means the assembly of one or more containers and any other components necessary to assure compliance with minimum packaging requirements under VRGTHM and these regulations.

"Pathological waste" means a solid waste that is human tissues, organs, body parts, fetuses, placentas, ~~effluences~~ *body fluids* or similar material: animal tissue, organs, body parts, fetuses, placentas, ~~effluence~~ *body fluids* or similar material from animals exposed to human pathogens for the purposes of testing or experimentation.

~~*"Permit"* means a control document issued by the Commonwealth pursuant to these regulations. The term "permit" includes any functional equivalent such as an authorization, license, or permit by rule.~~

"Permit by rule" means provisions of these regulations stating that a facility or activity is deemed to have a permit if it meets the requirements of the provision.

"Permitted waste management facility" or *" permitted facility"* means a *solid* waste treatment, storage, or disposal facility that has received a permit in accordance with the requirements of the ~~department~~ *regulations* .

~~"Person" means an individual, trust, firm, joint stock company, corporation (including a government corporation), partnership, association, state, municipality, commission, political subdivision of a state, any interstate body, or federal government agency.~~

~~*"Personnel" or "facility personnel"* means all persons who work at, or oversee the operations of, a waste management facility, and whose actions or failure to act may result in noncompliance with the requirements of these regulations.~~

"Physical construction" means excavation, movement of earth, erection of forms or structures, the purchase of equipment, or any other activity involving the actual preparation of the *solid* waste management facility.

"Principal corporate officer" means either:

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

2. The manager of one or more manufacturing, production, or operating facilities employing more than 250 persons or having gross annual sales or expenditures exceeding $25 million (in second-quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.

"Principal executive officer" means ~~for the purposes of these regulations, a principal executive officer is defined as~~ *either* :

1. For a federal agency:

a. The chief executive officer of the agency; or

b. A senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., regional administrators of EPA).

2. For a state agency: The chief executive officer of a department, board, commission, hospital, educational institution, or an authority.

3. For a municipality: The chief executive officer of a county, city, or town.

"Processing" means preparation, treatment, or conversion of *solid* waste by a series of actions, changes, or functions that bring about a decided result.

"Publicly owned treatment works" or *"POTW"* means any device or system used in the treatment (including recycling and reclamation) of municipal sewage or industrial wastes of a liquid nature which is owned by a state or municipality as defined by § 502(4) of the CWA.

"Putrescible waste" means solid waste which contains material capable of being decomposed by microorganisms.

"RCRA" means the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act ~~of 1976~~ (42 USC 6901 et seq.).

~~*"Recycled material"* means a material which is reused or reclaimed.~~

"Regulated medical waste" means solid wastes defined to be infectious wastes in Part III of these regulations.

~~*"Regulation"* means the control, direction and governance of solid and waste activities by means of the adoption and enforcement of laws, ordinances, rules and regulations.~~

"Sanitary sewer system" means ~~an approved sanitary sewer system~~ *a system for the collection and transport of sewage, the construction of which was approved by the Department of Health or other appropriate authority* .

"Secondary container" means a storage device into which a container can be placed for the purpose of containing any leakage of *solid* waste from ~~such emplaced~~ *the original* container.

"Section" means a subpart of these regulations and when referred to all portions of that part apply.

"Sharps" means needles, scalpels, knives, broken glass, syringes, pasteur pipettes and similar items having a point or sharp edge.

"Shipment" means the movement or quantity conveyed by a transporter of a *solid* waste between a generator and a designated facility or a subsequent transporter.

~~*"Signature"* means the name of a person written with his own hand.~~

"Site" means the land or water area upon which a facility or activity is physically located or conducted ; including , but not limited to , adjacent land used for utility systems such as repair, storage, shipping, or processing areas, or other areas incident to the controlled facility or activity.

~~"Sludge" means any solid, semisolid, or liquid waste generated from a municipal, commercial, or industrial wastewater treatment plant, water supply treatment plant, or air pollution control facility, exclusive of the treated effluent from a wastewater treatment plant.~~

"Solid waste" means any ~~discarded material that is not exempted by these regulations elsewhere or that is not excluded by variance granted by the executive director~~ *garbage, refuse, sludge and other discarded material*

including solid, liquid, semisolid or contained gaseous material, resulting from industrial, commercial, mining and agriculture operations, or community activities, but does not include (i) solid or dissolved material in domestic sewage, (ii) solid or dissolved material in irrigation return flows or in industrial discharges which are sources subject to a permit from the State Water Control Board, or (iii) source, special nuclear, or by-product material as defined by the Federal Atomic Energy Act of 1954, as amended .

"Solid waste management" means the systematic administration of activities which provide for the collection, source separation, storage, transportation, transfer, processing, treatment, and disposal of solid wastes whether or not such facility is associated with facilities generating such wastes or otherwise.

"Spill" means any accidental or unpermitted spilling, leaking, pumping, pouring, emitting, or dumping of wastes or materials which, when spilled, become wastes.

"Start-up" means the beginning of a combustion operation from a condition where the combustor unit is not operating and less than 140°F in all areas.

"Storage" means the holding, including during transportation, of *more than 64 gallons of* waste, at the end of which the *solid* waste is treated, disposed, or stored elsewhere. *Storage also means the transfer of a load of regulated medical waste from one vehicle to another during transportation, or the parking of a vehicle containing regulated medical waste during transport for 24 hours or more.*

~~"SW-846" means test methods for evaluating solid waste, physical/chemical methods, EPA publication SW-846.~~

"Training" means formal instruction, supplementing an employee's existing job knowledge, designed to protect human health and the environment via attendance and successful completion of a course of instruction in *solid* waste management procedures, including contingency plan implementation, relevant to those operations connected with the employee's position at the facility.

"Transfer facility" means any transportation related facility including loading docks, parking areas, storage areas, and other similar areas where shipments of *solid* waste are held during the normal course of transportation.

"Transportation" means the movement of *solid* waste by air, rail, highway, or water.

~~"Transporter" means a person engaged in the off-site transportation of waste by air, rail, highway, or water.~~

"Transport vehicle" means ~~a motor~~ *any* vehicle ~~, or rail car~~ used for the transportation of cargo ~~by any mode~~ . ~~Each cargo-carrying body (trailer, railroad freight car, etc.) is a separate transport vehicle.~~

~~"Treatment" means any method, technique, or process, including neutralization, designed to change the physical, chemical, or biological character or composition of any waste so as to neutralize such waste, as to recover energy or material resources from such wastes; so as to render such waste safe for transport or disposal, amenable for recovery, amenable for storage or reduced in volume.~~

"Vector" means a living animal, insect or other arthropod which ~~transmits~~ *may transmit* an infectious disease from one organism to another.

"VRGTHM" means Virginia Regulations Governing the Transportation of Hazardous Materials promulgated by the ~~Department of~~ *Virginia* Waste Management Board as authorized by §§ 10.1-1450 through 10.1-1454 of the Code of Virginia.

"Waste generation" means the act or process of producing a *solid* waste.

~~"Waste management" means the systematic control of the generation, collection, source separation, storage, transportation, processing, treatment, recovery, and disposal of wastes.~~

"Waste management facility" means all contiguous land and structures, other appurtenances, and improvements thereon used for treating, storing, and disposing of waste.

"Waste Management Unit" means any unit at a treatment, storage or disposal facility which is seeking or possesses a permit, *or* which has received solid waste (as defined in these regulations) at any time, including units that are not currently active.

PART II.
LEGISLATIVE AUTHORITY AND GENERAL INFORMATION.

§ 2.1. Authority for regulations.

These regulations are ~~promulgated~~ *issued* pursuant to the Virginia Waste Management Act, Chapter 14, Title 10.1 of the Code of Virginia ~~(hereinafter Code)~~ which authorizes the Virginia Waste Management Board to promulgate and enforce such regulations as may be necessary to carry out its duties and powers and the intent of that chapter the Virginia Waste Management Act and the federal acts.

§ 2.2. Purpose of regulations.

The purpose of these regulations is to establish standards and procedures pertaining to ~~infectious waste~~ *regulated medical waste* management in this Commonwealth; in order to protect the public health and public safety, and to enhance the environment and natural resources.

§ 2.3. Administration of regulations.

A. The Virginia Waste Management Board promulgates and enforces regulations that it deems necessary to protect the public health and safety, the environment, and natural resources.

B. The ~~executive~~ director is authorized to issue orders to require any person to comply with these regulations or to require such steps as he deems necessary to bring about compliance. Orders shall be issued in writing through certified mail and shall be issued in accordance with provisions of ~~the Administrative Process Act, Title 9, Chapter 1.1:1, Code of Virginia. The executive director is directed to administer these regulations in accordance with the Virginia Waste Management Act~~ *applicable law. Nothing contained in these regulations shall be considered to prevent or curtail the director in the exercise of any power granted to that office by statute, executive order, or separate action of the board* .

§ 2.4. Applicability of regulations.

A. These regulations apply to all persons who ~~generate infectious waste~~ *manage regulated medical waste* ; own or operate ~~infectious waste~~ *regulated medical waste* management facilities or allow ~~infectious waste~~ *regulated medical waste* management facilities to be operated on their property in this Commonwealth; to those who ~~intend~~ *seek approval* to engage in these activities and to all persons who manage ~~infectious waste~~ *regulated medical wastes* ; except those specifically exempted or excluded elsewhere in these regulations.

B. All existing ~~infectious waste~~ *regulated medical waste* management facilities, including those operating under a permit on the effective date of these regulations, shall comply with these regulations , *except as provided in this section. Existing permits will remain valid, except that conditions or waivers in existing permits that conflict with these amended regulations are void on the date six months from the effective date of these amended regulations. Operators of existing facilities are required to comply with these amended regulations within six months following their effective date and may comply at any time with any item contained in these regulations in lieu of a conflicting condition contained in an existing permit. A conflict shall only exist if it is not possible to obey both an item of the permit and an item of the regulations. If it is possible to obey both, no conflict shall exist.* ~~If the executive director determines that an existing permit is in conflict with these regulations, the permit will be amended to fully comply with these regulations.~~

§ 2.5. Severability.

A. *The board intends that these regulations be severable, so that* if any provision or part of these regulations is held invalid, unconstitutional or inapplicable to any person or circumstances, such invalidity, unconstitutionality or inapplicability shall not affect or impair the remaining provisions of these regulations and their application.

B. These regulations supersede and replace all previous regulations of the ~~Department of Waste Management~~ *Virginia Waste Management Board* to the extent that those prior regulations conflict with the regulations presented herein. Where there does not exist a conflict between the prior regulations and those presented herein, no replacement shall be deemed to occur and the prior regulations shall remain.

C. These regulations shall remain in effect until the Virginia Waste Management Board , ~~in subsequent formal action,~~ shall amend, rescind or otherwise alter them. ~~Such an action will be specific in its detail and cite these regulations by their title.~~ Where there appears to be a conflict ~~with~~ *between* these regulations and *other* regulations adopted at a future date, and such future regulations do not specifically clarify these regulations, these regulations shall be ~~superior~~ *controlling* except for the exemption of hazardous waste noted in Part III.

D. These regulations are completely separate from all federal or local governmental regulations.

§ 2.6. Relationship to other bodies of regulation.

A. Solid Waste Management Regulations.

These regulations are solid waste management regulations that address special needs for ~~infectious waste~~ *regulated medical waste* management. Any ~~infectious waste~~ *regulated medical waste* management facility shall also conform to general solid waste management regulations issued by the ~~department~~ *board* and any special solid waste management regulations such as those defining financial assurance requirements. If there is a ~~mutually exclusive~~ conflict between the details of regulations herein and the others, these regulations are ~~superior~~ *controlling* .

B. Hazardous Waste Management Regulations.

Any ~~infectious waste~~ *regulated medical waste* management facility shall also comply with any applicable sections of the hazardous waste management regulations issued by the department. If there is a ~~mutually exclusive~~ conflict between the details of regulations herein and the hazardous waste management regulations, the ~~later~~ *latter* regulations are ~~superior~~ *controlling* .

C. Hazardous Materials Transportation Regulations.

Intrastate shipment of hazardous materials are subject to regulations of the department. If there is a ~~mutually exclusive~~ conflict between the details of regulations herein and the hazardous materials transportation regulations, the ~~later~~ *latter* are ~~superior~~ *controlling* .

D. Regulations of other agencies.

If there is a ~~mutually exclusive~~ conflict between the regulations herein and adopted regulations of another agency of the Commonwealth, the provisions of these

regulations are set aside to the extent necessary to allow compliance with the regulations of the other agency.

E. Local government ordinances.

~~The department will notify local governing bodies of disposal facilities for infectious waste management that are proposed within their jurisdiction. The department is prevented from issuing permits for facilities for which it has not received a notice or waiver from the local governing body described in Title 10.1, § 10.1-1408.1 of the Code of Virginia. In general, local governing bodies operate under varying powers and adopt ordinances they deem appropriate.~~ Nothing herein either precludes or enables a local governing body to adopt ordinances. ~~While the department has the previously noted duty to defer to local governing body authority related to the zoning of a site, its technical and administrative regulations set out herein are completely independent of local government ordinances.~~ Compliance with one body of regulation does not insure compliance with the other; and, normally, both bodies of regulation must be complied with fully. ~~If compliance with any local government's ordinance would prevent compliance with a regulation of the Commonwealth contained herein, that local government's ordinance is preempted to the extent, and only to the extent, that the Commonwealth's regulations can be complied with fully.~~

~~§ 2.7. Effective date of regulations.~~

~~The effective date of these regulations is May 2, 1990.~~

§ 2.7. Innovative technology review process.

A. In order to assist the director in evaluating the appropriateness of new technologies, the director may, at his discretion, appoint a temporary Innovative Technology Review Panel as an advisory committee to the department. The panel shall consist of no less than seven and no more than 15 members. Members shall be citizens of the Commonwealth and include at least: one person knowledgeable in the field of microbiology, one person knowledgeable in the practice of medicine, one person knowledgeable in the practice of epidemiology, one person knowledgeable in federal or state regulations pertaining to the management or treatment of regulated medical waste, one person knowledgeable in the field of chemistry, one person knowledgeable in the practice of infection control, and one person knowledgeable in chemical or mechanical engineering.

B. The Innovative Technology Review Panel will meet as requested by the director and be supported by the department. The panel will review applications or petitions received from the director concerning technologies for the treatment or management of regulated medical waste as alternatives to those prescribed in regulations of the board or previously authorized by the director.

At the conclusion of each deliberation, the panel will report its findings to the director. In its deliberations, the panel will consider the effectiveness and reliability of the innovative technology relative to herein prescribed treatment methods, its potential to minimize solid waste generation and prevent pollution, and potential impacts on the public health or environment.

C. Following the receipt of the findings of the panel by the director, the director shall publish a notice in the Virginia Register. The notice shall describe the findings of the panel, methods of obtaining copies of the findings and related information, and procedures for petitioning for a variance to employ the innovative technology at a facility. The notice shall assert the director's intention to consider the findings of the panel in reaching a decision regarding petitions for a variance from these regulations that incorporate employment of the innovative technology.

D. Persons proposing to operate a facility using the innovative technology shall petition for and receive a variance for use of that technology at their site before its construction or installation. Procedures established in the Virginia Solid Waste Management Regulations, VR 672-20-10, §§ 9.2 and 9.6, shall be used in the petition for the variance and issuance of the variance.

PART III.
IDENTIFICATION AND LISTING OF ~~INFECTIOUS WASTE~~ *REGULATED MEDICAL WASTES*.

§ 3.1. General.

A. Purpose and scope.

1. Wastes identified in Part III are ~~infectious waste~~ *regulated medical wastes* which are subject to Virginia ~~Infectious Waste~~ *Regulated Medical Waste* Management Regulations.

2. The basic definition of solid waste appears in Part I along with other pertinent definitions and shall be referred to for the exact meaning of the terms used. Additional detailed descriptions of solid wastes, exclusions and listings required to arrive at the proper classification of wastes are the subject of this part.

~~3. Inherently waste-like materials. The executive director may rule that a specific material is inherently waste-like for the purposes of these regulations. Any person may petition the executive director for a ruling or the executive director may issue a rule without receiving a petition. In making a ruling, the executive director will consider the generation of the material, its use and the possible impact of the ruling on health and the environment.~~

B. Materials rendered ~~noninfectious~~ *nonregulated*.

Wastes that were once ~~infectious~~ *regulated* and were managed in accord with these regulations; and which,

because of treatment, are exempted under § 3.2 or are excluded under § 3.3 are no longer ~~infectious waste~~ *regulated medical wastes* and shall be managed in accordance with such other regulations of the ~~department~~ *board* that apply.

1. Packaging. Exempt or excluded *solid* waste shall not be packaged as ~~infectious waste~~ *regulated medical waste* or, if the *solid* waste was once ~~infectious~~ *regulated* , it shall bear a label clearly indicating that it is not ~~infectious~~ *regulated* and an explanation why it is no longer ~~infectious~~ *regulated* . *Solid* waste packaged as ~~infectious waste~~ *regulated medical waste* and not in compliance with this section ~~are infectious waste~~ *is regulated medical waste* .

2. Recordkeeping. If the *solid* waste is no longer ~~infectious~~ *regulated* because of treatment, the generator or permitted facility shall maintain a record of the treatment for three years afterward to include the date and type of treatment, type and amount of *regulated medical* waste treated, and the individual operating the treatment. Records for on-site treatment and shipping papers from commercial carriers for off-site treatment shall be maintained by the generator. Records for off-site treatment and shipping papers for off-site treatment shall be maintained by all permitted facilities. Generators or permitted facilities with more than one unit may maintain a centralized system of recordkeeping. All records shall be available for review upon request.

C. Recycled materials.

1. ~~Infectious waste~~ *Untreated regulated medical wastes* shall not be ~~recycled~~ *used, reused, or reclaimed* ; however, wastes that have been sterilized , *treated* or incinerated in accord with these regulations and are no longer ~~infectious waste~~ *regulated medical waste* may be *used, reused, or* reclaimed.

2. Bed linen, instruments, equipment and other materials that are routinely reused for their original purpose are not subject to these regulations until they are discarded and are a solid waste. ~~Handling of such reusable materials should follow the Center For Disease Control's "Guideline For Hospital Environmental Control: Cleaning, Disinfection, and Sterilization of Hospital Equipment," and "Guideline for Hospital Environmental Control: Laundry Services."~~ *These items do not include reusable carts or other devices used in the management of regulated medical waste (see § 5.6).*

D. Documentation of claims that materials are not solid wastes or are conditionally exempt from regulation.

Respondents in actions to enforce these regulations who raise a claim that a certain material is not a solid waste, or is conditionally exempt from regulation, shall demonstrate that they meet the terms of the exclusion or exemption. In doing so, they shall provide appropriate documentation to demonstrate that the material is not a waste, or is exempt from regulation.

§ 3.2. Exemptions to the regulations.

Exemptions to these regulations include:

1. Composting of sewage sludge at the sewage treatment plant of generation and not involving other solid wastes.

2. Land application of wastes regulated by the State Board of Health, the State Water Control Board, or any other state agency with such authority.

3. Wastewater treatment or pretreatment facilities permitted by the State Water Control Board by a NPDES permit.

4. Management of hazardous waste as defined and controlled by the Virginia Hazardous Waste Management Regulations to the extent that any requirement of those regulations is in conflict with regulations herein.

5. ~~These regulations shall not apply to~~ Health care professionals who generate ~~infectious waste~~ *regulated medical waste* in the provision of health care services in their own office ~~or~~ in the private home of a patient, *or in a limited small clinic, are exempt from those parts of these regulations listed in subdivision 6 of this section* provided the *regulated medical* waste is disposed of as authorized below:

a. With respect to ~~infectious waste~~ *regulated medical waste* other than sharps, the office or the patient's home ~~accumulates no more than 64 gallons~~ *does not accumulate sufficient regulated medical waste to create a storage facility as regulated by Part V* , the *regulated medical* waste is packaged and labeled in accord with § ~~4.3~~ *Part IV* , and the *regulated medical* waste is delivered ~~within 14 days~~ to a permitted ~~infectious waste~~ *regulated medical waste* treatment or storage facility *in accordance with Part VI* .

b. With respect to ~~infectious waste in the form of~~ sharps, the sharps are packaged in rigid, ~~leak-proof~~ *highly leak resistant* and *highly* puncture-resistant containers and labeled in accord with § ~~4.3~~ *Part IV* , and before filled to capacity, such containers are delivered to a permitted ~~infectious waste~~ *regulated medical waste* treatment or storage facility. Sharp containers ~~to be sterilized shall be orange in color and marked with autoclave tape; all other sharps containers~~ shall be red in color. ~~Where orange colored sharps containers are unavailable, boxes of other colors may be used if a large orange label is affixed indicating it is for steam sterilization.~~

c. The health care professional transports or arranges for the transportation of the ~~infectious waste~~ *regulated medical waste* :

(1) ~~Directly~~ *Himself,* or by ~~an~~ *his* employee *who is also a health care professional* , or

(2) By a transporter registered as such with the Department of ~~Waste Management~~ *Environmental Quality* .

d. Notwithstanding any provisions to the contrary in these regulations, waste transported pursuant to § ~~3.2 5a(1)~~ *subdivision 5 c (1) of this section* shall be exempt from § 4.3 B 4 of these regulations.

e. The regulated medical waste is not held in the office, the limited small clinic, or the patient's home for more than seven days after it is generated.

6. Persons qualifying under subdivision 5 of this section shall be exempt from §§ 4.4, 4.7 A, 4.8, and 6.1 through 6.9 of these regulations, unless otherwise required by subdivision 5 of this section.

§ 3.3. Exclusions.

A. The following materials are not solid wastes for the purposes of this part ~~H~~ :

1. Domestic sewage, including wastes that are not stored and are disposed of in a sanitary sewer system with or without grinding;

2. Any mixture of domestic sewage and other wastes that pass through a sewer system to a wastewater treatment works permitted by the State Water Control Board or the State Department of Health;

3. Human remains under the control of a licensed physician or dentist, when the remains are being used or examined for medical purposes and are not ~~abandoned materials~~ *solid wastes* ; and

4. Human remains properly interred in a cemetery or in preparation by a licensed ~~mortician~~ *funeral directors or embalmers* for such interment or cremation.

B. The following solid wastes are not ~~infectious waste~~ *regulated medical wastes* :

1. Wastes contaminated only with organisms which are not generally recognized as pathogenic to humans, even if those organisms cause disease in other animals or plants; and which are managed in complete accord with all regulations of the U.S. Department of Agriculture and the Virginia Department of Agriculture and Consumer Services.

2. Meat or other food items being discarded because of spoilage or contamination, and not included in § 3.5.

3. Garbage, trash and sanitary waste from septic tanks, single or multiple residences, hotels, motels, bunkhouses, ranger stations, crew quarters, campground, picnic grounds and day-use recreation areas, except for waste generated by the provision of professional health care services on the premises, ~~shall be exempt from these regulations,~~ provided that all medical sharps shall be placed in a container with a high degree of puncture-resistance before being mixed with other wastes or disposed.

C. The following ~~infectious waste~~ *regulated medical wastes* are not subject to the requirements of these regulations:

1. Used products for personal hygiene, such as diapers, facial tissues and sanitary napkins.

2. Material, not including sharps, containing small amounts of blood or body fluids, ~~and~~ *but containing* no free flowing or unabsorbed liquid.

§ 3.4. Characteristics of ~~infectious waste~~ *regulated medical waste* .

A. A solid waste is a regulated medical waste if it meets either of the two criteria of subsection B or C of this section.

~~A.~~ *B.* Any solid waste, as defined in these regulations and which is not excluded from regulation is an ~~an infectious waste~~ *a regulated medical waste* if it is identified by the health care professional in charge as capable of producing an infectious disease in humans ; ~~or if it is one of the controlled infectious waste listed in § 3.5~~ . A *solid* waste shall be considered to be capable of producing an infectious disease if it has been or is likely to have been contaminated by an organism likely to be pathogenic to healthy humans, such organism is not routinely and freely available in the community , and if such organism has a significant probability of being present in sufficient quantities and with sufficient virulence to transmit disease. *If the exact cause of a patient's illness is unknown, but the health care professional in charge suspects a contagious disease is the cause, the likelihood of pathogen transmission shall be assessed based on the pathogen suspected of being the cause of the illness.*

~~B. If the exact cause of a patient's illness is unknown, but the health care professional in charge suspects the presence of a contagious disease is the cause, wastes shall be managed in accordance with the specific pathogen suspected.~~

C. Any solid waste, as defined in these regulations and which is not excluded from regulation, is a regulated medical waste if it is listed in § 3.5 of these regulations.

§ 3.5. Lists of controlled ~~infectious waste~~ *regulated medical wastes* .

In addition to wastes described by the characteristics set forth in § 3.4, each *solid* waste or *solid* waste stream on the following lists is subject to these regulations . *unless exempted in § 3.2 or excluded in § 3.3 of these regulations* .

~~A.~~ *1.* Cultures and stock of microorganisms and biologicals. Discarded cultures, stocks, specimens, vaccines and associated items likely to have been contaminated by them are ~~infectious waste~~ *regulated medical wastes* if they are likely to contain organisms likely to be pathogenic to healthy humans. Discarded etiologic agents are ~~infectious waste~~ *regulated medical waste* . Wastes from the production of biologicals and antibiotics likely to have been contaminated by organisms likely to be pathogenic to healthy humans are ~~infectious waste~~ *regulated medical wastes* .

2. Blood and blood products. Wastes consisting of human blood, human blood products (includes serum, plasma, etc.) and items contaminated by ~~free flowing~~ human blood are ~~infectious waste~~ *regulated medical waste* .

3. Pathological wastes. All pathological wastes and all wastes that are human tissues, organs, body parts, or body fluids are ~~infectious waste~~ *regulated medical waste* .

4. Sharps. Used ~~hypodermic needles, syringes, scalpel blades, pasteur pipettes, broken glass and similar devices~~ *sharps* likely to be contaminated with organisms that are pathogenic to healthy humans and all sharps used in patient care are ~~infectious waste~~ *regulated medical wastes* .

5. Animal carcasses, body parts, bedding and related wastes. When animals are intentionally infected with organisms likely to be pathogenic to healthy humans for the purposes of research, in vivo testing, production of biological materials or any other reason, the animal carcasses, body parts, bedding material and all other wastes likely to have been contaminated are ~~infectious waste~~ *regulated medical wastes* when discarded, disposed of or placed in accumulated storage.

6. Any residue or contaminated soil, water, or other debris resulting from the cleanup of a spill of any ~~infectious waste~~ *regulated medical waste* .

7. Any *solid* waste contaminated by or mixed with ~~infectious waste~~ *regulated medical waste* .

PART IV.
GENERAL REQUIREMENTS.

§ 4.1. Permits and permits by rule.

No person ~~,~~ who is subject to these regulations ~~,~~ shall treat, store, or dispose of ~~infectious waste~~ *regulated medical waste* without a permit from the department to engage in those activities.

A. Persons required to have a permit.

Any person required to have a permit for activities in *the* management of ~~infectious waste~~ *regulated medical waste* shall ~~apply for and receive a~~ *make a formal application for a* permit in accord with Part ~~IX~~ *X* of these regulations; ~~except~~ *with the exception* that certain facilities may be deemed to have a permit by rule in accord with § 4.1 B of these regulations.

B. Person qualifying for a permit by rule.

Qualifying facilities are deemed to operate under a permit for ~~infectious waste~~ *regulated medical waste* management activities and their owners or operators are not required to comply with the permit issuance procedures of Part ~~IX~~ *X* of these regulations. While persons who own or operate qualifying facilities are not subject to Part ~~IX~~ *X* or required to have a written permit from the department for those qualifying facilities, they are subject to these regulations and all other parts thereof. If a person owns or operates ~~an infectious waste~~ *a regulated medical waste* management ~~facility~~ *unit* that does not qualify for a permit by rule, that person must comply with Part ~~IX~~ *X* and all other parts of these regulations for those ~~facilities~~ *units* , without regard to the presence of any other ~~facilities~~ *units* on the site that are operated under a permit by rule. Only those ~~facilities~~ *units* that are in complete ompliance with all the following conditions are qualified and considered to be under a permit by rule for their operation, and ~~the~~ *no* permit by rule shall ~~be immediately terminated when the~~ *exist for a* facility ~~fails~~ *failing* to fulfill any of the following conditions:

1. The facility and all ~~infectious waste~~ *regulated medical waste* activities are in compliance with all parts of these regulations except Part ~~IX~~ *X* .

2. More than 75% (by weight, in a calendar year) of all ~~infectious waste~~ *regulated medical waste* that is stored, treated or disposed of by the facility is generated on-site . *or the site is a collection point for nonstationary health care providers and is not owned or operated by vendor of waste management services* .

3. No ~~infectious waste~~ *regulated medical waste* is transported or received by the facility without being properly packaged and labelled in accordance with these regulations.

4. The activities at the facility do not involve the placing of ~~infectious waste~~ *regulated medical waste* directly into or on the land.

5. The owner or operator of the facility has notified the ~~executive~~ director in writing that the facility is operating under a permit by rule. The notice shall give the name of the facility; the mailing address of the facility; the location address of the facility; the type of business the facility serves; the type of facilities (treatment, storage, transportation, disposal) involving ~~infectious waste~~ *regulated medical waste* ; and the name, address and telephone number of the principal corporate officer.

6. The owner or operator of the facility has submitted the director a certification without qualification, conditions, or reservations from the local governing body (city, county, or town in which the facility is to be located) stating that the location and operation of the facility are consistent with all applicable ordinances.

~~C. Application to existing permitted facilities.~~

~~On the date these regulations become effective, they shall apply in full to infectious waste facilities that are operating on that date. Permits issued by the department prior to the effective date of these regulations shall be deemed to be amended such that any conditions contained in the permits that conflict with these regulations shall be void.~~

§ 4.2. Financial assurance requirements.

The department has adopted and will maintain separate regulation, Financial Assurance Regulations for Solid Waste Facilities, which are applicable in all parts to ~~infectious waste~~ *regulated medical waste* management facilities. Nothing in these regulations governing ~~infectious waste~~ *regulated medical waste* management shall be considered to delete or alter any requirements of the department as set out in Financial Assurance Regulations for Solid Waste Facilities.

§ 4.3. Packaging and labeling requirements for ~~infectious waste~~ *regulated medical waste* .

A. Responsibility for packaging and labeling.

1. The generator of ~~infectious waste~~ *regulated medical waste* is responsible for the packaging and labeling of ~~infectious waste~~ *regulated medical wastes* . As a bag ~~or other container~~ becomes full, it shall be sealed, packaged, labeled and managed as described in these regulations. Contractors or other agents may provide services to the generator, including packaging and labeling of ~~infectious waste~~ *regulated medical waste* ; however, no contract or other relationship shall relieve the generator of the responsibility for packaging and labeling the ~~infectious waste~~ *regulated medical waste* as required by these regulations.

2. No person shall receive for transportation, storage, treatment or disposal any ~~infectious waste~~ *regulated medical waste* that is not packaged in accord with these regulations. Contractors or other agents may package or repackage ~~infectious waste~~ *regulated medical wastes* to comply with these regulations, if the packaging or repackaging is performed on-site where the ~~infectious waste~~ *regulated medical waste* was generated and no transportation, storage, treatment or disposal occurs prior to the packaging or repackaging. Nothing in this section shall prevent the proper repackaging and further transportation of ~~infectious waste~~ *regulated medical waste* that has spilled during transportation.

B. Packaging prior to storage, treatment, transport or disposal.

All ~~infectious waste~~ *regulated medical waste* shall be packaged as follows before it is stored, treated, transported or disposed of:

1. ~~Infectious waste~~ *Regulated medical wastes* shall be contained in two leak-proof plastic bags each capable of passing the ASTM 125 pound ~~drop weight test~~ *Drop Test for Filled Bags (D959)* and each sealed separately, or one leak-proof, plastic bag inside a double-walled corrugated fiberboard box or equivalent rigid container. Free liquids ~~should~~ *shall* be contained in sturdy ~~leak-proof~~ *highly leak resistant* containers that resist breaking; heavy materials must be supported in boxes. Sharps shall be collected at the point of generation in *highly* puncture resistant containers, and those containers placed inside a plastic bag prior to storage or transport.

2. All bags containing ~~infectious waste~~ *regulated medical waste* shall be red in color ; ~~except that infectious waste that is to be sterilized shall be contained in orange bags and marked with autoclave tape~~ . Waste contained in red bags shall be considered ~~infectious waste~~ *regulated medical waste* and managed as ~~infectious waste~~ *regulated medical waste* ~~Wastes in orange bags shall be managed as regulated medical wastes prior to steam sterilization and as solid waste after steam sterilization. Waste in orange bags shall be sterilized before disposal and shall not be treated or disposed of by incineration, landfilling or any other method prior to steam sterilization.~~

3 Bags shall be sealed by lapping the gathered open end and binding with tape or closing device such that no liquid can leak.

4. In addition to the plastic bag containers described in this section, all ~~infectious waste~~ *regulated medical wastes* shall be enclosed in a ~~double-wall corrugated fiberboard box or equivalent~~ rigid container before it is transported off-site or in a motor vehicle on a street or highway. The box or container must meet the standards of *(1993)* 49 CFR ~~178.210~~ *171 through 178* for a classified strength of at least 275 ~~pound test and be class DOT-12A80 or DOT-12A50~~ *pounds per*

square inch using the Mullen Test or 48 pounds per inch using the Edge Crush Test .

Note: The Mullen Test is T 810 om-80, Bursting Strength of Corrugated and Solid Fiberboard, by the Technical Association of the Pulp and Paper Industry, P. O. Box 105113, Atlanta, GA 30348. The Edge Crush Test is D 2808, Standard Test Method for Compressive Strength of Corrugated Fiberboard (Short Column Test), by the American Society for Testing and Materials, 1916 Race Street, Philadelphia, PA 19013.

C. Labeling requirements.

All ~~infectious waste~~ *regulated medical waste* shall be labeled immediately after packaging. The label shall be securely attached to the outer layer of packaging and be clearly legible. The label may be a tag securely affixed to the package. Indelible ink shall be used to complete the information on the label, and the label shall be at least three inches by five inches in size. The following information shall be included:

1. The name, address and business telephone number of the generator *and the date on which the bag of regulated medical waste was discarded .*

2. ~~"Infectious waste"~~ *"Regulated medical waste"* in large print.

3. The name, address and business telephone number of all ~~haulers~~ *transporters* or other persons to whose control the ~~infectious waste~~ *regulated medical waste* is transferred.

4. The Biological Hazard Symbol.

D. Etiological agents.

All etiological agents, as defined in *(1993)* 49 CFR ~~173.386~~ *171 through 178* , that are transported shall be packaged as described in *(1993)* 49 CFR ~~173.387~~ *171 through 178* and labeled as described in *(1993)* 49 CFR ~~173.388~~ *171 through 178* , even when that transport is wholly within the boundaries of the Commonwealth.

E. Sharps.

Sharps shall be placed directly into rigid and *highly* puncture-resistant containers.

F. Protection of packagers.

Persons packaging ~~infectious waste~~ *regulated medical waste* shall wear heavy gloves of neoprene or equivalent materials and other appropriate items of personal protection equipment. As a minimum, other appropriate equipment shall include that recommended in "CDC Guidelines for Isolation Precautions In Hospitals" (1983) by the Center for Disease Control, Hospital Infections Program, Center for Infectious Diseases.

G. Special requirements for reusable containers.

Regulated medical waste may be conveyed in reusable carts or containers under the following conditions:

1. The waste in the cart or container is packaged fully in accordance with subsections B through E of this section. Discrete units of waste and the cart or container must be properly labeled in accordance with subsection C of this section.

2. Immediately following each time a reusable cart or container is emptied and prior to being reused it is thoroughly cleaned, rinsed and effectively disinfected with a hospital grade disinfectant effective against mycobacteria. The area where carts or containers are cleaned, rinsed or disinfected is a storage area and regulated under Part V of these regulations.

3. Unloading of reusable carts or containers that contain regulated medical waste should be accomplished by mechanical means and not require handling of bags or packages by humans.

4. When reusable carts or containers containing regulated medical waste are used for off-site transport, all aspects of the cart or container management shall comply with § 6.11 of these regulations.

§ 4.4. Management of spills of ~~infectious waste~~ *regulated medical waste* .

A. Spill containment and cleanup kit.

All ~~infectious waste~~ *regulated medical waste* management facilities are required to keep a spill containment and cleanup kit within the vicinity of any area where ~~infectious waste~~ *regulated medical wastes* are managed, and the location of the kit shall provide for rapid and efficient cleanup of spills anywhere within the area. All vehicles transporting ~~infectious waste~~ *regulated medical wastes* are required to carry a spill containment and cleanup kit in the vehicle whenever ~~infectious waste~~ *regulated medical wastes* are conveyed. The kit shall consist of at least the following items:

1. Material designed to absorb spilled liquids. The amount of absorbent material shall be that having a ~~rated~~ capacity , *as rated by the manufacturer, of* one gallon of liquid for every cubic foot of ~~infectious waste~~ *regulated medical waste* that is normally managed in the area for which the kit is provided or 10 gallons, whichever is less.

2. One gallon of ~~hospital grade~~ disinfectant in a sprayer capable of dispersing its charge in a mist and in a stream at a distance. The disinfectant ~~should~~ *shall* be hospital grade and effective against mycobacteria.

3. Enough red plastic bags to double enclose 150% of the maximum load accumulated or transported *(up to a maximum of 500 bags)* , that meet the ASTM 125 pound ~~drop weight test~~ *Drop Test for Filled Bags (D959)* and are accompanied by sealing tape (or devices) and labels (or tags). These bags shall be large enough to overpack any box or other container normally used for ~~infectious waste~~ *regulated medical waste* management by that facility.

4. Two new sets of liquid impermeable and disposable overalls, gloves, boots, caps and protective breathing devices. Overalls, boots and caps shall be oversized or fitted to ~~infectious waste~~ *regulated medical waste* workers ~~and be made of materials impermeable to liquids~~ . Boots may be of thick rubber and gloves shall be of heavy neoprene or equivalent ~~(these items~~ . Boots, gloves and breathing devices may be reused if fully disinfected between uses ~~)~~ . ~~Protection~~ *Protective* breathing devices shall be approved for filtering particulates and mists; usually, disposable surgical masks will suffice. Tape for sealing *openings at* wrists and ankles shall also be in the kit.

5. A first aid kit, fire extinguisher, boundary marking tape, lights and other appropriate safety equipment.

B. Containment and cleanup procedures.

Following a spill of ~~infectious waste~~ *regulated medical waste* or its discovery, the following procedures shall be implemented:

1. Leave the area until the aerosol settles (no more than a few minutes delay).

2. The cleanup crew will don the cleanup outfits described in § 4.4 A 4 and secure the spill area.

3. Spray the broken containers of ~~infectious waste~~ *regulated medical waste* with disinfectant.

4. Place broken containers and spillage inside overpack bags in the kit, minimizing exposure.

5. Disinfect the area and take other cleanup steps deemed appropriate.

6. Clean and disinfect nondisposable items.

7. Clean and disinfect cleanup outfits before removing.

8. Remove cleanup outfits and place disposable items in cleanup bag.

9. Take necessary steps to replenish containment and cleanup kit with items used.

C. When a spill involves only a single container of *regulated medical* waste whose volume is less than 32 gallons and spilled liquid whose volume is less than one quart, the individual responsible for the cleanup may elect to use alternate appropriate dress and procedures than those described in §§ 4.4 A and 4.4 B. Such alternate dress or procedures shall provide ~~an equal~~ protection of the health of workers and the public *equivalent to that described in this section* .

§ 4.5. Closure requirements.

When a ~~facility~~ *unit* that has been used for ~~infectious waste~~ *regulated medical waste* management is to cease operations involving ~~infectious waste~~ *regulated medical wastes* , it shall be thoroughly cleaned and disinfected. All *regulated medical* waste shall be disposed of in accord with these regulations, and items of equipment shall be disinfected. ~~(NOTE: The department maintains other regulations that define requirements for the closure of solid waste management facilities, these regulations shall be reviewed and complied with in the closure of infectious waste management facilities.)~~

§ 4.6. Methods of treatment and disposal.

A. All ~~infectious waste~~ *regulated medical waste* shall be ~~either~~ incinerated ~~or~~ , sterilized by steam , *treated by an alternative treatment method as described in Part IX of these regulations, or treated by an innovative technology authorized by the director (see § 2.7)* . ~~Gas sterilization, thermal inactivation, irradiation and chemical treatment will not be approved except under special approval of the executive director as experimental facilities. (NOTE: Bed linen, instruments, equipment and other reusable items are not wastes until they are discarded. This section and these regulations, as a whole, apply only to wastes, and they do not include the sterilization or disinfection of items that are reused for their original purpose. Therefore, the method of sterilization or disinfection of items prior to reuse is not limited. When reusable items are no longer serviceable and are discarded, they are wastes and subject to regulation at that time and must be sterilized by steam or incinerated if contaminated.)~~

B. No ~~infectious waste~~ *regulated medical waste* shall be disposed of in a solid waste landfill or other solid waste management facility. Upon ~~incineration or steam incineration~~ *authorized treatment* in accord with these regulations, the *solid* waste or its ash is not ~~infectious waste~~ *regulated medical waste* and may be disposed of at any landfill or other solid waste management facility permitted to receive putrescible *solid* waste or garbage . *provided the disposal is in accordance with the Solid Waste Management Regulations, VR 672-20-10, and other applicable regulations and standards* .

C. All pathological ~~waste~~ *regulated medical waste that is*

primarily bulk liquid shall be incinerated; other disposal methods are not acceptable for this type of *regulated medical* waste. However, this requirement does not prohibit the disposal, without storage and with or without grinding, of wastes, including blood and body fluids, in a sanitary sewer system.

D. ~~Infectious waste~~ *Regulated medical waste in closed bags or containers* shall not be compacted or subjected to violent mechanical stress; however, after it is fully ~~sterilized~~ *treated* and it is no longer ~~infectious waste~~ *regulated medical waste* , it may be compacted in a closed container. Nothing in this section shall prevent the puncturing of containers or packaging immediately prior to steam sterilization so that steam may penetrate into the *solid* waste mass, provided the puncturing is performed in a safe and sanitary method. *Devices that grind, shred, compact or reduce the volume of regulated medical waste may be employed at the point of generation and prior to enclosing the regulated medical waste in plastic bags and other required packaging; however, the solid waste remains regulated medical waste.*

§ ~~4.7. Approved test method.~~

~~The following test methods shall be used for analysis or determinations under these regulations:~~

~~A. "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," Publication SW-846, U.S. Environmental Protection Agency (available from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20401, (202) 783-3238).~~

~~B. "Guideline for Handwashing and Hospital Environmental Control," U.S. Center for Disease Control, Atlanta, Georgia.~~

§ ~~4.8.~~ *§ 4.7.* Recordkeeping requirements.

A. All generators and *regulated medical* waste management facilities that manage ~~infectious waste~~ *regulated medical waste* shall maintain the following records and assure that they are accurate and current:

1. A list of the members of ~~the~~ *any* ad hoc committee for the management of infection control for the facility, their address, their phone numbers and the period of their membership.

2. The date, persons involved and short description of events in each spill of ~~infectious waste~~ *regulated medical wastes* involving more than 32 gallons of *regulated medical* waste or one quart of free liquid.

3. A notebook or file containing the adopted policies and procedures of the ~~facilities~~ *facility* for dealing with ~~infectious waste~~ *regulated medical wastes* .

4. A log of all special training received by persons involved in ~~infectious waste~~ *regulated medical waste* management.

5. A log of ~~infectious waste~~ *regulated medical waste* received from off-site, the generator, the amount and its generation and receipt dates. Records shall be maintained for a period of three years and be available for review.

B. All solid waste management facilities that manage regulated medical waste shall maintain the following records and assure that they are accurate and current:

1. For each load received, a signed certificate for each load received in which the generator affirms that the load does not contain hazardous waste (including cytotoxic medications) or radioactive materials, except as provided in subdivision 3 of this subsection.

2. A signed and effective contract, inclusive of all loads received from a generator, in which the generator affirms that all loads do not contain hazardous waste (including cytotoxic medications) or radioactive materials, except as provided in subdivision 3 of this subsection.

3. The United States Nuclear Regulatory Commission (USNRC) has established regulations under Title 10 of the Code of Federal Regulations for the management of radioactive materials. The Virginia Department of Health has established other requirements in accordance with Title 32.1 of the Code of Virginia. No regulated medical waste containing radioactive materials, regardless of amount or origin, shall be treated unless its management and treatment are in full compliance with these two bodies of regulations and are deemed by both regulations not to represent a threat to public health and the environment.

§ 4.8. Operator training requirements.

(Reserved.)

§ 4.9. Quarterly reporting by facilities.

Operators of regulated medical waste management facilities that receive regulated medical waste from off-site shall file a written report of regulated medical waste amounts received during the preceding quarter on the 10th business day of January, April, July, and October of each year. The report shall contain:

1. The name, mailing address, physical location, and telephone number of the firm;

2. The name and signature of the person preparing the report;

3. Each city, county, and town (including the state) from which regulated medical waste was received during the quarter and the total amount (in ton

received from each point of origin; and

4. Each city, county, and town (including the state) to which regulated medical waste was shipped during the quarter and the total amount (in tons) sent to each point of destination.

PART V.
SPECIAL REQUIREMENTS FOR STORAGE FACILITIES.

§ 5.1. Application of Part V.

The requirements of this part apply only to areas of storage where more than 64 gallons of *regulated medical* waste are accumulated ~~. The requirements of this part apply to~~ *including* storage of ~~infectious waste~~ *regulated medical waste* during transportation and at incinerator, steam sterilization and other treatment and disposal facilities.

§ 5.2. Sanitation.

All areas used to store ~~infectious waste~~ *regulated medical waste* shall be clean and impermeable to liquids. Carpets and floor coverings with seams shall not be used in storage area. ~~Vermin and insects~~ *Vectors* shall be controlled.

§ 5.3. Access.

All areas used to store ~~infectious waste~~ *regulated medical waste* shall have access control that limits access to those persons specifically designated to manage ~~infectious waste~~ *regulated medical waste* .

§ 5.4. Temperature control and storage period.

Any ~~infectious waste~~ *regulated medical waste that is more than seven days past its date of generation and is* stored ~~for more than 72 hours after generation~~ shall be refrigerated, stored in an ambient temperature between 35°F and 45°F (2°C and 7°C). ~~No infectious waste shall be stored for more than seven consecutive days after its generation, unless it is frozen within 72 hours of its generation and maintained frozen during the entire remaining period of storage.~~ No ~~infectious waste~~ *regulated medical waste* shall be stored for more than 30 days ~~, even if frozen~~ .

§ 5.5. Drainage and ventilation.

All floor drains shall discharge directly to an approved sanitary sewer system. All ventilation shall discharge so as to minimize human exposure to the effluent. *All transfers of regulated medical waste between a vehicle and another vehicle or between vehicle and a structure shall occur under a roof that protects the operation from rainfall and over a floor or bermed pavement that will contain leaks and spills of liquids from the waste.*

§ 5.6. Facilities for management of reusable carts or containers.

Waste managed in reusable carts or containers shall meet the following requirements:

1. The regulated medical waste in the cart or container shall be packaged fully in accordance with subsections B through E of § 4.3. Discrete units of regulated medical waste and the cart or container must be properly labeled.

2. Immediately following each time a reusable cart or container is emptied and prior to being reused it shall be thoroughly cleaned, rinsed and effectively disinfected with a hospital grade disinfectant. The disinfectant must be used in accord with manufacturer's direction and effective against mycobacteria.

3. Unloading of reusable carts or containers that contain regulated medical waste not contained in nonreusable rigid containers should be accomplished by mechanical means and not require handling of packages by humans.

4. The area where cleaning, rinsing, and disinfecting occurs is a storage area and shall comply with all other sections of Part V.

§ 5.7. Container management.

Persons loading, unloading, or handling containers of regulated medical waste shall wear clean, heavy neoprene (or equivalent) gloves and clean overalls.

PART VI.
SPECIAL REQUIREMENTS FOR TRANSPORTATION.

§ 6.1. Application of Part VI.

The requirements of this part apply to all transportation of ~~infectious waste over roads or highways, by railroad or by water conveyance. It specifically includes all motor vehicle transportation~~ *regulated medical waste* .

§ 6.2. Sanitation.

~~Areas~~ *Surfaces* of equipment used to transport ~~infectious waste~~ *regulated medical waste* must be clean and impermeable to liquids, if those areas are involved with the management of the waste. Carpets and floor coverings with seams shall not be used. ~~Vermin and insects~~ *Vectors* shall be controlled. All trucks and equipment used to transport ~~infectious waste~~ *regulated medical waste* shall be thoroughly cleaned and disinfected before being used for any other purpose, at the end of each business day or 24-hour period of use and prior to any transfer of ownership.

§ 6.3. Access.

All vehicles, equipment and service or parking areas used in the transportation of ~~infectious waste,~~ *regulated medical waste* shall have access control that limits access to those persons specifically designated to manage ~~infectious waste~~ *regulated medical waste* .

§ 6.4. Temperature control and storage period.

Any ~~infectious waste~~ *regulated medical waste that is more than seven days past its date of generation and is* transported ~~more than 72 hours after generation~~ shall be refrigerated, maintained in an ambient temperature between 35°F and 45°F (2°C and 5°C), during transport and during any storage following transport. ~~No infectious waste shall be stored for more than seven consecutive days after its generation, unless it is frozen within 72 hours of the time of its generation and maintained frozen during the entire remaining period of storage.~~ No ~~infectious waste~~ *regulated medical waste* shall be stored for more than 30 days ~~, even if frozen~~ . Time in transport shall be accounted as time in storage

§ 6.5. Drainage.

All drainage shall discharge directly or through a holding tank to a ~~permitted~~ *an approved* sanitary sewer system. *All transfers of regulated medical waste between a vehicle and another vehicle or between vehicle and a structure shall occur under a roof that protects the operation from rainfall and over a floor or bermed pavement that will contain leaks and spills of liquids from the waste.*

§ 6.6. Packaging, labeling and placards.

A. No person shall transport or receive for transport any ~~infectious waste~~ *regulated medical waste* that is not packaged and labeled in accord with § 4.3 of these regulations.

B. The access doors to any area holding ~~infectious waste~~ *regulated medical waste* in transport shall have a warning sign in bold and large letters that indicates the cargo is ~~infectious waste~~ *regulated medical waste* .

C. Transportation vehicles shall bear placards depicting the international symbol for biologically hazardous materials *(see § 4.3 C)* . Placards shall conform to standards of the *United States* Department of Transportation specified in *(1993)* 49 CFR 172 Subpart F regarding size, placement, color and detail.

§ 6.7. Management of spills of ~~infectious waste~~ *regulated medical waste* .

A. Spill containment and cleanup kit.

All vehicles transporting ~~infectious waste~~ *regulated medical wastes* are required to carry a spill containment and cleanup kit in the vehicle whenever ~~infectious wastes~~ *regulated medical wastes* are conveyed. The kit shall consist of at least the following items:

1. Material designed to absorb spilled liquids. The amount of absorbent material shall be rated *by the manufacturer as having a capacity* to absorb 10 gallons.

2. One gallon of ~~hospital grade~~ disinfectant in a sprayer capable of dispersing its charge in a mist and in a stream at a distance. The disinfectant ~~should~~ *shall* be hospital grade and effective against mycobacteria.

3. Enough red plastic bags to double enclose 150% of the ~~minimum~~ *maximum* load accumulated or transported that meet the ASTM 125 pound ~~drop weight test~~ *Drop Test for Filled Bags (D959)* and are accompanied by seals and labels. These bags shall be large enough to overpack any box or other container normally used for ~~infectious waste~~ *regulated medical waste* management.

4. Two new sets of ~~impermeable and~~ disposable overalls, gloves, boots, caps and breathing protective devices. Overalls, boots and caps shall be oversized or fitted to ~~infectious waste~~ *regulated medical waste* workers and be made of materials impermeable to liquids. Boots may be of thick rubber and gloves shall be of heavy neoprene or equivalent ~~(these items~~ . Boots, gloves and breathing devices may be reused if fully disinfected between uses ~~)~~ . ~~Protection~~ *Protective* breathing devices shall be approved for filtering particulates and mists; disposable surgical masks will suffice. Tape for sealing *openings at* wrists and ankles shall also be in the kit

5. A first aid kit, fire extinguisher, boundary marking tape, lights and other appropriate safety equipment.

B. Containment and clean up procedures.

Following a spill of ~~infectious waste~~ *regulated medical waste* or its discovery, the following procedures shall be implemented:

1. Leave the area until the aerosol settles (no more than a few minutes delay).

2. The cleanup crew will don the cleanup outfits described in § 6.7 A 4 and secure the spill area.

3. Spray the broken containers of ~~infectious waste~~ *regulated medical waste* with disinfectant.

4. Place broken containers and spillage inside the overpack bags in the kit, minimizing exposure.

5. Disinfect the area and take other cleanup steps deemed appropriate.

6. Clean and disinfect cleanup outfits before removing.

7. Clean and disinfect nondisposable items.

8. Remove cleanup outfits and place disposal items in cleanup bag.

9. Take necessary steps to replenish containment and cleanup kit with items used.

C. When a spill involves only a single container of *regulated medical* waste whose volume is less than 32 gallons and spilled liquid whose volume is less than one quart, the individual responsible for the cleanup may elect to use alternate appropriate dress and procedures. Such alternate dress or procedures shall provide ~~an equal~~ protection of the health of workers and the public *equivalent to that described in subsections A and B of this section* .

§ 6.8. Loading and unloading.

Persons loading and unloading transportation vehicles with ~~infectious waste~~ *regulated medical waste* shall wear ~~disinfected~~ *clean* , heavy neoprene (or equivalent) gloves and clean coveralls.

§ 6.9. Registration of transporters.

A. At least 30 days prior to transporting any ~~infectious waste~~ *regulated medical waste* within the Commonwealth, all transporters shall register with the Department of ~~Waste Management~~ *Environmental Quality* . Registration shall consist *of* filing the data specified in § 6.9 B in written form, and the department will issue a registration number to the transporter. No ~~infectious waste~~ *regulated medical waste* shall be transported until the registration number is issued. Transporters shall notify the generator of the waste of his registration number when he collects the waste.

B. Data to be submitted by persons wishing to register as transporters of ~~infectious waste~~ *regulated medical waste* shall be as follows:

1. Name of the person or firm.

2. Business address and telephone number of person or firm. Include headquarters and local office.

3. Make, model and license number of each vehicle to be used to transport ~~infectious waste~~ *regulated medical waste* within the Commonwealth.

4. Name, business address and telephone number of each driver who will operate in the Commonwealth.

5. Areas (counties and cities) of the Commonwealth in which the transporter will operate.

6. a. Any person or firm other than reported in § 6.9 B 1 that is associated with the registering firm or any other name under which that person or firm does business.

b. Any other person or firm using any of the same vehicles and operators.

7. The name and phone number of a person who may be contacted in the event of an accident or release.

C. Within 30 days following the change of any data in § 6.9 B, the ~~transport~~ *transporter* shall notify the department of that change. Failure to notify the department nullifies the registration and invalidates the registration number.

D. Use of a false or invalid registration number is prohibited. (NOTE: All filing of data, request for registration number and issuance of a registration number shall be in writing.)

§ 6.10. Transport by mail, parcel post or courier service.

Transport of regulated medical waste by the United States Postal Services that fully complies with Part 111, (1993) 39 CFR, shall be considered to be transportation by a registered transporter and in compliance with these regulations if:

1. The generator maintains a complete and legible copy of the manifest or mail disposal services shipping record for a period of three years. (Note: Disposer's certification and other tracking items must be completed and shown on the copy.)

2. The addressee is a facility permitted by the appropriate agencies of the Commonwealth of Virginia or the host state.

3. No package may be more than 32 gallons in volume.

§ 6.11. Transport using reusable carts or containers.

A. No reusable carts or containers that have been used to manage regulated medical waste may be transported unless they have been cleaned, rinsed and disinfected in a storage facility permitted under these regulations and in compliance with Part V of these regulations.

B. Reusable carts or containers used to transport regulated medical waste must be sealed, highly puncture resistant, and highly leak resistant. They shall conform in all respects to 49CFR172 through 49CFR178 for containers and transport of regulated medical waste.

PART VII
SPECIAL REQUIREMENTS FOR INCINERATION.

§ 7.1. Application of Part VII.

The requirements of this part apply to all facilities that incinerate ~~infectious waste~~ *regulated medical waste* .

§ 7.2. Performance standards.

All incinerators for ~~infectious waste~~ *regulated medical waste* shall maintain the following level of operational performance at all times:

~~A.~~ *1.* Operational temperature and retention time. Whenever ~~infectious waste~~ *regulated medical wastes* are introduced into an incinerator, all the *regulated medical* waste shall be subjected to a burn temperature of not less than 1400°F (760°C) for a period not less than one hour. *For all incinerators,* gases generated by the combustion shall be subjected to a temperature of not less than 1800°F (982°C) for a period of one second or more. *For certain incinerators, gases generated by the combustion shall be subjected to a temperature of not less than 2000°F (1094°C) for a period of two seconds or more under separate requirements of the State Air Pollution Control Board.* Except at start-up interlocks or other process control devices shall prevent feeding of the incinerator unless these conditions can be achieved.

~~B.~~ *2.* Loading and operating controls. The incinerator shall have interlocks or other process control devices to prevent feeding of the incinerator until the conditions in § 7.2 A can be achieved. Such devices may have an override for start-up. In the event low temperatures occur, facilities shall have automatic auxiliary burners which are capable, excluding the heat content of the wastes, of independently maintaining the secondary chamber temperature at the minimum of 1800°F.

~~C.~~ *3.* Monitoring. There shall be continuous monitoring and recording of primary and secondary chamber temperatures. Monitoring data shall be maintained for a period of three years.

~~D.~~ *4.* Waste destruction efficiency. All combustible *solid* waste shall be converted by the incineration process into ash that is not recognizable as to its former character.

~~E.~~ *5.* The incinerator shall be permitted by the ~~Department of Air Pollution Control~~ *State Air Pollution Control Board* and be in compliance with the regulations of that agency.

§ 7.3. Analysis and management of the ash product.

A. Procedure.

Once every eight hours of operation of a continuously fed incinerator and once every batch or 24 hours of operation of a batch fed incinerator, a representative sample of 250 milliliters of the *bottom* ash shall be collected from the ash discharge or the ash discharge conveyer. Samples collected during 1000 hours of operation or quarterly, whichever is more often, shall be thoroughly mixed and seven random portions of equal volume shall be composited into one sample for laboratory analysis. This sample shall be tested in accord with the methods established by the Virginia Hazardous Waste Management Regulations for determining if a *solid* waste is a hazardous waste. Also, the sample shall be tested for total organic carbon content.

At incinerators equipped with air pollution control devices that remove and collect incinerator emissions control ash or dust, this ash shall be held separately and not mixed with bottom ash. Once every eight hours of operation of a continuously fed incinerator and once every batch or 24 hours of operation of a batch fed incinerator, a representative sample of 250 milliliters of the air pollution control ash or dust shall be collected from the pollution control ash discharge. Air pollution control ash or dust samples collected during 1000 hours of operation or quarterly, whichever is more often, shall be thoroughly mixed and seven random portions of equal volume shall be composited into one sample for laboratory analysis. This sample shall be tested in accord with the methods established by the Virginia Hazardous Waste Management Regulations for determining if a waste is a hazardous waste.

B. Results and records.

A log shall document the ash sampling, to include the date and time of each sample collected; the date, time and identification number of each composite sample; and the results of the analyses, including laboratory identification. Results of analyses shall be returned from the laboratory and recorded within four weeks following collection of the composite sample. The results and records described in this part shall be maintained for a period of three years, and shall be available for review.

C. Disposition of ash.

If a waste ash is found to be hazardous waste (based on a sample and a confirmation sample) the waste *ash* shall be disposed of as a hazardous waste in accord with the Virginia Hazardous Waste Management Regulations. If ash is found not to be hazardous waste by analysis, it may be disposed of in a solid waste landfill that is permitted ~~by the department~~ to ~~accept~~ *receive* garbage, putrescible waste or incinerator ash , *provided the disposal is in accordance with the Solid Waste Management Regulation. VR 672-20-10* . If the ash is found to be hazardous *waste* , the operator shall notify the ~~executive~~ director of the Department of ~~Waste Management~~ *Environmental Quality* within 24 hours ; ~~the incinerator unit shall cease operation and shall not operate until the operator has received the written approval of the executive director to continue~~ . No later than 15 days following, the permittee shall submit a plan for treating and disposing of the waste on hand at the facility and all unsatisfactorily treated waste that has left the facility. The permittee may include with the plan a ~~petition to restart operation of the facility that describes~~ *description of* the corrective actions to be taken to prevent further unsatisfactory performance. ~~The executive director~~

~~will notify the petitioner within 15 days of receipt of the petition of the decision rendered.~~ *No ash subsequently generated from the incinerator waste stream that was found to be hazardous waste shall be sent to a nonhazardous solid waste management facility in the Commonwealth without the express written approval of the director.*

~~D. Reduction or elimination of ash.~~

~~At any time two years following the effective date of these regulations, the executive director may reduce or eliminate any of the requirements for testing of the ash, provided the reduction or elimination is not believed to represent a threat to the public health or the environment. The reduction or elimination shall be issued in the same manner as a variance as set out in Part X.~~

D. Ash storage.

Air pollution control ash and bottom ash shall be held separately and not mixed. Throughout the storage of the ash it shall be kept in covered highly leak resistant containers. It should be held until the generator determines the ash waste to not be hazardous waste. Areas where ash containers are placed must be constructed with a berm or prevent runoff from that area.

E. Solid waste treated in compliance with Part VII, VIII or IX shall be deemed to be treated in accordance with these regulations. Regulated medical waste not treated in accordance with these regulations shall not be transported, received for transport or disposal or disposed of in any solid waste management facility.

§ 7.4. Compliance with other parts of these regulations.

In general, incinerator facilities shall comply with all other parts of these regulation. The site of the incinerator facility is a storage facility and shall comply with Part V of these regulations. *Management of* Spills or the opening in an emergency of any ~~infectious waste~~ *regulated medical waste* package, shall comply with § 4.4 of these regulations.

§ 7.5. Unloading operations.

Persons ~~required to handle packages of~~ *loading and unloading transportation vehicles with regulated medical* waste shall wear ~~freshly laundered or new overalls and heavy neoprene, or equivalent, gloves~~ *clean, heavy neoprene gloves (or equivalent) and clean overalls* .

PART VIII.
SPECIAL REQUIREMENTS FOR STEAM STERILIZATION.

§ 8.1. Application of Part VIII.

The requirements of this part apply to all steam sterilizers (autoclaves) that sterilize ~~infectious waste~~ *regulated medical waste* .

§ 8.2. Performance standards.

All sterilizers for ~~infectious waste~~ *regulated medical waste* shall maintain the following level of operational performance at all times:

~~A.~~ *1.* Operational temperature and detention. Whenever ~~infectious waste~~ *regulated medical wastes* are treated in a steam sterilizer, all the *regulated medical* waste shall be subjected to the following operational standards:

~~1.~~ *a.* Temperature of not less than 250°F for 90 minutes at 15 pounds per square inch of gauge pressure,

~~2.~~ *b.* Temperatures of not less than 272°F for 45 minutes at 27 pounds per square inch of gauge pressure,

~~3.~~ *c.* Temperature of not less than 250°F for 28 minutes at 80 pounds per square inch of gauge pressure, or

~~4.~~ *d.* Temperatures of not less than 270°F for 16 minutes at 80 pounds per square inch of gauge pressure.

~~Other~~ *Equivalent* combinations of operational temperatures, pressure and time may be approved by the ~~department~~ *director* if the installed equipment has been proved to achieve a reliable and complete kill of all microorganisms in *regulated medical* waste at design capacity. *Written requests for approval of an equivalent standard shall be submitted to the director.* Complete and thorough testing shall be fully documented, including tests of the capacity to kill B stearothermophilus. Longer steam sterilization times are required when a load contains a large quantity of liquid.

~~B.~~ *2.* Operational controls and records.

~~1.~~ *a.* Each package of *regulated medical* waste to be sterilized shall have a tape attached that will indicate if the steam sterilization temperature has been reached and *regulated medical* waste will not be considered satisfactorily sterilized if the indicator fails to indicate that temperature was reached during the process.

~~2.~~ *b.* Steam sterilization units shall be evaluated under full loading for effectiveness with spores of B stearothermophilus no less than once per month.

~~3.~~ *c.* A log shall be kept at each steam sterilization unit that is complete for the proceeding three-year period. The log shall record the date, time and operator of each usage; the type and approximate

amount of *regulated medical* waste treated; the post-sterilization reading of the temperature sensitive tape; the dates and results of calibration; and the results of effective testing described in § 8.2 B 2. Where multiple steam sterilization units are used, a working log can be maintained at each unit and such logs periodically consolidated at a central location. The consolidated logs shall be retained for three years and be available for review.

~~4. Infectious waste~~ *d. Regulated medical waste* shall not be compacted or subjected to violent mechanical stress before steam sterilization; however, after it is fully sterilized it may be compacted in a closed container.

e. Regulated medical waste shall be ground or shredded into particles that are no larger than 0.50 inches in any dimension. Grinding or shredding shall occur in a closed unit immediately preceding or following the treatment unit. Transfer from a grinder or shredder to or from a treatment unit shall be automatic and conducted by enclosed mechanical equipment.

§ 8.3. Disposal of treated wastes.

A. Solid waste that has been steam sterilized in compliance with these regulations is no longer regulated medical waste and is solid waste. Steam sterilized solid waste may be compacted.

B. All solid waste that has been steam sterilized shall be placed in opaque plastic bags and sealed. The bags may not be red or orange in color. Where bulk sterilization is used and the solid waste is compacted and immediately placed in closed bulk solid waste management containers, which are more than 64 gallons in volume, the repackaging of the solid waste in bags is not required.

C. Each bag of steam sterilized solid waste or bulk solid waste container must bear an easily read label, placard, or tag with the following words, "This solid waste has been properly treated in accord with the Virginia Regulated Medical Waste Management Regulations and is not regulated medical waste."

D. Regulated medical waste treated in compliance with Part VII, VIII or IX shall be deemed to be treated in accordance with these regulations. Regulated medical waste not treated in accordance with these regulations shall not be transported, received for transport or disposal, or disposed of in any solid waste management facility.

~~§ 8.3.~~ *§ 8.4.* Compliance with other parts of these regulations.

In general, sterilizer facilities shall comply with all other parts of these regulations. The site of the sterilizer facility is a storage facility and shall comply with Part V of these regulations. *Management of* spills or the opening in an emergency of any ~~infectious waste~~ *regulated medical waste* package, shall comply with § 4.4 of these regulations.

PART IX.
SPECIAL REQUIREMENTS FOR ALTERNATIVE TREATMENT.

§ 9.1. Application of Part IX.

The requirements of this part apply to all alternative treatment methods that treat regulated medical waste.

§ 9.2. Performance standards.

A. All alternative treatment facilities for regulated medical waste shall maintain the level of operational performance as described in this section at all times.

B. The following requirements apply to all alternative treatment facilities.

1. Regulated medical waste shall be grounded or shredded into particles that are no larger than 0.50 inches in any dimension. Grinding or shredding shall occur in a closed unit immediately preceding or following the treatment unit. Transfer from a grinder or shredder to or from a treatment unit shall be automated and conducted by enclosed mechanical equipment.

2. Alternative treatment units shall be evaluated under full loading for effectiveness with spores of B. stearothermophilus no less than once per month.

3. A log shall be kept at each alternative treatment unit that is complete for the preceding three-year period. The log shall record the date, time and operator; the type and approximate amount of solid waste treated; and the dates and results of calibration and testing. Where multiple alternative treatment units are used, a working log can be maintained at each unit and such logs periodically consolidated at a central location. The consolidated logs and all performance parameter recordings shall be retained for three years and be available for review.

4. Regulated medical waste shall not be compacted or subjected to violent mechanical stress before treatment. After it is fully treated it may be compacted in a closed container.

5. All process units for the preparation or treatment of regulated medical waste shall be in closed vessels under a negative pressure atmospheric control that filters all vents, discharges, and fugitive emissions of air from the process units through a high efficiency particulate air (HEPA) filter with an efficiency of 99.97% for 0.03 microns.

B. Facilities shall comply with the following treatment requirements for the specific technology employed.

1. Dry heat treatment.

a. Any treatment unit employing dry heat as the main treatment process shall subject all the regulated medical waste to:

(1) A temperature of no less than 480°F for no less than 30 minutes.

(2) A temperature of no less than 390°F for no less than 38 minutes, or

(3) A temperature of no less than 355°F for no less than 60 minutes.

b. No treatment unit employing dry heat as the main treatment process shall have a treatment chamber capacity greater than 1.0 cubic feet in volume.

c. Each treatment unit shall be equipped to sense, display and continiously record the temperature of the treatment chamber.

2. Microwave treatment.

a. Any treatment unit employing microwave radiation as the main treatment process shall subject all the solid waste to a temperature of no less than 203°F for no less than 25 minutes.

b. Microwave radiation power of the treatment process shall be at least six units each having a power of 1,200 watts or the equivalent power output.

c. Each microwave treatment unit shall be equipped to sense, display and continuously record the temperature at the start, middle and end of the treatment chamber.

3. Chlorination.

a. Any treatment unit employing chlorination as the main treatment process shall subject all the solid waste to a solution whose initial fee residual chlorine concentration is not less than 3.000 milligrams per liter for no less than 25 minutes.

b. The free chlorine residual of the solid waste slurry after treatment shall be maintained at 200 milligrams per liter. The treated solid waste stream shall be equipped to continuously analyze, display, and record free chlorine residual concentration.

4. Other alternative treatment technologies. All alternative treatment technologies approved by the director under § 2.7 C of these regulations shall conform to the requirements of this part and any additional requirements the director shall impose at the time of approval.

§ 9.3. Disposal of treated wastes.

A. Regulated medical waste that has been treated by an alternate treatment technique in compliance with these regulations is no longer regulated medical waste and is solid waste. Treated solid waste may be compacted.

B. All regulated medical waste that has been treated shall be placed in opaque plastic bags and sealed. The bags may not be red or orange in color. Where bulk treatment is used and the solid waste is compacted ana immediately placed in closed bulk solid waste management containers, which are more than 64 gallons in volume, the repacking of the treated solid waste in bags is not required.

C. Each bag of treated solid waste or bulk solid waste container must bear an easily read label, placard, or tag with the following words, "This solid waste has been properly treated in accord with Virginia Regulatea Medical Waste Management Regulations and is not regulated medical waste."

D. Regulated medical waste treated in compliance with Part VII, VIII or IX shall be deemed to be treated in accordance with these regulations. Regulated medical waste not treated in accordance with these regulations shall not be transported, received for transport or disposal, or disposed of in any solid waste management facility.

§ 9.4. Compliance with other parts of these regulations.

In general, alternative treatment facilities shall comply with all other parts of these regulations. The site of the treatment facility is a storage facility and must comply with Part V of these regulations. Management of spills or the opening in an emergency of any regulated medical waste package, shall comply with § 4.4 of these regulations.

PART ~~IX~~ *X*.
PERMIT APPLICATION AND ISSUANCE PROCEDURES.

§ ~~9.1.~~ *§ 10.1.* Scope of Part ~~IX~~ *X*.

This part of the regulations ~~requires~~ *describes procedures for obtaining* a permit for the treatment *,* or storage ~~or disposal~~ of ~~any infectious waste~~ *regulatea medical waste* unless specifically excluded by these regulations or under a permit by rule as defined in § 4.1 of these regulations. Owners and operators of ~~infectious waste~~ *regulated medical waste* management units shall have permits during the active life (including the closure periods) of the unit. The ~~executive~~ director may issue or deny a permit for one or more units at a facility without

simultaneously issuing or denying a permit to all of the units at the facility.

§ 10.2. Application for permit.

The Solid Waste Management Regulations, VR 672-20-10, contain detailed requirements for the siting, design, construction and operation of solid waste management facilities. All facilities for the management of regulated medical waste not permitted under Part IV, permit by rule, shall be permitted as a solid waste management facility in accordance with VR 672-20-10. The following designations shall apply:

1. Storage facilities. Permit application and review of any storage facility for the management of regulated medical waste shall comply with all applicable requirements and procedures for a solid waste transfer station under VR 672-20-10.

2. Incineration facilities. Permit application and review of any incinerator facility for the management of regulated medical waste shall comply with all applicable requirements and procedures for a solid waste energy recovery and incinerator facility under VR 672-20-10.

3. Steam sterilization and other nonincineration treatment facilities. Permit application and review of any steam sterilization or other nonincineration treatment facility for the management of regulated medical waste shall comply with all applicable requirements and procedures for a solid waste energy recovery and incinerator facility under VR 672-20-10.

§ 10.3. Contents of the application.

Procedures for the submission of applications and the review of applications for facilities for the management of regulated medical waste shall be identical to those for solid waste permit applications specified in VR 672-20-10. The content of the permit applications will comply with VR 672-20-10 and describe how the proposed facility will fully comply with these Regulated Medical Waste Management Regulations. Any certification submitted in fulfillment of permitting requirements of VR 672-20-10 shall incorporate total compliance with the requirements of these regulations, Regulated Medical Waste Regulations, when the application is for a facility to manage regulated medical waste. All operational plans submitted for the permitting of regulated medical waste facilities shall specifically describe how wastes received by the facilities will be screened as they arrive to prevent management of solid waste that are inappropriate or prohibited at the facilities.

§ 10.4. Duration of permits.

A. Any permit for the management of regulated medical waste shall expire after 10 years of operation. Permits shall not be extended beyond the 10-year permit by permit transfer or modifications. At any time more than 180 days prior to the expiration of the permit and no more than 480 days prior to the expiration of the permit, the holder of a valid permit may request that the director renew the permit and submit all information known to permit holder that is changed or new since the original permit application and which has not been previously submitted to the director. A permit may be renewed for a period of 10 years of operation. Processing of the request will be in accordance with subsections B and C of this section.

B. If the holder of a valid permit for a regulated medical waste management facility files with the director a request to renew the permit at least 180 days prior to the expiration of that permit, the director will cause an audit to be conducted of the facility's past operation, its current condition and the records held by the department concerning the facility. Within 60 days of receipt of a proper request, the director will report to the applicant the findings of the audit and those items of correction or information required before renewal will be considered. The director shall review the environmental compliance history of the permittee, material changes in key personnel, and technical limitations, standards, or regulations on which the original permit was based. If the director finds repeated material or substantial violations of the permittee or material changes in the permittee's key personnel would make continued operation of the facility not in the best interest of human health or the environment, the director shall deny the request for renewal of the permit. If the director finds the facilities to be insufficient to comply with regulations in effect at the time of the proposed renewal, the director shall deny the request for renewal. The director shall request any information from the permittee that is necessary to conduct the audit, and that is reasonably available to the permittee and substantive to the proposed renewal.

C. If the applicant files for renewal less than 180 days prior to the expiration of the original permit or files an improper application the director shall deny the application for renewal. If an application for renewal has been denied for a facility, any further applications and submittals shall be identical to those for a new facility.

§ 10.5. Existing facilities qualifications.

Owners and operators of existing and permitted regulated medical waste management facilities are not required to submit an application for a new permit at the time these amended regulations become effective. Existing permits will remain valid, except that conditions or waivers in existing permits that conflict with these amended regulations are void on the date six months from the effective date of these amended regulations. Operators of existing facilities are required to comply with these amended regulations within six months following their effective date and may comply at any time with any item contained in these regulations in lieu of a conflicting condition contained in an existing permit.

§ 10.6. Permitting administrative procedures.

Administration and procedures related to permit applications and permit administration for regulated medical waste facilities shall be those requirements for other solid waste management facilities contained in the Virginia Solid Waste Management Regulations, VR 672-20-10, Part VII.

§ 9.2. Application for permit.

A. Permit application.

Any person who is required to have a permit, including new applicants and permittees with expiring permits, shall complete, sign, and submit an application to the executive director, including the form contained in the appendix. Persons covered by permits by rule need not apply, but must notify the department in accord with Part IV. Procedures for application, issuance and administration of emergency permits are found exclusively in § 9.7 A. Procedures for application, issuance and administration of research, development, and demonstration permits are found exclusively in § 9.7 D.

B. When a facility or activity is owned by one person but is operated by another person, it is the operator's duty to obtain a permit; however, the owner shall also sign the permit application.

C. Completeness of application.

1. The executive director shall not begin the processing of a permit until the applicant has fully complied with the application requirements for that permit contained in § 9.3 and the signature requirements of § 9.6.

2. The executive director shall not issue a permit before receiving a complete application except permits by rule or emergency permits. An application for a permit is complete when the executive director receives an application form and any supplemental information which are completed to his satisfaction. The completeness of any application for a permit shall be judged independently of the status of any other permit application or permit for the same facility or activity.

3. All applicants for infectious waste management permits shall provide information set forth in § 9.3 and applicable portions of § 9.4 to the executive director.

D. Existing facilities qualifications.

Owners and operators of existing and permitted regulated medical waste management facilities are not required to submit an application for a new permit at the time these regulations become effective. Existing permits will remain valid, except that conditions or waivers in existing permits in conflict with these regulations are void and operators of existing facilities are required to comply with these regulations.

E. New facilities.

No person shall begin physical construction of a new facility without having submitted the permit application and having received a final effective permit.

§ 9.3. Contents of the application.

The application shall include the following information:

1. The activities conducted by the applicant which require him to obtain a permit.

2. Name, mailing address, and location of the facility for which the application is submitted.

3. The latitude and longitude of the facility.

4. The name, address and telephone number of the owner or the facility.

5. An indication of whether the facility is new or existing.

6. For existing facilities, a scale drawing of the facility showing the location of all past, present, and future treatment, storage, and disposal areas.

7. For existing facilities, photographs of the facility clearly delineating all existing structures; existing treatment, storage, and disposal areas; and sites of future treatment, storage, and disposal areas.

8. The operator's name, address, telephone number, ownership status, and status as federal, state, private, public, or other entity.

9. A listing of all permits or construction approvals received or applied for under any of the following programs and their counterpart programs administered by the Commonwealth:

a. Hazardous waste management program under RCRA;

b. NPDES program under CWA;

c. Prevention of Significant Deterioration (PSD) program under the Clean Air Act;

d. Nonattainment program under the Clean Air Act;

e. Other relevant environmental permits, including local permits.

10. A topographic map, or other map if a topographic map is unavailable, extending one mile beyond the

property boundaries of the source, depicting the facility and each of its intake and discharge structures; each of its infectious waste treatment, storage, or disposal facilities; and those wells, springs, other surface water bodies, and drinking water wells listed in public records or otherwise known to the applicant within the quarter-mile of the facility property boundary.

11. A brief description of the nature of the business.

12. A description of the processes to be used for treating, storing, transporting and disposing of infectious waste, and the design capacity of these items;

13. A description of the type of the infectious waste to be treated, stored, transported or disposed at the facility, an estimate of the quantity of such wastes to be treated, stored, transported or disposed annually;

14. A certification from the governing body of the city, county or town in which the facility is to be located that the location and operation of the facility are consistent with all applicable ordinances (in accordance with § 10.1-1408.1 B of the Code of Virginia.)

§ 9.4. Detailed submittal.

The following information is required for all facilities; however, its submittal may be delayed pending a preliminary evaluation by the department of the concept of the application based on the information above.

A. Conceptual review.

The applicant may request in writing that the department perform a conceptual review. The evaluation of the concept is not a commitment on the part of the department to issue a permit, nor is it a commitment by the applicant to proceed with the permitting process.

B. Final review.

No final permit will be considered or issued until the following information is submitted and is complete. (NOTE: If owners and operators of facilities can demonstrate that the information prescribed cannot be provided to the extent required, the executive director may take allowance for submission of such information on a case by case basis.)

1. A description of procedures, structures, or equipment used at the facility to:

a. Prevent hazards in unloading operations.

b. Prevent run-off from infectious waste handling areas to other areas of the facility or environment.

c. Prevent contamination of water supplies.

d. Mitigate effects of equipment failure and power outages.

e. Prevent exposure of personnel to regulated medical waste.

2. Traffic pattern, estimated volume (number, types of vehicles) and control; described access road surfacing and load bearing capacity; show traffic control signals.

3. Owners and operators of all facilities shall provide an identification of whether the facility is located within a 100-year flood plain. This identification shall indicate the source of data for such determination and include a copy of the relevant Federal Insurance Administration (FIA) flood map, if used, or the calculations and maps used where a FIA map is not available. Information shall also be provided identifying the 100-year flood level and any other special flooding factors (e.g., wave action) which shall be considered in designing, constructing, operating, or maintaining the facility to withstand washout from a 100-year flood.

4. An outline of both the introductory and continuing training programs by owners and operators to prepare persons to operate or maintain the facility in a safe manner as required. A brief description of how training will be designed to meet actual job tasks.

5. A copy of the closure plan.

6. Closure cost documentation. The most recent closure cost and post-closure cost estimates for the facility and a copy of the documentation required to demonstrate financial assurance under.

7. A topographic map showing a distance of 1,000 feet around the facility at a scale of 2.5 centimeters (1 inch) equal to not more than 61.0 meters (200 feet). Contours shall be shown on the map. The contour interval shall be sufficient to clearly show the pattern of surface water flow in the vicinity of and from each operational unit of the facility. For example, contours with an interval of 1.5 meters (5 feet), if relief is greater than 6.1 meters (20 feet) or an interval of 0.6 meters (2 feet), if relief is less than 6.1 meters (20 feet). Owners and operators of facilities located in mountainous areas should use larger contour intervals to adequately show topographic profiles of facilities. The map shall clearly show the following:

a. Map scale and date.

b. 100-year flood plain area.

c. Surface waters including intermittent streams.

d. Surrounding land uses (residential, commercia

agricultural, recreational).

e. A wind rose (i.e., prevailing wind speed and direction).

f. Orientation of the map (north arrow).

g. Legal boundaries of the facility site.

h. Access control (fences, gates).

i. Injection and withdrawal wells both on-site and off-site.

j. Buildings; treatment, storage, or disposal operations; or other structures (recreation areas, run-off control systems, access and internal roads, storm, sanitary, and process sewerage systems, loading and unloading areas, fire control facilities, etc.).

k. Barriers for drainage or flood control.

l. Location of operational units within the facility site, where infectious waste is (or will be) treated, stored, or disposed (including equipment cleanup areas).

m. Applicants may be required to submit such information as may be necessary to enable the executive director to carry out his duties as required.

8. From owners or operators of facilities that are used or to be used for storage or treatment, a description of the containment and refrigeration system.

9. For facilities that incinerate infectious waste.

a. An analysis of each waste or mixture of wastes to be burned.

b. Estimated heat value of the waste in the form and composition in which it will be burned.

c. A detailed engineering description of the incinerator, including:

(1) Manufacturer's name and model number of incinerator.

(2) Type of incinerator.

(3) Linear dimension of incinerator unit including cross sectional area of combustion chamber.

(4) Description of auxiliary fuel system (type/feed).

(5) Capacity of prime mover.

(6) Description of automatic waste feed cutoff system(s).

(7) Stack gas monitoring and pollution control monitoring system.

(8) Nozzle and burner design

(9) Construction materials.

(10) Location and description of temperature, pressure, flow indication and control devices.

(11) Feed minimum temperature interlock system.

d. The expected incinerator operation information, including:

(a) Gas zone temperatures and detention time;

(b) Waste feed rate;

(c) Combustion zone temperature;

(d) Indication of combustion gas velocity;

(e) Expected stack gas volume, flow rate, and temperature;

(f) Computed residence time for waste in the combustion zone;

(g) Proposed waste feed cutoff limits based on the identification significant operating parameters.

(h) Operation of feed-temperature maintenance interlock system.

e. Such supplemental information as the executive director finds necessary to achieve the purposes of this paragraph.

§ 9.5. Recordkeeping.

Applicants shall keep records of all data used to complete permit applications and any supplemental information submitted for a period of at least three years from the date the application is signed.

§ 9.6. Signatories to permit applications and reports.

A. Applications.

All permit applications shall be signed as follows:

1. For a corporation: By a principal corporate officer as defined in Part I.

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

3. For a municipality, state, federal, or other public

agency: By either a principal executive officer (see Part I) or ranking elected official.

B. Reports.

All reports required by permits and other information requested by the executive director shall be signed by a person described in § 9.6 A above or by a duly authorized representative of that person. A person is a duly authorized representative only if:

1. The authorization is made in writing by a person described in § 9.6 A;

2. The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity; and

3. The written authorization is submitted to the executive director.

C. Changes to authorization.

If an authorization is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements shall be submitted to the executive director prior to or together with any reports, information or applications to be signed by an authorized representative.

D. Certification.

Any person signing a document under § 9.6 A or § 9.6 B shall make the following certification:

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

§ 9.7. Special infectious waste management permits.

A. Emergency permits.

Notwithstanding any other provision of Part IX, in the event the executive director finds an imminent and substantial endangerment to human health or the environment, the executive director may issue a temporary emergency permit to a facility to allow treatment, storage, transportation or disposal of infectious waste for a nonpermitted facility or infectious waste not covered by the permit for a facility with an effective permit. Such permits:

1. May be oral or written. If oral, it shall be followed within five days by a written emergency permit;

2. Shall not exceed 90 days in duration;

3. Shall clearly specify the infectious waste to be received, and the manner and location of their treatment, storage, transportation or disposal;

4. May be terminated by the executive director at any time without process if it is determined that termination is appropriate to protect human health or the environment; and

5. Shall be accompanied by a public notice as required by the Virginia Administrative Process Act, including:

a. Name and address of the office granting the emergency authorization;

b. Name and location of the permitted facility;

c. A brief description of the wastes involved;

d. A brief description of the action authorized and reasons for authorizing it;

e. Duration of the emergency permit; and

6. Shall incorporate, to the extent possible and not inconsistent with the emergency situation, all applicable requirements of these regulations.

B. Research, development and demonstration permits.

1. The executive director may issue a research, development and demonstration permit for any infectious waste treatment facility which proposes to utilize an innovative and experimental infectious waste treatment technology or process for which permit standards for such experimental activity have not been promulgated. Any such permit shall include such terms and conditions as will assure protection of human health and the environment. Such permits:

a. Shall provide for the construction of such facilities as necessary, and for operation of the facility for no longer than one year unless renewed as provided in § 9.7 D 4; and

b. Shall provide for the receipt and treatment by the facility of only those types and quantities of regulated medical waste which the executive director deems necessary for purposes of determining the efficiency and performance capabilities of the technology or process and the effects of such technology or process on human

health and the environment, and

c. Shall include such requirements as the executive director deems necessary to protect human health and the environment (including, but not limited to, requirements regarding monitoring, operation, financial responsibility, closure and remedial action), and such requirements as the executive director deems necessary regarding testing and providing of information to the executive director with respect to the operation of the facility.

2. For the purpose of expediting review and issuance of permits under this section, the executive director may, consistent with the protection of human health and the environment, modify or waive permit application and permit issuance requirements in Part IX.

3. The executive director may order an immediate termination of all operations at the facility at any time he determines that termination is necessary to protect human health and the environment.

4. Any permit issued under § 9.7 B may be renewed not more than three times. Each such renewal shall be for a period of not more than one year.

§ 9.8. Conditions applicable to all permits.

The following conditions apply to all regulated medical waste management permits. All conditions applicable to all permits shall be incorporated into the permits either expressly or by reference. If incorporated by reference, a specific citation to these regulations shall be given in the permit.

A. Duty to comply.

The permittee shall comply with all conditions of the permit, except that permittee need not comply with the conditions of this permit to the extent and for the duration such noncompliance is authorized in an emergency permit (see § 9.7 A). Any permit noncompliance, except under the terms of an emergency permit, constitutes a violation of Title 10.1, Code of Virginia, and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or for denial of a permit renewal application.

B. Duty to reapply.

If the permittee wishes to continue a regulated activity after the expiration date of his permit, he shall apply for and obtain a new permit.

C. Need to halt or reduce activity not a defense.

It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

D. Duty to mitigate.

In the event of noncompliance with the permit, the permittee shall take all reasonable steps to minimize releases to the environment, and shall carry out such measures as are reasonable to prevent significant adverse impacts on human health or the environment.

E. Proper operation and maintenance.

The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control which are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance includes effective performance, adequate funding, adequate operator staffing and training, and adequate laboratory and process controls, including quality assurance procedures. This provision requires the operation of backup or auxiliary facilities or similar systems only when necessary to achieve compliance with permit conditions.

F. Permit actions.

The permit may be modified, revoked, and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation, and reissuance, or termination, or a notification of planned changes or anticipated noncompliance does not stay any permit condition.

G. Property rights.

The permit does not convey any property rights of any sort, or any exclusive privilege. Possession of a permit does not authorize any injury to persons or property or invasion of other private rights, or any infringement of Commonwealth or local law or regulations.

H. Duty to provide information.

The permittee shall furnish to the Commonwealth within a reasonable time, any pertinent information which the executive director may request to determine whether cause exists for modifying, revoking, and reissuing, or terminating this permit or to determine compliance with this permit. The permittee shall also furnish to the executive director, upon request, copies of records required to be kept by the permit.

I. Inspection and entry.

The permittee shall allow the executive director or an authorized representative, upon the presentation of credential and other documents as may be required by law, to:

1. Enter at reasonable times upon the permittee's premises where a regulated facility or activity is

located or conducted, or where records shall be kept under the conditions of the permit;

2. Have access to and copy, at reasonable times, any records that shall be kept under the conditions of the permit;

3. Inspect at reasonable times any facilities, equipment practices, or operations regulated or required under the permit; and

4. Sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by the regulations, any substances or parameters at any location.

J. Monitoring and records.

1. Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity. The permittee shall retain records of all monitoring information, including all calibrations and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit and records of all data used to complete the application for this permit, for a period of at least three years from the date of the sample, measurement, report, certification or application. This period may be extended by request of the executive director at any time.

3. Records of monitoring information shall include:

a. The date, exact place, and time of sampling or measurements;

b. The individual(s) who performed the sampling or measurements;

c. The date(s) analyses were performed;

d. The individual(s) who performed the analyses;

e. The analytical techniques or methods used; and

f. The results of such analyses.

K. Signatory requirement.

All applications, reports, or information submitted to the executive director shall be signed and certified as specified as § 9.6.

L. Reporting requirements.

1. Planned changes. The permittee shall give written notice to the executive director as soon as possible of any planned physical alterations or conditions to the permitted facility.

2. Anticipated noncompliance. The permittee shall give advance written notice to the executive director of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements. For a new facility, the permittee may not commence treatment, storage or disposal of infectious waste; and or a facility being modified the permittee may not treat, store or dispose of regulated medical waste in the modified portion of the facility, until:

a. The permittee has submitted to the executive director by certified mail or hand delivery a letter signed by the permittee stating that the facility has been constructed or modified in compliance with the permit; and

b. The executive director has inspected the modified or newly constructed facility and finds it is in compliance with the conditions of the permit.

3. Transfers. This permit is not transferable to any person except with the approval of the executive director. The executive director may require modification or revocation and reissuance of the permit to change the name of the permittee and incorporate such other requirements as may be necessary. If the executive director finds that a name change is a minor modification, the requirements of § 9.17 will apply.

4. Monitoring reports. Monitoring results shall be reported at the intervals specified in the permit or these regulations.

5. Compliance schedules. Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of the permit shall be submitted no later than 14 days following each schedule date.

6. Twenty-four hour reporting.

a. The permittee shall report to the department any noncompliance which may endanger health or environment. Any information shall be provided orally within 24 hours from the time the permittee becomes aware of the circumstances.

b. The following shall be included as information which shall be reported orally within 24 hours:

(1) Information concerning release of any regulated medical waste that may cause an endangerment to public health.

(2) Any information of a release or discharge of infectious waste, or of a fire or explosion from a facility, which could threaten the environment or human health outside the facility. The description of the occurrence and its cause shall include:

(a) Name, address and telephone number of the owner or operator;

(b) Name, address and telephone number of the facility;

(c) Date, time and type of incident;

(d) Name and quantity of material(s) involved;

(e) The extent of injuries, if any;

(f) An assessment of actual or potential hazards to the environment and human health outside the facility, where this is applicable; and

(g) Estimated quantity and disposition of recovered material that resulted from the incident.

c. A written submission shall also be provided within five days of the time the permittee becomes aware of the circumstances. The submission shall contain a description of the noncompliance and its cause; the period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate and prevent reoccurrence of the noncompliance. The executive director may waive the five-day notice requirement in favor of a written report within 15 days.

7. Other information where the permittee becomes aware that he failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application or in any report to the executive director, he shall promptly submit such facts or information.

§ 9.9. Establishing permit conditions.

A. General.

In addition to conditions required in all permits, the executive director shall establish conditions as required on a case-by-case basis, for the duration of permits, schedules of compliance, monitoring, and to provide for and assure compliance with all applicable requirements of these regulations.

Each permit issued under Part IX shall contain terms and conditions as the executive director determines necessary to protect human health and the environment.

B. An applicable requirement is a Commonwealth statutory or regulatory requirement which takes effect prior to final administrative disposition of a permit.

An applicable requirement is also any requirement which takes effect prior to the modification or revocation and reissuance of a permit, to the extent allowed in § 9.15.

C. New or reissued permits, and to the extent allowed under § 9.15, modified or revoked and reissued permits, shall incorporate each of the applicable requirements in these regulations.

D. Incorporation.

All permit conditions shall be incorporated either expressly or by reference. If incorporated by reference, a specific citation to the applicable regulations or requirements shall be given in the permit.

§ 9.10. Duration of permits and renewal of permits.

A. Infectious waste management permit shall be effective for a fixed term not to exceed 10 years.

B. The term of a permit shall not be extended by modification beyond the maximum duration specified in this part.

C. The executive director may issue any permit for a duration that is less than the full allowable term under this part.

D. If the holder of a valid permit for an regulated medical waste management facility files with the executive director a request to renew or extend the permit at least 180 days prior to the expiration of that permit, the executive director will cause an audit to be conducted of the facility's past operation, its current condition and the records held by the department concerning the facility. Within 60 days of receipt of a proper request, the department will report to the applicant the results of the audit and those items of correction or information required before renewal will be considered. At the time of filing, the applicant shall provide all information known to him that is changed or new since the original permit application and which he has not previously provided to the department. If the applicant files for renewal or extension less than 180 days prior to the expiration of the original permit or files an improper application the executive director shall deny the application for renewal. If an application for renewal has been denied for a facility, any further applications and submittals shall be identical to those for a new facility.

E. The executive director may refuse to renew a permit or issue a new permit for a facility if the facility has had a record of violations of the permit or regulations of the department, as evidenced by notices and other enforcement actions of the department; if the executive director believes current facilities may pose a threat to the health or environment or the facility will not comply with current regulations for design, siting and other physical characteristics which apply to new facilities.

§ 9.11. Effect of a permit.

A. Compliance with a valid permit during its term constitutes compliance for purposes of enforcement with the Virginia Solid Waste Management Act. However, a permit may be modified, revoked and reissued, or terminated during its term for cause as set forth in these regulations.

B. The issuance of a permit does not convey any property rights of any sort, or any exclusive privilege.

C. The issuance of a permit does not authorize any injury to persons or property or invasion of other private rights, or any infringement of Commonwealth or local law or regulations.

§ 9.12. Transfer of permits.

A permit may be transferred by the permittee to a new owner or operator only if the permit has been modified or revoked and reissued, or a minor modification made to identify the new permittee and incorporate such other requirements as may be necessary.

§ 9.13. Schedule of compliance.

A. The permit may, when appropriate, specify a schedule of compliance leading to compliance with these regulations.

1. Any schedules of compliance under this part shall require compliance as soon as possible.

2. Except as otherwise provided, if a permit establishes a schedule of compliance which exceeds one year from the date of permit issuance, the schedule shall set forth interim requirements and the dates for their achievement.

a. The time between interim dates shall not exceed one year;

b. If the time necessary for completion of any interim requirement is more than one year and is not readily divisible into stages of completion, the permit shall specify interim dates for the submission of reports of progress toward completion of the interim requirements and indicate a projected completion date.

3. The permit shall be written to require that no later than 14 days following each interim date and the final date of compliance, a permittee shall notify the executive director, in writing, of his compliance or noncompliance with the interim or final requirements.

§ 9.14. Modification, revocation and reissuance, or termination of permits.

A. If the executive director tentatively decides to modify or revoke and reissue a permit, he shall prepare a draft permit incorporating the proposed changes. The executive director may request additional information and, in the case of a modified permit, may require the submission of an updated permit application. In the case of revoked and reissued permits, the executive director shall require the submission of a new application.

1. In a permit modification under this part, only those conditions to be modified shall be reopened when a new draft permit is prepared. All other aspects of the existing permit shall remain in effect for the duration of the unmodified permit. When a permit is revoked and reissued under this part, the entire permit is reopened just as if the permit had expired and was being reissued. During any revocation and reissuance proceeding the permittee shall comply with all conditions of the existing permit until a new final permit is reissued.

2. Minor modifications as specified in § 9.17 are not subject to the above requirements.

B. If the executive director tentatively decides to terminate a permit, he shall issue a notice of intent to terminate. A notice of intent to terminate is a type of draft permit which follows the same procedures as any draft permit prepared under § 9.18.

§ 9.15. Modification or revocation and reissuance of permits.

When the executive director receives any information, he may determine whether one or more of the causes listed for modification or revocation and reissuance or both exist. If cause exists, the executive director may modify or revoke and reissue the permit accordingly, subject to the limitations of § 9.15 C, and may request an updated application if necessary. If cause does not exist under this section or § 9.17, the executive director shall not modify or revoke and reissue the permit. If a permit modification satisfies the criteria in § 9.17 for minor modifications, the permit may be modified without a draft permit or public review. Otherwise, a draft permit shall be prepared and other appropriate procedures followed.

A. Causes for modification.

The following are causes for modification but not revocation and reissuance of permits.

1. There are material and substantial alterations or additions to the permitted facility or activity which occurred after permit issuance which justify the application of permit conditions that are different or absent in the existing permit.

2. If the executive director has received information pertaining to circumstances or conditions existing at the time the permit was issued that was not included in the administrative record and would have justified the application of different permit conditions, the permit may be modified accordingly if in the

judgment of the executive director such modification is necessary to prevent significant adverse effects on public health or the environment.

3. The standards or regulations on which the permit was based have been changed by promulgation of amended standards or regulations or by judicial decision after the permit was issued. Permits may be modified during their terms for this cause only as follows:

a. For promulgation of amended standards or regulations, when:

(1) The permit condition requested to be modified was based on a promulgated infectious waste regulation;

(2) The Commonwealth has revised, withdrawn or modified that portion of the regulation on which the permit condition was based; and

(3) A permittee requests modification within 90 days after notice of the action on which the request is based.

b. For judicial decision, a court of competent jurisdiction has remanded and stayed Commonwealth regulations, if the remanded and stay concern that portion of the regulations on which the permit condition was based and a request is filed by the permittee within 90 days of judicial remand.

4. The executive director determines good cause exists for modification of a compliance schedule, such as an act of God, strike, flood, or material shortage or other events over which the permittee has little or no control and for which there is no reasonably available remedy.

5. The executive director may modify a permit:

a. After the executive director receives the notification of expected closure, when he determines that extension of the 90 or 180 day periods under that part, modification of the 30-year post-closure period, continuation of the security requirements, or permission to disturb the integrity of the containment system under are unwarranted;

b. When the permittee has filed a request for a variance to the level of financial responsibility or when the executive director demonstrates that an upward adjustment of the level of financial responsibility is required.

c. To include conditions applicable to units at a facility that were not previously included in the facility's permit.

B. Cause for modification or revocation and reissuance.

The following are causes to modify or, alternatively, revoke and reissue a permit:

1. Cause exists for termination under § 9.16, and the executive director determines that a modification or revocation and reissuance is appropriate.

2. The executive director has received notification of a proposed transfer of an existing permit.

C. Facility siting.

The suitability of the facility location will not be considered at the time of permit modification or revocation and reissuance unless new information or standards indicate that an endangerment to human health or the environment exists which was unknown at the time of permit issuance.

§ 9.16. Termination of permits.

A. The following are causes for terminating a permit during its term, or for denying a permit renewal application:

1. Noncompliance by the permittee with any condition of the permit;

2. The permittee's failure in the application or during the permit issuance process to disclose fully all relevant facts, or the permittee's misrepresentation of any relevant facts at any time; or

3. A determination that the permitted activity endangers human health or the environment and can only be regulated to acceptable levels by permit modification or termination.

B. The executive director shall follow the applicable procedures of the Virginia Administrative Process Act in terminating any permit under this part.

§ 9.17. Minor modification of permits.

Upon the consent of the permittee, the executive director may modify a permit to make the corrections or allowances for changes in the permitted activity listed in this part, without following the required procedures for major modification, including those concerning public notice and public hearing. Any permit modification not processed as a minor modification under this part shall be made for cause and with draft permit and public notice as required. Minor modifications may only:

1. Correct typographical error;

2. Require more frequent monitoring or reporting by the permittee;

3. Change an interim compliance date in a schedule of compliance, provided the new date is not more than

120 days after the date specified in the existing permit and does not interfere with attainment of the final compliance date requirement.

4. Allow for a change in ownership or operational control of a facility where the director determines that no other change in the permit is necessary, provided that a written agreement containing a specific date for transfer of permit responsibility between the current and new permittees has been submitted to the director. Changes in the ownership or operational control of a facility may be made without further proceeding if the new owner or operator submits a revised permit application no later than 60 days prior to the scheduled change. When a transfer of ownership or operational control of a facility occurs, the old owner or operator shall comply with the requirements of any financial assurance regulations, until the new owner or operator has demonstrated to the director that he is complying with the requirement. The new owner or operator shall demonstrate compliance with the requirements within six months of the date of the change in the ownership or operational control of the facility. Upon demonstration to the director by the new owner or operator of compliance, the director shall notify the old owner or operator in writing that he no longer needs to comply with § 9.7 as of the date of demonstration.

5. Change the lists of facility personnel or equipment in the permit's contingency plan.

§ 9.18. Draft permits.

A. Once an application is complete, the executive director shall tentatively decide whether to prepare a draft permit or to deny the application.

B. If the executive director tentatively decides to deny the permit application, he shall issue a notice of intent to deny. A notice of intent to deny the permit application is a type of draft permit which follows the same procedures as any draft permit prepared under this part. If the executive director's final decision is that the tentative decision to deny the permit was incorrect, he shall withdraw the notice of intent to deny and proceed to prepare a draft permit.

C. If the executive director decides to prepare a draft permit, he shall prepare a draft permit that contains the following information:

1. All conditions under §§ 9.8 and 9.9;

2. All compliance schedules under § 9.13.

§ 9.19. Public notice of permit actions and public comment period.

A. Scope.

The executive director shall give public notice that the following actions have occurred:

1. A draft permit has been prepared; or

2. A hearing has been scheduled.

B. Timing.

1. Public notice of the preparation of a draft permit or the intent to deny a permit application shall allow at least 45 days for public comment;

2. Public notice of a public hearing shall be given at least 30 days before the hearing.

C. Methods.

Public notice of activities described in this part shall be given by the following methods:

1. By mailing a copy of a notice to the following persons (any person otherwise entitled to receive notice under this paragraph may waive his rights to receive notice for any classes and categories of permits):

a. The app ·ant

b. Any other agency which the executive director knows has issued or is required to issue a permit for the same facility or activity; and to each state agency having any authority under the state law with respect to the construction or operation of such facility, including the Department of Air Pollution Control for incinerator facilities;

c. Any unit of local government having jurisdiction over the area where the facility is proposed to be located and the appropriate regional solid waste planning agency;

2. Publication of a notice in a daily or weekly major local newspaper of general circulation.

D. Contents.

1. All public notices issued under this part shall contain the following minimum information:

a. Name and address of the office processing the permit action for which notice is being given;

b. Name and address of the permittee or permit applicant and, if different, of the facility or activity regulated by the permit;

c. A brief description of the business conducted at the facility or activity described in the permit application or the draft permit;

d. The name, address and telephone number of a person from whom interested persons may obtain further information, including copies of the draft permit or fact sheet, and the application; and

e. A brief description of the comment procedures required and the time and place of any hearing that will be held, including a statement of procedures to request a hearing unless already scheduled, and other procedures by which the public may participate in the final permit decision.

2. In addition to the general public notice described in § 9.19 D 1, the public notice of a hearing shall contain the following information:

a. Reference to the date of previous public notices relating to the permit;

b. Date, time, and place of the hearing; and

c. A brief description of the nature and purpose of the hearing, including the applicable rules and procedures.

§ 9.20. Public comments and requests for public hearings.

During the public comment period provided, any interested person may submit written comments on the draft permit and may request a public hearing if no hearing has already been scheduled. A request for a public hearing shall be in writing and shall state the nature of the issues proposed to be raised in the hearing. All comments shall be considered in making the final decision and shall be answered as provided in § 9.23.

§ 9.21. Public hearings.

A. The executive director shall hold a public hearing whenever he receives written notice of opposition to a draft permit and a request for a hearing during the public comment period specified in § 9.19 B 1.

B. In addition to hearings required in § 9.21 A, the executive director may hold a public hearing at his discretion, whenever, for instance, such a hearing might clarify one or more issues involved in permit decision.

C. Whenever a public hearing is scheduled:

1. Public notice of the hearing shall be given as specified in § 9.19 B; and

2. Shall be held in the locality convenient to the nearest population center to the proposed facility.

§ 9.22. Obligation to raise issues and provide information during the public comment period.

All persons, including applicants, who believe any condition of a draft permit is inappropriate or that the executive director's tentative decision to deny an application, terminate a permit, or prepare a draft permit is inappropriate, shall raise all reasonably ascertainable issues and submit all reasonably available arguments and factual grounds supporting their position, including all supporting material, by the close of the public comment period. All supporting materials shall be included in full and not be incorporated by reference, unless they are already part of the administrative record in the same proceeding, or consist of Commonwealth or federal statutes and regulations, documents of general applicability, or other generally available reference materials. Commenters shall make supporting material not already included in the administrative record available to the Commonwealth as directed by the executive director.

§ 9.23. Response to comments.

A. Any time that any final permit decision is issued, the executive director shall issue a response to comments, when a final permit is issued. This response shall:

1. Specify which provisions, if any, of the draft permit have been changed in the final permit decision, and the reasons for the change; and

2. Briefly describe and respond to all significant comments on the draft permit raised during the public comment period, or during any hearing.

B. The response to comments shall be available to the public.

APPENDIX 9.1

Application Cover Sheet

COMMONWEALTH OF VIRGINIA
DEPARTMENT OF WASTE MANAGEMENT

APPLICATION FOR A PERMIT FOR AN INFECTIOUS WASTE MANAGEMENT FACILITY

NAME OF APPLICANT _____
ADDRESS _____

LOCATION OF SITE (Describe and attach map showing exact location)

SIZE OF SITE _____ Acres WASTE MANAGEMENT RATE(Estimated) _____ Tons Per Day

OPERATOR (If Different From Applicant) _____

OPERATOR ADDRESS _____

TYPE OF FACILITY FOR WHICH APPLICATION IS MADE

- Storage of Infectious Waste ☐
- Transportation of Infectious Waste ☐
- Incineration of Infectious Waste ☐
- Steam Sterilization of Infectious Waste ☐
- Experimental Treatment Method for Infectious Waste ☐

TYPES OF WASTE EXPECTED (Check all those for which permit is sought)

- Pathological ☐
- Hospital ☐
- Non-hospital Medical Care ☐
- Mortuary ☐
- Laboratory ☐
- Etiological Agents ☐
- Industrial Biological ☐
- Infected Animal Maintenance ☐
- Quarantine Outside Hospital ☐
- Dialysis Unit ☐
- Other ☐

_____ TITLE _____
Signature of Owner

TELEPHONE NUMBER ( ) _____ DATE _____

NOTE: COVER SHEET ONLY, ATTACH OTHER REQUIRED DATA

PART ~~X~~ *XI*.
~~RULEMAKING PETITIONS~~ *VARIANCES*.

~~§ 10.1.~~ *§ 11.1.* General.

~~A.~~ Any person affected by these regulations may petition the ~~executive~~ director to grant a variance ~~or an exemption~~ from any requirement of these regulations, subject to the provisions of this part. Any petition submitted to the ~~executive~~ director is also subject to the provisions of the Virginia Administrative Process Act (§ § 9-6.14:1 ~~to 9-6.14:25~~ *et seq.* of the Code of Virginia).

~~B. The executive director will not accept any petition relating to:~~

~~1. Equivalent testing or analytical methods contained in EPA Publication SW-846; and~~

~~2. Definition of solid waste contained in these regulations.~~

§ 11.2. Procedures.

Procedures for petitioning the director for a variance and for the issuance of a variance are those contained in Part IX, Rulemaking Petitions and Procedures, Solid Waste Management Regulations, VR 672-20-10.

~~§ 10.2. Exemptions to classification as a solid waste.~~

~~A. Applicability.~~

~~1. A person who recycles waste that is managed entirely within the Commonwealth may petition the executive director to exclude the waste at a particular site from the classification as the solid waste (see Parts I and III). The conditions under which a petition for a variance will be accepted are shown in § 10.2 B. The wastes excluded under such petitions may still, however, remain classified as a solid waste for the purposes of other regulations issued by the Virginia Waste Management Board or other agencies of the Commonwealth.~~

~~2. A person who generates wastes at a generating site in Virginia and whose waste is transported across state boundaries, shall first obtain favorable decision from the appropriate agencies of other states before his waste may be considered for an exemption by the executive director.~~

~~3. A person who recycles materials from a generating site outside the Commonwealth and who causes them to be brought into the Commonwealth for recycling shall first obtain favorable decision from the appropriate authorities in that state before the waste may be considered for an exemption by the executive director.~~

~~B. Conditions for an exemption.~~

~~As the result of a petition and in accordance with the standards and criteria in § 10.2 C and the procedures in § 10.5, the executive director may determine on a case-by-case basis that the following recycled materials are exempt for the purposes of these regulations:~~

~~1. Materials that are accumulated speculatively without sufficient amounts being recycled (as defined in Part I);~~

~~2. Materials that are reclaimed and then reused within the original primary production process in which they were generated;~~

~~3. Materials that have been reclaimed but shall be reclaimed further before the materials are completely recovered; and~~

~~4. Materials that are reclaimed and then reused in applications involving their placement into land.~~

~~C. Standards and criteria for exemptions.~~

~~1. The executive director may grant requests for a variance from classifying as a solid waste those materials that are accumulated speculatively without sufficient amounts being recycled if the applicant demonstrates that sufficient amounts of the material will be recycled or transferred for recycling in the following year. If a variance is granted, it is valid only for the following year, but can be renewed, on an annual basis, by filing a new application. The executive director's decision will be based on the following standards and criteria:~~

~~a. The manner in which the material is expected to be recycled, and when the material is expected to be recycled, and whether this expected disposition is likely to occur (for example, because of past practice, market factors, the nature of the material, or contractual arrangement for recycling);~~

~~b. The reason that the applicant has accumulated the material for one or more years without recycling 75% of the volume accumulated at the beginning of the year;~~

~~c. The quantity of material already accumulated and the quantity expected to be generated and accumulated before the material is recycled;~~

~~d. The extent to which the material is handled to minimize loss;~~

~~e. Other relevant factors.~~

~~2. The executive director may grant requests for a variance from classifying as a solid waste those materials that are reclaimed and then reused as feedstock within the original primary production process in which the materials were generated if the~~

reclamation operation is an essential part of the production process. This determination will be based on the following criteria:

a. How economically viable the production process would be if it were to use virgin materials, rather than reclaimed materials;

b. The prevalence of the practice on an industry-wide basis;

c. The extent to which the material is handled before reclamation to minimize loss;

d. The time periods between generating the material and its reclamation, and between reclamation and return to the original primary production process;

e. The location of the reclamation operation in relation to the production process;

f. Whether the reclaimed material is used for the purpose for which it was originally produced when it is returned to the original process, and whether it is returned to the process in substantially its original form;

g. Whether the person who generates the material also reclaims it; and

h. Other relevant factors.

3. The executive director may grant requests for a variance from classifying as a solid waste those materials that have been reclaimed but shall be reclaimed further before recovery is completed if, after initial reclamation, the resulting material is commodity-like (even though it is not yet a commercial product, and has to be reclaimed further). This determination will be based on the following factors:

a. The degree of processing the material has undergone and the degree of further processing that is required;

b. The value of the material after it has been reclaimed;

c. The degree to which the reclaimed material is like an analogous raw material;

d. The extent to which an end market for the reclaimed material is guaranteed;

e. The extent to which the reclaimed material is handled to minimize loss; and

f. Other relevant factors.

4. The executive director may grant requests for a variance from classifying as a solid waste those materials that are reclaimed and then reused in applications involving placement into land. This determination will be based on the following factors:

a. How economically advantageous is the utilization process using reclaimed materials compared to the virgin materials;

b. The prevalence of the practice on an industry-wide basis;

c. The extent to which the material is handled before reclamation to minimize loss;

d. The location of the generating and reclamation operations in relation to the utilization process;

e. The chemical and physical characteristics of the material prior and after the reclamation process;

f. An estimate of the rate of annual usage of the reclaimed material;

g. Whether the person who generates the material also reclaims it;

h. Proximity of emplaced materials to ground and surface waters; and

i. Other factors relevant to public health and the environment.

§ 10.3. Variances from requirements.

A. Application and conditions.

The executive director may grant a variance from any regulation herein, except those contained in § 10.1 B, to a permittee if the permittee demonstrates to the satisfaction of the executive director that:

a. Strict application of the regulation to the facility will result in undue hardship that is unique to the applicant's particular situation; or

b. Technical conditions exist that make a strict application of the regulation impossible to achieve; and

2. Granting the variance will not result in an unreasonable risk to the public health or the environment.

B. Effects of the decisions.

1. When the executive director renders a decision under § 10.3 in accordance with the procedures contained in § 10.5, he may:

a. Deny the petition;

b. Grant the variance as requested; or

c. Grant a modified or partial variance.

2. When a modified variance is granted, the executive director may:

a. Specify the termination date of the variance;

b. The executive director may include a schedule for:

(1) Compliance, including increments of progress, by the facility with each requirement of the variance; and

(2) Implementation by the facility of such control measures as the executive director finds necessary in order that the variance may be granted.

§ 10.4. Rulemaking petitions.

A. Applicability.

Any person may petition the executive director to append, modify, or revoke any provision of these regulations.

B. The petitioner should submit all relevant information shown in § 10.5 A 1. The executive director will proceed with the processing of the petition in accordance with § 10.5 B. The final decision will be rendered by the Virginia Waste Management Board.

§ 10.5. Administrative procedures.

A. Submission of petition.

1. General petitioning requirements. The petition shall be submitted to the executive director by certified mail and shall include:

a. The petitioner's name and address;

b. A statement of petitioner's interest in the proposed action;

c. A description of desired action and a citation to the regulation from which a variance is requested;

d. A description of need and justification for the proposed action;

e. The duration of the variance, if applicable;

f. The potential impact of the variance on public health or the environment;

g. Other information believed by the applicant to be pertinent; and

h. The following statements signed by the petitioner or his authorized representative, if applicable:

"I certify that I have personally examined and am familiar with the information submitted in this petition and all attached documents, and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment."

2. Additional requirements for petitions under § 10.2. In addition to the general information required of all petitioners under § 10.5 A 1:

a. To be successful the petitioner shall address the applicable standards and criteria listed in § 10.2 C.

b. For petitions submitted under § 10.2 B 4 following addition and annual quantities of waste covered by the petition;

(2) A description of the methodologies and equipment used to obtain representative samples and analyses, to include:

(a) The name and address of the laboratory facility performing the sampling on tests of the waste, if different from that of the petitioner;

(b) The qualifications of the persons sampling and testing the wastes;

(c) The dates of sampling and testing;

(d) A description of sample handling and preparation techniques, including techniques used for extraction, containerization and preservation of samples; and

(e) A description of the tests performed and the results obtained.

(3) The description of the reclamation processes.

3. Additional requirements for petitions under § 10.3. In addition to the general information required of all petitioners under § 10.5 A 1, the petitioner shall submit:

a. An explanation of the applicant's particular situation which prevents the facility from achieving compliance with the cited regulation;

b. Other information as may be required by the department.

B. Petition processing.

1. After receiving a petition that includes the information required in § 10.5 A, the executive director will determine whether the information received is sufficient to render the decision. If the information is deemed to be insufficient, the executive director will specify additional information needed and request that it be furnished.

2. The petitioner may submit the additional information requested, or may attempt to show that no reasonable basis exists for the request for additional information. If the executive director agrees that no reasonable basis exists for the request for additional information, he will act in accordance with § 10.5 B 3. If the executive director continues to believe that a reasonable basis exists to require the submission of such information, he will proceed with the denial action in accordance with the Virginia Administrative Process Act (VAPA).

3. After the petition is deemed complete:

a. The executive director will make a tentative decision to grant or deny the petition;

b. In case that petition may be tentatively denied, the executive director will offer the petitioner the opportunity to withdraw the petition, submit additional information, or request the executive director to proceed with the evaluation;

c. Unless the petition is withdrawn, the executive director will issue a draft notice tentatively granting or denying the application. Notification of this tentative decision will be provided by newspaper advertisement and radio broadcast in the locality where the applicant is located. The executive director will accept comment on the tentative decision for 30 days.

d. Upon a written request of any interested person, the executive director may, at his discretion, hold an informal fact finding meeting described in Article 3, Virginia Administrative Process Act. A person requesting a hearing shall state the issues to be raised and explain why written comments would not suffice to communicate the person's views. The executive director may in any case decide on his own motion to hold such a meeting.

e. After evaluating all public comments the executive director will:

(1) In case of general rulemaking petitions (§ 10.4), formulate and submit a recommendation to the Virginia Waste Management Board; or

(2) In case of all other petitions:

(a) Within 15 days after the expiration of the comment period, notify the applicant of the final decision; and

(b) Publish it in a newspaper having circulation in the locality.

C. Petition resolution.

1. In the case of a denial, the petitioner has a right to request a formal hearing to challenge the rejection.

2. If the executive director grants a variance request, the notice to the petitioner shall provide that the variance may be terminated upon a finding by the executive director that the petitioner has failed to comply with any variance requirements.

VA.R. Doc. No. R93-642; Filed June 30, 1993, 8:46 a.m.

STATE WATER CONTROL BOARD

Title of Regulation: **VR 680-14-19. Virginia Pollutant Discharge Elimination System (VPDES) General Permit for Storm Water Discharges from Construction Sites.**

Statutory Authority: § 62.1-44.15(10) of the Code of Virginia.

Effective Dates: June 30, 1993, through June 29, 1994.

Preamble:

VR 680-14-19 establishes a general VPDES permit for storm water discharges from construction cites. The Clean Water Act requires certain facilities with point source discharges of storm water associated with industrial activity to submit a permit application under the National Pollutant Discharge Elimination System (NPDES) permits program. Virginia operates this program as the VPDES permits program. This proposed regulation will allow construction site owners/operators to submit a Registration Statement as an application for coverage under a VPDES general permit and authorize the discharge of storm water associated with industrial activity from these sites. This proposed regulation will replace the emergency regulation VR 680-14-15, "VPDES General Permit Registration Statement for Storm Water Discharges Associated with Industrial Activity" that became effective September 22, 1992.

This proposed regulation will: (1) define storm water discharges from construction sites which may be authorized by this general permit; (2) establish procedures to submit a Registration Statement as intention to be covered by the general permit; (3) establish standard language for control of storm water discharges associated with industrial activity through the development of a storm water pollution prevention plan; and (4) set minimum monitoring requirements.

In Virginia there are an estimated 5000 to 10,000 construction sites that may be required to submit a permit application under the federal storm water regulations. Owners/operators of existing construction sites covered by this regulation were required to apply for a storm water permit by October 1, 1992, using one of two application options: (1) individual application, or (2) general permit "Notice of Intent."

Since Virginia did not have storm water general permits available prior to EPA's October 1, 1992 deadline, an emergency regulation (VR 680-14-15) was passed by the State Water Control Board on September 22, 1992. The emergency regulation allowed construction site owners/operators to file a Registration Statement indicating their intent to be covered by a storm water general permit that would subsequently be developed.

The Department staff has developed a general permit for storm water discharges from construction sites. This general permit is based upon EPA'S storm water general permit that was published in the Federal Register on September 9, 1992. In developing this general permit, EPA's general permit was modified to make it specific to Virginia.

The general permit requires the development and implementation of a pollution prevention plan by the permittee. The purpose of the pollution prevention plan is to identify potential sources of storm water pollution and to describe and ensure the implementation of best management practices to reduce the pollutants in storm water discharges. The general permit requires inspections to be conducted to identify sources of pollutants and to evaluate whether the pollution prevention measures are adequate and are being effectively implemented.

As required by this regulation, the owners/operators of all covered construction sites would submit a complete Registration Statement, develop a storm water pollution prevention plan, and perform regular inspections. A permit fee will be required from the applicant for the issuance of a general permit. The proposed regulation will authorize storm water discharges associated with industrial activity from these sites in the most effective, flexible, and economically practical manner to assure the improvement of water quality in State waters.

Nature of the Emergency:

Due to unforeseen complications associated with the 1993 revisions to the Virginia Administrative Process Act, the draft storm water general permit regulation which was scheduled to be adopted by the State Water Control Board in August will have to be taken through the rulemaking process again starting on July 1. This will make it impossible to have a storm water general permit in place prior to the expiration of the emergency regulation (VR 680-15-14) on September 22. If the storm water general permit is not adopted as an emergency regulation, the owners/operators of the construction sites that have applied under the old emergency regulation must reapply for an individual VPDES storm water permit for their storm water discharges. This will involve the completion and filing of an individual application and the payment of the "individual" permit application fee. If the impacted construction sites are unable to complete and submit the new individual application before September 22, they will be subject to penalties for unauthorized discharges of storm water.

Necessity for Action:

Department proposes to adopt a general VPDES permit for storm water discharges from construction sites. By adopting this general permit as an emergency regulation, the Department can begin covering these storm water discharges immediately. The general permit emergency regulation would expire one year from its effective date. By that time the Department will have taken the regulation through the administrative process for permanent adoption.

The Department recognizes the need for this general permit to ease the burden on the regulated community and to facilitate the issuance of storm water permits. Coverage under the general permit would reduce the paper work, time and expense of obtaining a permit for the owners and operators in this category. Adoption of the proposed regulation would also reduce the manpower needed by the Department for permitting these discharges. The proposed regulation allows the greatest flexibility possible for all construction sites to easily and efficiently meet the requirements

Summary:

This regulation will establish a general VPDES permit for storm water discharges from construction sites. The regulation will allow the owners/operators of construction sites to submit a Registration Statement as an application for coverage under a VPDES general permit and authorize the discharge of storm water associated with industrial activity from these sites. The regulation will replace the emergency regulation VR 680-14-15, Discharges Associated With Industrial Activity" that became effective September 22, 1992.

This emergency regulation will be enforced under applicable statutes and will remain in full force and effect for one year from the effective date, unless sooner modified or vacated or superseded by permanent regulations adopted pursuant to the Administrative Process Act.

The Department will receive, consider, and respond to

petitions by any interested persons at any time for the reconsideration or revision of this regulation.

It is so ordered.

BY:

/s/ Richard N. Burton
Director, Department of Environmental Quality
Date: June 28, 1993

APPROVED BY:

/s/ Elizabeth H. Haskell
Secretary of Natural Resources
Date: June 17, 1993

APPROVED BY:

/s/ Lawrence Douglas Wilder
Governor of the Commonwealth
Date: June 23, 1993

FILED WITH:

/s/ Ann M. Brown
Deputy Registrar of Regulations
Date: June 29, 1993

VR 680-14-19. Virginia Pollutant Discharge Elimination System (VPDES) General Permit for Storm Water Discharges from Construction Sites.

§ 1. Definitions

The words and terms used in this regulation shall have the meanings defined in the State Water Control Law and VR 680-14-01 (Permit Regulation) unless the context clearly indicates otherwise, except that for the purposes of this regulation:

"Commencement of construction" means the initial disturbance of soils associated with clearing, grading, or excavating activities or other construction activities.

"Department" means the Virginia Department of Environmental Quality.

"Director" means the Director of the Virginia Department of Environmental Quality or his designee.

"Final stabilization" means that all soil disturbing activities at the site have been completed, and that a uniform perennial vegetative cover with a density of 70% for the area has been established or equivalent stabilization measures (such as the use of mulches or geotextiles) have been employed.

"Industrial activity" includes the following categories of facilities which are considered to be engaging in "industrial activity":

1. Facilities subject to storm water effluent limitations guidelines, new source performance standards, or toxic pollutant effluent standards under 40 CFR Subchapter N (1992) (except facilities with toxic pollutant effluent standards which are exempted under subdivision 11 of this definition);

2. Facilities classified as Standard Industrial Classification (SIC) 24 (except 2434), 26 (except 265 and 267), 28 (except 283), 29, 311, 32 (except 323), 33, 3441, and 373 (Office of Management and Budget (OMB) SIC Manual, 1987);

3. Facilities classified as SIC 10 through 14 (mineral industry) (OMB SIC Manual, 1987) including active or inactive mining operations (except for areas of coal mining operations no longer meeting the definition of a reclamation area under 40 CFR Part 434.11(l) (1992) because the performance bond issued to the facility by the appropriate SMCRA authority has been released, or except for areas of noncoal mining operations which have been released from applicable state or federal reclamation requirements after December 17, 1990) and oil and gas exploration, production, processing, or treatment operations, or transmission facilities that discharge storm water contaminate by contact with or that has come into contact with, any overburden, raw materia, intermediate products, finished products, byproducts or waste products located on the site of such operations; (inactive mining operations are minin, sites that are not being actively mined, but which have an identifiable owner/operator; inactive mining sites do not include sites where mining claims are being maintained prior to disturbances associated with the extraction, bonification, or processing of mined materials, nor sites where minimal activities are undertaken for the sole purpose of maintaining a mining claim);

4. Hazardous waste treatment, storage, or disposal facilities, including those that are operating under interim status or a permit under Subtitle C of RCRA (42 USC 6901 et seq.);

5. Landfills, land application sites, and open dumps that receive or have received any industrial wastes (waste that is received from any of the facilities described under this definition) including those that are subject to regulation under Subtitle D of RCRA (42 USC 6901 et seq.);

6. Facilities involved in the recycling of materials, including metal scrapyards, battery reclaimers, salvage yards, and automobile junkyards, including but limited to those classified as Standard Industrial Classification 5015 and 5093 (OMB SIC Manual, 1987);

7. Steam electric power generating facilities, including coal handling sites;

8. Transportation facilities classified as SIC 40, 41, 42 (except 4221-4225), 43, 44, 45, and 5171 (OMB SIC Manual, 1987) which have vehicle maintenance shops, equipment cleaning operations, or airport deicing operations. Only those portions of the facility that are either involved in vehicle maintenance (including vehicle rehabilitation, mechanical repairs, painting, fueling, and lubrication), equipment cleaning operation, airport deicing operation, or which are otherwise identified under subdivisions 1 through 7 or 9 through 11 of this definition are associated with industrial activity;

9. Treatment works treating domestic sewage or any other sewage sludge or wastewater treatment device or system used in the storage treatment, recycling, and reclamation of municipal or domestic sewage, including land dedicated to the disposal of sewage sludge that are located within the confines of the facility, with a design flow of 1.0 MGD or more, or required to have an approved pretreatment program under 40 CFR Part 403 (1992). Not included are farm lands, domestic gardens or lands used for sludge management where sludge is beneficially reused and which are not physically located in the confines of the facility, or areas that are in compliance with Section 405 of the Clean Water Act (33 USC 1251 et seq.);

10. Construction activity including clearing, grading and excavation activities except: operations that result in the disturbance of less than five acres of total land area which are not part of a larger common plan of development or sale;

11. Facilities under SIC 20, 21, 22, 23, 2434, 25, 265, 267, 27, 283, 30, 31 (except 311), 323, 34 (except 3441), 35, 36, 37 (except 373), 38, 39, 4221-4225 (OMB SIC Manual, 1987), and which are not otherwise included within subdivisions 2 through 10 of this definition.

"Runoff coefficient" means the fraction of total rainfall that will appear at the conveyance as runoff.

"Storm water" means storm water runoff, snow melt runoff, and surface runoff and drainage.

"Storm water discharge associated with industrial activity" means the discharge from any conveyance which is used for collecting and conveying storm water and which is directly related to manufacturing, processing or raw materials storage areas at an industrial plant. The term does not include discharges from facilities or activities excluded from the NPDES program under 40 CFR Part 122 (1992). For the categories of industries identified in subdivisions 1 through 10 of the "industrial activity" definition, the term includes, but is not limited to, storm water discharges from industrial plant yards; immediate access roads and rail lines used or traveled by carriers of raw materials, manufactured products, waste material, or by-products used or created by the facility; material handling sites; refuse sites; sites used for the application or disposal of process wastewaters (as defined at 40 CFR Part 401 (1992)); sites used for the storage and maintenance of material handling equipment; sites used for residual treatment, storage, or disposal; shipping and receiving areas; manufacturing buildings; storage area (including tank farms) for raw materials, and intermediate and finished products; and areas where industrial activity has taken place in the past and significant materials remain and are exposed to storm water. For the categories of industries identified in subdivision 11 of the "industrial activity" definition, the term includes only storm water discharges from all the areas (except access roads and rail lines) that are listed in the previous sentence where material handling equipment or activities, raw materials, intermediate products, final products, waste materials, by-products, or industrial machinery are exposed to storm water. For the purposes of this definition, material handling activities include the storage, loading and unloading, transportation, or conveyance of any raw material, intermediate product, finished product, by-product or waste product. The term excludes areas located on plant lands separate from the plant's industrial activities, such as office buildings and accompanying parking lots as long as the drainage from the excluded areas is not mixed with storm water drained from the above described areas.

§ 2. Purpose.

This general permit regulation governs storm water discharges associated with subdivision 10 of the definition of industrial activity, construction activity as previously defined. Construction activities include, but are not limited to, clearing, grading and excavation activities except operations that result in the disturbance of less than five acres of total land area which are not part of a larger common plan of development or sale. Storm water discharges associated with subdivisions 1 through 9 and 11 of the definition of industrial activity, as previously defined, shall not have coverage under this general permit.

This general permit covers only discharges comprised solely of storm water from construction activities which result in the disturbance of five or more total acres land area on a site provided that the discharge is through a point source to a surface water of the state or through a municipal or nonmunicipal separate storm sewer system to surface waters of the state.

Storm water discharges associated with industrial activity that originate from the site after construction activities have been completed and the site has undergone final stabilization are not authorized by this permit.

§ 3. Authority for regulation.

The authority for this regulation is pursuant to subdivisions (5), (6), (7), (9), (10), and (14) of § 62.1-44.15, §

62.1-44.15:6, and §§ 62.1-44.16, 62.1-44.17, 62.1-44.20 and 62.1-44.21 of the Code of Virginia; 33 USC 1251 et seq.; and the Permit Regulation (VR 680-14-01).

§ 4. Delegation of authority.

The director, or his designee, may perform any act of the board provided under this regulation, except as limited by § 62.1-44.14 of the Code of Virginia.

§ 5. Effective date of the permit.

This VPDES general permit regulation supersedes the emergency regulation (VR 680-14-15) Virginia Pollutant Discharge Elimination System (VPDES) General Permit Registration Statement for Storm Water Discharges Associated with Industrial Activity which became effective September 22, 1992. Complete Registration Statements received under the emergency regulation (VR 680-14-15) are hereby recognized as valid and acceptable under this regulation. This general permit will become effective on June 30, 1993. This general permit will expire one year from the effective date. This general permit is effective as to any covered owner/operator upon compliance with all the provisions of § 6 and the receipt of this general permit.

§ 6. Authorization to discharge.

Any owner/operator governed by this general permit is hereby authorized to discharge to surface waters of the Commonwealth of Virginia provided that the owner/operator files and receives acceptance, by the director, of the Registration Statement of § 7, complies with the requirements of § 8, files the permit fee required by § 9, and provided that:

1. Individual permit. The owner/operator shall not have been required to obtain an individual permit as may be required in the Permit Regulation (VR 680-14-01). Currently permitted discharges may be authorized under this general permit after an existing permit expires provided that the existing permit did not establish numeric limitations for such discharges.

2. Prohibited discharge locations. The owner/operator shall not be authorized by this general permit to discharge to state waters where other board regulation or policies prohibit such discharges.

3. Local government notification. The owner/operator shall obtain the notification from the governing body of the county, city or town required by § 62.1-44.15:3 of the Code of Virginia.

4. Endangered or threatened species. The director may deny coverage under this general permit to any owner/operator whose storm water discharge to state water may adversely affect a listed or proposed to be listed endangered or threatened species or its critical habitat. In such cases, an individual permit shall be required.

5. Other sources of storm water discharges. Storm water discharges from construction sites that are mixed with a storm water discharge from an industrial activity other than construction may be authorized by this permit where: (i) the industrial activity other than construction is located on the same site as the construction activity; and (ii) storm water discharges associated with industrial activity from the areas of the site where industrial activity other than construction are occurring (including storm water discharges from dedicated asphalt plants and dedicated concrete plants) are covered by a different VPDES general permit or individual permit authorizing such discharges. The permittee shall obtain coverage under this VPDES general permit for the construction activity discharge and a VPDES general or individual permit for the industrial activity discharge.

The permittee shall comply with the terms and requirements of each permit obtained that authorizes any component of the discharge. The storm water permit authorized by this permit may be combined with other sources of storm water which are not required to be covered under a VPDES permit, so long as the discharger is in compliance with this permit.

Receipt of this general permit does not relieve any owner/operator of the responsibility to comply with any other federal, state or local statute, ordinance or regulation.

§ 7. Registration statement and notice of termination.

A. The owner shall file a complete VPDES general permit registration statement for storm water discharges from construction activities. Any owner proposing a new discharge shall file the registration statement at least 14 days prior to the date planned for commencing the construction activity. Any owner of an existing construction activity covered by an individual VPDES permit who is proposing to be covered by this general permit shall notify the director of this intention at least 180 days prior to the expiration date of the individual VPDES permit and shall submit a complete registration statement 30 days prior to the expiration date of the individual VPDES permit. Any owner of an existing construction activity not currently covered by a VPDES permit who is proposing to be covered by this general permit shall file the registration statement within 30 days of the effective date of the general permit. The required registration statement shall be in the following form:

VIRGINIA POLLUTANT DISCHARGE ELIMINATION SYSTEM GENERAL PERMIT REGISTRATION STATEMENT FOR STORM WATER DISCHARGES FROM CONSTRUCTION ACTIVITIES.

1. Construction Site Owner.

Name: . . . . .

Mailing Address: . . . . .

City: . . . . . State: . . . . . Zip Code: . . . . .

Phone: . . . . .

2. Construction Site Operator

Name: . . . . .

Mailing Address: . . . . .

City: . . . . . State: . . . . . Zip Code: . . . . .

Phone: . . . . .

3. Location of Construction Site

Name: . . . . .

Address: . . . . .

City: . . . . . State: . . . . . Zip Code: . . . . .

If street address unavailable: . . . . . Lat . . . . Long

4. Status ..... (Federal, State, Public, or Private)

5. Is Storm Water Runoff discharged to a Municipal Separate Storm Sewer System (MS4)? . . . Yes . . No

If yes, operator name of the MS4 . . .

6. Receiving Water Body (i.e. Clear Creek or unnamed Tributary to Clear Creek) . . . . . .

7. Other Existing VPDES Permit Numbers . . . . . .

8. Project Start Date . . . . . .

9. Project Completion Date . . . . . .

10. Total Land Area (acres) . . . . . .

11. Estimated Area to be Disturbed (acres) . . . . . .

12. Is the Storm Water Pollution Prevention Plan in Compliance with State and/or Local Sediment and Erosion Control Plans? . . . Yes . . . No

If no, explain . . . . . .

13. Brief Description of Construction Activity

. . . . . .
. . . . . .

14. The owner/operator must attach to this Registration Statement the notification (Local Government Ordinance Form) from the governing body of the county, city or town as required by § 62.1-44.15:3 of the Code of Virginia.

15. Certification:

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

Print Name: . . . . . .

Title: . . . . . .

Signature: . . . . . Date: . . . . . .

.....

For Department of Environmental Quality Use Only:

Accepted/Not Accepted by: . . . . . Date: . . . . . .

Basin . . . . . Stream Class . . . . . Section . . . . . .

Special Standards . . . . . .

B. Where a site has been finally stabilized and all storm water discharges from construction activities that are authorized by this permit are eliminated, the owner of the facility shall submit a Notice of Termination within 30 days after final stabilization has been achieved. The required notice of termination shall be in the following form:

VIRGINIA POLLUTANT DISCHARGE ELIMINATION SYSTEM
GENERAL PERMIT NOTICE OF TERMINATION FOR STORM WATER DISCHARGES FROM CONSTRUCTION ACTIVITIES.

1. VPDES Storm Water General Permit Number . . . .

2. Check here if you are no longer the owner/operator of the facility . . .

3. Check here if the Storm Water Discharges from the Construction Site have been terminated . . .

4. Construction Site Owner

Name: . . . . . .

Mailing Address: . . . . . .

City: . . . . . State: . . . . . Zip Code: . . . . . .

Phone: . . . . . .

5. Construction Site Operator

Name: . . . . . .

Mailing Address: . . . . . .

City: . . . . . State: . . . . . Zip Code: . . . . . .

Phone: . . . . . .

6. Location of Construction Site

Name: . . . . . .

Address: . . . . .

City: . . . . . State: . . . . . Zip Code: . . . . . .

If street address unavailable: Lat . . . . . Long . . . . .

Certification: . . . . . .

"I certify under penalty of law that disturbed soils at the identified facility have been finally stabilized and temporary erosion and sediment control measures have been removed or will be removed at an appropriate time, or that all storm water discharges associated with industrial activity from the identified facility that are authorized by a VPDES general permit have been eliminated. I understand that by submitting this notice of termination, that I am no longer authorized to discharge storm water associated with industrial activity by the general permit, and that discharging pollutants in storm water associated with industrial activity to surface waters of the State is unlawful under the Clean Water Act where the discharge is not authorized by a VPDES permit."

Print Name: . . . . . .

Title: . . . . . .

Signature: . . . . . Date: . . . . . .

For Department of Environmental Quality Use Only:

Accepted/Not Accepted by: . . . . . Date: . . . . . .

§ 8. General permit.

Any owner/operator whose registration statement is accepted by the director or his designee will receive the following permit and shall comply with the requirements therein and be subject to all requirements of the Permit Regulation (VR 680-14-01).

General Permit No.: VAR19xxxx

Effective Date: June 30, 1993

Expiration Date: June 30, 1994

GENERAL PERMIT FOR STORM WATER DISCHARGES FROM CONSTRUCTION SITES AUTHORIZATION TO DISCHARGE UNDER THE VIRGINIA POLLUTANT DISCHARGE ELIMINATION SYSTEM AND THE VIRGINIA STATE WATER CONTROL LAW

In compliance with the provisions of the Clean Water Act, as amended, and pursuant to the State Water Control Law and regulations adopted pursuant thereto, owners/operators of construction sites (those sites or common plans of development or sale that will result in the disturbance of five of more acres total land area) with storm water discharges associated with industrial activity from these construction sites are authorized to discharge to surface waters within the boundaries of the Commonwealth of Virginia, except those where Board regulation or policies prohibit such discharges.

The authorized discharge shall be in accordance with this cover page, Part I - Effluent Limitations and Monitoring Requirements, Part II - Monitoring and Reporting, Part III - Storm Water Pollution Prevention Plan, and Part IV - Management Requirements, as set forth herein.

PART I.
EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS.

1. During the period beginning with the permit's effective date and lasting until the permit's expiration date, the permittee is authorized to discharge from point sources, storm water from construction sites.

Such discharges shall be limited and monitored by the permittee as specified below:

NO LIMITATIONS OR MONITORING REQUIRED

2. There shall be no discharge of floating solids or visible foam in other than trace amounts.

PART II.
MONITORING AND REPORTING.

A. Sampling and analysis methods.

1. Samples and measurements taken as required by this permit shall be representative of the volume and nature of the monitored activity.

2. Unless otherwise specified in this permit all sample

preservation methods, maximum holding times and analysis methods for pollutants shall comply with requirements set forth in Guidelines Establishing Test Procedures for the Analysis of Pollutants Under the Clean Water Act as published in the Federal Register (40 CFR Part 136 (1992)).

3. The sampling and analysis program to demonstrate compliance with the permit shall at a minimum, conform to Part I of this permit.

4. The permittee shall periodically calibrate and perform maintenance procedures on all monitoring and analytical instrumentation at intervals that will insure accuracy of measurements, in accordance with approved EPA and state protocols.

B. Recording of results.

For each measurement or sample taken pursuant to the requirements of this permit, the permittee shall record the following information:

1. The date, exact place and time of sampling or measurements;

2. The person(s) who performed the sampling or measurements;

3. The dates analyses were performed;

4. The person(s) who performed each analysis;

5. The analytical techniques or methods used; and

6. The results of such analyses and measurements.

7. The date and duration (in hours) of the storm event(s) sampled;

8. The rainfall measurements or estimates (in inches) of the storm event which generated the sampled runoff; and

9. The duration between the storm event sampled and the end of the previous measurable (greater than 0.1 inch rainfall) storm event.

C. Records retention.

All records and information resulting from the monitoring activities required by this permit, including all records of analyses performed and calibration and maintenance of instrumentation and recording from continuous monitoring instrumentation, shall be made a part of the pollution prevention plan and shall be retained on site for three years from the date of the sample, measurement, report or application or until at least one year after coverage under this permit terminates, whichever is later. This period of retention shall be extended automatically during the course of any unresolved litigation regarding the regulated activity or regarding control standards applicable to the permittee, or as requested by the director

D. Additional monitoring by permittee.

If the permittee monitors any pollutant at the location(s) designated herein more frequently than required by this permit, using approved analytical methods as specified above, the results of such monitoring shall be included in the calculation and reporting of the values required in the monitoring report. Such increased frequency shall also be reported.

E. Water quality monitoring.

The director may require every permittee to furnish such plans, specifications, or other pertinent information as may be necessary to determine the effect of the pollutant(s) on the water quality or to ensure pollution of state waters does not occur or such information as may be necessary to accomplish the purposes of the Virginia State Water Control Law, Clean Water Act or the Permit Regulation.

The permittee shall obtain and report such information if requested by the director. Such information shall be subject to inspection by authorized state and federal representatives and shall be submitted with such frequency and in such detail as requested by the director.

F. Reporting requirements.

1. If, for any reason, the permittee does not comply with one or more limitations, standards, monitoring or management requirements specified in this permit, the permittee shall submit to the Department's Regional Office, as quickly as possible upon discovery, at least the following information:

a. A description and cause of noncompliance;

b. The period of noncompliance, including exact dates and times and/or the anticipated time when the noncompliance will cease; and

c. Actions taken or to be taken to reduce, eliminate, and prevent recurrence of the noncompliance.

Whenever such noncompliance may adversely affect surface waters of the state or may endanger public health, the permittee shall submit the above required information by oral report within 24 hours from the time the permittee becomes aware of the circumstances and by written report within five days. The Department's Regional Office may waive the written report requirement on a case by case basis if the oral report has been received within 24 hours and no adverse impact on surface waters of the state has been reported.

2. The permittee shall report any unpermitted, unusual or extraordinary discharge which enters or could be expected to enter surface waters of the state. The permittee shall provide information specified in subdivisions 1 a through 1 c of this subsection regarding each such discharge immediately, that is as quickly as possible upon discovery, however, in no case later than 24 hours. A written submission covering these points shall be provided to the Department's Regional Office within five days of the time the permittee becomes aware of the circumstances covered by this paragraph.

Unusual or extraordinary discharge would include but not be limited to (i) unplanned bypasses, (ii) upsets, (iii) spillage of materials resulting directly or indirectly from processing operations or pollutant management activities, (iv) breakdown of processing or accessory equipment, (v) failure of or taking out of service, sewage or industrial waste treatment facilities, auxiliary facilities or pollutant management activities, or (vi) flooding or other acts of nature.

If the Department's Regional Office cannot be reached, a 24-hour telephone service is maintained in Richmond (804-527-5200) to which the report required above is to be made.

G. Signatory requirements.

Any registration statement, report, certification, or notice of termination required by this permit shall be signed as follows:

1. Registration Statement/Notice of Termination.

a. For a corporation: by a responsible corporate official. For purposes of this section, a responsible corporate official means (i) a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation, or (ii) the manager of one or more manufacturing, production, or operating facilities employing more than 250 persons or having gross annual sales or expenditures exceeding $25,000,000 (in second-quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.

b. For a municipality, state, federal or other public agency by either a principal executive officer or ranking elected official. (A principal executive officer of a federal, municipal, or state agency includes the chief executive officer of the agency or had executive officer having responsibility for the overall operation of a principal geographic unit of the agency).

c. For a partnership or sole proprietorship, by a general partner or proprietor respectively.

2. Reports. All reports required by permits and other information requested by the director shall be signed by:

a. One of the persons described in subdivision 1 a, 1 b, or 1 c of this subsection; or

b. A duly authorized representative of that person. A person is a duly authorized representative only if:

(1) The authorization is make in writing by a person described in subdivision 1 a, 1 b, or 1 c of this subsection; and

(2) The authorization specifies either an individual or a position having responsibility for the overall operation of the regulation facility or activity, such as the position of plant manager, operator of a well or a well field, superintendent, or position of equivalent responsibility. (A duly authorized representative may thus be either a named individual or any individual occupying a named position).

(3) If an authorization is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization must be submitted to the directo. prior to or together with any separate information, registration statement or notice of termination to be signed by an authorized representative.

3. Certification. Any person signing a document under subdivision 1 or 2 of this subsection shall make the following certification: I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system or those persons directly responsible for gathering the information, the information submitted is to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false information including the possibility of fine and imprisonment for knowing violations.

H. Prohibition on nonstorm water discharges.

All discharges covered by this permit shall be composed entirely of storm water except as provided in subdivisions 1 and 2 of this subsection.

1. Except as provided in subdivision 2 of this subsection, discharges of material other than storm water must be in compliance with a VPDES permit (other than this permit) issued for the discharge.

2. The following nonstorm water discharges may be authorized by this permit provided the nonstorm water component of the discharge is in compliance with subdivision D 5 of Part III: discharges from fire fighting activities; fire hydrant flushing; waters used to wash vehicles or control dust in accordance with subdivision D 2 c (2) of Part III; potable water sources including waterline flushing; irrigation drainage; routine external building washdown which does not use detergents; pavement washwaters where spills or leaks of toxic or hazardous materials have not occurred (unless all spilled material has been removed) and where detergents are not used; air conditioning condensate; springs; uncontaminated ground water; and foundation or footing drains where flows are not contaminated with process materials such as solvents.

I. Releases in excess of reportable quantities.

1. This permit does not relieve the permittee of the reporting requirements of 40 CFR Part 117 (1992) and 40 CFR Part 302 (1992). The discharge of hazardous substances or oil in the storm water discharge(s) from a construction site shall be prevented or minimized in accordance with the applicable storm water pollution prevention plan for the site. Where a release containing a hazardous substance in an amount equal to or in excess of a reporting quantity established under either 40 CFR Part 117 (1992) or 40 CFR Part 302 (1992) occurs during a 24 hour period, the storm water pollution prevention plan must be modified within 14 calendar days of knowledge of the release. The modification shall provide a description of the release, the circumstances leading to the release, and the date of the release. In addition, the plan must be reviewed to identify measures to prevent the reoccurrence of such releases and to respond to such releases, and the plan must be modified where appropriate.

2. Spills. This permit does not authorize the discharge of hazardous substances or oil resulting from an on-site spill.

PART III.
STORM WATER POLLUTION PREVENTION PLANS.

A storm water pollution prevention plan shall be developed for each construction site covered by this permit. Storm water pollution prevention plans shall be prepared in accordance with good engineering practices. The plan shall identify potential sources of pollution which may reasonably be expected to affect the quality of storm water discharges from the construction site. In addition, the plan shall describe and ensure the implementation of practices which will be used to reduce the pollutants in storm water discharges associated with industrial activity at the construction site and to assure compliance with the terms and conditions of this permit. Facilities must implement the provisions of the storm water pollution prevention plan required under this part as a condition of this permit.

A. Deadlines for plan preparation and compliance.

1. For construction activities that have begun on or before the effective date of this permit, the plan shall be prepared and provide for compliance with the terms and schedule of the plan beginning within 30 days after the effective date of this permit.

2. For construction activities that have begun after the effective date of this permit, the plan shall be prepared and provide for compliance with the terms and schedule of the plan beginning with the commencement of construction activities.

3. For ongoing construction activity involving a change of ownership of property covered by this general permit, the new owner shall accept and maintain the existing storm water pollution prevention plan or prepare and implement a new storm water pollution prevention plan prior to taking over operations at the site.

B. Signature and plan review.

1. The plan shall be signed in accordance with subsection G of Part II, and be retained on-site at the facility which generates the storm water discharge in accordance with subsection F of this part.

2. The permittee shall make plans available upon request to the director; a state or local agency approving sediment and erosion plans, grading plans, or storm water management plans; or in the case of a storm water discharge associated with industrial activity which discharges through a municipal separate storm sewer system to the municipal operator of the system.

3. The director may notify the permittee at any time that the plan does not meet one or more of the minimum requirements of this Part. After such notification from the director, the permittee shall make the required changes to the plan in accordance with the time frames established below and shall submit to the director a written certification that the requested changes have been made.

a. Except as provided in subdivision 3 b of this subsection, the permittee shall have 30 days after such notification to make the changes necessary.

b. The permittee shall have seven days after such notification to make changes relating to sediment and erosion controls to prevent loss of sediment from the site, unless additional time is provided by the director.

C. Keeping plans current.

The permittee shall amend the plan whenever there is a change in design, construction, operation, or maintenance, which has a significant effect on the potential for the discharge of pollutants to the surface waters of the state and which has not otherwise been addressed in the plan or if the storm water pollution prevention plan proves to be ineffective in eliminating or significantly minimizing pollutants from sources identified under subdivision D 2 of this part, or in otherwise achieving the general objectives of controlling pollutants in storm water discharges associated with industrial activity. The plan shall be amended within 30 days of the change or the time when the plan is determined to be ineffective.

D. Contents of plan.

The storm water pollution prevention plan shall include the following items:

1. Site description. Each plan shall provide a description of pollutant sources and other information as indicated:

a. A description of the nature of the construction activity;

b. A description of the intended sequence of major activities which disturb soils (e.g. grubbing, excavation, grading);

c. Estimates of the total area of the site and the total area of the site that is expected to be disturbed by excavation, grading, or other activities;

d. An estimate of the runoff coefficient of the site prior to construction and after construction activities are completed and existing data describing the soil or the quality of any discharge from the site;

e. A description of existing vegetation at the site;

f. A description of any other potential pollution sources, such as vehicle fueling, storage of fertilizers or chemicals, sanitary waste facilities, etc.

g. The name of the receiving water(s) and the ultimate receiving water(s), and areal extent of wetland acreage at the site.

h. A site map indicating: (i) drainage patterns and approximate slopes anticipated after major grading activities; (ii) areas of soil disturbance: (iii) the location of major structural and nonstructural controls identified in the plan; (iv) the location of areas where stabilization practices are expected to occur including the types of vegetative cover: (v) surface waters (including wetlands); (vi) locations of storm water discharge points to a surface water with an outline of the drainage area for each discharge point; (vii) existing and planned paved areas and buildings; (viii) locations of permanent storm water management practices to be used to control pollutants in storm water after construction activities have been completed; and (ix) locations of other potential pollution sources as described in subdivision f of this subsection.

Two site maps may be developed, one indicating preconstruction site conditions and the second indicating final site conditions. The two maps should be on the same scale.

2. Controls. Each plan shall include a description of appropriate controls and measures that will be implemented at the construction site. The plan will clearly describe for each major activity identified in the site plan appropriate control measures and the timing during the construction process that the measures will be implemented. (For example, perimeter controls for one portion of the site will be installed after the clearing and grubbing necessary for installation of the measure, but before the clearing and grubbing for the remaining portions of the site. Perimeter controls will be actively maintained until final stabilization of those portions of the site upward of the perimeter control. Temporary perimeter controls will be removed after final stabilization). The description and implementation of controls shall address the following minimum components:

a. Erosion and sediment controls.

(1) Stabilization practices. A description of interim and permanent stabilization practices, including site-specific scheduling of the implementation of the practices. Site plans should ensure that existing vegetation is preserved where attainable and that disturbed portions of the site are stabilized. Stabilization practices may include: temporary seeding, permanent seeding, mulching, geotextiles, sod stabilization, vegetative buffer strips, protection of trees, preservation of mature vegetation, and other appropriate measures. A record of the dates when major grading activities occur, when construction activities temporarily or permanently cease on a portion of the site, and when stabilization measures are initiated shall be included in the plan. Except as provided in subdivision 2 a (1)(a) and (b) of this subsection, stabilization measures shall be initiated as soon as practicable in portions of the site where construction activities have temporarily or permanently ceased, but in no case more than 14 days after the construction activity in that portion of the site has temporarily or permanently ceased.

(a) Where the initiation of stabilization measures by the 14th day after construction activity temporary or permanently cease is precluded by snow cover, stabilization measures shall be initiated as soon as practicable.

(b) Where construction activity will resume on a portion of the site within 21 days from when activities ceased, (e.g. the total time period that construction activity is temporarily ceased is less than 21 days) then stabilization measures do not have to be initiated on that portion of site by the 14th day after construction activity temporarily ceased.

(2) Structural practices. A description of structural practices to divert flows from exposed soils, store flows or otherwise limit runoff and the discharge of pollutants from exposed areas of the site to the degree attainable. Such practices may include silt fences, earth dikes, drainage swales, sediment traps, check dams, subsurface drains, pipe slope drains, level spreaders, storm drain inlet protection, rock outlet protection, reinforced soil retaining systems, gabions, and temporary or permanent sediment basins. Structural practices should be placed on upland soils to the degree attainable. The installation of these devices may be subject to Section 404 of the CWA.

(a) For common drainage locations that serve an area with 10 or more disturbed acres at one time, a temporary (or permanent) sediment basin providing 3,600 cubic feet of storage per acre drained, or equivalent control measures, shall be provided where attainable until final stabilization of the site. The 3,600 cubic feet of storage area per acre drained does not apply to flows from offsite areas and flows from onsite areas that are either undisturbed or have undergone final stabilization where such flows are diverted around the sediment basin. For drainage locations which serve 10 or more disturbed acres at one time and where a temporary sediment basin providing 3,600 cubic feet of storage per acre drained, or equivalent controls is not attainable, sediment traps, silt fences, or equivalent sediment controls are required for all sideslope and downslope boundaries of the construction area.

(b) For drainage locations serving less than 10 acres, sediment traps, silt fences or equivalent sediment controls are required for all sideslope and downslope boundaries of the construction area unless a sediment basin providing storage for 3,600 cubic feet of storage per acre drained is provided.

b. Post-construction storm water management. A description of measures that will be installed during the construction process to control pollutants in storm water discharges that will occur after construction operations have been completed. Structural measures should be placed on upland soils to the degree attainable. The installation of these devices may be subject to Section 404 of the Clean Water Act. This permit only addresses the installation of storm water management measures, and not the ultimate operation and maintenance of such structures after the construction activities have been completed and the site has undergone final stabilization. Permittees are only responsible for the installation and maintenance of storm water management measures prior to final stabilization of the site, and are not responsible for maintenance after storm water discharges associated with industrial activity have been eliminated from the site.

(1) Such practices may include: storm water detention structures (including wet ponds); storm water retention structures; flow attenuation by use of open vegetated swales and natural depressions; infiltration of runoff onsite; and sequential systems (which combine several practices). A goal of 80% removal of total suspended solids from those flows which exceed predevelopment levels should be used in designing and installing storm water management controls (where practicable). Where this goal is not met, the permittee shall provide justification for rejecting each practice listed above based on site conditions.

(2) Velocity dissipation devices shall be placed at discharge locations and along the length of any outfall channel as necessary to provide a nonerosive velocity flow from the structure to a water course so that the natural physical and biological characteristics and functions are maintained and protected.

c. Other controls.

(1) No solid materials, including building materials, garbage, and debris shall be discharged to surface waters of the State, except as authorized by a Section 404 permit.

(2) Off-site vehicle tracking of sediments and the generation of dust shall be minimized. Public or private roadways shall be kept cleared of accumulated sediment. Bulk clearing of accumulated sediment shall not include flushing the areas with water. Cleared sediment shall be returned to the point of likely origin or other suitable location.

(3) The plan shall ensure and demonstrate compliance with applicable state and/or local waste disposal, sanitary sewer or septic system regulations.

d. Approved state or local plans. Any erosion and sediment control plans or storm water management plans approved by local officials shall be retained with the storm water pollution prevention plan prepared in accordance with this permit. Requirements specified in sediment and erosion site plans or site permits or storm water management site plans or site permits approved by state or local

officials that are applicable to protecting surface water resources are, upon submittal of a Registration Statement to be authorized to discharge under this permit, incorporated by reference and are enforceable under this permit even if they are not specifically included in a storm water pollution prevention plan required under this permit. This provision does not apply to provisions of master plans, comprehensive plans, non-enforceable guidelines or technical guidance documents that are not identified in a specific plan or permit that is issued for the construction site.

3. Maintenance. A description and schedule of procedures to maintain in good and effective operating conditions vegetation, erosion and sediment control measures and other protective measures during construction identified in the site plan.

4. Inspections. Qualified personnel (provided by the permittee) shall inspect disturbed areas of the construction site and areas used for storage of materials that are exposed to precipitation that have not been finally stabilized, structural control measures, and locations where vehicles enter or exit the site. These inspections shall be conducted at least once every seven calendar days and within 24 hours of the end of a storm event that produces surface runoff.

a. Disturbed areas and areas used for storage of materials that are exposed to precipitation shall be inspected for evidence of, or the potential for, pollutants entering the drainage system. Erosion and sediment control measures identified in the plan shall be observed to ensure that they are operating correctly. Where discharge locations or points are accessible, they shall be inspected to ascertain whether erosion control measures are effective in preventing significant impacts to receiving waters. Locations where vehicles enter or exit the site shall be inspected for evidence of offsite sediment tracking.

b. Based on the results of the inspection, the site description identified in the plan in accordance with subdivision 1 of this subsection of this permit and pollution prevention measures identified in the plan in accordance with subdivision 2 of this subsection of this permit shall be revised as appropriate, but in no case later than seven calendar days following the inspection. Such modifications shall provide for timely implementation of any changes to the plan within seven calendar days following the inspection.

c. A report summarizing the scope of the inspection, name(s) and qualifications of personnel making the inspection, the date(s) of the inspection, major observations relating to the implementation of the storm water pollution prevention plan, and actions taken in accordance with subdivision 4 b of this subsection of the permit shall be made and retained as part of the storm water pollution prevention plan for at least three years from the date that the site is finally stabilized. The report shall be signed in accordance with subsection G of Part II of this permit.

5. Nonstorm water discharges. Except for flows from fire fighting activities, sources of nonstorm water listed in subdivision F 2 of Part II of this permit that are combined with storm water discharges associated with industrial activity must be identified in the plan. The plan shall identify and ensure the implementation of appropriate pollution prevention measures for the nonstorm water component(s) of the discharge.

E. Contractors.

1. The storm water pollution prevention plan must clearly identify for each measure identified in the plan, the contractor(s) and/or subcontractor(s) that will implement the measure. All contractors and subcontractors identified in the plan must sign a copy of the certification statement required in subdivision 2 of this subsection of this permit in accordance with subsection G of Part II of this permit. All certifications must be included in the storm water pollution prevention plan.

2. All contractors and subcontractors identified in a storm water pollution prevention plan in accordance with subdivision 1 of this subsection of this permit shall sign a copy of the following certification statement before conducting any professional service at the site identified in the storm water pollution prevention plan:

"I certify under penalty of law that I understand the terms and conditions of this Virginia Pollutant Discharge Elimination System (VPDES) general permit that authorizes the storm water discharges associated with industrial activity from the construction site identified as part of this certification."

The certification must include the name and title of the person providing the signature in accordance with subsection G of Part II of this permit; the name, address and telephone number of the contracting firm; the address (or other identifying description) of the site; and the date the certification is made.

F. Retention of records.

1. The permittee shall retain copies of storm water pollution prevention plans and all reports required by this permit, and records of all data used to complete the Registration Statement to be covered by this permit, for a period of at least three years from the date that the site is finally stabilized. This period may be extended by request of the director at any time.

2. The permittee shall retain a copy of the storm water pollution prevention plan required by this permit at the construction site from the date of commencement of construction to the date of final stabilization.

G. Notice of termination.

1. Where a site has been finally stabilized and all storm water discharges from construction activities that are authorized by this permit are eliminated, the owner of the facility shall submit a Notice of Termination that is signed in accordance with subsection G of Part II.

2. The terms and conditions of this permit shall remain in effect until a completed Notice of Termination is submitted.

PART IV.
MANAGEMENT REQUIREMENTS.

A. Treatment works operation and quality control.

All waste collection, control, treatment, management of pollutant activities and disposal facilities shall be operated in a manner consistent with the following:

1. At all times, all facilities and pollutant management activities shall be operated in a prudent and workmanlike manner so as to minimize upsets and discharges of excessive pollutants to state waters.

2. The permittee shall provide an adequate operating staff which is duly qualified to carry out the operation, maintenance and testing functions required to ensure compliance with the conditions of this permit.

3. Maintenance of treatment facilities or pollutant management activities shall be carried out in such a manner that the monitoring and/or limitation requirements are not violated.

B. Adverse impact.

The permittee shall take all feasible steps to minimize any adverse impact to state waters resulting from noncompliance with any limitation(s) and/or conditions specified in this permit, and shall perform and report such accelerated or additional monitoring as is necessary to determine the nature and impact of the noncomplying limitation(s) and/or conditions.

C. Duty to halt, reduce activity or to mitigate.

1. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

2. The permittee shall take all reasonable steps to minimize, correct or prevent any discharge in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment.

D. Structural stability.

The structural stability of any of the units or parts of the facilities herein permitted is the sole responsibility of the permittee and the failure of such structural units or parts shall not relieve the permittee of the responsibility of complying with all terms and conditions of this permit.

E. Bypassing.

Any bypass ("Bypass - means intentional diversion of waste streams from any portion of a treatment works") of the treatment works herein permitted is prohibited.

F. Compliance with state and federal law.

Compliance with this permit during its term constitutes compliance with the State Water Control Law and the Clean Water Act except for any toxic standard imposed under Section 307(a) of the Clean Water Act.

Nothing in this permit shall be construed to preclude the institution of any legal action under, or relieve the permittee from any responsibilities, liabilities, or penalties established pursuant to any other State law or regulation or other appropriate requirements of the State Water Control Law not related to the activities authorized by this storm water general permit or under authority preserved by Section 510 of the Clean Water Act.

G. Property rights.

The issuance of this permit does not convey any property rights in either real or personal property, or any exclusive privileges, nor does it authorize any injury to private property or any invasion of personal rights, nor any infringement of federal, state, or local laws or regulations.

H. Severability.

The provisions of this permit are severable.

I. Duty to reregister.

If the permittee wishes to continue to discharge under this general permit after the expiration date of this permit, the permittee shall submit a new registration statement at least 120 days before the expiration date of this permit.

J. Right of entry.

The permittee shall allow authorized state and federal representatives, upon the presentation of credentials:

1. To enter upon the permittee's premises on which the establishment, treatment works, pollutant management activities, or discharge(s) is located or in which any records are required to be kept under the terms and conditions of this permit;

2. To have access to inspect and copy at reasonable times any records required to be kept under the terms and conditions of this permit;

3. To inspect at reasonable times any monitoring equipment or monitoring method required in this permit;

4. To sample at reasonable times any waste stream, discharge, process stream, raw material or by-product; and

5. To inspect at reasonable times any collection, treatment, pollutant management activities or discharge facilities required under this permit.

For purposes of this section, the time for inspection shall be deemed reasonable during regular business hours, and whenever the facility is discharging or involved in managing pollutants. Nothing contained herein shall make an inspection time unreasonable during an emergency.

K. Transferability of permits.

This permit may be transferred to another person by a permittee if:

1. The current owner notifies the director 30 days in advance of the proposed transfer of the title to the facility or property;

2. The notice to the director includes a written agreement between the existing and proposed new owner containing a specific date of transfer of permit responsibility, coverage and liability between them; and

3. The director does not within the 30-day time period notify the existing owner and the proposed owner of the Board's intent to modify or revoke and reissue the permit.

Such a transferred permit shall, as of the date of the transfer, be as fully effective as if it had been issued directly to the new permittee.

L. Public access to information.

Any secret formulae, secret processes, or secret methods other than effluent data submitted to the Department may be claimed as confidential by the submitter pursuant to § 62.1-44.21 of the law. Any such claim must be asserted at the time of submission in the manner prescribed on the application form or instructions or, in the case of other submissions, by stamping the words "secret formulae, secret processes or secret methods" on each page containing such information. If no claim is made at the time of submission, the Department may make the information available to the public without further notice. If a claim is asserted, the information will be treated in accordance with the procedures in the Virginia Freedom of Information Act (§§ 2.1-340 et seq. and 62.1-44.21 of the Code of Virginia). Notwithstanding the foregoing, any supplemental information that the Department may obtain from filings made under the Virginia Toxics Substance Information Act (TSIA) shall be subject to the confidentiality requirements of TSIA.

Claims of confidentiality for the following information will be denied:

1. The name and address of any permit applicant or permittee;

2. Registration statements, permits, and effluent data.

Information required by the Registration Statement may not be claimed confidential. This includes information submitted on the forms themselves and any attachments used to supply information required by the forms.

M. Permit modification.

The permit may be modified when any of the following developments occur:

1. When a change is made in the promulgated standards or regulations on which the permit was based;

2. When an effluent standard or prohibition for a toxic pollutant must be incorporated in the permit in accordance with provisions of Section 307(a) of the Clean Water Act;

3. When the level of discharge of or management of a pollutant not limited in the permit exceeds applicable Water Quality Standards or the level which can be achieved by technology-based treatment requirements appropriate to the permittee;

N. Permit termination.

The owner shall submit a Notice of Termination when a site has been finally stabilized and all storm water discharges from construction activities that are authorized by this permit are eliminated.

O. Permit modifications, revocations and reissuances, and termination.

This general permit may be modified, revoked and reissued, or terminated pursuant to the Permit Regulation (VR 680-14-01) and in accordance with subsections M, N, and P of this Part IV of this permit.

P. When an individual permit may be required.

The director may require any owner authorized to discharge under this permit to apply for and obtain an individual permit. Cases where an individual permit may be required include, but are not limited to, the following:

1. The discharge(s) is a significant contributor of pollution.

2. Conditions at the operating facility change altering the constituents and/or characteristics of the discharge such that the discharge no longer qualifies for a general permit.

3. The discharge violates the terms or conditions of this permit.

4. A change has occurred in the availability of demonstrated technology or practices for the control or abatement of pollutants applicable to the point source.

5. Effluent limitation guidelines are promulgated for the point sources covered by this permit.

6. A water quality management plan containing requirements applicable to such point sources is approved after the issuance of this permit.

This permit may be terminated as to an individual owner for any of the reasons set forth above after appropriate notice and an opportunity for hearing.

Q. When an individual permit may be requested.

Any owner operating under this permit may request to be excluded from the coverage of this permit by applying for an individual permit. When an individual permit is issued to an owner the applicability of this general permit to the individual owner is automatically terminated on the effective date of the individual permit. When a general permit is issued which applies to an owner already covered by an individual permit, such owner may request exclusion from the provisions of the general permit and subsequent coverage under an individual permit.

R. Civil and criminal liability.

Nothing in this permit shall be construed to relieve the permittee from civil and criminal penalties for noncompliance with the terms of this permit.

S. Oil and hazardous substance liability.

Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject under Section 311 of the Clean Water Act or §§ 62.1-44.34:14 through 62.1-44.34:23 of the Code of Virginia.

T. Unauthorized discharge of pollutants.

Except in compliance with this permit, it shall be unlawful for any permittee to:

1. Discharge into state waters: sewage, industrial wastes, other wastes, or any noxious or deleterious substances; or

2. Otherwise alter the physical, chemical or biological properties of such state waters and make them detrimental to the public health, or to animal or aquatic life, or to the uses of such waters for domestic or industrial consumption, or for recreation, or for other uses.

§ 9. Permit fees.

Notwithstanding the requirements of VR 680-01-01, for the purposes of this emergency regulation only, the fee for issuance of general permits under this emergency regulation shall be $40.

FACT SHEET
ISSUANCE OF A VPDES GENERAL PERMIT FOR STORM WATER DISCHARGES FROM CONSTRUCTION SITES
AUTHORIZATION TO DISCHARGE STORM WATER FROM CONSTRUCTION SITES UNDER THE VIRGINIA POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT PROGRAM AND THE VIRGINIA STATE WATER CONTROL LAW.

The Virginia State Water Control Board has under consideration the issuance of a VPDES general permit for storm water discharges from construction sites.

Permit Number: VAR19xxxx

Name of Permittee: Any owner/operator of a construction site, where construction activities that include clearing, grading and excavating are performed except operations that result in the disturbance of less than five acres of total land area which are not part of a larger common plan of development of sale in the Commonwealth of Virginia, agreeing to be regulated under the terms of this General Permit.

Facility Location: Commonwealth of Virginia

Receiving Waters: Surface waters within the boundaries of the Commonwealth of Virginia, except designated public water supplies or water where Board Regulations or Policies prohibit such discharges.

On the basis of preliminary review and application of lawful standards and regulations, the Board proposes to issue the General Permit subject to certain conditions and has prepared a draft permit. It has been determined that this category is appropriately controlled under a General Permit. The category involves construction sites that

disturb five or more acres of land and discharge storm water runoff.

The draft General Permit requires that all covered sites which generate a discharge to surface waters meet standardized monitoring requirements and requirements to develop a site-specific storm water pollution prevention plan.

Proposed Monitoring Requirements

The permittee is required to inspect disturbed areas of the construction site and areas used for storage of materials that are exposed to precipitation that have not been finally stabilized, structural control measures, and locations where vehicles enter or exit the site. These inspections shall be conducted at least once every seven calendar days and within 24 hours of the end of a storm event that produces surface runoff. Records of these inspections are to be retained. These inspection requirements are consistent with EPA's general permit for storm water discharges from construction activities.

Minimum monitoring and reporting requirements specifically addressing storm water discharges associated with industrial activity were developed by EPA. EPA established that at least an annual inspection be conducted at the site which provides sufficient flexibility to establish monitoring requirements that reflect the potential risk of the discharge and that are appropriately related to the nature of the permit conditions for a discharge. Several factors were taken into consideration when evaluating this issue. The potential difficulties of collection of storm water samples which include determining when a discharge will occur, safety considerations, the potential for a multiple discharge points at a single facility, the intermittent nature of the event, the limited number of events that occur in some parts of the country and variability in flow rates. The types and concentrations of pollutants in the storm water discharges depend on the nature of the industrial activities occurring at the site, the nature of the precipitation event, and the time period from the last storm. Variations in these parameters at a site may result in variation from event to event in results collected. Requiring each construction site to submit monitoring data at least annually would result in a significant increase in the number of discharge monitoring reports received by the state. A significant amount of permitting resources dedicated to reviewing and filing these reports would be necessary.

In establishing the minimum monitoring and reporting requirements for storm water discharges from construction sites, it was determined that frequent and thorough inspections would allow for the identification of areas contributing to a storm water discharge associated with industrial activity and the evaluation of whether measures to reduce pollutant loadings identified in the storm water pollution prevention plan are adequate and properly implemented in accordance with the terms of the permit or whether additional control measures are needed. Because construction sites can be complex, transient operations, frequent inspections are necessary to ensure that new pollutant sources are identified, measures are implemented for new activities at the site, and existing measures are kept operational. Measures to reduce pollutants in storm water discharges must be properly maintained in order to be effective. Often, these types of controls may become altered by construction activities or by storm events such that their ability to remove pollutants is severely limited. Frequent inspection for construction activities are appropriate and necessary for successful program implementation.

This general permit for storm water discharges from construction sites does not contain the traditional numeric or toxicity effluent limitations as conditions. Requirements in this permit include the development of a storm water pollution prevention plan. Discharge sampling information would not provide as direct a link to compliance with this permit condition as it does with numeric limitations. Where permits require the implementation of pollution prevention measures and do not establish numeric effluent limitations, conducting inspections to identify sources of pollution and to evaluate whether the pollution prevention measures required by the permit are being effectively implemented and are in compliance with the terms of the permit will provide a better indication than discharge sampling of whether a facility is complying with the permit. This will also reduce discharge sampling burdens on the construction site. Also, due to the changing nature of the activity at a construction site, monitoring storm water from this type of site would have limited usefulness. The permittee is also required to maintain records summarizing the results of the inspection and a certification that the facility is in compliance with the permit. The requirement for adequate documentation of the inspection is particularly important given the lack of requirements to collect discharge monitoring data under the permit and the importance placed on using site inspections to ensure the effective implementation of pollution prevention plans.

Proposed Requirements for the Development of a Storm Water Pollution Plan

The permittee is required to develop a storm water pollution prevention plan. The plan is intended to identify potential sources of pollution which may reasonably be expected to affect the quality of storm water discharges from the construction site and describe and ensure the implementation of practices which will be used to reduce the pollutants in storm water discharges.

The Clean Water Act requires that all NPDES permits for storm water discharges associated with industrial activity must, at a minimum, establish Best Available Technology Economically Achievable (BAT) and Best Conventional Pollutant Control Technology (BCT) requirements. This permit establishes BAT/BCT requirements in terms of requirements to develop and implement storm water pollution prevention plans an

thus, is consistent with the requirements of the CWA. Currently, there is not sufficient data to develop appropriate numeric effluent limitations for storm water discharges from construction sites.

The development of a pollution prevention plan maintains the flexibility for a site-specific plan to be developed and implemented. This adequately addresses the variable storm water management/pollution prevention opportunities available at a construction site. Storm water pollution prevention plans are required to achieve BAT/BCT requirements in lieu of numeric limitations. Pollution prevention measures are the most practicable and cost-effective approaches to reducing pollutants in storm water discharges and provide for flexibility for developing tailored plans and strategies. This permit identifies specific components that the plan must address and all the components of the plan are essential for reducing pollutants in storm water discharges and are necessary to reflect BAT/BCT. A specific list of traditional storm water controls and sediment and erosion practices are not established because the significant variability in facilities covered by this permit precludes the identification of universal standards or practices that are appropriate or can be implemented by all permittees.

The permittee is to consider the relevant BAT and BCT factors when developing and implementing storm water pollution prevention plans. The following factors are to be considered when evaluating BAT requirements: the age of equipment and facilities involved; the process employed; the engineering aspects of the application of various types of control techniques; process changes; the cost of achieving such effluent reduction; and non-water quality environmental impacts. The following factors are to be considered when evaluating BCT requirements; the reasonableness of the relationship between the costs of attaining a reduction in effluent and the effluent reduction benefits derived; the comparison of the cost and level of reduction of such pollutants from the discharge from publicly owned treatment works to the cost and level of reduction of such pollutants from a class or category of industrial sources; the age of equipment and facilities involved; the process employed; the engineering aspects of the application of various types of control techniques; process changes; and no-water quality environmental impacts.

Other Regulatory Considerations

The General Permit will have a fixed term of one (1) year effective upon Board approval. Every authorization under this General Permit will expire at the same time and all authorizations will be renewed on the same date.

All construction sites that the Director believes are eligible for coverage under this permit will be authorized to discharge under the terms and conditions of this permit after a complete Registration Statement is submitted. If it is determined to be appropriate, the Director will send a copy of the General Permit to the owner/operator. If this General Permit is inappropriate, the owner/operator will be notified and the requirement that an individual permit is needed will remain in effect. Any facility may request an individual permit by submitting an appropriate application.

All permits will contain the pages of Parts I, II, III and IV.

VA.R. Doc. No. R93-620; Filed June 29, 1993, 12:08 p.m.

AT RICHMOND, JUNE 25, 1993

COMMONWEALTH OF VIRGINIA

At the relation of the

STATE CORPORATION COMMISSION

Ex Parte : In the matter of investigating N11 access to information service providers — CASE NO. PUC930019

ORDER INITIATING INVESTIGATION

A number of information service providers ("ISPs") have petitioned the State Corporation Commission ("Commission") and the Commission's Division of Communications to require the Chesapeake and Potomac Telephone Company of Virginia ("C&P") to offer three digit dialing for access to information services rather than the typical seven digit dialing required of local telephone calls. They have requested that this three digit dialing be designated as "N11" similar to the "911" code currently used to access emergency services or the "411" code used to access directory assistance. Such access may be technically feasible, but the Commission is concerned that the limited number of codes available would be quickly exhausted by the ISPs who have sought such codes. Consequently, rather than address each petition on an ad hoc basis, the Commission has determined to open this generic investigation of the feasibility, public interest, and implementation of three digit access to information services. Accordingly,

IT IS THEREFORE ORDERED:

(1) That this matter is docketed and assigned Case No. PUC930019;

(2) That, on or before July 16, 1993, the Commission's Division of Communications shall complete publication of the following notice on one occasion in the classified advertising of major Virginia newspapers:

EX PARTE : IN THE MATTER OF INVESTIGATING N11 ACCESS TO INFORMATION SERVICE PROVIDERS
CASE NO. PUC930019

The Virginia State Corporation Commission ("SCC") has initiated an investigation of the feasibility and public interest of requiring Virginia telephone companies to offer a three digit access code to information service providers ("ISPs") such that callers could reach ISPs by dialing an "N11" code similar to the 911 code reserved for emergency service or the 411 code reserved for directory assistance. The remaining generally available "N11" codes are 211, 311, 511, and 711. By dialing one of these numbers, consumers may be able to get stock quotes, sports scores, lottery information, horoscopes, weather forecasts, news and other information for a fee.

The SCC is inviting comments from interested persons about the feasibility and public interest of providing additional access codes, and if feasible, how to implement them. The Commission's Division of Communications has compiled a list of 14 issues that, among others, might deserve comment. Any person desiring a copy of the list of 14 issues may request it by calling the Division of Communications at (804) 371-9420 or by writing the Division of Communications at the following address: Division of Communications, State Corporation Commission, P.O. Box 1197, Richmond, Virginia 23209.

Any person desiring to submit comments about this investigation should file an original and fifteen (15) copies of such comments, on or before July 30, 1993, with William J. Bridge, Clerk, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23216. Such comments should refer to Case No. PUC930019.

VIRGINIA STATE CORPORATION COMMISSION

(3) That, on or before July 30, 1993, interested persons may file written comments with the Clerk of the Commission on the issues listed in Appendix A, as well as other pertinent issues related to N11 access by filing an original and fifteen (15) copies of said comments with William J. Bridge, Clerk, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23216. Said comments should refer to Case No. PUC930019;

(4) That the Division of Communications furnish proof of publication of notice as described above on or before August 31, 1993;

(5) That the Commission Staff investigate N11 access to ISPs and file a report with the Clerk of the Commission on or before August 31, 1993;

(6) That a copy of the Division of Communications' "N11 Issues for Comment" is attached hereto as Appendix A. Appendix A is for illustrative purposes only and is not an exhaustive list of issues. Comments are also solicited on any other pertinent issues, and

(7) That this matter is continued generally.

ATTESTED COPIES of this order shall be sent by the Clerk of the Commission to: each of Virginia's local exchange telephone companies as set out in Appendix B attached hereto; Virginia's certificated interexchange carriers as set out in Appendix C attached hereto; Warner F. Brundage, Jr., Vice President, General Counsel and Secretary, C&P Telephone Company of Virginia, P.O. Box 27241, Richmond, Virginia 23261; Mark Newhouse, Star Ledger, Star Ledger Plaza, Newark, New Jersey 07102; Hank Levine, Levine, Lagapa & Block, 1200 19th Stree

N.W., Suite 602, Washington, D.C. 20036; Ed Roberts, Manager, New Media Center, The Washington Post, 1150 15th Street, N.W., Washington, D.C. 20071; Gerald Hilton, WWBT - TV, P.O. Box 12, Richmond, Virginia 23201; Robert Lopardo, MCI Telecommunications, 1133 19th Street, N.W., Washington, D.C. 20036; Jan Masek, The Print Group, Inc., 302 North LA Brea Avenue #1000, Los Angeles, California 90036; Ken Prohoniak, Staff Director, Regulatory Affairs, U.S. Sprint, 1850 M Street, N.W., Suite 1110, Washington, D.C. 20036; Eugene J. Park, The Daily Press, Inc., 7505 Warwick Boulevard, Newport News, Virginia 23607; Richard Orloff, Ashbury Park Press, 3601 Route 66, Box 1550, Neptune, New Jersey 07755; Gordon Borrell, Landmark Communications, 150 West Brambleton Avenue, Norfolk, Virginia 23510; Lee Sullins, Media General, P.O. Box 85333, Richmond, Virginia 23293-0001; Peter J. Brennan, Director of Development, Tele-Publishing, Inc., 126 Brookline Avenue, Boston, Massachusetts 02215; Ralph Frye, Executive Director, Virginia Telephone Association, 11 South 12th Street, Suite 310, Richmond, Virginia 23219; J. G. Harrington, Dow, Lohnes & Albertson, 1255 23rd Street, N.W., Suite 500, Washington, D.C. 20037; Russell Merbeth, Communications Daily, 3000 K Street, N.W., Washington, D.C. 20007-5116; the Division of Consumer Counsel, Office of the Attorney General, 101 North 8th Street, 6th Floor, Richmond, Virginia 23219; Michael G. Jones, Esquire, Irwin, Campbell and Crowe, 1320 Eighteenth Street, N.W., Suite 400, Washington, D.C. 20036; Robert L. DiMino, Esquire, Sabin, Bermant, and Gould, 350 Madison Avenue, New York, New York 10017; the Commission's Office of General Counsel; and the Commission's Divisions of Communications, Public Utility Accounting, and Economics and Finance.

APPENDIX A

N11 ISSUES FOR COMMENT

1. Is it feasible and in the public interest for the State Corporation Commission (SCC) to require C&P or other local exchange companies (LECs) to assign available N11 codes for use by information service providers (ISPs)?

2. What services to the public could be provided by ISPs using N11 codes? What would be the charges to consumers to use these services?

3. Does the Virginia SCC have legal jurisdiction to authorize C&P (or other LECs) to assign N11 Codes for use by ISPs?

4. Should this investigation be postponed until the Federal Communications Commission (FCC) concludes its Notice of Proposed Rulemaking in CC Docket 92-105?

5. If such a service is feasible and in the public interest, how should it be implemented? Should there be an N11 access trial? If so, for how long?

6. Should such a trial involve local exchange telephone companies other than C&P?

7. Should rules promulgated in this case apply to all local exchange companies?

8. If there is a trial, how should it be structured? That is, should it be a statewide trial, or, for example, concurrent trials in the several metropolitan statistical areas (MSAs) of the state?

9. How should numbers be allocated? Should they be on a first-come, first-served basis, a lottery among qualified applicants, a comparative evaluation basis, or a competitive bidding process among qualified applicants? How should qualified applicants be determined? How should a comparative evaluation be done?

10. If there is a trial, should all four generally available numbers (211, 311, 511, and 711) be used or be available for use?

11. Are there other abbreviated dialing alternatives to N11 access such as dialing the "*" (star) or " # " (pound) button prior to or after dialing any digits? Are such alternatives currently available? If not, when will they be available?

12. If such a trial is authorized, how will its success be measured?

13. What preconditions should apply if an assigned code is recalled by the SCC, FCC, or the North American Numbering Plan administrator?

14. What, if any, safeguards should be required concerning the use of N11 codes for ISPs that offer sexually explicit or pornographic services or messages?

APPENDIX B

TELEPHONE COMPANIES IN VIRGINIA

Amelia Telephone Corporation
Mr. Bruce H. Mottern, Director
State Regulatory Affairs
P.O. Box 22995
Knoxville, Tennessee 37933-0995

Amelia Telephone Corporation
Mr. Raymond L. Eckels, Manager
P. O. Box 76
Amelia, Virginia 23002

Buggs Island Telephone Cooperative
Mr. M. Dale Tetterton, Jr., Manager
P. O. Box 129
Bracey, Virginia 23919

Burke's Garden Telephone Exchange
Ms. Sue B. Moss, President
P. O. Box 428
Burke's Garden, Virginia 24608

Central Telephone Company of Virginia
Mr. Gregory L. Wells
Acting President - VA/NC
P. O. Box 6788
Charlottesville, Virginia 22906

Chesapeake & Potomac Telephone Company
Mr. Hugh R. Stallard, President
and Chief Executive Officer
600 East Main Street
P.O. Box 27241
Richmond, Virginia 23261

Citizens Telephone Cooperative
Mr. James R. Newell, Manager
Oxford Street
P. O. Box 137
Floyd, Virginia 24091

Clifton Forge-Waynesboro Telephone Company
Mr. James S. Quarforth, President
P. O. Box 1990
Waynesboro, Virginia 22980-1990

Contel of Virginia, Inc.
Mr. Edward J. Weise, President
9380 Walnut Grove Road
P. O. Box 900
Mechanicsville, Virginia 23111-0900

GTE South
Mr. J. M. Swatts
State Manager - External Affairs
300 Bland Street
Bluefield, West Virginia 24701

GTE South
Mr. Thomas R. Parker
Associate General Counsel
Law Department
P.O. Box 110 - Mail Code: 7
Tampa, Florida 33601-0110

Highland Telephone Cooperative
Mr. Elmer E. Halterman, General Manager
P.O. Box 340
Monterey, Virginia 24465

Mountain Grove-Williamsville
Telephone Company
Mr. L. Ronald Smith
President/General Manager
P. O. Box 105
Williamsville, Virginia 24487

New Castle Telephone Company
Mr. Bruce H. Mottern, Director
State Regulatory Affairs
P.O. Box 22995
Knoxville, Tennessee 37933-0995

New Hope Telephone Company
Mr. K. L. Chapman, Jr., President
P. O. Box 38
New Hope, Virginia 24469

North River Telephone Cooperative
Mr. W. Richard Fleming, Manager
P. O. Box 236, Route 257
Mt. Crawford, Virginia 22841-0236

Pembroke Telephone Cooperative
Mr. Stanley G. Cumbee, General Manager
P. O. Box 549
Pembroke, Virginia 24136-0549

Peoples Mutual Telephone Company, Inc
Mr. E. B. Fitzgerald, Jr.
President & General Manager
P. O. Box 367
Gretna, Virginia 24557

Roanoke & Botetourt Telephone Company
Mr. Allen Layman, President
Daleville, Virginia 24083

Scott County Telephone Cooperative
Mr. James W. McConnell, Manager
P. O. Box 487

Gate City, Virginia 24251

Shenandoah Telephone Company
Mr. Christopher E. French
President
P. O. Box 459
Edinburg, Virginia 22824

United Telephone-Southeast, Inc
Mr. William K. Smith, President
112 Sixth Street, P. O. Box 699
Bristol, Tennessee 37620

Virginia Telephone Company
Mr. Bruce H. Mottern, Director
State Regulatory Affairs
P.O. Box 22995
Knoxville, Tennessee 37933-0995

APPENDIX C

INTER-EXCHANGE CARRIERS

AT&T Communications of Virginia
Mr. Terry Michael Banks, Vice President
Three Flint Hill
3201 Jermantown Road, Room 3B

Fairfax, Virginia 22030-2885

CF-W Network Inc.
Mr. James S. Quarforth, President
P. O. Box 1990
Waynesboro, Virginia 22980-1990

Central Telephone Company of Virginia
Mr. James W. Spradlin, III
Government & Industry Relations
P.O. Box 6788
Charlottesville, Virginia 22903

Citizens Telephone Cooperative
Mr. James R. Newell, Manager
Oxford Street
P.O. Box 137
Floyd, Virginia 24091

Metromedia Communications Corporation
Mr. Joseph Kahl, Manager
Regulatory Affairs
One Meadowlands Plaza
East Rutherford, New Jersey 07073

Contel of Virginia, Inc.
Mr. Stephen Spencer
1108 East Main Street, Suite 1108
Richmond, Virginia 23219

Institutional Communications Company - Virginia
Ms. Dee Kindel
8100 Boone Boulevard, Suite 500
Vienna, Virginia 22182

MCI Telecommunications Corp. of Virginia
Robert C. Lopardo
Senior Attorney
1150 17th Street, N.W., 8th Floor
Washington, D.C. 20036

R&B Network, Inc.
Mr. Allen Layman, Executive Vice President
P. O. Box 174
Daleville, Virginia 24083

Scott County Telephone Cooperative
Mr. James W. McConnell, Manager
P.O. Box 487
Gate City, Virginia 24251

Shenandoah Telephone Company
Mr. Christopher E. French
President & General Manager
P. O. Box 459
Edinburg, Virginia 22824

SouthernNet of Va., Inc.
Peter H. Reynolds, Director
780 Douglas Road, Suite 800
Atlanta, Georgia 30342

TDX Systems, Inc.
Mr. Charles A. Tievsky, Manager
Legal and Regulatory Affairs
1919 Gallows Road
Vienna, Virginia 22180

Sprint Communications of Virginia, Inc.
Mr. Kenneth Prohoniak
Staff Director, Regulatory Affairs
1850 "M" Street, N.W. Suite 110
Washington, DC 20036

Wiltel of Virginia
Brad E. Mutschelknaus, Esquire
Wiley, Rein and Fielding
1776 K Street, N.W.
Washington, DC 20006

VA.R. Doc. No. R93-614; Filed June 28, 1993, 4:55 p.m.

AT RICHMOND, JUNE 28, 1993

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

CASE NO. PUE900070

Ex Parte: In Re: Investigation
of conservation and load
management programs

ORDER ISSUING RULES ON COST/BENEFIT MEASURES

On March 27, 1992, the Commission issued an order addressing the role of energy conservation and load management practices by electric and gas utilities. We recognized the importance of conservation and load management as part of the integrated planning strategy necessary to make utility service efficient and affordable. We also reversed our long-standing prohibition against promotional allowances because such promotions, when designed to encourage cost effective conservation and load management programs, could be in the public interest. However, a pivotal question had not been explored in the depth necessary for us to make a reasoned decision at that time.

Specifically, what cost/benefit methodology should be used to evaluate proposed programs designed to conserve energy or better balance utilities' loads? At our direction, the Staff organized a task force to analyze the requisite data and recommend an appropriate test, or combination of tests, with which to evaluate conservation and load management proposals. We advised that the effort need not address questions on quantifying environmental externalities. While we believe it is important for the Commission to consider environmental factors in rendering our decisions from a qualitative standpoint, in our opinion, we lack the statutory authority to go beyond such considerations and attempt to quantify the impact of

externalities. See Virginia Code §§ 56-235.1 and 56-235.2.

The task force was made up of the Secretary of Natural Resources and representatives from Appalachian Power Company, Potomac Edison, Commonwealth Gas Services, Washington Gas Light, Southern Environmental Law Center, the Office of the Attorney General, Sycom Enterprises, Old Dominion Electric Cooperative, Virginia Electric and Power Company, Virginia Natural Gas, the American Lung Association, the Virginia Committee for Fair Utility Rates, and the State Corporation Commission Staff.

On February 9, 1993, the Staff filed its report providing an overview of current conservation and load management (demand-side management or "DSM") programs of utilities in Virginia and the Commission's policy regarding such programs. The report identified the key concepts and issues that influence the choice and application of cost/benefit tests to DSM programs. It reviewed available tests and discussed their uses, advantages, and disadvantages. Finally, the report addressed the numerous policy and technical issues associated with the use of cost/benefit tests and offered conclusions and recommendations for the Commission's consideration. The report reflected many of the positions discussed by the task force in meetings convened from June 1992 through September 1992, but it did not constitute a consensus of the task force.

The principal goal of the Staff report was to identify the test or tests which should be used to determine the economic costs and benefits of DSM programs. Staff identified five tests in common use across the United States. Those tests included the Participants Test, the Utility Cost Test, the Ratepayer Impact Measure ("RIM") Test, the Total Resource Cost ("TRC") Test, and the Societal Test. Staff identified the uses and goals of each test.

The Participants Test measures the quantifiable benefits and costs of a program to the participating customer. The Utility Cost Test measures the cost of a DSM program incurred by the utility, excluding costs incurred by the participant. The RIM Test measures the difference between the change in total revenues paid to the utility and the change in total costs to a utility resulting from the DSM program. This test is also called the Nonparticipant Test or the No Losers Test. The TRC Test measures the cost of a program as a resource option to the utility and its ratepayers as a whole. This test is also known as the All Ratepayers Test.

The Staff also identified the Societal Test as a measure used in some states. This test attempts to quantify the change in total resource cost to society as a whole. It takes into account external factors such as the environment, health, safety, and local economic effects. As already noted, however, the Commission previously found that existing statutory authority precludes us from quantifying externalities. The Staff, therefore, focused on the first four tests in its report.

Staff concluded that no one cost/benefit test provides all of the information necessary for Virginia utilities, the public, and this Commission to evaluate the impact of a DSM program. Each test has strengths and limitations in the information it provides. Therefore, Staff recommended that Virginia utilities be directed to conduct quantitative cost/benefit analyses from four perspectives: from the perspective of the program participant, the nonparticipant, the utility, and all ratepayers. All the tests identified above, except the Societal Test, provide information that can collectively contribute to a broad understanding of the impact of a particular program. Thus, Staff believed that such a multi-perspective approach would provide information necessary to strike the proper balance among the interests of all parties affected by any proposed program.

Staff also discussed the types of DSM programs to which the tests applied. Staff noted that different utilities will pursue different load shape objectives and thus demand side programs might reduce peak loads, shift load, build off-peak load, or contribute to a general reduction of sales throughout the day. Staff further observed that some DSM programs can contribute to a general increase in sales and greater market share. While recognizing that many programs do not fit neatly into one particular category, Staff identified six general categories of DSM programs: peak clipping, valley filling, load shifting, strategic conservation, strategic load growth, and flexible load shape. Staff observed that a cost/benefit test that provides useful information for one type of program may not provide meaningful information when applied to a different category of DSM program, again highlighting the importance of a multi-perspective approach.

Staff stressed the importance of the use of accurate data in the cost/benefit analysis. It proposed a set of minimum guidelines for data input and modeling assumptions to facilitate the development and use of meaningful data. Minimum standards, Staff asserted, are important to assure thorough analyses are performed and to provide all participants in a proceeding with a basic understanding about how the data are being developed.

Staff made no specific recommendation with regard to the issue of the application of tests to individual programs versus groups of programs. However, the Staff noted that a utility proposing a package of programs should be able to provide cost/benefit analyses of the individual components of the package.

The Staff fully supported the practice of developing experimental or pilot DSM programs prior to applying for full-scale program implementations. Staff suggests that such experimental programs be carefully structured to acquire the data necessary for evaluation. Also, they should be limited in scope so that the number of participants, the program budget, and the time period are appropriate for experimental purposes. Since the purpose of a pilot

program is to gather data for evaluation, a full cost/benefit analysis likely will not be possible. The Staff even suggests that experimental programs that do not involve promotional allowances or new rates need not be subjected to a formal Commission approval process.

For many DSM programs, the key stakeholders are the utility initiating the program, the utility's customers likely to participate in the program, and the utility's customers that are not likely to participate in the program. However, some DSM programs have a significant impact on a customer's choice of fuels, and accordingly, another group of potential stakeholders are the alternative energy suppliers that may be affected by the implementation of the DSM program. In its report, the Staff noted that the opinions on whether and how to include the potential impact on alternative energy suppliers in the cost/benefit analysis generated a wide divergence of opinion on the task force.

Staff believed that the assessment of the effects on alternative energy providers may be appropriate in certain instances where the effect is associated with proposed DSM programs that increase sales or involve promotional allowances. Realistically, however, Staff recognized that it may be impractical for an applicant to consider the impact of a DSM program on alternative energy suppliers and that the burden of such an analysis may actually discourage utilities from pursuing programs that may otherwise be viable. Staff, therefore, proposed that the Commission consider the effect on alternative suppliers from proposed promotional allowance programs and any program resulting in increased sales of the sponsoring utility, but only if such programs are likely to have a significant effect on the sales of alternative energy suppliers. Staff further recommended at the hearing that, if the Commission determines such an effect should be considered, the burden be placed on the alternative energy supplier to quantify that impact. Notice to the alternative energy supplier thus becomes crucial.

Finally, Staff discussed the importance of verification of DSM program impacts. The utilities, the public, and the Commission must see the results of programs to determine if the programs are beneficial and should continue. Monitoring should measure both long-term and short-term effects of any programs. Evaluation of program impacts, of course, can be directly measured by calculating changes in energy use and comparing measurements made at different times. Direct measurements might include customer billing, whole building metering, and end-use metering. A second approach to evaluation can be engineering modeling. This approach would rely heavily on measuring the energy consumption characteristics of equipment and appliances. In any event, DSM programs must produce measurable results, particularly as those programs grow in size and cost.

Task force members and other interested participants filed written comments on the Staff's report. Several of those participants also presented oral comment to the Commission on April 15, 1993. The participants generally applauded the Staff's recommendations. Parties generally agreed with Staff's observation that every one of the tests offers valuable information that can be used in evaluating proposed programs. Some participants unconditionally supported Staff's multi-perspective approach emphasizing the importance of flexible interplay between and among all available tests, particularly the TRC and the RIM Tests. Those participants further cautioned that reliance on one particular method could produce unintended consequences.

Several participants, while supporting a multi-perspective approach, recommended that the Commission establish a threshold test for determining the cost effectiveness of DSM programs. Any program which could not meet the threshold test would be disqualified from further consideration without application of the other tests. Those participants, however, differed on whether the TRC Test or the RIM Test should be used as the primary or threshold test. Those favoring use of the TRC Test as a threshold measure argued that dependence upon the RIM Test virtually guaranteed failure of programs that would improve customer energy efficiency. They asserted that the TRC test offered the broadest view of the costs and benefits of proposed programs and therefore would not result in a premature elimination of potential conservation DSM options. Opponents to use of the TRC Test as a threshold test asserted that the TRC Test ignores the issue of cross subsidies between program participants and nonparticipants and also screens out strategic load building programs.

A number of participants also emphasized that experimental pilot DSM programs, before full-scale implementation, are important aids to utilities and facilitate prudent decisions concerning DSM programs and expenditures for such programs. They provide an important opportunity for the Commission and interested parties to review the program before substantial commitments are made. Information gathered through such pilots are better indicators of full-scale implementation than using national or regional statistics. A number of commenters supported Staff's recommendation that utilities should be allowed to implement some pilot DSM programs without prior Commission approval, recognizing that pilot programs involving promotional allowances or having rate impacts should continue to be subject to mandatory prior Commission approval. They generally agreed that any proposed DSM program that would increase sales also should be reviewed prior to its implementation, even if approved on a pilot basis, and that the approval should be based on a preliminary cost/benefit analysis. Others emphasized the importance of regulatory oversight of DSM programs. They recognized that experimental or pilot programs may, indeed, be necessary to accumulate data, but stressed that some such programs still fall well outside the provision of traditional utility services. They also noted that some experimental programs can be quite extensive.

Several gas companies asserted that the effects on alternative energy suppliers can and should be quantified

and considered directly in the cost/benefit analysis. They asserted that the utility proposing the program should conduct that analysis. Representatives from electric utilities, on the other hand, urged the Commission to consider the impacts on alternative fuel suppliers only when a promotional practice was involved and there were significant impacts which could be clearly measured and quantified. Even in those cases, electric representatives emphasized that a procedure for obtaining the relevant data would be necessary and potentially difficult to implement. Electric representatives also expressed concern that their competitors have attempted to use Commission proceedings to discourage effective competition. This competition, they stated, has encouraged beneficial results and is desirable. They cautioned that the boundless extension of considerations of the impact on alternative fuel suppliers to any DSM program that increased sales would tend to diminish competition, dampen proposals for new DSM programs, and encourage arguments by competitors to advance their own marketing agendas. Competition, it was asserted, should be encouraged and not diminished by intervention from the regulators.

Finally, one participant, the Southern Environmental Law Center ("SELC"), while commenting on the specific questions raised in this proceeding, also argued that the Commission must establish clear and firm guidance to move utilities beyond the status quo. SELC believed that the free market would not capture more than a small increment of this important resource due to numerous barriers, foremost of which, it alleged, is the existing regulatory utility rate setting process. That process, in the SELC's judgment, makes efficiency improvements less profitable than building power plants. SELC appeared to want the Commission to set required levels of investment in conservation and load management programs for each utility. It asserted that general statements of support for cost effective DSM, in the absence of firm requirements, accomplishes little. SELC alleged that this Commission had not yet set a specific goal for utilities to pursue efficiency improvements in Virginia that cost less than new power plants. SELC, however, acknowledged that it is appropriate to proceed cautiously in this area.

NOW THE COMMISSION, upon consideration of the Staff Report, the written and oral comments of the participants, and the applicable law, is of the opinion and finds that a multi-perspective approach to evaluating proposed DSM programs is in the public interest. We agree with our Staff and numerous participants that each of the accepted tests identified by the Staff in its report offers valuable information about a proposed program. Analysis of a program using a multi-perspective approach provides the applicant, all stakeholders, and the Commission with information about the projected impact of a program.

The Participant's Test is a good indicator of the attractiveness of a program to a customer and thus provides information useful in estimating likely participation rates. The Utility Cost Test measures the change in a utility's revenue requirement resulting from a program. The Utility Cost Test thus is a good measure of the change in total utility bills due to the program. It also provides a direct comparison to supply-side options since supply-side tests typically measure the change in a utility's cost flowing from a supply-side resource. The RIM Test measures the difference between the change in total revenue paid to a utility and the change in total costs to a utility resulting from the program. The RIM Test offers a measure of the impact of a DSM program on customers who do not participate in the program. The non-participant perspective is important because all ratepayers may be affected by the actions that some take. The TRC Test measures the net costs of a DSM program as a resource option based on the total cost of the program, including the participant's and the utility's cost. It is essentially a measure of the change in the average cost of energy services across all customers.

Each test, however, also has its weaknesses. Program applicants thus should conduct cost/benefit analyses using the Participants Test, the Utility Cost Test, the RIM Test, and the TRC Test. As previously noted, although the Societal Test can also provide valuable information, it need not be conducted at this time.

Although the Commission is sympathetic to the request for us to choose a threshold test, we are concerned that use of a threshold test would prematurely eliminate programs that may ultimately prove to be in the public interest. We concur with the criticism of some commenters that the RIM Test, as a threshold measure, would inappropriately screen out conservation programs. The TRC Test as a threshold measure, on the other hand, would screen out strategic load building programs which, when viewed in relation to a utility's total resource plan and load shape, may prove to be beneficial. Thus, we are unable to establish a threshold test. The information provided by each individual analysis will serve to provide more comprehensive information about the expected impact, costs, and benefits of a particular program. We agree that a multi-perspective approach strikes the proper balance for all parties affected by a proposed program.

We also agree with our Staff that the usefulness of the analysis is dependent on the quality of the assumptions and input data. Accordingly, we will adopt the minimum guidelines recommended by our Staff

Utility applicants are certainly free to file packages of programs. A utility, in fact, should assure itself that programs collectively benefit the utility's resource plan. However, it is also critical that a cost/benefit analysis of each individual program be available, even if an application is for approval of a package of programs.

We also agree with Staff's recommendation that certain limited pilot or experimental programs may be conducted without prior Commission approval. Rate experiments require Commission approval pursuant to statute, and programs involving promotional allowances require closer scrutiny, and accordingly, should continue to be approved

under our Rules Governing Promotional Allowances. Our utilities must, however, file reports with our Staff that are available to the public that identify all experimental programs at least 30 days prior to implementation and periodic updates on the results of the experiments. Comprehensive reports on the status of all experimental or pilot programs should be filed at least semi-annually with the Commission's Division of Economics and Finance.

It is clear that some DSM programs will have a significant impact on a customer's choice of fuels. Determination of the impact of a proposed DSM program on alternative energy suppliers was one of the more controversial issues in this proceeding. Clearly the Commission, in its assessment of any DSM program that affects alternative fuel suppliers, should consider such effects in making its decision of whether a proposed program is in the public interest.

In the case of DSM programs involving promotional allowances, the Commission requires the utility applicant to consider the effect of the proposed program on alternative energy suppliers, and, if such effects are significant, to demonstrate that the program serves the overall public interest. Such a requirement is appropriate for actively intervening in energy markets through promotional allowance programs. We will not, however, require a utility proposing a DSM program that does not involve promotional allowances to carry the burden of determining the impact of its proposed program on alternative fuel suppliers.

The development of reliable DSM cost and benefit projections for a utility's customers and its own system is a difficult enough task. The complexities involved in conducting such an analysis were well-documented in the Staff's report and the comments of a number of parties to this proceeding. To extend this analytical challenge to require a consideration of the impact of programs on the customers and systems of alternative fuel suppliers in all cases is unnecessary and unduly burdensome.

The Commission, however, must be provided a complete record when assessing DSM programs. We encourage alternative energy suppliers to participate in proceedings that affect their interests. The alternative fuel supplier has access to the information necessary to attempt to quantify the impact of a proposed DSM program on its sales. It therefore should be incumbent upon alternative energy suppliers to present their own estimates of the impact of utility DSM programs on their organizations. We believe this presentation of alternative views will result in a record that will allow us best to determine which programs are in the public interest. To facilitate this participation we will require a program applicant to provide notice to known regulated alternative fuel suppliers in its service territory.

We also agree with the Staff that verification of DSM program savings and load impacts is critical. Utilities will be required to measure on a short-term and long-term basis the effects of DSM programs.

Finally, we want to reiterate our support for the development of cost effective DSM programs in Virginia. Despite the SELC's criticism, it is our intent to establish clear direction to encourage such development and move utilities to cost effective integrated resource plans which include DSM as a resource option. It is not prudent, in our judgment, to establish fixed requirements which our utilities must meet at any cost.

ACCORDINGLY, IT IS ORDERED:

(1) That rules on the proper cost/benefit tests to be conducted on proposed DSM programs as set forth in Attachment A shall be, and are, implemented; and

(2) That there being nothing further to be done in this docket, this case shall be closed and the papers placed in the file for ended causes.

Commissioner Moore took no part in the decision in this case.

AN ATTESTED COPY hereof shall be sent by the Clerk of the Commission to: Pamela Johnson, Esquire, Virginia Electric and Power Company, P.O. Box 26666, Richmond, Virginia 23261; Donald A. Fickennscher, Virginia Natural Gas, 5010 East Virginia Beach Boulevard, Norfolk, Virginia 23502-3488; Donald R. Hayes, Esquire, Northern Virginia Natural Gas, 6801 Industrial Road, Springfield, Virginia 22151; Mark G. Thessin, United Cities Gas Company, 5300 Maryland Way, Brentwood, Tennessee 37027; Stephen H. Watts, II, Esquire, McGuire, Woods, Battle & Boothe, One James Center, Richmond, Virginia 23219; Kristen J. Brown, Esquire, Commonwealth Distribution Companies, 200 Divic Center Drive, Columbus, Ohio 43215; Kenworth E. Lion, Jr., Esquire, Virginia-Maryland-Delaware Association, 4201 Dominion Boulevard #200, Glen Allen, Virginia 23060; Edward L. Petrini, Office of the Attorney General, 101 North 8th Street, 6th Floor, Richmond, Virginia 23219; Allen Glover, Esquire, Appalachian Power Company, P.O. Box 720, Roanoke, Virginia 24004-0720; Robert M. Hewett, Vice President, Old Dominion Power Company, One Quality Street, Lexington, Kentucky 40507; Robert B. Murdoch, Esquire, Potomac Edison Company, Downsville Pike, Hagerstown, Maryland 21740; A Hayes Butler, Esquire, Delmarva Power and Light Company, P.O. Box 231, Wilmington, Delaware 19899; Richard A. Parrish, 201 West Main Street #14, Charlottesville, Virginia 22901; Mark J. Lafratta, Esquire, Mays & Valentine, P.O. Box 1122, Richmond, Virginia 23208-1122; Elizabeth H. Haskell, Commonwealth of Virginia, Office of the Governor, Richmond, Virginia 23219; James C. Dimitri, Esquire, Virginia Commission for Fair Utility Rates, 1200 Mutual Building, Richmond, Virginia 23219; Douglas A. Ames, Transphase Systems, Inc., 800 Midatlantic Drive #2015, Mt. Laurel, New Jersey 08054; S. Lynne Sutcliffe, Sycom Enterprise, 7475 Wisconsin Avenue, 6th Floor, Bethesda, Maryland 20814; Lori Marsh, VPI and State University, Blacksburg, Virginia 24061-0512; Piedmont Environmental

Council, 28-C Main Street, P.O. Box 460, Warrenton, Virginia 22186; Sierra Club-Virginia Chapter, P.O. Box 14648, Richmond, Virginia 23221-0648; William B. Grant, 803 Marlbank Drive, Yorktown, Virginia 23692-4353; Patricia J. Devlin, 3959 Pender Drive, Fairfax, Virginia 22030; Neal D. Emerald, 5915 Grisby House Court, Centreville, Virginia 22020; Stephen M. Ayres, M.D., P.O. Box 7065, Richmond, Virginia 23221-0065; Debose Egleston, Jr., P.O. Box 838, Waynesboro, Virginia 22980; Virginia Citizen Action, 1531 West Main Street, 2nd Floor, Richmond, Virginia 23220; Eileen B. Claussen, U.S. Environmental Protection Agency, Washington, D.C. 20460; and Daniel Lashof, 1350 New York Avenue, N.W., Washington, D.C. 20005.

ATTACHMENT A

RULES GOVERNING COST/BENEFIT MEASURES REQUIRED FOR DSM PROGRAMS

1. PURPOSE

The purpose of these rules is to establish the cost/benefit measures which utilities operating in Virginia must conduct to determine whether a proposed demand-side management ("DSM") program is ost effective and in the public interest.

2. COST/BENEFIT MEASURES

Utility applicants shall analyze a proposed program from a multi-perspective approach using, at a minimum, the Participants Test, the Utility Cost Test, the Ratepayer Impact Measure Test, and the Total Resource Cost Test. Utilities may file for approval of programs individually or as a package. However, any application which includes a package of DSM programs shall also provide an analysis of the cost/benefit of each program individually.

3. MINIMUM GUIDELINES FOR DATA INPUT AND MODELING ASSUMPTIONS

Minimum guidelines to provide direction to electric and natural gas utilities in developing applications for approval of DSM programs are as follows:

(1) That the assumptions used in developing projected input data and the models used in the integrated resource planning process should be identified and well-documented. Utility-specific data should be used whenever possible (e.g., unit performance data, end-use load research data, market research data, etc.). In cases where utility-specific data are not available, the assumptions must be clearly defined;

(2) That historic data, if available, should be assessed in developing projected data. Significant departures from historic trends should be explained;

(3) That each projected data series should represent the Company's most current forecast;

(4) That computer modeling techniques should be used in the development of an integrated resource plan;

(5) That estimates of the capital and O&M (operation and maintenance) costs of supply-side options should include realistic projections of the costs of compliance with all promulgated environmental regulations or enacted legislation from which environmental regulations will be promulgated.

(6) That each assumption and/or projected data series should be consistent with all other assumptions and/or projections. Consistency of data should be maintained between all models used within the integrated resource planning process; and

(7) That alternative projections to determine sensitivity to input assumptions should be developed. These alternative projections should be used to perform cost/benefit analysis.

Waiver of strict adherence to these guidelines for small utilities or those in unusual circumstances may be granted by order of the Commission.

4. PILOT OR EXPERIMENTAL PROGRAMS

Utilities must seek Commission approval of pilot or experimental programs that involve rates or promotional allowances, but other limited pilot or experimental programs may be conducted without prior Commission approval. Utilities shall file reports with the Commission's Division of Economics and Finance that identify any pilot or experimental program at least 30 days prior to its implementation. Periodic reports shall also be filed at least semi-annually with the Commission's Division of Economics and Finance identifying all DSM pilot or experimental programs and the status of such programs.

VA.R. Doc. No. R93-701; Filed July 1, 1993, 9:16 a.m.

DIRECTOR'S ORDER NUMBER EIGHTEEN (93)

VIRGINIA'S THIRTY-FIFTH INSTANT GAME LOTTERY; "CASH EXPLOSION," FINAL RULES FOR GAME OPERATION.

In accordance with the authority granted by Section 58.1-4006A of the Code of Virginia, I hereby promulgate the final rules for game operation in Virginia's thirty-fifth instant game lottery, "Cash Explosion." These rules amplify and conform to the duly adopted State Lottery Board regulations for the conduct of instant game lotteries.

The rules are available for inspection and copying during normal business hours at the State Lottery Department headquarters, 2201 West Broad Street, Richmond, Virginia, and at each of the State Lottery Department regional offices. A copy may be requested by mail by writing to: Marketing Division, State Lottery Department, P. O. Box 4689, Richmond, Virginia 23220.

This Director's Order becomes effective on the date of its signing and shall remain in full force and effect unless amended or rescinded by further Director's Order.

/s/ Kenneth W. Thorson
Director
Date: June 25, 1993

VA.R. Doc. No. R93-704; Filed July 2, 1993, 4:31 p.m.

DIRECTOR'S ORDER NUMBER NINETEEN (93)

"CASH EXPLOSION": PROMOTIONAL GAME AND DRAWING RULES

In accordance with the authority granted by Section 58.1-4006A of the Code of Virginia, I hereby promulgate the "Cash Explosion" promotional game and drawing rules for the Instant Game 35 kickoff events which will be conducted at various lottery retailer locations throughout the Commonwealth on Thursday, July 1, 1993. These rules amplify and conform to the duly adopted State Lottery Board regulations for the conduct of lotteries.

The rules are available for inspection and copying during normal business hours at the State Lottery Department headquarters, 2201 West Broad Street, Richmond, Virginia, and at each of the State Lottery Department regional offices. A copy may be requested by mail by writing to: Marketing Division, State Lottery Department, P. O. Box 4689, Richmond, Virginia 23220.

This Director's Order becomes effective on the date of its signing and shall remain in full force and effect until July 31, 1993, unless otherwise extended by the Director.

/s/ Kenneth W. Thorson
Director
Date: June 25, 1993

VA.R. Doc. No. R93-705; Filed July 2, 1993, 4:31 p.m.

DIRECTOR'S ORDER NUMBER TWENTY (93)

"WATCH 'N WIN"; PROMOTIONAL GAME AND DRAWING RULES

In accordance with the authority granted by Section 58.1-4006A of the Code of Virginia, I hereby promulgate the "Watch 'n Win" promotional game and drawing rules for the promotional events for the Virginia Lottery and commercial television consortium promotional program to be conducted from Monday, July 5, 1993 through Friday, July 31, 1993. These rules amplify and conform to the duly adopted State Lottery Board regulations for the conduct of lotteries.

The rules are available for inspection and copying during normal business hours at the State Lottery Department headquarters, 2201 West Broad Street, Richmond, Virginia, and at each of the State Lottery Department regional offices. A copy may be requested by mail by writing to: Marketing Division, State Lottery Department, P. O. Box 4689, Richmond, Virginia 23220.

This Director's Order becomes effective on the date of its signing and shall remain in full force and effect unless amended or rescinded by further Director's Order.

/s/ Kenneth W. Thorson
Director
Date: June 25, 1993

VA.R. Doc. No. R93-706; Filed July 2, 1993, 4:31 p.m.

DIRECTOR'S ORDER NUMBER TWENTY-ONE (93)

INSTANT GAME 36 VIRGINIA LOTTERY RETAILER PROMOTIONAL PROGRAM RULES.

In accordance with the authority granted by Section 58.1-4006A of the Code of Virginia, I hereby promulgate Instant Game 36 Virginia Lottery Retailer Promotional Program Rules for the lottery retailer incentive program which will be conducted from Monday, August 16, 1993 through Sunday, October 10, 1993. These rules amplify and conform to the duly adopted State Lottery Board regulations.

These rules are available for inspection and copying during normal business hours at the State Lottery Department headquarters, 2201 West Broad Street, Richmond, Virginia, and at each of the State Lottery Department regional offices. A copy may be requested by mail by writing to: Marketing Division, State Lottery Department, P. O. Box 4689, Richmond, Virginia 23220.

This Director's Order becomes effective on the date of its signing and shall remain in full force and effect unless amended or rescinded by further Director's Order.

/s/ Kenneth W. Thorson
Director
Date: June 28, 1993

VA.R. Doc. No. R93-707; Filed July 2, 1993, 4:31 p.m.

EXECUTIVE ORDER NUMBER SEVENTY-TWO (93)

DECLARATION OF A STATE OF EMERGENCY ARISING FROM A STORM SYSTEM WHICH COVERED MOST OF THE COMMONWEALTH

On June 4, 1993, a summer storm system – consisting of torrential rains, high-velocity winds, and hail – traversed the Commonwealth. As a result of the storm, massive power outages occurred, many trees were downed, and buildings damaged. The damages necessitated significant debris clearance and other protective measures on the part of the local governments and utilities. Hail and wind caused major damage to farmland, crops, and fences. Although most of the Commonwealth was hit by the storm, particularly affected jurisdictions included the cities of Lynchburg and Bedford and the counties of Campbell and Appomattox. Approximately ten other Southside jurisdictions sustained less severe damage.

The health and general welfare of the citizens of the localities affected require that state action be taken to help alleviate the conditions which are a result of this situation. This constitutes an emergency, as contemplated under the provisions of Section 44-146.16 of the Code of Virginia, I also find that the effects of this storm system constitute a disaster wherein personal injuries were threatened and significant damage to public and private property has occurred.

Therefore, by virtue of the authority vested in me by Section 44-146.17 of the Code of Virginia, as Governor and as Director of Emergency Services, and subject always to my continuing and ultimate authority and responsibility to act in such matters, I do hereby proclaim that a state of emergency exists in the affected areas of the Commonwealth, and I direct that appropriate assistance be rendered by agencies of the state government to alleviate these conditions.

This Executive Order shall become effective upon its signing, and shall remain in full force and effect until June 30, 1994, unless sooner amended or rescinded by further executive order.

Given under my hand and under the Seal of the Commonwealth of Virginia, this 22nd day of June, 1993.

/s/ Lawrence Douglas Wilder
Governor

GOVERNOR'S COMMENTS ON PROPOSED REGULATIONS

(Required by § 9-6.12:9.1 of the Code of Virginia)

DEPARTMENT OF HEALTH

Title of Regulation: **VR 355-39-100. Regulations Governing Elibibility Standards and Charges for Medical Care Services.**

Governor's Comment:

/s/ Lawrence Douglas Wilder
Governor
Date: June 24, 1993

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Title of Regulation: **State Plan for Medical Assistance Relating to Copayments for Outpatient Rehabilitative Services and Removal of XVIII Cap on Fees.**
VR 460-02-4.1810. Charges Imposed on Categorically Needy for Certain Services.
VR 460-02-4.1830. Charges Imposed on Medically Needy for Certain Services.
VR 460-02-4.1920. Methods and Standards for Establishing Payment Rates – Other Types of Care.

Governor's Comment:

/s/ Lawrence Douglas Wilder
Governor
Date: June 29, 1993

THE LEGISLATIVE Record

VOLUME 3 NUMBER 2 VIRGINIA DIVISION OF LEGISLATIVE SERVICES JULY 1993

SJR 240: Select Committee to Review the Transportation Trust Fund

June 23, 1993, Richmond

The Select Committee to Review the Findings and Recommendations of the Virginia Department of Transportation Concerning the Sufficiency and Distribution of Funds in the Transportation Trust Fund was briefed by the Secretary of Transportation and representatives of Virginia's four major transportation agencies (Department of Transportation, Department of Rail and Public Transportation, Virginia Port Authority, and Department of Aviation) on the outlook for federal, state, and local transportation revenues and the adequacy of this funding for the upcoming years.

Secretary Milliken reported that (i) the Highway Maintenance and Operating Fund (HMO) was likely to grow by about two percent per year, (ii) the highway portion of the Transportation Trust Fund (TTF) was expected to grow at a slightly higher rate, (iii) other state TTF revenues were likely to remain relatively constant, and (iv) following an initial increase, due in large measure to Virginia's "donor state bonus," federal transportation revenues flowing to Virginia , too, were likely to remain relatively flat for the foreseeable future. The agency representatives presented evidence that these relatively unchanging revenue streams would be applied to meet an ever-lengthening list of needs, and that failure to address these needs would place increasing burdens on all modes of transportation and inevitably result in reduced personal mobility and increased difficulties in making goods and services available when and where they are needed.

The speakers presented considerable statistical data supporting the general proposition that, absent additional revenues, no revision of existing formulas for apportioning and allocating transportation revenues would increase Virginia's ability to meet its overall transportation needs. Several agency representatives stressed that mere redistribution of present revenues would force them to curtail or eliminate existing or already-planned programs. Transportation Commissioner Pethtel, for example, stressed that after fiscal year 1994-95, highway maintenance costs will exceed the funds available in the HMO, thus requiring either use of TTF funds to cover maintenance costs or reductions in highway maintenance.

Similar sentiments were expressed by Ralph L. Axselle, speaking on behalf of Virginians for Better Transportation. He observed that the general public is unaware of the magnitude of Virginia's transportation needs, the urgency of those needs, and the impossibility of meeting those needs using either present revenues or present allocation schemes. The answer to these difficulties, Mr. Axselle stressed, does not lie in increased efficiency of transportation agency operations. He also urged the members to seek legislative mechanisms to repay TTF revenues "borrowed" by the General Assembly in recent years for nontransportation purposes and to prevent such "borrowing" in the future.

Urchie B. Ellis criticized the report of the study of Virginia's transportation needs under SJR 188. He felt that the report placed excessive emphasis on highway construction needs relative to other transportation modes, particularly rail, and called for a more balanced approach to the totality of Virginia's transportation needs.

INSIDE:

The select committee's next meetings will be public hearings in Hampton, Richmond, Herndon, and Salem on July 20 and 21.

Hampton
July 20 - 2 p.m.
Hampton Public Library
4207 Victoria Boulevard

Richmond
July 20 - 2 p.m.
Senate Room B
General Assembly Building

Herndon
July 21 - 10 a.m.
Center for Innovative Technology
2214 Rock Hill Road

Salem
July 21 - 10 a.m.
Roanoke County Board Chamber
3738 Brambleton Avenue

The Honorable Hunter B. Andrews, *Chairman*
Legislative Services contact: Alan B. Wambold

HJR 645: The Virginia Mine Safety Law of 1966

June 14, 1993, Richmond

The initial meeting of the Joint Subcommittee Studying the Virginia Mine Safety Law of 1966, established by HJR 645 (1993), included an overview of the Mine Safety Law and the Commonwealth's mining industry, a comparison of Virginia's mine safety laws and program with those of other states, and the review of a survey to be circulated to a cross-section of persons with an interest in mine safety issues.

In his opening remarks, Chairman Smith noted that the mining industry cannot prosper under an ineffective law. Members were urged to maintain their focus on the critical issue of finding effective ways of providing mine safety. In order to meet the goal of formulating recommendations by December, subcommittee members will need to make major policy decisions early in the process, and build on them as the study progresses.

Mine Safety Law

Despite substantial improvements in mine safety in recent years, the explosion at the Southmountain Mine last year that claimed eight lives and accidents at the W. S. Frey Company limestone quarry that claimed two lives illustrate the need for an effective mine safety program.

The Virginia Mine Safety Law of 1966, consisting of the first 14 chapters of Title 45.1, has not been substantively rewritten since 1954. In the 27 years following the recodification of Title 45, the Mine Safety Law has been amended on numerous occasions. Many amendments have been necessitated by changes in technology and practices previously prescribed in the *Code*. The many amendments to the law have created internal inconsistencies and obsolete references. Accordingly, subcommittee staff recommended that, in addition to any policy changes that may be forthcoming in the course of the study, it may also be appropriate to rewrite portions of the law to increase clarity and readability.

Virginia's Mining Industry

The Department of Mines, Minerals and Energy (DMME) is responsible for administering state laws and regulations applicable to surface and underground coal mining and mineral (non-coal) mining. DMME data reveal that the number of regulated mines and miners has declined over the past five years. Also declining since 1988 were coal production, underground coal production, and mineral production. Surface coal production increased slightly.

Despite the declining figures for mines, miners, and production, the value of sales has held steady over the period 1988 through 1991. Coal sales increased from $1.576 billion to $1.632 billion, while mineral sales decreased from $506 million to almost $416 million.

Much of the decline in the number of mineral mines, mine workers, and mineral sales was attributed to the 1990 decision of the Virginia Court of Appeals in the May Brothers case, in which the court held that "borrow pits" or dirt mines do not constitute mineral mines within the scope of the state law. As a result, the figures for mineral mines after 1990 exclude data for these types of operations.

Despite the downward trend in many of these categories, the rates for violations and closure orders have held steady or increased over the last five years for which numbers are available. More importantly, the rates for accidents and fatalities in coal and mineral mines have generally remained steady. The accident rate dipped slightly over this period, and the rate in mineral mines fell in each of the last two years (after peaking in 1990). The rate of fatalities in mineral mining has crept up, and the fatality rate in coal mines jumped in 1992 (attributable primarily to the deaths of eight miners in the Southmountain disaster last December).

Agency Resources

DMME Director O. Gene Dishner's remarks included an overview of the department's programs and responsibilities. Coal mine safety accounts for less than 15 percent of the agency's staff and budget. General fund appropriations account for 90 percent of the budget of the Division of Mines. He attributed the outstanding performance of the department to its implementation of principles of total quality management.

The budget for the coal mine safety program has fallen slightly (from $3,258,938 to $3,186,660) in the period 1989 through 1992. The allocation of these resources has changed over these four years. While funds earmarked for inspections and for technical assistance have increased by over $370,000, the budget for training has decreased by over $386,000. The budget for mineral mine safety over the same period has increased from $689,515 to over $1 million.

Comparison of Laws and Programs

The Virginia Mine Safety Law and the corresponding state program differ from the laws and programs of other eastern coal-producing states and the federal government in several major areas. The laws and programs compared to those of Virginia encompassed Kentucky, West Virginia, Alabama, Ohio, Illinois, and Pennsylvania, as well as the Federal Mine Safety and Health Act of 1977. Features of the Commonwealth's mine safety program that differed appreciably from other programs surveyed include:

- **Spot inspections** are allowed in every program except those of Virginia, Alabama, and Pennsylvania.
- **Confidentiality of whistle blowers** is guaranteed in every program except Virginia and Kentucky.
- **Frequency of underground inspections** is lower only in Kentucky, and many states require more frequent inspections than Virginia.
- **Off-site prep plants** are not covered by the programs of three states (Virginia, Kentucky, and Alabama).
- **Citing for "regular" violations during technical assistance visits** is permitted under the program of every state except Virginia, where only imminent danger violations can be cited.
- **Civil enforcement actions**, in addition to criminal actions, are permitted in all other states except Alabama and Pennsylvania.
- **Technical assistance for mineral mines** is provided by every state except Virginia and Alabama.
- **On-site safety training** is provided by every program other than Virginia's.
- **New miner training and continuing education** is required in every other state except Pennsylvania, which does not mandate new miner training.
- **Use of an advisory board** in the coal safety program is a feature of only Virginia and Pennsylvania; all other states except Alabama have policy-making and/or regulatory boards.

In other respects, Virginia's law and program are similar to the others surveyed. The mine safety laws generally tend to establish detailed prescriptive standards by statute, rather than creating enabling provisions and delegating the authority to promulgate prescriptive standards in regulation. As is the case with most of the states surveyed, Virginia focuses its program on miner safety issues, and relies on the federal Mine Safety and Health Administration to address miner health standards. Virginia's law is also typical in providing combined standards for underground and surface operations and for coal and mineral mining. Only Alabama and Pennsylvania prescribe separate standards for underground and surface, and for coal and mineral, mining.

The law and program comparison revealed several aspects in which Virginia's safety requirements are more stringent than those of the other jurisdictions. Virginia is one of three states with standards for diesel equipment used underground and for surface impoundments. Only one other state (Alabama) regulates vertical ventilation holes and gas wells. West Virginia is the only state other than the Commonwealth that provides for government-certified mine rescue crews.

Survey on Law's Effectiveness

In order to assist the subcommittee in identifying areas of the Mine Safety Law that do and do not provide adequate protection of miners, staff presented a questionnaire soliciting the input of a cross-section of persons with an interest in mine safety issues. The survey seeks the reaction of respondents on a variety of issues, many of which were identified in the comparison of the mine safety law and programs as areas where Virginia is substantially different from other jurisdictions.

The survey results will be analyzed based on the respondents' views on underground coal mining, surface coal mining, underground mineral mining, and/or surface mineral mining. The results of the survey will be presented at the next meeting of the subcommittee, which will be held on July 13 in Richmond.

The Honorable Alson H. Smith, Jr., *Chairman*
Legislative Services contact: Franklin D. Munyan

HJR 532: Joint Subcommittee to Study the Electoral Process

June 23, 1993, Richmond

At its organizational meeting held on June 23, the joint subcommittee adopted a vigorous work schedule. Under the direction of Chairman Scott, the subcommittee will conduct four regional hearings this summer to solicit comments from the public on the electoral process and hear proposals for election reform. The subcommittee anticipates exploring a number of issues, including Virginia's compliance with the new National Registration Act, selection of electoral college delegates by Congressional district, use of mail ballots in referendum and town elections, longer voting hours, a shorter period between election day and the last day for registration, selection of jurors other than from a voting list, and registration and voting opportunities for disabled, military, and overseas voters and college students.

The following dates and locations have been set for public hearings to be conducted by the subcommittee:

- Thursday, July 15, 7:30 p.m. - Falls Church
Luther Jackson Middle School, 3020 Gallows Road
- Thursday, July 22, 2:00 p.m. - Norfolk
Norfolk Public Library, Kirkby Room, 301 E. City Hall Avenue
- Thursday, August 5, 7:00 p.m. - Abingdon
Virginia Highlands Community College, Room 605, Learning Resources Business Technology Center
- Wednesday, September 8, 10:00 a.m. - Richmond
General Assembly Building - House Room C
(work session at 1:00 p.m.)

The Honorable James M. Scott, *Chairman*
Legislative Services contact: Ginny Edwards

HJR 692: Joint Subcommittee Studying Human Immunodeficiency Virus (AIDS)

June 7, 1993, Richmond

Originally established in 1988, the Joint Subcommittee Studying Human Immunodeficiency Virus has served as the mediator and harbinger of HIV policy in the Commonwealth. The present resolution provides for a two-year study, continued to the adjournment sine die of the 1995 Session. The current membership continues to serve, with vacancies filled as set forth in the original enabling resolutions (HJR 31 and SJR 28 of 1988), except that the vacancy created by the resignation of the member who occupied one of the seats designated for a "citizen with expertise in care and treatment of AIDS patients" was revised to provide for appointment of an HIV-infected citizen or a person living with AIDS.

1993 Study Plan

During its first 1993 interim meeting, the joint subcommittee organized for the coming study year. A review of HJR 692's objectives revealed a variety of pending issues, ranging in scope from the emergence of multiple-drug-resistant tuberculosis to issues related to women and children, such as the development of a plan to phase-in services to HIV-infected children in the Children's Specialty Services Program.

The joint subcommittee reviewed its 1993 legislative actions, which included four study resolutions and two bills, examined a draft of its 1993 report, and discussed a proposed study plan and schedule for the coming year, which included three additional all-day, interim meetings (morning work sessions and afternoon public hearings) and a decision-making meeting for the early days of the 1994 Session.

Next Meeting

The next meeting has been scheduled for August 26 in Lynchburg. During the morning session, the joint subcommittee will receive reports on the demographics of the HIV epidemic in Virginia, activity reports from several regional HIV/AIDS centers and from various institutions of higher education on AIDS education activities, and a report on HIV antibody and CD4 cell count testing. In the afternoon, the public forum issue will be: *From the Community Perspective/Community Services and Organizations.* Public volunteers who wish to speak on the designated issue are encouraged to register; further, public speakers who wish to speak on any other matter related the HIV/AIDS epidemic and its Virginia ramifications may register for the public hearing.

The Honorable Joan H. Munford, *Chairman*
Legislative Services contact: Norma E. Szakal

Special Subcommittee Studying Child Abuse Issues

June 22, 1993, Richmond

Delegate Brickley announced that he established this subcommittee of the House Committee on Health, Welfare and Institutions because of the May 4, 1993, death of two-year old Donnell Robinson of Prince William County due to injuries sustained from physical abuse. Donnell died after allegations of physical abuse were investigated by authorities. Delegate Brickley noted that the Robinson case points up the issue of how the child's best interest is served — by removing him from the home or by attempting to keep the family together.

Child protective services is a traditionally difficult area, and there is a continuing need to review and update the purpose and goals of child protective services because of a lack of consensus about its purpose and about the principles that ought to govern practice. A Customer Services Improvement Project Committee within the State Department of Social Services concluded that the child protective services system needs to engage in a strategic planning process that dovetails with the overall strategic plan for social services.

Study Group

The state department and Prince William County Department of Social Services have formed a study group made up of local, state, and national experts to analyze child protective services policy and practice in both administration and service delivery at the state and local levels. The study group is expected to issue an initial report with recommendations for policy changes in September and a final report, with any proposed legislative changes, by December.

The state department and local departments always review fatality cases in hopes of learning from the tragedy, and the state department conducted an internal review of Prince William County Department of Social Services' handling of the Donnell Robinson case. In addition the state department is reviewing all other fatalities to determine if there are similarities or patterns that have policy or training implications. The report of the state department's review of Donnell Robinson's case is almost complete, and a copy will be delivered, under conditions of confidence, to each subcommittee member.

Roles of State and Local Departments

The state department provides training for local staff through the Virginia Institute for Social Service Training Activities (VISSTA). VISSTA training is not mandatory, but social workers are required to have a baccalaureate degree in social work or a related human services field (effective September 1990). Although workers must be trained and certified before investigating the small percentage of cases where the alleged perpetrator is a

non-familial caretaker, workers do not have to be trained or certified before performing family work.

Scope of the Problem

Abuse or neglect resulted in the deaths of 32 children in Virginia during FY 1992 (22 of died of abuse and 10 of neglect). From July 1, 1992, through April 30, 1993, there were 26 child fatalities due to maltreatment. Since May 1, 1993, there have been five child maltreatment fatalities, one of which was an active child protective services case at the time of death. Nationwide there is a steady increase in child fatalities and in the number and severity of child abuse/neglect incidents. In July 1988 the department implemented a child fatality protocol; 30 states have child fatality review teams, and legislation mandating such teams was considered but not endorsed by the Virginia General Assembly.

Prince William County

Ricardo Perez, director of the Prince William County Department of Social Services, stated that because his department is unable to publicly disclose its actions with respect to specific cases, the public lacks full and complete information concerning the actions of his department. The confidential relationship is a crucial element in the process of case planning. He said that he was unable to reveal to the subcommittee certain information about the Robinson case due to confidentiality requirements. Steve MacIsaac, deputy county attorney for Prince William County, said that the county wishes to provide information to the subcommittee but feels that this should not be done in the absence of a formal attorney general's opinion or court order. Mr. Perez stated that a review by an internal team indicated that local practices and procedures were followed and that the staff made an appropriate decision based on the information available at that time. He stated that Prince William County has a procedure whereby the department and the local police department jointly investigate many of the more serious child abuse and neglect complaints but that the ability to work together as a team is hampered by confidentiality regulations and that he will be asking the study group to look at the application of confidentiality laws to such joint procedures. Mr. Perez stressed his commitment to examining the incident to enhance the child protective services system in the Commonwealth.

In response to questions, Mr. Perez said that there is no state policy governing how often a case ought to be monitored. He also reported that staff turnover is a significant problem, that all of the child protective service workers in his department have received VISSTA training and that many have masters' degrees and prefer to be on the treatment team rather than the investigative team. He reported that there has been a dramatic increase in the severity of child protective services cases in recent years, which requires significantly more staff time, but the increase in the number of cases has not been as dramatic, which makes it difficult to justify additional staff.

Chief Charlie T. Deane of the Prince William County Police Department said that the death of a child in 1978 led to policy changes in the county, resulting in the formation of a local department of social services/local police department team to respond to child abuse cases. This has significantly improved the coordination of child abuse investigations and has protected victims. However, from the police perspective, the issue of confidentiality is of concern because even though the police detective is a member of the team, he is not routinely privy to all information available to the Prince William County Department of Social Services. Chief Deane noted that the police respond to domestic situations 24 hours a day and that a free flow of information between agencies would enhance the ability to protect abused children.

DCJS Programs

Fran Ecker, chief of juvenile services at the Department of Criminal Justice Services, spoke about the Children's Justice Act (CJA) and Court Appointed Special Advocate (CASA) programs administered by her department. The CJA program, which is federally funded, focuses on improving the investigation, prosecution, and administrative and judicial handling of child abuse cases, with an emphasis on sexual abuse. The focus has recently been broadened to include child-abuse-related fatalities. For the past four years the program has provided multidisciplinary training and special interest training to CPS workers, law enforcement investigators, prosecutors, judges, and allied professionals in the health and mental health professions. Ms. Ecker invited the subcommittee to a symposium on child fatalities, which will be held on October 7, 1993.

In the CASA program volunteers are appointed by Juvenile and Domestic Relations Court judges to serve as impartial investigators in child abuse and neglect cases. CASA volunteers also monitor compliance with court orders by the child's family and report noncompliance to the court. Ms. Ecker said that her agency can provide staff assistance in starting CASA programs in localities that do not have them.

Ms. Ecker noted that as of February 1993, 41 states had instituted some systematic form of child death review and that Virginia is one of the largest states that does not have a coordinated approach to the review of child maltreatment fatalities. Delegate Brickley indicated that the subcommittee will review this issue.

Next Meeting

After ascertaining that no subcommittee member objected, Delegate Brickley stated that he will obtain a court order so that information regarding Donnell Robinson's case can be provided at the subcommittee's next meeting, which will be held in August or September and will include a progress report from the study group.

The Honorable David G. Brickley, *Chairman*
Legislative Services contact: Jessica F. Bolecek

HJR 593: Study of Crime and Violence Prevention through Community Economic Stimulation and Development

June 8, 1993, Richmond

In recent years, high crime neighborhoods have been targeted by crime prevention programs, such as the 1991 Richmond City/State Police Partnership, the anti-crime partnership authorized by §2.1-53.6:3 of the *Code of Virginia*, and the federal "Weed and Seed" program. These programs sought to reclaim neighborhoods from the thrall of criminal activity by linking traditional police services with coordinated resources of schools, housing and social service agencies, economic development organizations, and other community-based organizations. Results have included the arrest and ultimate incarceration of significant numbers of criminals; the elimination of many of the physical, social, and economic factors that contributed to crime; and the restoration of some measure of community cohesion.

To sustain the momentum achieved by these successful programs, the HJR 593 joint subcommittee has been charged with examining crime and violence prevention through community economic stimulation and development.

Richmond City Programs

At the initial work session, subcommittee members heard from various Richmond City officials, toured two troubled Richmond neighborhoods, and attempted to establish an agenda for issues to be considered during the study.

Richmond has been grappling with neighborhood violence for some time through a number of initiatives. In the fall of 1990, a comprehensive urban violence strategy was implemented, emphasizing safety, the quality of living environment, and internal community organization.

Early emphasis was on law enforcement and improvement of relations between community members and local law-enforcement personnel. Particular emphasis was also placed on children in these communities. Drug-free blocks were successfully established, and neighborhood teams were formed to develop plans for future action within each community. In addition, the federal Weed and Seed program was implemented approximately one year ago, with Gilpin Court and Blackwell being targeted within the City of Richmond. This program achieved great success, primarily because of community organizational structures already in place.

Housing in Richmond

Improving community aesthetic environments was also of prime concern. The city's housing stock in older neighborhoods has deteriorated, and abandoned housing is a major problem. Existing laws encumber the process of destroying or renovating such housing, which is extremely time-consuming. Also, it is very difficult to convey good title in many instances. More often than not, the city must wait until property becomes so dilapidated as to pose a threat to public safety.

In Virginia property must be tax delinquent for four years before a city can initiate legal proceedings, which can take additional years. At the end of this period, such properties often have less value than the cost of tearing down buildings on them. Delegate Hall explained that the four-year requirement is a lingering vestige from our heritage as an agrarian society, where landowners were given special privileges to overcome years of lean crops.

Approximately $100,000 in city funds are devoted annually to the demolition of abandoned housing. Typically, three years are required to complete condemnation procedures for each property involved. Liens are placed on all demolished property; however, the city only recovers 3 or 4% of such liens.

Dilapidated and abandoned housing has become a major problem in several neighborhoods. Incentives could stimulate rehabilitation or demolition of abandoned housing and encourage middle-class tenants to relocate in these neighborhoods . Currently, the typical tenant is elderly or a single mother.

Homesteading, which is used extensively by other Virginia cities, should be encouraged in Richmond. Also helpful would be methods to provide good, marketable title to real estate, together with low interest loans to permit rehabilitation. It was suggested that the study subcommittee review state laws pertaining to eminent domain and public health/nuisance condemnation procedures. One problem seems to be defining these terms. Boarded up, abandoned buildings do not qualify as nuisances under current interpretations.

Issues

Subcommittee members agreed to focus on four major factors during their study:

1. Building on the state/local law-enforcement partnerships.
2. Investigating approaches for investment of state funds in support of community organizations working to rehabilitate neighborhoods.
3. Proposing solutions for the control and rehabilitation of abandoned housing.
4. Studying ways to prevent the deterioration of neighborhoods.

The subcommittee agreed to expand its membership and discussed the possibility of adding representatives from various interested groups and public and private community residents. In view of the proposed increase in membership, Chairman Hall suggested that the subcommittee may wish to establish several task forces among which to divide the various issues to be explored during this study.

The Honorable Franklin P. Hall, *Chairman*
Legislative Services contact: Oscar R. Brinson

HJR 100: Joint Subcommittee Studying the Use of Vehicles Powered by Clean Transportation Fuels

June 2, 1993, Suffolk

Five briefings were presented to the subcommittee: (i) the alternative fuels pilot program in the Virginia Department of Transportation (VDOT), (ii) clean fuel-related legislation considered by the 1993 Session of the General Assembly, (iii) administration of motor fuel and special fuel taxes in Virginia by the Department of Motor Vehicles (DMV), (iv) administration of the Virginia Alternative Fuels Revolving Fund by VDOT, and (v) the impact of the federal Energy Policy Act on state and local government motor vehicle fleets in Virginia.

Pilot Program

All three portions of VDOT's alternative fuels project (Northern Virginia, Greater Richmond, and Hampton Roads) are now in operation. In Northern Virginia, earlier vehicle and station problems have been solved; in Greater Richmond, some difficulties remain in completely filling vehicle gas cylinders at the fueling station; and in Hampton Roads, problems remain deriving from the fact that equipment for this phase of the project has been supplied by a different vendor. None of the difficulties has been specifically fuel-related. It was also reported that (i) VDOT's current budget calls for the purchase of six dedicated compressed natural gas (CNG) pickup trucks, two for use in each of the state's three air quality nonattainment areas (Northern Virginia, Greater Richmond, and Hampton Roads); (ii) the transportation commissioner's official vehicle has been converted to use CNG; and (iii) passenger cars involved with VDOT's CNG project can travel about 120 miles on CNG between refills.

1993 Legislation

The 1993 General Assembly considered 20 pieces of legislation relating to clean air or clean fuels, of which 14 passed, five failed, and one was vetoed by the Governor. Bills passed and signed into law include (i) implementation of the clean fuel fleet provisions of the federal Clean Air Act (HB 1788 and SB 809), (ii) placing special identifying signs or decals on alternatively fueled school buses (HB 1204), (iii) provision for motor vehicle emissions inspections programs for Northern Virginia (HB 2275 and SB 861) and Greater Richmond (SB 2002), (iv) establishment of incentives both for scrappage of older "dirtier" motor vehicles (HB 2220 and HB 2221) and for purchase of alternatively fueled vehicles (HB 1727, HB 1881, SB 771, and SB 960). The clean fuel fleet and alternatively fueled school bus bills were legislative recommendations developed by the subcommittee.

Taxes

Members of the subcommittee were reminded that taxes on both "motor fuels" (gasoline) and "special fuels" (diesel fuel and most alternative fuels) are administered by DMV (not the Department of Taxation). Although the amount of the tax is passed on to retail consumers as a part of the cost of the product, on motor fuels and special fuels, the taxes generally are actually remitted at the first point of sale in Virginia. This latter fact means that data on the volume of fuel sales and fuel taxes paid by retail consumers are generally not available from DMV on a locality-by-locality basis.

Revolving Fund

VDOT has used the proceeds of the Virginia Alternative Fuels Revolving Fund to make grants to 11 localities and local school divisions and one institution of higher education during the period ending in June of 1993. These grants supported the acquisition of 26 vehicles powered by CNG, one powered by propane, and one powered by electricity, the vast bulk of which would be operating in air quality nonattainment areas of Virginia.

Federal Mandates

The recently passed federal Energy Policy Act contains mandates for conversion of portions of federal and state motor vehicle fleets to fuels other than conventional gasoline and diesel fuel, and under certain conditions, these requirements could be applied by the federal Secretary of Energy to municipal and private fleets as well. The subcommittee was urged to take steps to ensure that the Commonwealth was aware of these requirements and prepared to implement them on a timely basis.

Virginia's alternative fuels program could benefit, however, if Virginia-based federal motor vehicle fleets were made priority targets for conversion under the Energy Policy Act's fleet conversion mandates. The presence of significant numbers of alternatively fueled federal vehicles in the Commonwealth would provide an incentive to fuel providers to make the needed fuels available not only to federal vehicles, but to other potentially alternatively fueled vehicles owned by the state, local governments, businesses, and private individuals.

Next Meeting

The subcommittee's next meeting will be at 10:00 a.m. on July 20 in House Room 4 of the State Capitol.

The Honorable Arthur R. Giesen, Jr., *Chairman*
Legislative Services contact: Alan B. Wambold

HJR 526: Joint Subcommittee Studying the Business, Professional and Occupational License (BPOL) Tax

June 22, 1993, Richmond

The purpose of the study, as explained during the joint subcommittee's organizational meeting, is to examine the BPOL tax and determine if the law should be amended or repealed and replaced with an alternative means of taxation which provides the same revenue amounts to local jurisdictions.

The business community dislikes the tax for two main reasons. First and foremost, the BPOL tax is based on the gross receipts instead of the profitability of a business. This is viewed as inequitable by the business community. Second, the tax is unpopular because of the way in which it is administered. Because the BPOL tax is local option, each local jurisdiction decides whether or not to levy the tax, sets the rates within the guidelines of the state law, assesses the tax, and collects it. Therefore, businesses located in more than one local jurisdiction have to deal with each jurisdiction and its differences concerning the tax.

The local jurisdictions recognize the problems the BPOL tax presents; however, they have come to depend on the revenues provided by the tax. It is the fourth largest revenue producer (after real estate, personal property, and local sales taxes) for most local jurisdictions. Therefore, whatever changes are made, the result needs to be revenue neutral.

The issues on which the subcommittee will focus are:
1. What is the purpose of or policy behind the BPOL tax?
2. How have the economic conditions changed since the current BPOL tax law was enacted?
3. Will such changes be better addressed by amending the current law or by repealing it and replacing if with a different method of taxation?
4. What method of taxation will be fair and equitable to business while providing comparable revenue stream to local government?

The next meeting of the subcommittee is planned for early August in Richmond, at which time representatives from local governments and the business community will speak to the subcommittee.

The Honorable David G. Brickley, *Chairman*
Legislative Services contact: Joan E. Putney

The Legislative Record summarizes the activities of Virginia legislative study commissions and joint subcommittees. Published in Richmond, Virginia, by the Division of Legislative Services, an agency of the General Assembly of Virginia.

E.M. Miller, Jr. *Director*
R.J. Austin *Manager, Special Projects*
K.C. Patterson *Editor*
James A. Hall *Designer*

Special Projects, Division of Legislative Services
910 Capitol Street, 2nd Floor, Richmond, Virginia 23219 804/786-3591

The Legislative Record is also published in *The Virginia Register of Regulations*, available from the Virginia Code Commission, 910 Capitol Street, 2nd Floor, Richmond, Virginia 23219. Notices of upcoming meetings of all legislative study commissions and joint subcommittees appear in the Calendar of Events in *The Virginia Register of Regulations*.

Symbol Key †
† Indicates entries since last publication of the Virginia Register

GENERAL NOTICES

NOTICE

Notices of Intended Regulatory Action are published as a separate section at the beginning of each issue of the Virginia Register.

DEPARTMENT OF LABOR AND INDUSTRY

† Notice to the Public

The Safety and Health Codes Board adopted the following standards, regulations and amendments to regulations at its meeting on June 21, 1993:

1. Permit-Required Confined Spaces for General Industry; Final Rule, § 1910.146, VR 425-02-92. Effective date of the Standard is September 1, 1993.

2. Amendment to the Virginia Confined Space Standard for the Construction Industry, VR 425-02-12. Effective date of the amendment to the regulation is September 1, 1993.

3. Lead Exposure in Construction, Interim Final Rule, § 1926.62, VR 425-02-94. Effective date of the Standard is September 1, 1993.

4. The Agriculture Standard for Occupational Exposure to Cadmium, § 1928.1027, VR 425-02-94. Effective date of the Standard is September 1, 1993.

5. Amendment to the General Industry Standard for Occupational Exposure Cadmium, § 1910.1027, VR 425-02-90. Effective date of the amendment to the regulation is September 1, 1993.

6. Amendment to the Construction Industry Standard for Occupational Exposure to Cadmium, § 1926.63, VR 425-02-91. Effective date of the amendment to the regulation is September 1, 1993.

7. Amendment to Air Contaminants Standard, § 1910.1000, VR 425-02-36. Effective date of the amendment to the regulation is September 1, 1993.

8. Revocation of the 1989 Revised Permissible Exposure Limits to the General Industry Standard for Air Contaminants, § 1910.1000, VR 425-02-36. Effective date of the amendment to the regulation is September 1, 1993.

9. Amendment to Boiler and Pressure Vessel Rules and Regulations, VR 425-01-75. Effective date of the amendment to the regulation is September 1, 1993.

10. Amendment to Regulation Concerning Licensed Asbestos Contractor Notification, Asbestos Project Permits and Permit Fees, VR 425-01-74. Effective date of the amendment to the regulation is September 1, 1993.

11. Emergency Regulation - Administrative Regulations Manual, VR 425-02-11. Effective date of the emergency regulation is June 30, 1993

12. Amendment to the Administrative Regulations Manual, VR 425-02-11 Effective date of the amendment to the regulation is September 1, 1993.

13. Emergency Regulation - Public Participation Guidelines, VR 425-01-68. Effective date of the emergency regulation is June 30, 1993.

Notice to the Public

The 1993 General Assembly session passed House Joint Resolution 534 requesting the Department of Labor and Industry, assisted by an appropriate advisory group, to study drug testing in the workplace. The advisory committee established pursuant to HJR 534 to study drug testing in the workplace has been formed and will meet on the call of the chairman.

The purpose of the work sessions is to review research material in order to submit a report to the Governor and the 1994 General Assembly.

Information concerning the meeting dates can be obtained by contacting the chairman, Marilyn Mandel, at the Department of Labor and Industry, Office of Planning and Policy Analysis, Powers-Taylor Building, 13 South 13th Street, Richmond, Virginia 23219, telephone (804) 786-2385.

VIRGINIA CODE COMMISSION

NOTICE TO STATE AGENCIES

Mailing Address: Our mailing address is: Virginia Code Commission, 910 Capitol Street, General Assembly Building, 2nd Floor, Richmond, VA 23219. You may FAX in your notice; however, we ask that you do not follow-up with a mailed copy. Our FAX number is: 371-0169.

FORMS FOR FILING MATERIAL ON DATES FOR PUBLICATION IN THE VIRGINIA REGISTER OF REGULATIONS

All agencies are required to use the appropriate forms when furnishing material and dates for publication in the Virginia Register of Regulations. The forms are supplied by the office of the Registrar of Regulations. If you do not have any forms or you need additional forms, please contact: Virginia Code Commission, 910 Capitol Street, General Assembly Building, 2nd Floor, Richmond, VA 23219, telephone (804) 786-3591.

FORMS:

NOTICE of INTENDED REGULATORY ACTION - RR01
NOTICE of COMMENT PERIOD - RR02
PROPOSED (Transmittal Sheet) - RR03
FINAL (Transmittal Sheet) - RR04
EMERGENCY (Transmittal Sheet) - RR05
NOTICE of MEETING - RR06
AGENCY RESPONSE TO LEGISLATIVE OR GUBERNATORIAL OBJECTIONS - RR08
DEPARTMENT of PLANNING AND BUDGET (Transmittal Sheet) - DPBRR09

Copies of the Virginia Register Form, Style and Procedure Manual may also be obtained at the above address.

ERRATA

DEPARTMENT OF TAXATION

Title of Regulation: VR 630-10-80. Retail Sales and Use Tax: Penalties and Interest.

Publication: VA.R. 9:20 3625-3626 June 28, 1993.

Correction to Final Regulation:

Page 3626, column 1, line 2, after "pay" insert "the full amount"

CALENDAR OF EVENTS

Symbols Key
† Indicates entries since last publication of the Virginia Register
♿ Location accessible to handicapped
☎ Telecommunications Device for Deaf (TDD)/Voice Designation

NOTICE

Only those meetings which are filed with the Registrar of Regulations by the filing deadline noted at the beginning of this publication are listed. Since some meetings are called on short notice, please be aware that this listing of meetings may be incomplete. Also, all meetings are subject to cancellation and the Virginia Register deadline may preclude a notice of such cancellation.

For additional information on open meetings and public hearings held by the Standing Committees of the Legislature during the interim, please call Legislative Information at (804) 786-6530.

VIRGINIA CODE COMMISSION

EXECUTIVE

DEPARTMENT FOR THE AGING

August 17, 1993 - 1 p.m. – Public Hearing
Department for the Aging, 700 East Franklin Street, 10th Floor, Richmond, Virginia.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department for the Aging intends to amend regulations entitled: **VR 110-01-02. Grants to the Area Agencies on Aging.** The purpose of the proposed amendments are to delete requirements for the operation of local ombudsman entities and make revisions to comply with the 1992 amendments to the Older Americans Act.

Statutory Authority: § 2.1-373 of the Code of Virginia.

Written comments may be submitted until August 14, 1993.

Contact: J. James Cotter, Division Director, Virginia Department for the Aging, 700 E. Franklin St., 10th Floor, Richmond, VA 23219-2327, telephone (804) 225-2271 or toll-free 1-800-552-4464.

VIRGINIA AGRICULTURAL COUNCIL

† **August 23, 1993 - 9:15 a.m.** – Open Meeting
Embassy Suites, 2925 Emerywood Parkway, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

This is the council's annual meeting whereby financial reports and project activities will be reviewed. The council will entertain public comment at the conclusion of all other business for a period not to exceed 30 minutes. Any person who needs any accommodation in order to participate at the meeting should contact the assistant secretary of the Virginia Agricultural Council identified in this notice at least 10 days before the meeting date, so that suitable arrangements can be made for any appropriate accommodation.

Contact: Thomas R. Yates, Assistant Secretary, 1100 Bank St., Suite 203, Richmond, VA 23219, telephone (804) 786-6060.

ALCOHOLIC BEVERAGE CONTROL BOARD

August 2, 1993 - 9:30 a.m. – Open Meeting
August 16, 1993 - 9:30 a.m. – Open Meeting
August 30, 1993 - 9:30 a.m. – Open Meeting
2901 Hermitage Road, Richmond, Virginia ♿

A meeting to receive and discuss reports and activities from staff members. Other matters not yet determined.

Contact: Robert N. Swinson, Secretary to the Board, 2901 Hermitage Road, P.O. Box 27491, Richmond VA 23261, telephone (804) 367-0616.

GOVERNOR'S COUNCIL ON ALCOHOL AND DRUG ABUSE PROBLEMS

† **August 20, 1993 - 3 p.m.** – Open Meeting
Embassy Suites, Alexandria, Virginia. ♿

A general meeting.

Contact: Marcella Burton, Staff Assistant, Governor's Drug Policy Office, 9th Street Office Bldg., 1st Floor, Richmond, VA 23219, telephone (804) 786-2211 or (804) 371-8015/TDD ☎

ALCOHOL SAFETY ACTION PROGRAM - MOUNT ROGERS

† **August 4, 1993 - 12:30 p.m.** – Open Meeting
Oby's Restaurant, North Main Street, Marion, Virginia.

A meeting to conduct program business. The order of business at all regular meetings shall be as follows: 1) Call to order; 2) Roll call; 3) Approval of minutes; 4) Unfinished business; 5) New business; and 6) Adjournment.

Contact: J. L. Reedy, Jr., Director, Mt. Rogers ASAP, 1102 A N. Main St., Marion, VA 24354, telephone (703) 783-7771.

AVIATION BOARD

August 25, 1993 - 9 a.m. – Open Meeting
August 27, 1993 - 9 a.m. – Open Meeting
Radisson Hotel Hampton, 700 Settlers Landing Road, Hampton, Virginia.

A board meeting held in conjunction with Virginia Aviation Conference. The board will receive applications for state grants on August 25 and announce funding allocations on August 27.

Contact: Nancy Brent, 4508 S. Laburnum Ave., Richmond, VA 23231-2422, telephone (804) 786-6284 or fax (804) 786-3690.

Annual Virginia Aviation Conference

August 25, 1993 - 9 a.m. – Open Meeting
August 26, 1993 - 9 a.m. – Open Meeting
August 27, 1993 - 9 a.m. – Open Meeting
Radisson Hotel Hampton, 700 Settlers Landing Road, Hampton, Virginia.

Speakers and panel discussions on matters of interest to the aviation community. Various aviation organizations also hold meetings during this conference.

Contact: Nancy Brent, Department of Aviation, 4508 S. Laburnum Ave., Richmond, VA 23231-2422, telephone (804) 786-6284 or fax (804) 786-3690.

BOARD FOR BARBERS

† **August 9, 1993 - 9 a.m.** – Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, 5th Floor, Richmond, Virginia.

A meeting to (i) review applications; (ii) review correspondence; (iii) review and disposition of enforcement cases; and (iv) conduct routine board business.

Contact: Roberta L. Banning, Assistant Director, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8590.

CHESAPEAKE BAY LOCAL ASSISTANCE BOARD

Central Area Review Committee

July 30, 1993 - 10 a.m. – Open Meeting
August 26, 1993 - 10 a.m. – Open Meeting
September 29, 1993 - 10 a.m. – Open Meeting
Chesapeake Bay Local Assistance Department, 805 East Broad Street, Suite 701, Richmond, Virginia. (Interpreter for the deaf provided upon request)

The review committee will review Chesapeake Bay Preservation Area programs for the central area. Persons interested in observing should call the Chesapeake Bay Local Assistance Department to verify meeting time, location and schedule. No comments from the public will be entertained at the review committee meeting; however, written comments are welcome.

Contact: Receptionist, Chesapeake Bay Local Assistance Department, 805 E. Broad St., Richmond, VA 23219, telephone (804) 225-3440, toll-free 1-800-243-7229 or toll-free 1-800-243-7229/TDD

Northern Area Review Committee

August 19, 1993 - 2 p.m. – Open Meeting
September 23, 1993 - 10 a.m. – Open Meeting
Chesapeake Bay Local Assistance Department, 805 East Broad Street, Suite 701, Richmond, Virginia. (Interpreter for the deaf provided upon request)

The review committee will review Chesapeake Bay Preservation Area programs for the northern area. Persons interested in observing should call the Chesapeake Bay Local Assistance Department to verify meeting time, location and schedule. No comments from the public will be entertained at the review committee meeting; however, written comments are welcome.

Contact: Receptionist, Chesapeake Bay Local Assistance Department, 805 E. Broad St., Richmond, VA 23219, telephone (804) 225-3440, toll-free 1-800-243-7229 or toll-free 1-800-243-7229/TDD

Southern Area Review Committee

August 27, 1993 - 1 p.m. – Open Meeting
City of Hampton's Planning Office Conference Room, Harbor Center Building, 2 Eaton Street, 9th Floor, Hampton, Virginia. (Interpreter for the deaf provided upon request)

September 24, 1993 - 1 p.m. – Open Meeting

Chesapeake Bay Local Assistance Department, 805 East Broad Street, Suite 701, Richmond, Virginia. (Interpreter for the deaf provided upon request)

The review committee will review Chesapeake Bay Preservation Area programs for the southern area. Persons interested in observing should call the Chesapeake Bay Local Assistance Department to verify meeting time, location and schedule. No comments from the public will be entertained at the review committee meeting; however, written comments are welcome.

Contact: Receptionist, Chesapeake Bay Local Assistance Department, 805 E. Broad St., Richmond, VA 23219, telephone (804) 225-3440, toll-free 1-800-243-7229 or toll-free 1-800-243-7229/TDD

COMPENSATION BOARD

July 28, 1993 - 1 p.m. – Open Meeting
September 1, 1993 - 1 p.m. – Open Meeting
Ninth Street Office Building, 202 North 9th Street, Room 913/913A, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A routine meeting to conduct business.

Contact: Bruce W. Haynes, Executive Secretary, P.O. Box 3-F, Richmond, VA 23206-0686, telephone (804) 786-3886 or (804) 786-3886/TDD

BOARD FOR CONTRACTORS

Complaints Committee

† **August 25, 1993 - 8 a.m.** – Open Meeting
3600 West Broad Street, 4th Floor, Conference Room 1, Richmond, Virginia.

A regular meeting.

Contact: A.R. Wade, Assistant Director, Board for Contractors, 3600 W. Broad St., 5th Floor, Richmond, VA 23230, telephone (804) 367-0136.

Recovery Fund Committee

† **September 22, 1993 - 9 a.m.** – Open Meeting
3600 West Broad Street, Richmond, Virginia.

A meeting to consider claims filed against the Virginia Contractor Transaction Recovery Fund. This meeting will be open to the public; however, a portion of the discuss may be conducted in executive session.

Contact: Holly Erickson, Assistant Administrator, Recovery Fund, 3600 W. Broad St., Richmond, VA 23219, telephone (804) 367-8561.

BOARD FOR COSMETOLOGY

† **July 26, 1993 - 10 a.m.** – Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A general business meeting.

Contact: Karen W. O'Neal, Assistant Director, Board for Cosmetology, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-0500 or (804) 367-9753/TDD

DEPARTMENT OF CRIMINAL JUSTICE SERVICES (CRIMINAL JUSTICE SERVICES BOARD)

August 28, 1993 – Written comments may be submitted until this date.

October 6, 1993 - 9 a.m. – Public Hearing
General Assembly Building, 910 Capitol Square, House Room D, Richmond, Virginia.

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: **VR 240-01-5. Rules Relating to Compulsory Minimum Training Standards for Dispatchers.** The regulation mandates entry-level training requirements for dispatchers.

Statutory Authority: § 9-170 (1) and (8) of the Code of Virginia.

Contact: L. T. Eckenrode, Division Director, Department of Criminal Justice Services, 805 E. Broad St., Richmond, VA 23219, telephone (804) 786-4000.

* * * * * * * *

† **September 29, 1993 - 2 p.m.** – Public Hearing
State Capitol, House Room 1, Richmond, Virginia.

September 24, 1993 – Written comments may be submitted through 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: **VR 240-02-1. Regulations Relating to Criminal History Record Information Use and Security.** The purpose of the proposed amendment is to permit use of nondedicated telecommunication lines to access criminal history record information in limited, but secure, circumstances. Exceptions to the current requirement for use of dedicated telecommunication lines for data transmission would be granted on an exceptional basis provided that documented policies and procedures ensure that access to criminal history record information is limited to authorized users.

Statutory Authority: §§ 9-170 and 9-184 through 9-196 of the Code of Virginia.

Contact: Paul F. Kolmetz, Ph.D., Director, Division of Information Systems, Department of Criminal Justice Services, 805 E. Broad St., Richmond, VA 23219, telephone (804) 371-7726.

Subcommittee of the Committee on Training Studying Exceptions to Regulation of Private Investigators

† **August 4, 1993 - 9 a.m.** – Open Meeting
State Capitol, House Room 4, Richmond, Virginia.

A subcommittee to hear testimony pursuant to Senate Resolution 46 on the Exceptions to the Regulation of Private Investigators, § 9-183.2.

Contact: Martha M. Clancy, Criminal Justice Program Analyst, Department of Criminal Justice Services, P.O. Box 10110, Richmond, VA 23240-9998, telephone (804) 786-4700.

BOARD OF DENTISTRY

July 28, 1993 - 8:30 a.m. – Open Meeting
August 13, 1993 - 8:30 a.m. – Open Meeting
Department of Health Professions, 6606 West Broad Street, Richmond, Virginia.

Informal conferences.

August 6, 1993 - 8:30 a.m. – Open Meeting
Department of Health Professions, 6606 West Broad Street, Richmond, Virginia.
Formal hearings.

Contact: Marcia J. Miller, Executive Director, 6606 W. Broad St., Richmond, VA 23230-1717, telephone (804) 662-9906.

DEPARTMENT OF EDUCATION (BOARD OF)

July 29, 1993 - 8:30 a.m. – Open Meeting
James Monroe Building, 101 North 14th Street, Richmond, Virginia. (Interpreter for the deaf provided upon request)

The Board of Education and the Board of Vocational Education will hold a regularly scheduled meeting. Business will be conducted according to items listed on the agenda. The agenda is available upon request.

Contact: Dr. Ernest W. Martin, Assistant Superintendent, State Department of Education, P.O. Box 2120, Richmond, VA 23216-2120, telephone (804) 225-2073 or toll-free 1-800-292-3820.

STATE EDUCATION ASSISTANCE AUTHORITY

August 5, 1993 - 10 a.m. – Public Hearing
411 East Franklin Street, 2nd Floor, Boardroom, Richmond, Virginia.

August 27, 1993 – Written comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Education Assistance Authority intends to amend regulations entitled: **VR 275-01-1. Regulations Governing Virginia Administration of the Federally Guaranteed Student Loan Programs under Title IV, Part B of the Higher Education Act of 1965 as Amended.** The purpose of the proposed amendments is to incorporate changes to federal statute and regulations, to reduce lender due diligence requirements and to respond to changes in federal interest payments for claims.

Statutory Authority: § 23-38.33:1 C 7 of the Code of Virginia.

Written comments may be submitted through August 27, 1993, to Marvin Ragland, Virginia Student Assistance Authorities, 411 East Franklin Street, Richmond, Virginia, 23219.

Contact: Sherry Scott, Policy Analyst, 411 E. Franklin St., Richmond, VA 23219, telephone (804) 775-4000 or toll-free 1-800-792-5626.

LOCAL EMERGENCY PLANNING COMMITTEE - FAIRFAX COUNTY, CITY OF FAIRFAX, AND THE TOWNS OF HERNDON AND VIENNA

† **September 23, 1993 - 9:30 a.m.** – Open Meeting
Fairfax County Government Center, 12000 Government Center Parkway, Conference Room 9, Fairfax, Virginia.

A public hearing and LEPC meeting regarding 1993 HMER Plan.

Contact: Marysusan Giguere, Fire and Rescue Department, Management Analyst II, 4100 Chain Bridge Rd., Suite 400, Fairfax, VA 22030, telephone (703) 246-3991.

LOCAL EMERGENCY PLANNING COMMITTEE - GLOUCESTER COUNTY

July 28, 1993 - 6:30 p.m. – Open Meeting
County Administration Building Conference Room, Gloucester, Virginia. (Interpreter for the deaf provided upon request)

The summer quarterly meeting will include (i) distribution of recently amended hazardous materials plan; (ii) the annual exercise; and (iii) a briefing

from the Public Awareness Committee on a proposed community education program.

Contact: Georgette N. Hurley, Assistant County Administrator, P.O. Box 329, Gloucester, VA 23061, telephone (804) 693-4042.

LOCAL EMERGENCY PLANNING COMMITTEE - HENRICO

July 27, 1993 - 7 p.m. – Open Meeting
Henrico County Public Safety Building, Division of Fire, Parham and Hungary Spring Roads, 3rd Floor, Richmond, Virginia.

A meeting to satisfy requirements of the Superfund Amendment and Reauthorization Act of 1986.

Contact: W. Timothy Liles, Assistant Emergency Services Coordinator, Division of Fire, P.O. Box 27032, Richmond, VA 23273, telephone (804) 672-4906.

DEPARTMENT OF ENVIRONMENTAL QUALITY

August 17, 1993 - 10 a.m. – Open Meeting
Monroe Building, 101 North 14th Street, Conference Room C, Richmond, Virginia.

The Waste Division of the Department of Environmental Quality will receive public comments on its Notice of Intended Regulatory Action proposing to amend VR 672-20-1, Financial Assurance Regulations of Solid Waste Facilities. The purpose is to amend existing regulations to incorporate requirements contained in EPA Guidelines for Municipal Solid Waste Facilities and EPA Financial Assurance Guidelines for local governments. Public comments will be received on the proposed amendment along with recommendations. Public comments will also be received on the costs and benefits of the regulation amendments, any proposed alternatives to be recommended by the public, and the desirability of using an ad hoc committee or group or individuals in the development of the amendment.

Contact: William F. Gilley, Regulatory Service Manager, Department of Environmental Quality, 101 N. 14th St., 11th Floor, Richmond, VA 23219, telephone (804) 225-2966.

August 18, 1993 - 10 a.m. – Open Meeting
Department of Environmental Quality, Innsbrook, 4900 Cox Road, Board Room, Richmond, Virginia.

A meeting to inform the public of the intent to promulgate a regulation entitled "Waste Tire End User Partial Reimbursement Regulation." The meeting will consist generally of an informative overview of the intended regulation followed by a public comment and question and answer session.

Contact: Allan Lassiter, Director, Waste Tire Program, Department of Environmental Quality, 101 N. 14th St., 11th Floor, Richmond, VA 23219, telephone (804) 225-2945.

† **August 25, 1993 - 10 a.m.** – Open Meeting
Department of Environmental Quality, Innsbrook, 4900 Cox Road, Board Room, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A public meeting to discuss and receive comments on the process to amend the Regulated Medical Waste Management Regulations on behalf of the Virginia Waste Management Board. The meeting is being held jointly with the Air Division on companion proposals for regulations. The meeting will include a discussion period of the possible changes and the public will be invited to submit written and oral comments.

Contact: William F. Gilley, Regulatory Service Manager, Department of Environmental Quality, Monroe Bldg.,101 N. 14th St., 11th Floor, Richmond, VA 23219, telephone (804) 225-2966 or (804) 371-8737/TDD

VIRGINIA FIRE SERVICES BOARD

† **August 18, 1993 - 7:30 p.m.** – Public Hearing
Howard Johnson Hotel, 100 Tower Drive, Danville, Virginia.

A public hearing to discuss fire training and policies. The hearing is open to the public for comments and input.

Contact: Anne J. Bales, Executive Secretary Senior, 2807 Parham Rd., Suite 200, Richmond, VA 23294, telephone (804) 527-4236.

† **August 20, 1993 - 9 a.m.** – Open Meeting
Howard Johnson Hotel, 100 Tower Drive, Danville, Virginia.

A business meeting to discuss training and fire policies. The meeting is open to the public for comments and input.

Contact: Anne J. Bales, Executive Secretary Senior, 2807 Parham Rd., Suite 200, Richmond, VA 23294, telephone (804) 527-4236.

Fire/EMS Education and Training Committee

† **August 19, 1993 - 10 a.m.** – Open Meeting
Howard Johnson Hotel, 100 Tower Drive, Danville, Virginia.

A meeting to discuss fire training and policies. The committee meeting is open to the public for comments and input.

Contact: Anne J. Bales, Executive Secretary Senior, 280 Parham Rd., Suite 200, Richmond, VA 23294, telephon

(804) 527-4236.

Fire Prevention and Control Committee

† **August 19, 1993 - 9 a.m.** – Open Meeting
Howard Johnson Hotel, 100 Tower Drive, Danville, Virginia.

A meeting to discuss fire training and policies. The committee meeting is open to the public for comments and input.

Contact: Anne J. Bales, Executive Secretary Senior, 2807 Parham Rd., Suite 200, Richmond, VA 23294, telephone (804) 527-4236.

Legislative/Liaison Committee

† **August 19, 1993 - 1 p.m.** – Open Meeting
Howard Johnson Hotel, 100 Tower Drive, Danville, Virginia.

A meeting to discuss fire training and policies. The committee meeting is open to the public for comments and input.

Contact: Anne J. Bales, Executive Secretary Senior, 2807 Parham Rd., Suite 200, Richmond, VA 23294, telephone (804) 527-4236.

BOARD OF GAME AND INLAND FISHERIES

† **August 26, 1993 - 9 a.m.** – Open Meeting
Virginia Beach Resort and Conference Center, 2000 Shore Drive, Virginia Beach, Virginia.

Board members will spend the day touring department-owned facilities, including the dedication of the Whitehurst Marsh tract in Virginia Beach.

† **August 27, 1993 - 9 a.m.** – Open Meeting
Virginia Beach Resort and Conference Center, 2000 Shore Drive, Virginia Beach, Virginia.

Committees of the Board of Game and Inland Fisheries (Finance, Planning, Wildlife and Boat, Law and Education and Liaison) will meet. Each committee will review those agenda items appropriate to its authority and, if necessary, make recommendations for action to the full board. Other general and administrative matters, as necessary, will be discussed, and appropriate actions will be taken. During the Wildlife and Boat Committee meeting, staff will present the proposed 1993-94 migratory waterfowl seasons that will be based on the framework provided by the U.S. Fish and Wildlife Service.

† **August 28, 1993 - 9 a.m.** – Open Meeting
Virginia Beach Resort and Conference Center, 2000 Shore Drive, Virginia Beach, Virginia.

The board will convene an executive session at 8 a.m. At 9 a.m., the public meeting will begin. In addition to adopting the 1993-94 migratory waterfowl seasons, other general and administrative matters, as necessary, will be discussed, and the appropriate actions will be taken.

Contact: Belle Harding, Secretary to Bud Bristow, 4010 W. Broad St., P.O. Box 11104, Richmond, VA 23230-1104, telephone (804) 367-1000.

BOARD FOR GEOLOGY

† **August 27, 1993 - 10 a.m.** – Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, Conference Room 3, Richmond, Virginia.

A general board meeting.

Contact: David E. Dick, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8595 or (804) 367-9753/TDD

VDH VIRGINIA DEPARTMENT OF HEALTH
Protecting You and Your Environment

DEPARTMENT OF HEALTH (STATE BOARD OF)

August 31, 1993 – Written comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Board of Health intends to **repeal** regulations entitled: **VR 355-17-02. Sewerage Regulations** and **adopt** regulations entitled **VR 355-17-100. Sewage Collection and Treatment Regulations.** The proposed regulations govern the design, construction and operation of both sewage collection systems and sewage treatment works, including the use of sewage sludge, and will replace existing regulations.

Statutory Authority: §§ 32.1-164 and 62.1-44.19 of the Code of Virginia.

Contact: C. M. Sawyer, Director, Division of Wastewater Engineering, Virginia Department of Health, P.O. Box 2448, Richmond, VA 23218, telephone (804) 786-1755.

* * * * * * * *

August 24, 1993 - 9 a.m. – Public Hearing

1500 East Main Street, Room 214, Richmond, Virginia.

August 27, 1993 – Written comments may be submitted through 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: **VR 355-40-400. Regulations Governing the Virginia Medical Scholarship Program.** The regulation sets forth eligibility criteria, award process, terms, conditions, and circumstances under which Virginia Medical Scholarships will be awarded.

Statutory Authority: § 32.1-122.6 B of the Code of Virginia.

Contact: E. George Stone, Director, Virginia Medical Scholarship Program, Virginia Department of Health, P.O. Box 2448, Richmond, VA 23218, telephone (804) 786-6970.

BOARD OF HEALTH PROFESSIONS

Ad-Hoc Committee on Certification of Providers of Counseling Services to Sexual Assault Offenders

† **July 28, 1993 - 9 a.m.** – Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Room 2, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

The ad-hoc committee will consider competency requirements and statutory changes to recommend for certification of providers of counseling services to sexual assault offenders (pursuant to SJR 339, 1993).

Contact: Richard D. Morrison, Executive Director, 6606 W. Broad St., 4th Floor, Richmond, VA 23230, telephone (804) 662-9904 or (804) 662-7197/TDD ☎

VIRGINIA HEALTH SERVICES COST REVIEW COUNCIL

July 27, 1993 - 9:30 a.m. – Open Meeting
† **August 24, 1993 - 9:30 a.m.** – Open Meeting
Blue Cross Blue Shield of Virginia, 2015 Staples Mill Road, Richmond, Virginia.

A monthly meeting.

Contact: Kim Bolden, Public Relations Coordinator, 805 E. Broad St., 6th Floor, Richmond, VA 23219, telephone (804) 786-6371.

STATE COUNCIL OF HIGHER EDUCATION FOR VIRGINIA

† **September 13, 1993 - 1 p.m.** – Open Meeting
† **September 14, 1993 - 1 p.m.** – Open Meeting
Mountain Lake, Virginia. Ⓘ (Interpreter for the deaf provided upon request)

The council's annual retreat. There will be a general business meeting on Tuesday, September 14. For more information, contact the council.

Contact: Anne M. Pratt, Associate Director, Monroe Bldg., 101 N. 14th St., 9th Floor, Richmond, VA 23219, telephone (804) 225-2632 or (804) 361-8017/TDD ☎

DEPARTMENT OF HISTORIC RESOURCES

† **August 18, 1993 - 10 a.m.** – Open Meeting
General Assembly Building, 910 Capitol Square, Senate Room A, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

A meeting to consider the nomination of the following properties to the Virginia Landmarks Register and the National Register of Historic Places:

1. Killahevlin, Front Royal, Warren County
2. Lucketts School, Loudoun County
3. William Mackey House, Rockbridge County
4. Mankin Mansion, Henrico County
5. Moore's Auto Body and Paint Shop, City of Richmond
6. River House, Clarke County
7. Shenandoah County Farm, Shenandoah County
8. Thomas Jefferson High School, City of Richmond
9. Varney's Falls Dam, Botetourt Court
10. Greenway Rural Historic District, Clarke County

Contact: Margaret Peters, Information Director, 221 Governor St., Richmond, VA 23219, telephone (804) 786-3143 or (804) 786-1934/TDD ☎

State Review Board

† **August 17, 1993 - 10 a.m.** – Open Meeting
General Assembly Building, 910 Capitol Square, Senate Room A, Richmond, Virginia Ⓘ (Interpreter for the deaf provided upon request)

A meeting to consider the nomination of the following properties to the Virginia Landmarks Register and the National Register of Historic Places:

1. Killahevlin, Front Royal, Warren County
2. Lucketts School, Loudoun County
3. William Mackey House, Rockbridge County
4. Mankin Mansion, Henrico County
5. Moore's Auto Body and Paint Shop, City of Richmond
6. River House, Clarke County
7. Shenandoah County Farm, Shenandoah County
8. Thomas Jefferson High School, City of Richmond
9. Varney's Falls Dam, Botetourt Court
10. Greenway Rural Historic District, Clarke County

Contact: Margaret Peters, Information Director, 221 Governor St., Richmond, VA 23219, telephone (804) 786-3143 or (804) 786-1934/TDD ☎

HOPEWELL INDUSTRIAL SAFETY COUNCIL

August 3, 1993 - 9 a.m. – Open Meeting
Hopewell Community Center, Second and City Point Road, Hopewell, Virginia. ♿ (Interpreter for deaf provided upon request)

A Local Emergency Preparedness Committee meeting on emergency preparedness as required by SARA Title III.

Contact: Robert Brown, Emergency Service Coordinator, 300 N. Main St., Hopewell, VA 23860, telephone (804) 541-2298.

DEPARTMENT OF LABOR AND INDUSTRY AND THE HJR 534 ADVISORY COMMITTEE

† **August 9, 1993 - 7 p.m.** – Open Meeting
Piedmont Community College Auditorium, Charlottesville, Virginia. ♿ (Interpreter for the deaf provided upon request)

August 16, 1993 - 7 p.m. – Open Meeting
Wytheville Community College, Bland Hall Auditorium, Wytheville, Virginia. ♿ (Interpreter for the deaf provided upon request)

† **August 18, 1993 - 7 p.m.** – Open Meeting
Old Dominion University, Webb Center, Hampton-Newport News Room, Norfolk, Virginia. ♿ (Interpreter for the deaf provided upon request)

House Joint Resolution 534 requests the Department of Labor and Industry, assisted by an advisory group, to study drug testing in the workplace. The public is invited to comment on any aspect of workplace drug testing including the many economic, legal and technological questions regarding employment-related drug testing. Written comments may be submitted at the meeting or sent to Marilyn Mandel at the address below.

Contact: Marilyn Mandel, Director, Office of Planning and Policy Analysis, Department of Labor and Industry, Powers-Taylor Bldg., 13 S. 13th St., Richmond, VA 23219, telephone (804) 786-2385.

STATE LAND EVALUATION ADVISORY COUNCIL

August 24, 1993 - 10 a.m. – Open Meeting
September 8, 1993 - 10 a.m. – Open Meeting
Department of Taxation, 2220 West Broad Street, Richmond, Virginia. ♿

A meeting to adopt suggested ranges of values for agricultural, horticultural, forest and open-space land use and the use-value assessment program.

Contact: Ronald W. Wheeler, Acting Assistant Commissioner, Virginia Department of Taxation, Office of Taxpayer Services, 2220 W. Broad St., Richmond, VA 23219, telephone (804) 367-8028.

LIBRARY BOARD

September 13, 1993 - 10 a.m. – Open Meeting
Virginia State Library and Archives, 11th Street at Capitol Square, Supreme Court Room, 3rd Floor, Richmond, Virginia. ♿

A meeting to discuss administrative matters of the Virginia State Library and Archives.

Contact: Jean H. Taylor, Secretary to State Librarian, Virginia State Library and Archives, 11th St. at Capitol Square, Richmond, VA 23219, telephone (804) 786-2332.

STATE COUNCIL ON LOCAL DEBT

August 18, 1993 - 11 a.m. – Open Meeting
September 15, 1993 - 11 a.m. – Open Meeting
James Monroe Building, 101 North 14th Street, 3rd Floor, Treasury Board Conference Room, Richmond, Virginia. ♿

A regular meeting, subject to cancellation unless there are action items requiring the council's consideration. Persons interested in attending should call one week prior to meeting date to ascertain whether or not the meeting is to be held as scheduled.

Contact: Gary Ometer, Debt Manager, Department of the Treasury, P.O. Box 6-H, Richmond, VA 23215, telephone (804) 225-4928.

LONGWOOD COLLEGE

Board of Visitors

July 26, 1993 - 9:30 a.m. – Open Meeting
Longwood College, East Ruffner Building, Farmville, Virginia. ♿

A meeting to conduct routine business.

Contact: William F. Dorrill, President, President's Office, Longwood College, 201 High Street, Farmville, VA 23909-1899, telephone (804) 395-2001.

STATE LOTTERY BOARD

July 26, 1993 - 10 a.m. – Open Meeting

August 23, 1993 - 10 a.m. – Open Meeting
2201 West Broad Street, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A regular monthly meeting. Business will be conducted according to items listed on the agenda which has not yet been determined. Two periods for public comment are scheduled.

Contact: Barbara L. Robertson, Lottery Staff Officer, State Lottery Department, 2201 W. Broad St., Richmond, VA 23220, telephone (804) 367-3106 or (804) 367-3000/TDD

MARINE RESOURCES COMMISSION

July 27, 1993 - 9:30 a.m. – Open Meeting
2600 Washington Avenue, 4th Floor, Room 403, 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 and 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 is taken under oath from parties addressing agenda items on permits and licensing. Public comments are 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.

† **August 9, 1993 - 1 p.m.** – Open Meeting
† **August 10, 1993 - 9 a.m.** – Open Meeting
Windmill Point Conference Center, Windmill Point, Virginia.

The commission will meet with its staff in an informal conference on marine resources of the tidal waters.

Contact: Sandra S. Schmidt, Secretary to the Commission, P.O. Box 756, Newport News, VA 23607-0756, telephone (804) 247-8088, toll-free 1-800-541-4646 or (804) 247-2292/TDD

BOARD OF MEDICINE

July 30, 1993 - 8:30 a.m. – Open Meeting
Sheraton Inn, I-95 and Route 3, Fredericksburg, Virginia.

A meeting to 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 of the Code of Virginia. Public comment will not be received.

Contact: Karen W. Perrine, Deputy Executive Director, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9908 or (804) 662-9943/TDD

Credentials Committee

August 14, 1993 - 8 a.m. – Open Meeting
6606 West Broad Street, 5th Floor, Richmond, Virginia.

The Credentials Committee will meet in open and closed session to conduct general business, interview and review medical credentials of applicants applying for licensure in Virginia and discuss any other items which may come before the committee. The committee will receive public comments of those persons appearing on behalf of candidates.

Contact: Eugenia K. Dorson, Deputy Executive Director, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9923.

Executive Committee

August 13, 1993 - 9 a.m. – Open Meeting
6606 West Broad Street, 5th Floor, Board Room 1 Richmond, Virginia.

The Executive Committee will meet in open and closed session to review cases of files requiring administrative action, review proposed budget, review legislation enacted by the 1993 General Assembly, review proposed regulations which may need administrative action, and consider any other items which may come before the committee. The committee may receive public comments on specific items at the pleasure of the chairperson.

Contact: Eugenia K. Dorson, Deputy Executive Director, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9925.

Legislative Committee

† **September 3, 1993 - 9 a.m.** – Open Meeting
6606 West Broad Street, 5th Floor, Board Room 1, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A meeting to review §§ 54.1-2936, 54.1-2937 and 54.1-2961 of the Code of Virginia, and develop regulations for licensure, practice and renewal requirements for a limited license or temporary license in Virginia. The committee will also review the practice requirements for respiratory therapy, discuss referral for physical therapy pursuant to § 54.1-2943 and the fee for the PMLEXIS examination.

Contact: Eugenia K. Dorson, Deputy Executive Director, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9923 or (804) 662-7197/TDD ☎

Advisory Board on Occupational Therapy

† **September 1, 1993 - 10 a.m.** – Open Meeting

6606 West Broad Street, 5th Floor, Board Room 4, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

A meeting to review the impact of health care reform which may impact the regulations for the practice of occupational therapy as presented at the American Occupational Therapy Association, Inc., at their annual meeting in March. Also, to review regulations relating to foreign educated therapists to consider additional requirements or alternatives to ensure minimal competency requirements to practice occupational therapy with safety to the public, and such other issues which may come before the advisory board. The chairperson will entertain public comments during the first 15 minutes on any agenda items.

Contact: Eugenia K. Dorson, Deputy Executive Director, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9923 or (804) 662-7197/TDD ☎

Advisory Board on Physical Therapy

† **September 17, 1993 - 9 a.m.** – Open Meeting

6606 West Broad Street, Board Room 3, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

A meeting to (i) receive specific reports from officers and staff; (ii) review and evaluate traineeship evaluation forms; (iii) discuss requirements for facilities to employ foreign educated trainees and related forms; (iv) clarify the decision to allow foreign educated therapist to sit for the examination during the traineeship; (v) clarify, by regulation, the period for license requirements in another state to be eligible for waiver of the required traineeship for foreign applicants; (vi) review § 6.1 of the regulations; (vii) review passing score for licensure examination; (viii) review the use of or storage of schedule VI drugs; and (ix) conduct such other business which may come before the advisory board. The chairman will entertain public comments during the first 15 minutes on any agenda items.

Contact: Eugenia K. Dorson, Deputy Executive Director, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9923 or (804) 662-7197/TDD ☎

DEPARTMENT OF MENTAL HEALTH, MENTAL RETARDATION AND SUBSTANCE ABUSE SERVICES (STATE BOARD)

July 28, 1993 - 10 a.m. – Open Meeting
Roslyn Conference Center, 8727 River Road, Richmond, Virginia. ♿

A regular monthly meeting. Agenda to be published on July 21. Agenda may be obtained by calling Jane Helfrich.

Tuesday: Informal session 8 p.m.

Wednesday: Committee meetings 9 a.m.
Regular session 10 a.m.

See agenda for location.

Contact: Jane V. Helfrich, Board Administrator, State Mental Health, Mental Retardation and Substance Abuse Services Board, P.O. Box 1797, Richmond, VA 23214, telephone (804) 786-3921.

MIDDLE VIRGINIA BOARD OF DIRECTORS AND THE MIDDLE VIRGINIA COMMUNITY CORRECTIONS RESOURCES BOARD

August 5, 1993 - 7 p.m. – Open Meeting
502 South Main Street #4, Culpeper, Virginia.

From 7 p.m. until 7:30 p.m. the Board of Directors will hold a business meeting to discuss DOC contract, budget, and other related business. Then the CCRB will meet to review cases before for eligibility to participate with the program. It will review the previous month's operation (budget and program related business).

Contact: Lisa Ann Peacock, Program Director, 502 S Main St. #4, Culpeper, VA 22701, telephone (703) 825-4562

VIRGINIA MILITARY INSTITUTE

Board of Visitors

August 7, 1993 - 8:30 a.m. – Open Meeting
Jefferson Hotel, Richmond, Virginia. ♿

A meeting to (i) conduct election of president; (ii) make committee appointments; and (iii) receive committee reports. An opportunity for public comment will be provided immediately after the Superintendent's comments (about 9 a.m.).

Contact: Colonel Edwin L. Dooley, Jr., Secretary to the Board, Superintendent's Office, Virginia Military Institute, Lexington, VA 24450, telephone (703) 464-7206 or fax (703) 464-7660.

VIRGINIA MUSEUM OF FINE ARTS

Collections Committee

† **September 21, 1993 - 2 p.m.** – Open Meeting
Meeting location to be announced.

A meeting to consider proposed gifts, purchases and loans of art works.

Contact: Emily C. Robertson, Secretary of the Museum, Virginia Museum of Fine Arts, 2800 Grove Ave., Richmond, VA 23221, telephone (804) 367-0553.

Finance Committee

† **September 23, 1993 - 11 a.m.** – Open Meeting
Virginia Museum of Fine Arts Conference Room, Richmond, Virginia. ♿

A meeting to conduct budget review and approval.

Contact: Emily C. Robertson, Secretary of the Museum, Virginia Museum of Fine Arts, 2800 Grove Ave., Richmond, VA 23221, telephone (804) 367-0553.

Board of Trustees

† **September 23, 1993 - Noon** – Open Meeting
Virginia Museum of Fine Arts Auditorium, Richmond, Virginia. ♿

First meeting FY 1993-94 of the full Board of Trustees to receive reports from committees and staff; conduct budget review; and conduct acquisition of art objects.

Contact: Emily C. Robertson, Secretary of the Museum, Virginia Museum of Fine Arts, 2800 Grove Ave., Richmond, VA 23221, telephone (804) 367-0553.

VIRGINIA MUSEUM OF NATURAL HISTORY

Board of Trustees

† **August 21, 1993 - 9 a.m.** – Open Meeting
Virginia Museum of Natural History, 1001 Douglas Avenue, Martinsville, Virginia.

A meeting that will include reports from the executive, finance, marketing, outreach, personnel, planning/facilities, and research and collections committees. Public comment will be received following approval of the minutes of the April meeting.

Contact: Rhonda J. Knighton, Executive Secretary, Virginia Museum of Natural History, 1001 Douglas Ave., Martinsville, VA 24112, telephone (703) 666-8616 or (703) 666-8638/TDD ☎

BOARD OF OPTOMETRY

August 11, 1993 - 9 a.m. – Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 1, Richmond, Virginia.

A board meeting. The board will consider adopting final regulations and develop responses to comments received during the public comment period.

Contact: Scotti W. Milley, Executive Director, Board of Pharmacy, 6606 W. Broad St., Suite 400, Richmond, VA 23230, telephone (804) 662-9911.

† **August 13, 1993 - 9 a.m.** – Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Room 4, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

An informal conference committee meeting. Public comment will not be received.

Contact: Carol Stamey, Administrative Assistant, 6606 W. Broad St., Richmond, VA 23230-1717, telephone (804) 662-9910.

VIRGINIA OUTDOORS FOUNDATION

† **August 10, 1993 - 10 a.m.** – Open Meeting
State Capitol, Capitol Square, House Room 1, Richmond, Virginia. ♿

A general business meeting.

Contact: Tyson B. Van Auken, Executive Director, 203 Governor St., #302, Richmond, VA 23219, telephone (804) 786-5539.

STATE PREVENTIVE HEALTH ADVISORY COMMITTEE

† **August 2, 1993 - 10 a.m.** – Public Hearing
State Capitol, Capitol Square, House Room 1, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

A public hearing on the State Prevention Plan for use of FY 94 Preventive Health and Health Services Block Grant funds. The period for written public comment is July 22 through August 23, 1993.

Contact: Helen Tarantino, Assistant Director for Public Health Programs, Main Street Station, 1500 Main St., Suite 214, Richmond, VA 23219, telephone (804) 786-3563.

PRIVATE SECURITY SERVICES ADVISORY BOARD

† **July 27, 1993 - 7 p.m.** – Open Meeting
† **July 28, 1993 - 9 a.m.** – Open Meeting

Sheraton Inn, Route 3 and I-95, Fredericksburg, Virginia. (Interpreter for the deaf provided upon request)

A quarterly meeting.

Contact: Martha M. Clancy, Criminal Justice Program Analyst, Department of Criminal Justice Services, P.O. Box 10110, Richmond, VA 23240-9998, telephone (804) 786-4700.

BOARD OF PROFESSIONAL COUNSELORS

† **July 29, 1993 - 1 p.m.** – Open Meeting
† **July 30, 1993 - 1 p.m.** – Open Meeting
Department of Health Professions, 6606 West Broad, Richmond, Virginia.

A meeting of the task force on education and supervision.

Contact: Evelyn B. Brown, Executive Director, or Joyce D. Williams, Administrative Assistant, 6606 W. Broad St., Richmond, VA 23230, telephone (804) 662-9912.

BOARD OF PSYCHOLOGY

August 12, 1993 - 9:30 a.m. – Open Meeting
Department of Health Professions, 6606 West Broad Street, Richmond, Virginia. (Interpreter for the deaf provided upon request)

The board will conduct a formal fact finding in accordance with § 9-6.14:12 of the Code of Virginia to determine the eligibility of an applicant for licensing as a clinical psychologist. No public comment will be received.

August 12, 1993 - 9:30 a.m. – Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Room #1, Richmond, Virginia.

A formal credentials hearing to review application for licensure of Cheryl R. Hussey, Ed.D.

Contact: Evelyn B. Brown, Executive Director, or Jane Ballard, Administrative Assistant, 6606 W. Broad St., Richmond, VA 23230, telephone (804) 662-9913.

SEWAGE HANDLING AND DISPOSAL APPEALS REVIEW BOARD

† **August 25, 1993 - 10 a.m.** – Open Meeting
General Assembly Building, 910 Capitol Square, Senate Room A, Richmond, Virginia.

A meeting to hear all administrative appeals of denials of onsite sewage disposal system permits pursuant to § 32.1-166.1 et seq., § 9-6.14:12 of the Code of Virginia, and VR 355-34-02.

Contact: Constance G. Talbert, Secretary to the Board, 1500 E. Main St., Suite 177, P.O. Box 2448, Richmond, VA 23218, telephone (804) 786-1750.

DEPARTMENT OF SOCIAL SERVICES (STATE BOARD OF)

August 27, 1993 – Written comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Board of Social Services intends to amend regulations entitled: **VR 615-08-1. Virginia Energy Assistance Program.** The amendments propose several changes to the fuel and cooling assistance components of the Energy Assistance Program. In fuel assistance, households applying for assistance will be allowed to establish or maintain one $5,000 savings account for education expenses or the purchase of a primary residence without penalty in the calculation of benefit amounts. Households receiving utility subsidies that must pay some heating expenses out-of-pocket will not have their benefit reduced. Additionally, income exempt in Food Stamps, ADC or Medicaid will be considered exempt in the determination of eligibility for fuel assistance. The cooling assistance component would be eliminated in FY 93-94.

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

Written comments may be submitted through August 27, 1993, to Charlene H. Chapman, Department of Social Services, 730 E. Broad St., Richmond, VA 23219.

Contact: Peggy Friedenberg, Legislative Analyst, Bureau of Governmental Affairs, 730 E. Broad St., Richmond, VA 23219, telephone (804) 692-1820.

* * * * * * * *

July 30, 1993 - 9 a.m. – Public Hearing
Virginia Housing Development Authority, 601 South Belvidere Street, Richmond, Virginia.

August 28, 1993 – Written comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Board of Social Services intends to adopt regulations entitled: **VR 615-45-5. Investigation of Child Abuse and Neglect In Out of Family Complaints.** The regulation establishes policy to be used for investigating child abuse and neglect which occurs in certain situations outside the child's family.

Statutory Authority: §§ 63.1-25 and 63.1-248.6 of the Code of Virginia.

Written comments may be submitted until August 28, 1993, to Rita Katzman, Program Manager, 730 East Broad Street, Richmond, Virginia.

Contact: Peggy Friedenberg, Legislative Analyst, Bureau of Governmental Affairs, 730 E. Broad St., Richmond, VA 23219, telephone (804) 692-1820.

BOARD FOR PROFESSIONAL SOIL SCIENTISTS

† **September 20, 1993 - 10 a.m.** – Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia.

A general board meeting.

Contact: David E. Dick, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8595 or (804) 367-9753/TDD

COMMONWEALTH TRANSPORTATION BOARD

† **August 18, 1993 - 2 p.m.** – Open Meeting
Department of Transportation, 1401 East Broad Street, Board Room, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A work session of the Commonwealth Transportation Board and staff.

† **August 19, 1993 - 10 a.m.** – Open Meeting
Department of Transportation, 1401 East Broad Street, Board Room, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A monthly meeting to vote on proposals presented regarding bids, permits, additions and deletions to the highway system, and any other matters requiring board approval. Public comment will be received at the outset of the meeting on items on the meeting agenda for which the opportunity for public comment has not been afforded the public in another form. 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.

Contact: John G. Milliken, Secretary of Transportation, 1401 E. Broad St., Richmond, VA 23219, telephone (804) 786-6670.

TREASURY BOARD

August 18, 1993 - 9 a.m. – Open Meeting
September 15, 1993 - 9 a.m. – Open Meeting

James Monroe Building, 101 North 14th Street, Treasury Board Room, 3rd Floor, Richmond, Virginia.

A regular meeting of the board.

Contact: Gloria J. Hatchel, Administrative Assistant, Department of the Treasury, 101 N. 14th St., 3rd Floor, Richmond, VA 23219, telephone (804) 371-6011.

* * * * * * * * *

August 13, 1993 – Written comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Treasury Board intends to amend regulations entitled **VR 640-02. Virginia Security for Public Deposits Act Regulations.** The purpose of the proposed amendments is to provide adequate protection for public funds on deposit in financial institutions by strengthening the ability of the Treasury Board to monitor collateral by identifying criteria for the selection of third-party escrow agents by financial institutions.

Statutory Authority: § 2.1-364 of the Code of Virginia.

Written comments may be submitted through August 13, 1993.

Contact: Robert S. Young, Director of Financial Policy, Department of the Treasury, P.O. Box 1879, Richmond VA 23215-1879, telephone (804) 225-3131.

BOARD ON VETERANS' AFFAIRS

† **August 25, 1993 - 10 a.m.** – Public Hearing
General Assembly Building, 910 Capitol Square, House Room C, Richmond, Virginia.

Topics of discussion will include the state veterans cemetery and other items of interest to Virginia's veterans. The public is invited to speak on items of interest to the veteran community; however, presentations should be limited to 15 minutes. Speakers are requested to register with the aide present at the meeting and should leave a copy of their remarks for the record. Service organizations should select one person to speak on behalf of the entire organization in order to give ample time to accommodate all who may wish to speak.

Contact: Beth Tonn, Secretary for the Board, P.O. Box 809, Roanoke, VA 24004, telephone (703) 857-7104 or (703) 857-7102/TDD

BOARD OF VETERINARY MEDICINE

† **August 10, 1993 - 9 a.m.** – Open Meeting
Southern States Building, 6606 West Broad Street, 5th

Floor, Conference Rooms 3 and 4, Richmond, Virginia. (Interpreter for the deaf provided upon request)

Informal conferences.

† **August 11, 1993 - 8:30 a.m.** – Open Meeting
Southern States Building, 6606 West Broad Street, 5th Floor, Conference Room 2, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A brief board meeting and regulatory review.

Contact: Terri H. Behr, Administrative Assistant, 6606 W. Broad St., 4th Floor, Richmond, VA 23230, telephone (804) 662-9915 or (804) 662-7197/TDD

VIRGINIA RACING COMMISSION

† **August 4, 1993 - 9:30 a.m.** – Open Meeting
VRS Building, 1200 East Main Street, Richmond, Virginia.

A regular commission meeting, including a discussion of the proposed regulations relating to satellite facilities and public participation guidelines, as well as the procedure for the evaluation of applications to construct a racetrack.

Contact: William H. Anderson, Policy Analyst, Virginia Racing Commission, P.O. Box 1123, Richmond, VA 23208, telephone (804) 371-7363.

VIRGINIA RESOURCES AUTHORITY

August 10, 1993 - 9:30 a.m. – Open Meeting
The Mutual Building, 909 East Main Street, Suite 607, Board Room, Richmond, Virginia.

The board will meet to (i) approve minutes of its prior meeting; (ii) review the authority's operations for the prior months; and (iii) consider other matters and take other actions as it may deem appropriate. The planned agenda of the meeting will be available at the offices of the authority one week prior to the date of the meeting. Public comments will be received at the beginning of the meeting.

Contact: Shockley D. Gardner, Jr., Mutual Bldg., 909 E. Main St., Suite 707, Richmond, VA 23219, telephone (804) 644-3100 or fax (804) 644-3109.

DEPARTMENT FOR THE VISUALLY HANDICAPPED (BOARD FOR)

July 28, 1993 - 2 p.m. – Open Meeting
397 Azalea Avenue, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A regular meeting of the board to receive reports from the department staff and other information that may be presented to the board.

Contact: Joseph A. Bowman, Assistant Commissioner, 397 Azalea Ave., Richmond, VA 23227, telephone (804) 371-3140 or toll-free 1-800-622-2155.

Advisory Committee on Services

July 31, 1993 - 11 a.m. – Open Meeting
397 Azalea Avenue, Richmond, Virginia. (Interpreter for the deaf provided upon request)

The committee meets quarterly to advise the Virginia Board for the Visually Handicapped on matters related to services for blind and visually impaired citizens of the Commonwealth.

Contact: Barbara G. Tyson, Executive Secretary Sr., 397 Azalea Ave., Richmond, VA 23227, telephone (804) 371-3140 or toll-free 1-800-622-2155.

VIRGINIA COUNCIL ON VOCATIONAL EDUCATION

August 4, 1993 - 1 p.m. – Open Meeting
New River Community College, Dublin, Virginia.

1 p.m.: On-site visit at New River Community College to observe access to vocational technical programs for students with disabilities

3:30 p.m.: General session.

4 p.m.: Committee meetings.

August 5, 1993 - 8 a.m. – Open Meeting
New River Community College, Dublin, Virginia.

8 a.m.: Business session.

9 a.m.: Work session - plan of work for FY 94.

Contact: Jerry M. Hicks, Executive Director, 7420-A Whitepine Rd., Richmond, VA 23237, telephone (804) 275-6218.

VIRGINIA VOLUNTARY FORMULARY BOARD

September 2, 1993 - 10:30 a.m. – Open Meeting
Washington Building, 1100 Bank Street, 2nd Floor Board Room, Richmond, Virginia.

A meeting to consider public hearing comments and review new product data for products pertaining to the Virginia Voluntary Formulary.

Contact: James K. Thompson, Director, Bureau of Pharmacy Services, 109 Governor St., Room B1-9,

Richmond, VA 23219, telephone (804) 786-4326.

VIRGINIA WASTE MANAGEMENT BOARD

July 30, 1993 – Written 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 Virginia Waste Management Board intends to amend regulations entitled: **672-40-01. Regulated Medical Waste Management Regulations.** The proposed amendments add flexibility in optional treatment methods and make several technical adjustments to the current regulations.

Statutory Authority: § 10.1-1402 of the Code of Virginia.

Contact: Robert G. Wickline, Director of Research, Department of Environmental Quality, 101 N. 14th St., 11th Floor, Richmond, VA 23219, telephone (804) 225-2667.

August 2, 1993 - 10 a.m. – Open Meeting
Lancaster County Public Library, Kilmarnock, Virginia.

This will be a general business meeting. Staff will seek approval to publish the Notice of Intended Regulatory Action for Amendment 12 of the Hazardous Materials Management Regulation and the Vegetative Waste Regulations. The Virginia Waste Management Board will tour waste management facilities at Tangier Island following the board meeting.

August 3, 1993 - 10 a.m. – Open Meeting
Windmill Point Marine Lodge, Route 695, Windmill Point Virginia.

The Virginia Waste Management Board will hold a workshop. This is a working session only. No formal action will be taken. The public is welcome to attend.

Contact: Loraine Williams, Secretary, Monroe Bldg., 101 N. 14th St., 11th Floor, Richmond, VA 23219, telephone (804) 225-2667.

BOARD FOR WASTE MANAGEMENT FACILITY OPERATORS

† **August 20, 1993 - 10:30 a.m.** – Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia.

A general board meeting.

Contact: David E. Dick, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8595 or (804) 367-9753/TDD

STATE WATER CONTROL BOARD

July 27, 1993 - 1 p.m. – Open Meeting
Clarke County Administration Office, 102 North Church Street, Board of Supervisors Room, Berryville, Virginia.

The staff is scheduling a series of meetings of the Shenandoah River Surface Water Management Area Advisory Group. The duties of this advisory group are to assist in determining the appropriateness of a designation, the boundaries of the proposed area, and the adequacy of data. The group must also evaluate the data to determine the minimum instream flow level that will activate the surface water withdrawal permits and sets the various stages of conservation plans. Other tentatively scheduled meetings are August 31 and September 28, 1993, at the same time and place. Contact should be made prior to the meeting date so as to be informed of any changes in time of meeting, location or cancellation.

Contact: Thomas Felvey, Department of Environmental Quality, Water Division, P.O. Box 11143, Richmond, VA 23230, telephone (804) 527-5092.

VIRGINIA WORKERS' COMPENSATION COMMISSION

August 13, 1993 – Written comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Virginia Worker's Compensation Commission intends to promulgate regulations entitled: **VR 405-01-06. Procedures for Processing Workers' Compensation Claims.** The commission proposes to change its present rules concerning prehearing, hearing and review procedures in accordance with recommendations made by the 1993 General Assembly. The Virginia Workers' Compensation Commission pursuant to § 65.2-201 A of the Code of Virginia, proposes to change its present Rules of Practice and Procedure in accordance with recommendations made by the 1993 General Assembly. Present rules concerning prehearing, hearing and review procedures have been reviewed and proposed new rules are offered for comment by the public, members of the bar and all other interested parties. Copies of the proposed new rules may be obtained from the Office of the Clerk, Worker's Compensation Commission, 1000 DMV Drive, Richmond, Virginia 23220, without cost. A public hearing will be conducted in the commission courtroom beginning at 10 a.m. on July 15, 1993, at which time interested parties will be heard regarding proposed rule changes. Those who wish to have their comments made part of the record must file written comments with the Clerk of the Commission no less than five business days prior to the public hearing. Oral comments to the commission will be heard and shall be limited to eight minutes per person unless extended comments are approved by

the commission before the hearing date.

Statutory Authority: § 65.2-201 A of the Code of Virginia.

Contact: Lawrence D. Tarr, Chief Deputy Commissioner, 1000 DMV Dr., Richmond, VA 23220, telephone (804) 367-8664.

LEGISLATIVE

VIRGINIA COAL AND ENERGY COMMISSION

Energy Preparedness Subcommittee

† **August 10, 1993 - 10 a.m.** – Open Meeting
General Assembly Building, 910 Capitol Square, Senate Room A, Richmond, Virginia.

An open meeting.

Contact: Thomas C. Gilman, Senate of Virginia, P.O. Box 396, Richmond, VA 23203, telephone (804) 786-5742, or Arlen K. Bolstad, Staff Attorney, Division of Legislative Services, 910 Capitol Square, Richmond, VA 23219, telephone (804) 786-3591.

JOINT COMMISSION TO STUDY MANAGEMENT OF THE COMMONWEALTH'S WORKFORCE AND ITS COMPENSATION, PERSONNEL, AND MANAGEMENT POLICIES, AND TO RECOMMEND IMPROVEMENTS TO VIRGINIA'S SYSTEM

August 4, 1993 - 10 a.m. – Open Meeting
General Assembly Building, 910 Capitol Square, Senate Room B, Richmond, Virginia.

An open meeting. SJR 279, 1993.

Contact: John McE. Garrett, Senate of Virginia, P.O. Box 396, Richmond, VA 23203, telephone (804) 786-5742, or Nancy Roberts, Division Manager, Division of Legislative Services, 910 Capitol Square, Richmond, VA 23219, telephone (804) 786-3591.

JOINT SUBCOMMITTEE TO STUDY GOVERNMENTAL ACTIONS AFFECTING PRIVATE PROPERTY RIGHTS

August 16, 1993 - 1 p.m. –Open Meeting
State Capitol, Capitol Square, House Room 1, Richmond, Virginia.

The subcommittee will hold an organizational meeting for studying Virginia governmental actions which may result in taking of private property under current federal or Virginia constitutional law, and the need, if any, for legislation to change current law or procedures in response to such study.

Contact: Jeffrey F. Sharp, Staff Attorney, Division of Legislative Services, 910 Capitol Square, Richmond, VA 23219, telephone (804) 786-3591.

SELECT COMMITTEE ON SALES TAX EXEMPTIONS

† **September 16, 1993 - 11 a.m.** – Open Meeting
General Assembly Building, 910 Capitol Square, Senate Room B, Richmond, Virginia.

An open meeting. SJR 249, 1993.

Contact: Aubrey Stewart, Senate of Virginia, P.O. Box 396, Richmond, VA 23203, telephone (804) 786-5742, or John MacConnell, Staff Attorney, Division of Legislative Services, 910 Capitol Square, Richmond, VA 23219, telephone (804) 786-3591.

CHRONOLOGICAL LIST

OPEN MEETINGS

July 26
† Cosmetology, Board for
Longwood College
- Board of Visitors
Lottery Department, State

July 27
Emergency Planning Committee, Local - Henrico
Health Services Cost Review Council, Virginia
Marine Resources Commission
† Private Security Services Advisory Board
Water Control Board, State

July 28
Compensation Board
Dentistry, Board of
Emergency Planning Committee, Local - Gloucester County
† Health Professions, Board of
- Ad-Hoc Committee on Certification of Providers of Counseling Services to Sexual Assault Offenders
Mental Health, Mental Retardation and Substance Abuse Services Board, State
† Private Security Services Advisory Board
Visually Handicapped, Board for the

July 29
Education, Board of
† Professional Counselors, Board of

Calendar of Events

July 30
Chesapeake Bay Local Assistance Board
- Central Area Review Committee
Medicine, Board of
† Professional Counselors, Board of

July 31
Visually Handicapped, Department for the
- Advisory Committee on Services

August 2
Alcoholic Beverage Control Board
Waste Management Board, Virginia

August 3
Hopewell Industrial Safety Council
Waste Management Board, Virginia

August 4
† Alcohol Safety Action Program - Mount Rogers
† Criminal Justice Services, Department of
- Subcommittee of the Committee on Training Studying Exceptions to Regulation of Private Investigators
Management of the Commonwealth's Workforce and Its Compensation, Personnel and Management Policies, and to Recommend Improvements to Virginia's System, Joint Commission to Study
† Virginia Racing Commission
Vocational Education, Council on

August 5
Middle Virginia Board of Directors and the Middle Virginia Community Corrections Resources Board
Military Institute, Virginia
- Board of Visitors
Vocational Education, Virginia Council on

August 6
Dentistry, Board of

August 9
† Barbers, Board for
† Labor and Industry, Department of and the HJR 534 Advisory Committee
† Marine Resources Commission

August 10
† Coal and Energy Commission
- Subcommittee on Energy Preparedness
† Marine Resources Commission
† Veterinary Medicine, Board of
† Virginia Outdoors Foundation
Virginia Resources Authority

August 11
Pharmacy, Board of
† Veterinary Medicine, Board of

August 12
Psychology, Board of

August 13
Dentistry, Board of
Medicine, Board of
- Executive Committee
† Optometry, Board of

August 14
Medicine, Board of
- Credentials Committee

August 16
Alcoholic Beverage Control Board
† Labor and Industry, Department of and the HJR 534 Advisory Committee
Private Property Rights, Joint Subcommittee to Study Governmental Actions Affecting

August 17
Environmental Quality, Department of
† Historic Resources, Department of
- State Review Board

August 18
Environmental Quality, Department of
† Historic Resources, Department of
† Labor and Industry, Department of and the HJR 534 Advisory Committee
Local Debt, State Council on
† Transportation Board, Commonwealth
Treasury Board

August 19
Chesapeake Bay Local Assistance Board
- Northern Area Review Committee
† Fire Services Board, Virginia
- Fire/EMS Education and Training Committee
- Legislative/Liaison Committee
- Fire Prevention and Control
† Transportation Board, Commonwealth

August 20
† Alcohol and Drug Abuse Problems, Governors Council on
† Fire Services Board, Virginia
† Waste Management Facility Operators, Board for

August 21
† Museum of Natural History, Virginia
- Board of Trustees

August 23
† Agricultural Council, Virginia
Lottery Department, State

August 24
† Health Services Cost Review Council, Virginia
Land Evaluation Advisory Council, State

August 25
Aviation Board
† Contractors, Board for

- Complaints Committee
† Environmental Quality, Department of
† Sewage Handling and Disposal Appeals Review Board

August 26
Chesapeake Bay Local Assistance Board
- Central Area Review Committee
† Game and Inland Fisheries, Board of

August 27
Aviation Board
Chesapeake Bay Local Assistance Board
- Southern Area Review Committee
† Game and Inland Fisheries, Board of
† Geology, Board for

August 28
† Game and Inland Fisheries, Board of

August 30
Alcoholic Beverage Control Board

September 1
Compensation Board
† Medicine, Board of
- Advisory Board on Occupational Therapy

September 2
Voluntary Formulary Board, Virginia

September 3
† Medicine, Board of
- Legislative Committee

September 8
Land Evaluation Advisory Council, State

September 13
† Higher Education for Virginia, State Council of
Library Board

September 14
† Higher Education for Virginia, State Council of

September 15
Local Debt, State Council on
Treasury Board

September 16
† Sales Tax Exemptions, Select Committee on

September 17
† Medicine, Board of
- Advisory Board on Physical Therapy

September 20
† Professional Soil Scientists, Board for

September 21
† Museum of Fine Arts, Virginia
- Collections Committee
† Contractors, Board for
- Recovery Fund Committee

September 23
Chesapeake Bay Local Assistance Board
- Northern Area Review Committee
† Museum of Fine Arts, Virginia
- Finance Committee
- Board of Trustees

September 24
Chesapeake Bay Local Assistance Board
- Southern Area Review Committee

September 29
Chesapeake Bay Local Assistance Board
- Central Area Review Committee

PUBLIC HEARINGS

August 2
† Preventive Health Advisory Committee, State

August 5
State Education Assistance Authority

August 17
Aging, Department for the

August 18
† Fire Services Board, Virginia

August 24
Health, Board of

August 25
† Veterans' Affairs, Board on

September 29
† Criminal Justice Services, Department of

October 6
Criminal Justice Services, Department of