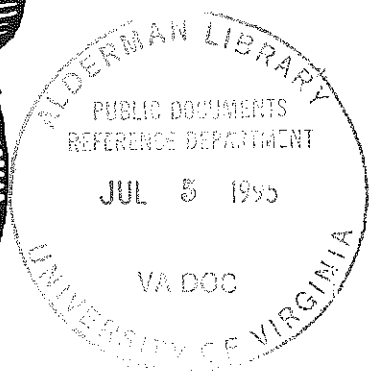


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THE VIRGINIA REGISTER

OF REGULATIONS

VA
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VOLUME ELEVEN • ISSUE TWENTY

JUNE 26, 1995

1995

Pages 3181 Through 3328

THE VIRGINIA REGISTER INFORMATION PAGE

The *Virginia Register* is an official state publication issued every other week throughout the year. Indexes are published quarterly, and the last index of the year is cumulative.

The *Virginia Register* has several functions. The full text of all regulations, both as proposed and as finally adopted or changed by amendment, is 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 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 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-month 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 (§ 9-6.14:7.1 et seq.) of Chapter 1.1:1 of the Code of Virginia be examined carefully.

CITATION TO THE VIRGINIA REGISTER

The *Virginia Register* is cited by volume, issue, page number, and date. **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.

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Staff of the Virginia Register: **Joan W. Smith**, Registrar of Regulations; **Jane D. Chaffin**, Assistant Registrar of Regulations.

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NOTICES OF INTENDED REGULATORY ACTION

Symbol Key

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

DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT (BOARD OF)

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Housing and Community Development intends to consider amending regulations entitled: **VR 394-01-21. Virginia Uniform Statewide Building Code, Volume 1 - New Construction Code/1993.** The purpose of the proposed action is to (i) amend the "Notice of Violation" section to comport with the "Statute of Limitation" section of the Code of Virginia; (ii) amend the requirement for the spacing of intermediate supports for guardrails; (iii) amend the sections which establish "Wind Zones" in Virginia, to comply with those required by new HUD federal regulation; (iv) delete vague and subjective text in the regulation regarding ice damming on roofs for one and two family dwellings; (v) amend the requirements for private suites (skyboxes) at automobile race tracks; (vi) amend the regulation to raise the size and occupancy threshold, regarding when permits are required for tents; (vii) amend the "Existing Building" section to clarify and to remove vague and subjective language which may be barriers to revitalization of existing buildings, and (viii) amend the "Inspections" section to allow the waiver of inspections pursuant to § 36-105 of the Code of Virginia. The agency intends to hold a public hearing on the proposed regulation after publication.

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

Public comments may be submitted until July 14, 1995.

Contact: Norman R. Crumpton, Program Manager, Department of Housing and Community Development, The Jackson Center, 501 North Second Street, Richmond, VA 23219-1321, telephone (804) 371-7170, FAX (804) 371-7092 or (804) 371-7089/TDD ☎

VA.R. Doc. No. R95-518; Filed May 17, 1995, 4:39 p.m.

BOARD OF MEDICINE

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Medicine intends to consider amending regulations entitled: **VR 465-02-1. Regulations Governing the Practice of Medicine, Osteopathy, Podiatry, Chiropractic, Clinical Psychology and Acupuncture.** The purpose of the proposed action is to amend § 1.9 B, which restricts pharmacological treatment of obesity. The agency intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: §§ 54.1-2400 and 59.1-2900 et seq. of the Code of Virginia.

Public comments may be submitted until July 26, 1995.

Contact: Warren Koontz, M.D., Executive Director, Board of Medicine, 6606 W. Broad St., Richmond, VA 23230, telephone (804) 662-9908.

VA.R. Doc. No. R95-532; Filed June 5, 1995, 12:02 p.m.

DEPARTMENT OF STATE POLICE

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of State Police intends to consider amending regulations entitled: **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 regulations after publication.

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

Public comments may be submitted until July 26, 1995.

Contact: Captain W. Steven Flaherty, Safety Officer, Department of State Police, Safety Division, P.O. Box 85607, Richmond, VA 23285-5607, telephone (804) 378-3479 or FAX (804) 378-3487.

VA.R. Doc. No. R95-544; Filed June 6, 1995, 11:07 a.m.

BOARD OF PSYCHOLOGY

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Psychology intends to consider promulgating regulations entitled: **VR 565-01-3. Regulations Governing the Certification of Sex Offender Treatment Providers.** The purpose of the proposed action is to establish educational, experience and examination requirements; standards of ethics; grounds for disciplinary action; and fees for certification of sex offender treatment providers. The agency intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: § 54.1-3605 of the Code of Virginia.

Public comments may be submitted until July 26, 1995.

Contact: Evelyn B. Brown, Executive Director, Board of Psychology, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9912, FAX (804) 662-9943 or (804) 662-7197/TDD ☎

VA.R. Doc. No. R95-531; Filed June 5, 1995, 12:02 p.m.

Notices of Intended Regulatory Action

DEPARTMENT OF SOCIAL SERVICES (STATE BOARD OF)

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Board of Social Services intends to consider promulgating regulations entitled: **VR 615-01-56. Public Assistance Programs - Meal and Snack Deductions for Self-Employed Day Care Providers.** The purpose of the proposed action is to establish a uniform allowable deduction for meals and snacks as a business expense for self-employed day care providers who care for children not residing in their homes. The agency does not intend to hold a public hearing on the proposed regulation after publication.

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

Public comments may be submitted until July 26, 1995.

Contact: Constance O. Hall, AFDC Program Manager, Department of Social Services, 730 E. Broad St., Richmond, VA 23219, telephone (804) 692-1730 or FAX (804) 692-1704.

VA.R. Doc. No. R95-543; Filed June 6, 1995, 2:02 p.m.

PUBLIC COMMENT PERIODS - PROPOSED REGULATIONS



PUBLIC COMMENT PERIODS REGARDING STATE AGENCY REGULATIONS

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

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

STATE AIR POLLUTION CONTROL BOARD

- † July 26, 1995 - 11 a.m. -- Public Hearing
Department of Environmental Quality, Innsbrook Corporate Center, 4900 Cox Road, Board Room, Glen Allen, Virginia.
- † July 27, 1995 - 11 a.m. -- Public Hearing
James McCort Administration Building, One County Complex Court, Board Chamber Room, Prince William, Virginia.
- † August 28, 1995 -- Public comments may be submitted until 4:30 p.m. on this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Air Pollution Control Board intends to amend regulations entitled: **VR 120-01. Regulations for the Control and Abatement of Air Pollution (Revision FF -- Rule 4-4, Emission Standards for Open Burning)**. The proposed regulation amendments provide for the deregulation of certain control measures at the state level while providing an administrative mechanism to assist local governments in developing their own control programs. The proposed amendments also require a summertime ban on open burning in order to reduce emissions of volatile organic compounds in Virginia's ozone nonattainment areas.

Request for Comments: The purpose of this notice is to provide the public with the opportunity to comment on the proposed regulation and the costs and benefits of the proposal.

Localities Affected: Although any person conducting open burning will be affected by the proposed regulation, the jurisdictions within Virginia's three Volatile Organic Compound Emissions Control Areas (identified below) will experience more impact during June, July and August than jurisdictions outside these areas.

1. The Northern Virginia area: Arlington County, Fairfax County, Loudoun County, Prince William County, Stafford County, the City of Alexandria, the City of Fairfax, the City of Falls Church, the City of Manassas, and the City of Manassas Park.

2. The Richmond area: Charles City County, Chesterfield County, Hanover County, Henrico County, the City of Colonial Heights, the City of Hopewell, and the City of Richmond.
3. The Hampton Roads area: James City County, York County, the City of Chesapeake, the City of Hampton, the City of Newport News, the City of Norfolk, the City of Poquoson, the City of Portsmouth, the City of Suffolk, the City of Virginia Beach, and the City of Williamsburg.

Location of Proposal: The proposal, an analysis conducted by the department (including a statement of purpose, a statement of estimated impact and benefits of the proposed regulation, an explanation of need for the proposed regulation, an estimate of the impact of the proposed regulation upon small businesses, identification of and comparison with federal requirements, and a discussion of alternative approaches), and any other supporting documents may be examined by the public at the department's Air Programs Section, 629 East Main Street, 8th Floor, Richmond, Virginia, and the department's regional offices (listed below) between 8:30 a.m. and 4:30 p.m., of each business day until the close of the public comment period.

Southwest Regional Office
Department of Environmental Quality
121 Russell Road
Abingdon, Virginia
Ph: (703) 676-5482

West Central Regional Office
Department of Environmental Quality
Executive Office Park, Suite D
5338 Peters Creek Road
Roanoke, Virginia
Ph: (703) 561-7000

Lynchburg Satellite Office
Department of Environmental Quality
7701-03 Timberlake Road
Lynchburg, Virginia
Ph: (804) 582-5120

Public Comment Periods - Proposed Regulations

Fredericksburg Satellite Office
Department of Environmental Quality
300 Central Road, Suite B
Fredericksburg, Virginia
Ph: (703) 899-4600

Piedmont Regional Office
Department of Environmental Quality
Innsbrook Corporate Center
4900 Cox Road
Glen Allen, Virginia
Ph: (804) 527-5300

Tidewater Regional Office
Department of Environmental Quality
Old Greenbrier Village, Suite A
2010 Old Greenbrier Road
Chesapeake, Virginia
Ph: (804) 424-6707

Springfield Satellite Office
Department of Environmental Quality
Springfield Corporate Center, Suite 310
6225 Brandon Avenue
Springfield, Virginia
Ph: (703) 644-0311

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

Public comments may be submitted until 4:30 p.m., August 28, 1995, to the Manager, Air Programs Section, Department of Environmental Quality, P.O. Box 10009, Richmond, Virginia 23240.

Contact: Dr. Kathleen Sands, Policy Analyst, Air Programs Section, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 762-4413.

† July 26, 1995 - 11 a.m. -- Public Hearing
Department of Environmental Quality, Innsbrook Corporate Center, 4900 Cox Road, Glen Allen, Virginia.

† July 27, 1995 - 11 a.m. -- Public Hearing
James McCort Administration Building, One County Complex Court, Board Chamber Room, Prince William, Virginia.

† August 28, 1995 -- Public comments may be submitted until 4:30 p.m. on this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Air Pollution Control Board intends to amend regulations entitled: **VR 120-01. Regulations for the Control and Abatement of Air Pollution (Revision RR -- Volatile Organic Compounds)**. The standards require owners to reduce emissions of volatile organic compounds from specific sources, and to limit those emissions to a level resulting from the use of reasonably available control technology. The following types of sources are affected: otherwise unregulated facilities; surface cleaning and degreasing operations using nonhalogenated solvents; rotogravure/flexographic printing facilities emitting 25-100 tons per year; sanitary landfill operations; and lithographic printing operations.

Request for Comments: The purpose of this notice is to provide the public with the opportunity to comment on the proposed regulation and the costs and benefits of the proposal.

Localities Affected: The localities affected by the proposed regulation are as follows:

1. The Northern Virginia area: Arlington County, Fairfax County, Loudoun County, Prince William County, Stafford County, the City of Alexandria, the City of Fairfax, the City of Falls Church, the City of Manassas, and the City of Manassas Park.

2. The Richmond area: Charles City County, Chesterfield County, Hanover County, Henrico County, the City of Colonial Heights, the City of Hopewell, and the City of Richmond.

Location of Proposal: The proposal, an analysis conducted by the department (including a statement of purpose, a statement of estimated impact and benefits of the proposed regulation, an explanation of need for the proposed regulation, an estimate of the impact of the proposed regulation upon small businesses, identification of and comparison with federal requirements, and a discussion of alternative approaches), and any other supporting documents may be examined by the public at the department's Air Programs Section, 629 East Main Street, 8th Floor, Richmond, Virginia, and the department's regional offices (listed below) between 8:30 a.m. and 4:30 p.m., of each business day until the close of the public comment period.

Southwest Regional Office
Department of Environmental Quality
121 Russell Road
Abingdon, Virginia
Ph: (703) 676-5482

West Central Regional Office
Department of Environmental Quality
Executive Office Park, Suite D
5338 Peters Creek Road
Roanoke, Virginia
Ph: (703) 561-7000

Lynchburg Satellite Office
Department of Environmental Quality
7701-03 Timberlake Road
Lynchburg, Virginia
Ph: (804) 582-5120

Fredericksburg Satellite Office
Department of Environmental Quality
300 Central Road, Suite B
Fredericksburg, Virginia
Ph: (703) 899-4600

Piedmont Regional Office
Department of Environmental Quality
Innsbrook Corporate Center
4900 Cox Road
Glen Allen, Virginia
Ph: (804) 527-5300

Public Comment Periods - Proposed Regulations

Tidewater Regional Office
Department of Environmental Quality
Old Greenbrier Village, Suite A
2010 Old Greenbrier Road
Chesapeake, Virginia
Ph: (804) 424-6707

Springfield Satellite Office
Department of Environmental Quality
Springfield Corporate Center, Suite 310
6225 Brandon Avenue
Springfield, Virginia
Ph: (703) 644-0311

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

Public comments may be submitted until 4:30 p.m., August 28, 1995, to the Manager, Air Programs Section, Department of Environmental Quality, P.O. Box 10009, Richmond, Virginia 23240.

Contact: Karen G. Sabasteanski or Dr. Kathleen Sands, Policy Analysts, Air Programs Section, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 762-4000.

PROPOSED REGULATIONS

For information concerning Proposed Regulations, see Information Page.

Symbol Key

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

STATE AIR POLLUTION CONTROL BOARD

Title of Regulations: VR 120-01. Regulations for the Control and Abatement of Air Pollution (Revision FF).

VR 120-04-4001 through VR 120-04-4005, Part IV, Rule 4-40, Emission Standards for Open Burning.

Appendix D, Forest Management and Agriculture Practices.

Appendix I, Model Local Ordinance on Open Burning.

Appendix O, Forest Fire Law of Virginia.

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

Public Hearing Dates:

July 26, 1995 -- 11 a.m. (Glen Allen)

July 27, 1995 -- 11 a.m. (Prince William)

Public comments may be submitted until August 28, 1995.

(See Calendar of Events section for additional information)

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

Purpose: The purpose of the regulation is (i) to limit or, in some instances, prohibit open burning and to establish requirements to restrict emissions of particulates and volatile organic compounds (VOCs) during the peak ozone season to the level necessary for the protection of public health and welfare; and (ii) to provide guidance to local governments on the adoption of ordinances to regulate open burning. The regulation amendments are being adopted in response to (i) the federal Clean Air Act, which requires Virginia to reduce these emissions in moderate and serious ozone nonattainment areas by 15% by the end of 1996 and (ii) a recommendation by the 1990 Governor's Commission on Efficiency in Government that open burning should be regulated by local governments rather than by the state.

Substance: The major provisions of the proposal are summarized below:

1. The distance requirement for the burning of leaves and garden trimmings has been eliminated (§ 120-04-4004 E).

2. The distance and content requirements for the burning of household refuse has been eliminated (§ 120-04-4004 F).

3. The exception of Region 7 from the allowable open burning of construction waste has been eliminated (§ 120-04-4004 H and J).

4. All requirements for burning on the site of a landfill have been eliminated except that pertaining to methane gas (§ 120-04-4004 J).

5. All state permit requirements have been eliminated (§ 120-04-4004 H, J; § 120-04-4005).

6. Open burning of construction waste, debris waste, and demolition waste is banned during June, July, and August in the Northern Virginia, Richmond, and Hampton Roads volatile organic compound emissions controls areas (§ 120-04-4004 H, J).

7. A provision has been added to allow the board to grant a waiver of compliance from any provision of the rule to any person who makes a satisfactory demonstration that other state or local statutory provisions or other enforceable mechanisms will achieve the objective of the provision from which the waiver is granted (§ 120-04-4005).

8. A model local ordinance has been appended (Appendix I).

9. The appendix containing the Forest Fire Law of Virginia has been eliminated (Appendix O).

Issues: The primary advantages and disadvantages of implementation and compliance with the regulation by the public and the department are discussed below.

1. Public: Deregulation of open burning on the state level will encourage local governments to develop individual enforcement programs tailored to each jurisdiction's specific needs. Progress will be made towards attaining the emissions reduction goals of the 15% plans, thus lessening the threat of sanctions. The summertime ban on burning in the ozone nonattainment areas will have a positive health effect for the 20% of Virginians in those areas who suffer from some form of respiratory ailment. On the other hand, Virginians outside these areas may suffer more than they currently do if their local governments fail to take upon themselves the responsibility for developing control programs for open burning.

2. Department: Progress will be made towards attaining the emissions reduction goals of the 15% plans, thus lessening the threat of sanctions. The department will be able to devote its scarce resources to control programs more directly linked to the attainment of legally mandated standards and will thus save both staff time and money. The department will experience no disadvantages by the implementation of this regulation.

Localities Affected: Although any person conducting open burning will be affected by the proposed regulation, the jurisdictions within Virginia's three Volatile Organic Compound Emissions Control Areas (identified below) will

experience more impact during June, July, and August than jurisdictions outside these areas.

1. The Northern Virginia Area: Arlington County, Fairfax County, Loudoun County, Prince William County, Stafford County, the City of Alexandria, the City of Fairfax, the City of Falls Church, the City of Manassas, and the City of Manassas Park.
2. The Richmond Area: Charles City County, Chesterfield County, Hanover County, Henrico County, the City of Colonial Heights, the City of Hopewell, and the City of Richmond.
3. The Hampton Roads Area: James City County, York County, the City of Chesapeake, the City of Hampton, the City of Newport News, the City of Norfolk, the City of Poquoson, the City of Portsmouth, the City of Suffolk, the City of Virginia Beach, and the City of Williamsburg.

Impact:

1. Entities Affected. All individuals or organizations who perform open burning are affected by this regulation.
2. Fiscal Impact.

a. Costs to Affected Entities. In assessing its cost for the three-month ban on open burning in the metropolitan Washington area, Maryland estimated that during the first year two large companies would each purchase a chipper at a cost of \$250,000. The chippers would then be rented to small companies and local governments, thus recouping about \$40,000 on each chipper during the first year. Each chipper would therefore pay for itself in about six years with rental revenue.

Aside from the provision for the three-month ban, other regulatory provisions in the proposal have been considerably relaxed. For instance, the distance requirement for the burning of leaves and garden trimmings has been eliminated, the distance and content requirements for the burning of household refuse has been eliminated, and all state permit requirements have been eliminated. These and the several other relaxed regulatory requirements are estimated to save the state about \$112,000 per year.

The assumption of new enforcement responsibilities by local governments will be voluntary. Therefore, any additional costs to these local governments will vary widely and will be incurred at the discretion of each jurisdiction. Many jurisdictions have already enacted ordinances which are as stringent as or more stringent than the current state regulation, so these jurisdictions will incur no new costs in maintaining the same level of enforcement.

b. Costs to Agency. It is not expected that the regulation amendments will result in any cost to the Department of Environmental Quality other than that currently in the budget.

c. Source of Agency Funds. The sources of department funds to carry out this regulation are the general fund and the grant money provided by the

U.S. Environmental Protection Agency under Section 105 of the federal Clean Air Act.

Summary:

The regulation amendments concern provisions covering open burning. The proposed regulation amendments provide for the deregulation of certain control measures at the state level while providing an administrative mechanism to assist local governments in developing their own control programs. The proposed amendments also require a summertime ban on open burning in order to reduce emissions of volatile organic compounds in Virginia's ozone nonattainment areas.

VR 120-01. Regulations for the Control and Abatement of Air Pollution (Revision FF).

PART IV. EMISSION STANDARDS FOR OPEN BURNING. (RULE 4-40)

§ 120-04-4001. Applicability.

A. Except as provided in subsection C of this section, the provisions of this rule apply to any person who permits or engages in open burning or who permits or engages in burning using ~~open pit incinerators, conical burners (teepee burners) and other devices or methods which the board determines are specifically designed to provide good combustion performance~~ special incineration devices.

B. The provisions of this rule apply throughout the Commonwealth of Virginia.

C. The provisions of this rule do not apply to such an extent as to prohibit the burning of leaves by persons on property where they reside if the local governing body of the county, city or town in which such persons reside has enacted an otherwise valid ordinance (under the provisions of ~~§ 40-47.48(b)~~ 10.1-1308 of the Virginia Air Pollution Control Law) regulating such burning in all or any part of the locality.

§ 120-04-4002. Definitions.

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

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

C. Terms defined:

"Automobile graveyard" means any lot or place which is exposed to the weather and upon which more than five motor vehicles of any kind, incapable of being operated, and which it would not be economically practical to make operative, are placed, located or found.

"Built-up area" means any area with a substantial portion covered by industrial, commercial or residential buildings.

"Clean burning waste" means waste which does not produce dense smoke when burned and which is not prohibited to be burned under this rule.

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"Commercial waste" means all waste generated by establishments engaged in business operations. This category includes, but is not limited to, waste resulting from the operation of stores, markets, office buildings, restaurants and shopping centers.

"Construction waste" means solid waste which is produced or generated during construction of structures. Construction waste consists of lumber, wire, sheetrock, broken brick, shingles, glass, pipes, concrete, and metal and plastics if the metal or plastics are a part of the materials of construction or empty containers for such materials. Paints, coatings, solvents, asbestos, any liquid, compressed gases or semi-liquids, and garbage are not construction wastes and the disposal of such materials shall be in accordance with the regulations of the Department of Virginia Waste Management Board.

"Debris waste" means stumps, wood, brush, and leaves from land clearing operations.

"Demolition waste" means that solid waste which is produced by the destruction of structures and their foundations and includes the same materials as construction waste.

"Garbage" means rotting animal and vegetable matter accumulated by a household in the course of ordinary day-to-day living.

"Hazardous waste" means refuse or combination of refuse which, because of its quantity, concentration or physical, chemical or infectious characteristics may:

1. Cause or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating illness; or
2. Pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, disposed, or otherwise managed.

"Household refuse" means waste material and trash normally accumulated by a household in the course of ordinary day-to-day living.

"Industrial waste" means all waste generated on the premises of manufacturing and industrial operations such as, but not limited to, those carried on in factories, processing plants, refineries, slaughter houses, and steel mills.

"Junk" means old or scrap copper, brass, rope, rags, batteries, paper, trash, rubber, debris, waste, or junked, dismantled, or wrecked automobiles, or parts thereof, iron, steel, and other old or scrap ferrous or nonferrous material.

"Junkyard" means an establishment or place of business which is maintained, operated, or used for storing, keeping, buying, or selling junk, or for the maintenance or operation of an automobile graveyard, and the term shall include garbage dumps and sanitary fills.

"Opening burning" means the burning of any matter in such a manner that the products resulting from combustion are emitted directly into the atmosphere without passing through a stack, duct or chimney.

"Open pit incinerator" means a device used to burn waste for the primary purpose of reducing the volume by removing combustible matter. Such devices function by directing a curtain of air at an angle across the top of a trench or similarly enclosed space, thus reducing the amount of combustion by-products emitted into the atmosphere. The term also includes trench burners, air curtain destructors and over draft incinerators.

"Refuse" means trash, rubbish, garbage and other forms of solid or liquid waste, including, but not limited to, wastes resultant from residential, agricultural, commercial, industrial, institutional, trade, construction, land clearing, forest management and emergency operations.

"Salvage operation" means any operation consisting of a business, trade or industry participating in salvaging or reclaiming any product or material, such as, but not limited to, reprocessing of used motor oils, metals, chemicals, shipping containers or drums, and specifically including automobile graveyards and junkyards.

"Smoke" means small gas-borne particulate matter consisting mostly, but not exclusively, of carbon, ash and other material in concentrations sufficient to form a visible plume.

"Special incineration device" means a pit incinerator, conical or teepee burner, or any other device specifically designed to provide good combustion performance.

§ 120-04-4003. Open burning prohibitions.

A. No owner or other person shall cause or permit open burning of refuse except as provided in § 120-04-4004 or use of special incineration devices except as provided in § 120-04-4005 120-04-4004.

B. No owner or other person shall cause or permit open burning or the use of a special incineration device for disposal of rubber tires, asphaltic materials, crankcase oil, impregnated wood or other rubber or petroleum based materials except when conducting bona fide fire fighting instruction at fire fighting training schools having permanent facilities.

C. No owner or other person shall cause or permit open burning or the use of a special incineration device for disposal of hazardous waste or containers for such materials.

D. No owner or other person shall cause or permit open burning or the use of a special incineration device for the purpose of a salvage operation or for the disposal of commercial/industrial waste.

E. Open burning or the use of special incineration devices permitted under the provisions of this rule does not exempt or excuse any owner or other person from the consequences, liability, damages or injuries which may result from such conduct; nor does it excuse or exempt any owner or other person from complying with other applicable laws, ordinances, regulations and orders of the governmental entities having jurisdiction, even though the open burning is conducted in compliance with this rule. In this regard special attention should be directed to §§ 10-62 and 10-63 § 10.1-1142 of the Forest Fire Law of Virginia (See Appendix O). Excerpts from the Forest Fire Law of Virginia are presented

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~~for information purposes only; the board has no authority to enforce the provisions thereof, which is enforced by the Department of Forestry.~~

F. With regard to the provisions of subsection E of this section, special attention should also be directed to the regulations of the ~~Department of Virginia Waste Management Board~~. No disposal of waste by open burning or transportation of waste to be disposed of by open burning shall take place in violation of the regulations of the ~~Department of Virginia Waste Management Board~~.

G. Upon declaration of an Alert, Warning or Emergency Stage of an Air Pollution Episode as described in Part VII or when deemed advisable by the board to prevent a hazard to, or an unreasonable burden upon, public health or welfare, no owner or other person shall cause or permit open burning or use of a special incineration device; and any in-process burning or use of special incineration devices shall be immediately terminated in the designated Air Quality Control Region.

§ 120-04-4004. Permissible open burning.

Open burning or the use of special incineration devices is permitted in the following instances provided the provisions of subsections B through G of § 120-04-4003 are met:

~~A. 1. Upon the request of an owner or a responsible civil or military public official, the board may approve open burning or the use of special incineration devices under controlled conditions for the elimination of a hazard which constitutes a threat to the public health, safety or welfare and which cannot be remedied by other means consonant with the circumstances presented by the hazard. Such uses of open burning or the use of special incineration devices may include, but are not limited to, the following:~~

~~4. a. Destruction of deteriorated or unused explosives and munitions on government or private property when other means of disposal are not available.~~

~~2. b. Disposal of debris caused by floods, tornadoes, hurricanes or other natural disasters where alternate means of disposal are not economical or practical and when it is in the best interest of the citizens of the Commonwealth.~~

~~B. 2. Open burning is permitted for training and instruction of government and public fire fighters under the supervision of the designated official and industrial in-house fire fighting personnel with clearance from the local fire fighting authority. The designated official in charge of the training shall notify and obtain the approval of the regional director prior to conducting the training exercise. Training schools where permanent facilities are installed for fire fighting instruction are exempt from this notification requirement.~~

~~3. Open burning or the use of special incineration devices is permitted for the destruction of classified military documents under the supervision of the designated official.~~

~~C. 4. Open burning is permitted for camp fires or other fires that are used solely for recreational purposes, for~~

ceremonial occasions, for outdoor noncommercial preparation of food, and for warming of outdoor workers provided the materials specified in subsections B and C of § 120-04-4003 are not burned.

~~D. Open burning is permitted for the disposal of leaves and tree, yard and garden trimmings located on the premises of private residences, provided the following conditions are met:~~

~~1. The burning takes place on the premises of the private residence.~~

~~2. The location of the burning is not less than 300 feet from any occupied building unless the occupants have given prior permission, other than a building located on the property on which the burning is conducted.~~

~~3. There must be no collection service available at the adjacent street or public road. This condition applies only to urban areas.~~

~~E. Open burning is permitted for the disposal of household refuse by homeowners or tenants, provided the following conditions are met:~~

~~1. The burning takes place on the premises of the dwelling.~~

~~2. Animal carcasses or animal wastes are not burned.~~

~~3. Garbage is not burned.~~

~~4. The location of the burning is not less than 300 feet from any occupied building unless the occupants have given prior permission, other than a building located on the property on which the burning is conducted.~~

~~5. There must be no collection service available at the adjacent street or public road on a schedule of at least once per week and no collection boxes or stations are provided by the locality.~~

~~5. In urban areas, open burning is permitted for the disposal of leaves and tree, yard and garden trimmings located on the premises of private property, provided that no regularly scheduled public or private collection service for such trimmings is available at the adjacent street or public road. In nonurban areas, open burning is permitted for the disposal of leaves and tree, yard and garden trimmings located on the premises of private property regardless of the availability of collection service for such trimmings.~~

~~6. Open burning is permitted for the disposal of household refuse by homeowners or tenants, provided that no regularly scheduled public or private collection service for such refuse is available at the adjacent street or public road.~~

~~F. 7. Open burning is permitted for the destruction of any combustible liquid or gaseous material by burning in a flare or flare stack. Use of a flare or flare stack for the destruction of hazardous waste or commercial/industrial waste is allowed provided written approval is obtained from the board and the facility is in compliance with Rule 4-3 and Rule 5-3. Permits issued under Part VIII may be used to satisfy the requirement for written approval.~~

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~~G. 8. Except in Air Quality Control Region 7, Open burning or the use of special incineration devices is permitted for disposal of land-clearing refuse on the site of clearing operations clean burning construction waste, debris waste, and demolition waste resulting from property maintenance, from the development or modification of roads and highways, parking areas, railroad tracks, pipelines, power and communication lines, buildings or building areas, sanitary landfills, or from any other clearing operations which may be approved by the executive director, provided the following conditions are met:~~

~~1. All reasonable effort shall be made to minimize the amount of material that is burned. Such efforts shall include, but are not limited to, the removal of pulpwood, sawlogs and fireweed.~~

~~2. The material to be burned shall consist of brush, stumps and similar land-clearing refuse generated at the site and shall not include demolition material or any refuse brought in from other sites.~~

~~3. The burning shall be at least 500 feet from any occupied building unless the occupants have given prior permission, other than a building located on the property on which the burning is conducted; burning shall be conducted at the greatest distance practicable from highways and air fields. If the regional director determines that it is necessary to protect public health and welfare, he may direct that any of the above cited distances be increased.~~

~~4. The burning shall be attended at all times and conducted to ensure the best possible combustion with a minimum of smoke being produced. Under no circumstances should the burning be allowed to smolder beyond the minimum period of time necessary for the destruction of the materials.~~

~~5. The burning shall be conducted only when the prevailing winds are away from any city, town or built up area.~~

~~H. When any burning contemplated by subsection G of this section is to occur within cities or urban areas, persons responsible for the burning shall, prior thereto, obtain a permit from the regional director. Such permits may be granted only after confirmation by the regional director that the burning can and will comply with the conditions in subsection G of this section and any other conditions which are deemed necessary by the regional director to ensure that the burning will not endanger the public health and welfare or to ensure compliance with any applicable provisions of these regulations. Buildings which have not been demolished may be burned only as provided in subdivision 2 of this section. Open burning for the purpose of such disposal is prohibited in volatile organic compound emissions control areas (see Appendix P) during June, July, and August.~~

~~I. 9. Open burning is permitted for forest management and agriculture practices approved by the board (see Appendix D), provided the following conditions are met:~~

~~4. a. The burning shall be at least 1000 feet from any occupied building unless the occupants have given prior permission, other than a building located on the property on which the burning is conducted.~~

~~2. b. The burning shall be attended at all times.~~

~~J. 10. Except in Air Quality Control Region 7, Open burning or the use of special incineration devices is permitted for disposal of refuse clean burning construction waste, debris waste, and demolition waste on the site of local landfills provided that the locally elected officials (or their designated representative) obtain a permit beforehand from the executive director. Such permits may be granted only after confirmation by the regional director that the burning can and will comply with the conditions in subsection J, paragraphs 1 through 7 of this section and any other conditions which are deemed necessary by the executive director to ensure that the burning will not endanger the public health and welfare or to ensure compliance with any applicable provisions of these regulations. The permit may be issued for each occasion of burning or for a period of time, not to exceed two years, as deemed appropriate by the executive director provided that the burning does not take place on land that has been filled and covered so as to present an underground fire hazard due to the presence of methane gas. Open burning for the purpose of such disposal is prohibited in volatile organic compound emissions control areas (see Appendix P) during June, July, and August.~~

~~1. The burning shall take place on the premises of a local sanitary landfill (the establishment and operation of which meets the provisions of the Regulations of the Department of Waste Management) or other area operated under the authority of the locality and approved by the executive director.~~

~~2. The burning shall be attended at all times.~~

~~3. The material to be burned shall consist only of the following:~~

~~a. Brush, tree trimmings, yard and garden trimmings, and similar land-clearing refuse.~~

~~b. Clean burning construction waste and demolition waste and similar materials.~~

~~4. All reasonable effort shall be made to minimize the amount of material that is burned. Such efforts shall include, but are not limited to, the removal of pulpwood, sawlogs, firewood and other marketable material.~~

~~5. No materials may be burned in violation of the regulations of the Department of Waste Management. Special attention should be directed to § 10-62 and § 10-63 of the Forest Fire Law of Virginia (See Appendix O). Excerpts from the Forest Fire Law of Virginia are presented for information purposes only; the board has no authority to enforce the provisions thereof.~~

~~6. The regional director shall be notified of the days during which the burning will occur.~~

~~7. The burning shall not take place on land that has been filled and covered so as to present an underground fire hazard due to the presence of methane gas. The exact site of the burning shall be established in coordination with the regional consultant of the Bureau of Solid Waste Management, State Department of Waste Management and the local fire official; and no other site shall be used without the approval of these officials.~~

~~8. By mutual consent through a memorandum of agreement, the board and Department of Waste Management may provide that permits issued by the respective agencies be administered by a single procedure addressing the needs of both agencies or that the department may incorporate the board's provisions into its permits and be the sole grantor of permits for waste disposal in landfills.~~

~~§ 120-04-4005. Special incineration devices.~~

~~Use of special incineration devices is permitted as specified below provided the provisions of subsections B through G of § 120-04-4003 are met:~~

~~A. The provisions of this section shall apply to open-pit incinerators, conical burners (teepee burners) and other devices or methods which the board determines are specifically designed to provide good combustion performance.~~

~~B. Prior to the initial installation (or reinstatement, in cases of relocation) and operation of devices or methods subject to the provisions of this section, persons responsible for the burning shall obtain a permit from the regional director. Such permits may be granted only after confirmation by the regional director that the burning can and will comply with the emission standards in Rule 4-1 and any conditions which are deemed necessary by the regional director to ensure that the operation of the devices will not endanger the public health and welfare or to ensure compliance with any applicable provisions of these regulations.~~

~~C. Permits granted under this section in AQCR 7 shall at a minimum contain the following conditions:~~

~~1. All reasonable effort shall be made to minimize the amount of material that is burned. Such efforts shall include, but are not limited to, the removal of pulpwood, sawlogs and firewood.~~

~~2. The material to be burned shall consist of brush, stumps and similar land clearing refuse generated at the site and shall not include demolition material or any refuse brought in from other sites.~~

~~3. The burning shall be at least 500 feet from any occupied building unless the occupants have given prior permission, other than a building located on the property on which the burning is conducted; burning shall be conducted at the greatest distance practicable from highways and air fields. If the regional director determines that it is necessary to protect public health and welfare, he may direct that any of the above cited distances be increased.~~

~~4. The burning shall be attended at all times and conducted to ensure the best possible combustion with a~~

~~minimum of smoke being produced. Under no circumstances should the burning be allowed to smolder beyond the minimum period of time necessary for the destruction of the materials.~~

~~5. The burning shall be conducted only when the prevailing winds are away from any city, town or built-up area.~~

~~D. Use of open-pit incinerators shall only be allowed for the disposal of debris waste and clean burning construction waste and demolition waste.~~

~~E. Permits issued under this section shall be limited in duration to one year.~~

~~F. Permits issued under this section prior to (effective date of revision) may at the executive director's discretion remain in effect until (two years after effective date of revisions).~~

~~§ 120-04-4005. Waivers.~~

~~A. A waiver from any provision of this rule may be granted by the board for any person or geographic area provided that satisfactory demonstration is made that another state or local government entity has in effect statutory provisions or other enforceable mechanisms that will achieve the objective of the provision from which the waiver is granted.~~

~~B. Demonstrations made pursuant to subsection A of this section should, at a minimum, meet the following criteria:~~

~~1. The demonstration should show that the statutory provisions or other enforceable mechanisms essentially provide the same effect as the provision from which the waiver is granted.~~

~~2. The demonstration should show that the governmental entity has the legal authority to enforce the statutory provisions or enforceable mechanisms.~~

~~C. Waivers under subsection A of this section shall be executed through a memorandum of understanding between the board and affected governmental entity and may include such terms and conditions as may be necessary to ensure that the objectives of this rule are met by the waiver.~~

~~D. A waiver from any applicable provision of this rule may be granted by the board for any locality which has lawfully adopted an ordinance in the language of the model ordinance in Appendix I or in other language that will achieve the objective of the provision from which the waiver is granted.~~

APPENDIX D.

FOREST MANAGEMENT AND AGRICULTURE PRACTICES.

I. Open burning is permitted in accordance with Sections II and III of this appendix provided the provisions of subsections B through G of § 120-04-4003 are met.

II. Open burning may be used for the following forest management practices provided the burning is conducted in accordance with the Department of Forestry's smoke management plan:

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- A. To reduce forest fuels and minimize the effect of wild fires.
 - B. To control undesirable growth of hardwoods.
 - C. To control disease in pine seedlings.
 - D. To prepare forest land for planting or seeding.
 - E. To create a favorable habitat for certain species of wildlife.
 - F. To remove dead vegetation for the maintenance of railroad, highway and public utility right-of-way.
- III. In the absence of other means of disposal, open burning may be used for the following agricultural practices:
- A. To destroy undesirable vegetation.
 - B. To clear orchards and orchard prunings.
 - C. To destroy fertilizer and chemical containers.
 - D. To denature seed and grain which may no longer be suitable for agricultural purposes.
 - E. To prevent loss from frost or freeze damage.
 - F. To create a favorable habitat for certain species of wildlife.
 - G. To destroy strings and plastic ground cover remaining in the field after being used in growing staked tomatoes.

APPENDIX I.

MODEL LOCAL ORDINANCE ON OPEN BURNING.

I. General.

A. If the governing body of any locality wishes to adopt an ordinance governing open burning within its jurisdiction, the ordinance must first be approved by the board (see § 10.1-1321 B of the Code of Virginia).

B. In order to assist local governments in the development of ordinances acceptable to the board, the following ordinance is offered as a model. The language of the model ordinance generally reflects the language of Rule 4-40 of the board's Regulations for the Control and Abatement of Air Pollution.

C. If a local government wishes to adopt the language of the model ordinance without changing any wording except that enclosed by parentheses, that government's ordinance shall be deemed to be approved by the board on the date of local adoption provided that a copy of the ordinance is filed with the department upon its adoption by the local government.

D. If a local government wishes to change any wording of the model ordinance aside from that enclosed by parentheses in order to construct a local ordinance, that government shall request the approval of the board prior to adoption of the ordinance by the local jurisdiction. A copy of the ordinance shall be filed with the department upon its adoption by the local government.

II. Model Ordinance.

ORDINANCE NO. (000)

Section (000-1). Title. This article shall be known as the (local jurisdiction) Ordinance for the Regulation of Open Burning.

Section (000-2). Purpose. The purpose of this article is to protect public health, safety, and welfare by regulating open burning within (local jurisdiction) to achieve and maintain, to the greatest extent practicable, a level of air quality that will provide comfort and convenience while promoting economic and social development. This article is intended to supplement the applicable regulations promulgated by the State Air Pollution Control Board and other applicable regulations and laws.

Section (000-3). Definitions. For the purpose of this article and subsequent amendments or any orders issued by (local jurisdiction), the words or phrases shall have the meaning given them in this section.

A. "Automobile graveyard" means any lot or place which is exposed to the weather and upon which more than five motor vehicles of any kind, incapable of being operated, and which it would not be economically practical to make operative, are placed, located or found.

B. "Clean burning waste" means waste which does not produce dense smoke when burned and is not prohibited to be burned under this ordinance.

C. "Construction waste" means solid waste which is produced or generated during construction of structures. Construction waste consists of lumber, wire, sheetrock, broken brick, shingles, glass, pipes, concrete, and metal and plastics if the metal or plastics are a part of the materials of construction or empty containers for such materials. Paints, coatings, solvents, asbestos, any liquid, compressed gases or semi-liquids, and garbage are not construction wastes and the disposal of such materials must be in accordance with the regulations of the Virginia Waste Management Board.

D. "Debris waste" means stumps, wood, brush, and leaves from land clearing operations.

E. "Demolition waste" means that solid waste which is produced by the destruction of structures and their foundations and includes the same materials as construction waste.

F. "Garbage" means rotting animal and vegetable matter accumulated by a household in the course of ordinary day to day living.

G. "Hazardous waste" means refuse or combination of refuse which, because of its quantity, concentration or physical, chemical or infectious characteristics may:

1. Cause or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating illness; or
2. Pose a substantial present or potential hazard to human health or the environment when improperly

treated, stored, transported, disposed, or otherwise managed.

H. "Household refuse" means waste material and trash normally accumulated by a household in the course of ordinary day to day living.

I. "Industrial waste" means all waste generated on the premises of manufacturing and industrial operations such as, but not limited to, those carried on in factories, processing plants, refineries, slaughter houses, and steel mills.

J. "Junkyard" means an establishment or place of business which is maintained, operated, or used for storing, keeping, buying, or selling junk, or for the maintenance or operation of an automobile graveyard, and the term shall include garbage dumps and sanitary fills.

K. "Open burning" means the burning of any matter in such a manner that the products resulting from combustion are emitted directly into the atmosphere without passing through a stack, duct or chimney.

L. "Open pit incinerator" means a device used to burn waste for the primary purpose of reducing the volume by removing combustible matter. Such devices function by directing a curtain of air at an angle across the top of a trench or similarly enclosed space, thus reducing the amount of combustion by-products emitted into the atmosphere. The term also includes trench burners, air curtain destructors and over draft incinerators.

M. "Refuse" means trash, rubbish, garbage and other forms of solid or liquid waste, including, but not limited to, wastes resulting from residential, agricultural, commercial, industrial, institutional, trade, construction, land clearing, forest management and emergency operations.

N. "Salvage operation" means any operation consisting of a business, trade or industry participating in salvaging or reclaiming any product or material, such as, but not limited to, reprocessing of used motor oils, metals, chemicals, shipping containers or drums, and specifically including automobile graveyards and junkyards.

O. "Smoke" means small gas-borne particulate matter consisting mostly, but not exclusively, of carbon, ash and other material in concentrations sufficient to form a visible plume.

P. "Special incineration device" means a pit incinerator, conical or teepee burner, or any other device specifically designed to provide good combustion performance.

Section (000-4). Prohibitions on open burning.

A. No owner or other person shall cause or permit open burning or the use of a special incineration device for disposal of refuse except as provided in this ordinance.

B. No owner or other person shall cause or permit open burning or the use of a special incineration device for disposal of rubber tires, asphaltic materials, crankcase oil, impregnated wood or other rubber or petroleum based materials except when conducting bona fide fire fighting instruction at fire fighting training schools having permanent facilities.

C. No owner or other person shall cause or permit open burning or the use of a special incineration device for disposal of hazardous waste or containers for such materials.

D. No owner or other person shall cause or permit open burning or the use of a special incineration device for the purpose of a salvage operation or for the disposal of commercial/industrial waste.

E. Open burning or the use of special incineration devices permitted under the provisions of this ordinance does not exempt or excuse any owner or other person from the consequences, liability, damages or injuries which may result from such conduct; nor does it excuse or exempt any owner or other person from complying with other applicable laws, ordinances, regulations and orders of the governmental entities having jurisdiction, even though the open burning is conducted in compliance with this ordinance. In this regard special attention should be directed to § 10.1-1142 of the Forest Fire Law of Virginia, the regulations of the Virginia Waste Management Board, and the State Air Pollution Control Board's Regulations for the Control and Abatement of Air Pollution.

F. Upon declaration of an alert, warning or emergency stage of an air pollution episode as described in Part VII of the Regulations for the Control and Abatement of Air Pollution or when deemed advisable by the State Air Pollution Control Board to prevent a hazard to, or an unreasonable burden upon, public health or welfare, no owner or other person shall cause or permit open burning or use of a special incineration device; and any in process burning or use of special incineration devices shall be immediately terminated in the designated air quality control region.

Section (000-5). Exemptions. The following activities are exempted to the extent covered by the State Air Pollution Control Board's Regulations for the Control and Abatement of Air Pollution:

A. Open burning for training and instruction of government and public fire fighters under the supervision of the designated official and industrial in-house fire fighting personnel;

B. Open burning for camp fires or other fires that are used solely for recreational purposes, for ceremonial occasions, for outdoor noncommercial preparation of food, and for warming of outdoor workers;

C. Open burning for the destruction of any combustible liquid or gaseous material by burning in a flare or flare stack;

D. Open burning for forest management and agriculture practices approved by the State Air Pollution Control Board; and

E. Open burning for the destruction of classified military documents.

Section (000-6). Permissible open burning.

A. Open burning is permitted for the disposal of leaves and tree, yard and garden trimmings located on the premises of private property, provided that the conditions are met:

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1. The burning takes place on the premises of the private property; (and)

2. The location of the burning is not less than 300 feet from any occupied building unless the occupants have given prior permission, other than a building located on the property on which the burning is conducted; (and

3. No regularly scheduled public or private collection service for such trimmings is available at the adjacent street or public road¹).

B. Open burning is permitted for the disposal of household refuse by homeowners or tenants, provided that the following conditions are met:

1. The burning takes place on the premises of the dwelling;

2. Animal carcasses or animal wastes are not burned;

3. Garbage is not burned; (and)

4. The location of the burning is not less than 300 feet from any occupied building unless the occupants have given prior permission, other than a building located on the property on which the burning is conducted; (and

5. No regularly scheduled public or private collection service for such refuse is available at the adjacent street or public road²).

C. Open burning is permitted for disposal of land clearing debris resulting from property maintenance, from the development or modification of roads and highways, parking areas, railroad tracks, pipelines, power and communication lines, buildings or building areas, sanitary landfills, or from any other clearing operations which may be approved by (local fire official), provided the following conditions are met:

1. All reasonable effort shall be made to minimize the amount of material burned, with the number and size of the debris piles approved by (local fire official);

2. The material to be burned shall consist of brush, stumps and similar land clearing debris and shall not include demolition material;

3. The burning shall be at least 500 feet from any occupied building unless the occupants have given prior permission, other than a building located on the property on which the burning is conducted;

4. The burning shall be conducted at the greatest distance practicable from highways and air fields,

5. The burning shall be attended at all times and conducted to ensure the best possible combustion with a minimum of smoke being produced;

6. The burning shall not be allowed to smolder beyond the minimum period of time necessary for the destruction of the materials; and

7. The burning shall be conducted only when the prevailing winds are away from any city, town or built-up area.

D. Open burning is permitted for disposal of debris on the site of local landfills provided that the burning does not take place on land that has been filled and covered so as to present an underground fire hazard due to the presence of methane gas provided that the following conditions are met:

1. The burning shall take place on the premises of a local sanitary landfill which meets the provisions of the regulations of the Virginia Waste Management Board,

2. The burning shall be attended at all times;

3. The material to be burned shall consist only of brush, tree trimmings, yard and garden trimmings, clean burning construction waste, clean burning debris waste, or clean burning demolition waste;

4. All reasonable effort shall be made to minimize the amount of material that is burned;

5. No materials may be burned in violation of the regulations of the Virginia Waste Management Board or the State Air Pollution Control Board.

The exact site of the burning on a local landfill shall be established in coordination with the regional director and (local fire official); no other site shall be used without the approval of these officials. (Local fire official) shall be notified of the days during which the burning will occur.

E. Sections 000-6 A through D notwithstanding, no owner or other person shall cause or permit open burning or the use of a special incineration device during June, July, or August.³)

Section (000-7). Permits.

A. When open burning of land clearing debris (Section 000-6 C) or open burning of debris on the site of a local landfill (Section 000-6 D) is to occur within (local jurisdiction), the person responsible for the burning shall obtain a permit from (local fire official) prior to the burning. Such a permit may be granted only after confirmation by (local fire official) that the burning can and will comply with the provisions of this ordinance and any other conditions which are deemed necessary to ensure that the burning will not endanger the public health and welfare or to ensure compliance with any applicable provisions of the State Air Pollution Control Board's Regulations for the Control and Abatement of Air Pollution. The permit may be issued for each occasion of burning or for a specific period of time deemed appropriate by (local fire official).

¹This provision shall be included in ordinances for urban areas. It may be included in ordinances for nonurban areas.

²This provision shall be included in ordinances for urban areas. It may be included in ordinances for nonurban areas.

³This provision shall be included in ordinances for jurisdictions within volatile organic compound emissions control areas. It may be included in ordinances for jurisdictions outside these areas.

B. Prior to the initial installation (or reinstatement, in cases of relocation) and operation of special incineration devices, the person responsible for the burning shall obtain a permit from (local fire official), such permits to be granted only after confirmation by (local fire official) that the burning can and will comply with the applicable provisions in Regulations for the Control and Abatement of Air Pollution and that any conditions are met which are deemed necessary by (local fire official) to ensure that the operation of the devices will not endanger the public health and welfare. Permits granted for the use of special incineration devices shall at a minimum contain the following conditions:

1. All reasonable effort shall be made to minimize the amount of material that is burned. Such efforts shall include, but are not limited to, the removal of pulpwood, sawlogs and firewood.
2. The material to be burned shall consist of brush, stumps and similar land clearing debris and shall not include demolition material.
3. The burning shall be at least 300 feet from any occupied building unless the occupants have given prior permission, other than a building located on the property on which the burning is conducted; burning shall be conducted at the greatest distance practicable from highways and air fields. If (local fire official) determines that it is necessary to protect public health and welfare, he may direct that any of the above cited distances be increased.
4. The burning shall be attended at all times and conducted to ensure the best possible combustion with a minimum of smoke being produced. Under no circumstances should the burning be allowed to smolder beyond the minimum period of time necessary for the destruction of the materials.
5. The burning shall be conducted only when the prevailing winds are away from any city, town or built-up area.
6. The use of special incineration devices shall be allowed only for the disposal of debris waste, clean burning construction waste, and clean burning demolition waste.
7. Permits issued under this subsection shall be limited to a specific period of time deemed appropriate by (local fire official).

(C. An application for a permit under Section 000-7 A or 000-7 B shall be accompanied by a processing fee of \$----.⁴)

Section (000-8). Penalties for violation.

A. Any violation of this ordinance is punishable as a Class I misdemeanor. (See § 15.1-901 of the Code of Virginia.)

B. Each separate incident may be considered a new violation.

⁴The fee stipulation in this section is optional at the discretion of the jurisdiction.

APPENDIX O.

FOREST FIRE LAW OF VIRGINIA.

~~§ 10-62. Regulating the burning of woods, brush, etc.; penalties.~~

~~(a) It shall be unlawful for any owner or lessee of land to set fire to, or to procure another to set fire to, any woods, brush, logs, leaves, grass, debris, or other inflammable material upon such land unless he previously has taken all reasonable care and precaution, by having cut and piled the same or carefully cleared around the same, to prevent the spread of such fire to lands other than those owned or leased by him. It shall also be unlawful for any employee of any such owner or lessee of land to set fire to or to procure another to set fire to any woods, brush, logs, leaves, grass, debris, or other inflammable material, upon such land unless he has taken similar precautions to prevent the spread of such fire to any other land.~~

~~(b) During the period beginning March 1 and ending May 15 of each year, even though the precautions required by the foregoing paragraph have been taken, it shall be unlawful, in any county or city or portion thereof organized for forest fire control under the direction of the State Forester, for any person to set fire to, or to procure another to set fire to, any brush, leaves, grass, debris or field containing dry grass or other inflammable material capable of spreading fire, located in or within 300 feet of any woodland, brushland, except between the hours of 4:00 p.m. and 12:00 midnight.~~

~~(c) The provisions of subsection (b) of this section shall not apply to any fires which may be set on rights-of-way of railroad companies by their duly authorized employees.~~

~~(d) Any person violating any provisions of this section shall, upon conviction, be fined not less than 10 or more than \$100, for each separate offense. If any forest fire originates as a result of the violation by any person of any provision of this section, such person shall, in addition to the above penalty, be liable to the Commonwealth and to each county or city which enters into a contract as provided in § 10-46.1 for the full amount of all expenses incurred by the Commonwealth and the county or city respectively in suppressing such fire, such amounts to be recoverable by action brought by the State Forester in the name of the Commonwealth on behalf of the Commonwealth and by the board of supervisors on behalf of the county or by the council on behalf of the city.~~

~~Subsection (b) of this section shall not become effective in any county or city of the Commonwealth until it has been approved by a majority vote of the governing body of such county or city.~~

~~§ 10-63. Failure to extinguish fires built in open.~~

~~Whoever builds a fire in the open air, or uses a fire built by another in the open air within 150 feet of any woodland, brushland or field containing dry grass or other inflammable material, shall, before leaving such fire untended, totally extinguish it. Any person failing to do so shall be guilty of a misdemeanor and shall, upon conviction, be fined not more than \$100. Whenever it shall be established that a forest fire originated from such fire, the person building or using such~~

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fire shall, in addition to the above penalty, be liable for the full amount of all costs incurred in suppressing the fire.

VA.R. Doc. No. R95-548; Filed June 7, 1995, 11:30 a.m.

Title of Regulations: VR 120-01. Regulations for the Control and Abatement of Air Pollution (Revision RR).

VR 120-01-01 and VR 120-01-02, Part I, General Definitions.

VR 120-04-0401 through VR 120-04-0419, Part IV, Rule 4-4, Emissions Standards for General Process Operations.

VR 120-04-2401 through VR 120-04-2415, Part IV, Rule 4-24, Emission Standards for Solvent Metal Cleaning Operations Using Nonhalogenated Solvents.

VR 120-04-3601 through VR 120-04-3615, Part IV, Rule 4-36, Emission Standards for Flexographic, Packaging Rotogravure, and Publication Rotogravure Printing Lines.

VR 120-04-4301 through VR 120-04-4313, Part IV, Rule 43, Emission Standards for Sanitary Landfills.

VR 120-04-4501 through VR 120-04-4514, Part IV, Rule 45, Emission Standards for Lithographic Printing Processes.

Appendix S, Air Quality Program Policies and Procedures.

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

Public Hearing Dates:

July 26, 1995 -- 11 a.m. (Glen Allen)

July 27, 1995 -- 11 a.m. (Prince William)

Public comments may be submitted until August 28, 1995.

(See Calendar of Events section for additional information)

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

Purpose: The purpose of the standards is (i) to require owners to reduce emissions of VOCs from specific sources, and (ii) to limit those emissions to a level resulting from the use of reasonably available control technology necessary for the protection of public health and welfare. The regulation amendments are being adopted in response to the federal Clean Air Act, which requires Virginia to reduce these emissions in moderate and serious ozone nonattainment areas by 15% by the end of 1996.

Substance: The major provisions of the proposal are summarized below:

Rule 4-4 (otherwise unregulated sources):

1. The standard for VOCs (§ 120-04-0407) now applies to all facilities that are within a stationary source that has a theoretical potential to emit 25 tons per year or greater

in the Northern Virginia Emissions Control Area; formerly, the theoretical potential to emit was 50 tons per year.

2. The standard for NO_x (§ 120-04-0408) now applies to facilities that are within a stationary source that has a theoretical potential to emit (i) 50 tons per year or greater in the Northern Virginia Emissions Control Area, or (ii) 100 tons per year or greater in the Richmond Emissions Control Area. Previously, these provisions applied only to the Northern Virginia Emissions Control Area.

Rule 4-24 (surface cleaning and degreasing operations using nonhalogenated solvents):

1. The rule formerly applied to all solvent metal cleaning operations. It has been revised slightly to apply only to the nonhalogenated solvents.

2. The applicability section has been revised to specify that solvent metal cleaning operations may include cold or vapor degreasing at service stations; motor vehicle repair shops; automobile dealerships; machine shops; and any other metal refinishing, cleaning, repair, or fabrication facility.

3. A definition of nonhalogenated solvent has been added, reflecting the rule's new emphasis.

4. Various minor revisions to improve clarity have been made.

Rule 4-36 (rotogravure/flexographic printing facilities emitting 10-100 tons per year):

1. The emissions exemption threshold has been lowered from 100 tons per year to 25 tons per year in the Northern Virginia Volatile Organic Compound Emissions Control Area in accordance with the 15% plan for that area.

2. Surface coatings other than printing inks (e.g., varnishes) have been rendered subject to the standards for VOCs.

3. Alternative procedures for determining compliance have been added; existing procedures for determining compliance have been clarified.

Rule 4-43 (sanitary landfill operations):

1. The affected facility to which the provisions of this rule apply is each sanitary landfill which has accepted waste at any time since November 8, 1987, or which has additional capacity for future waste deposition. The provisions of this rule apply only to sources of VOCs in the Northern Virginia and Richmond Volatile Organic Compound Emissions Control Areas designated in Appendix P of the Regulations for the Control and Abatement of Air Pollution.

2. The standard for VOCs shall apply to affected facilities with a design capacity of at least 1.1 million tons of waste and with an emission rate for nonmethane organic compounds of at least 25 tons per year.

3. Facilities subject to the standard for VOCs shall install and operate a well-designed gas management system

that employs an open flare, an enclosed combustor, or an equivalent control device or system.

4. Each owner required to install a gas collection system shall use any of a variety of specified methods to determine the compliance of that system with the regulatory requirements.

5. Each owner shall submit an initial design capacity report to the board within 90 days of the effective date of the rule. An amended design capacity report must be submitted to the board providing notification of any increase in the size of the landfill, whether the increase results from an increase in the permitted area or depth of the landfill, a change in the operating procedures, or any other means which results in an increase in the maximum design capacity of the landfill. Each owner shall also submit an annual nonmethane organic compound emission rate report and a semiannual report containing specified operating information. As appropriate, each owner shall also submit a landfill closure report and an equipment removal report.

6. Each owner shall keep up-to-date, readily accessible records of the maximum design capacity, the current amount of refuse in place, the year-by-year waste acceptance rate, and specified data for control equipment performance and operating parameters.

Rule 4-45 (lithographic printing operations):

1. The provisions of this rule apply only to sources of VOCs in the Northern Virginia Volatile Organic Compound Emissions Control Area. Exempted from the provisions of this rule are facilities whose potential to emit is less than 10 tons per year of VOCs.

2. The weight of the alcohol or alcohol substitute in the lithographic fountain solution is limited to 1.6% alcohol for lithographic web printing; 5.0% alcohol for lithographic sheet-fed printing; and 5.0% alcohol substitute for any lithographic printing process. Alternatively, the owner may install a refrigeration system which maintains the fountain solution at a temperature of less than 60° or a system which achieves a reduction of VOC emissions from the fountain solution of at least 70% for lithographic heatset web printing; 90% for lithographic non-heatset web printing; 50% for lithographic non-heatset sheet-fed printing; and 10% for lithographic non-heatset news printing.

3. For each heatset web offset lithographic printing process, the owner shall either (i) install a system which achieves an emission reduction from the press dryer exhaust vent of 90% by weight of VOCs minus methane and ethane; (ii) maintain the maximum dryer exhaust outlet concentration at 50 ppmv as carbon minus methane and ethane; or (iii) use inks with an average hourly VOC content of 2.5 pounds per gallon or less.

4. For any lithographic printing process, the owner shall either (i) calculate the monthly average of the cleaning solution at no more than 30% VOCs by weight; (ii) calculate the monthly average of the VOC portion of the cleaning solution as applied as having a composite partial vapor pressure of 10 millimeters of mercury or

less at 68°F (20°C); or (iii) store cleaning solution and applicators in covered containers or machines with remote reservoirs when not in use.

5. For the purpose of demonstrating compliance with the VOC emission standards, the source shall reduce its emissions of VOCs at least 15% from its permitted limit by the end of the first year following the effective date of this rule. By the end of the second year following the effective date of this rule, the source shall reduce its emissions of VOCs at least 30% from its permitted limit. By the end of the third year following the effective date of this rule, the source shall be in full compliance with the standards.

6. Emissions tests shall include an initial test within 90 days of start-up when the control device is installed and operating that demonstrates compliance with the emission standards. EPA test methods cited in 40 CFR part 60, Appendix A, shall be used to demonstrate compliance with the emission limit or percent reduction efficiency requirement. Alternate methods may be used with the approval of the board.

7. Monitoring shall be performed as specified in EPA's model rule for lithographic printing.

8. The owner of any lithographic printing press shall record and report specified key parameters on a monthly basis.

Issues: The primary advantages and disadvantages of implementation and compliance with the regulation by the public and the department are discussed below.

1. **Public:** The regulations will be an advantage to the public because they will reduce air pollution, a source of significant damage to property and health. The regulations will also ensure that the state meets the requirements of federal law, thereby preventing monetary expense and the loss of state control over its own programs. On the other hand, depending on the source type and pollution control scenarios selected by the source, sources may need to invest additional time, labor, and money in order to meet additional emission limitations.

2. **Department:** Advantages to the department stemming from the regulations include better determination of compliance and monitoring, as well as a better knowledge of emissions in an affected area. In terms of cost, the regulation may be a disadvantage; additional emission limitations require additional time and staff to ensure that permits meet the applicable guidelines and that the sources follow them.

Localities Affected: The localities affected by the proposed regulation are as follows:

1. The Northern Virginia Area: Arlington County, Fairfax County, Loudoun County, Prince William County, Stafford County, the City of Alexandria, the City of Fairfax, the City of Falls Church, the City of Manassas, and the City of Manassas Park.

2. The Richmond Area: Charles City County, Chesterfield County, Hanover County, Henrico County,

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the City of Colonial Heights, the City of Hopewell, and the City of Richmond.

Impact:

1. Entities Affected

Rule number	Subject	Northern Virginia	Richmond	Total
4-4	other unregulated sources	10	20	30
4-24	degreasing	—	—	4200
4-36	rotogravure/ flexographic printing	1	6	7
4-43	landfills	3	0	3
4-45	lithographic printing	2	1	3

2. Fiscal Impact

a. Costs to Affected Entities. In defining levels of control, pollution cannot totally be eliminated in most situations. Therefore, the issue becomes defining the appropriate level of control. With this in mind, a two-tier approach for defining the appropriate level of control has been developed. For new facilities, the emissions must be controlled using best available control technology (BACT). For existing facilities, where retrofit is a problem, only reasonably available control technology (RACT) is required, usually less restrictive than BACT. To select RACT, cost effectiveness is one tool. It is useful for economic comparisons of the various control systems. The cost effectiveness of a pollution control system is a simple ratio of the projected cost of the control system to the amount of emissions that would be controlled. The resulting cost effectiveness can then be compared to that of other related controls to provide a measure of how "reasonable" the system is relative to the others. Thus, the cost effectiveness value for a particular control system is usually expressed in terms of dollars per ton of pollutant removed by the control system. The cost effectiveness value is obtained by adding the capital costs for the control equipment to the operating and maintenance costs and amortizing that sum over an appropriate period of time. The result is called the annualized cost. Dividing this value by the tons of pollutant removed gives the cost effectiveness value.

The costs to the affected entities will vary widely according to source size and type and the particular options chosen by each source in order to comply with the regulations.

The emission standards for VOCs in Rule 4-4 (otherwise unregulated facilities) do not contain set emission limits or other specific requirements. For this reason, the available cost impact data for Rule 4-4 is not definitive. The standards are structured to provide for the establishment of the specific emission limits achievable by the use of reasonably available control technology (RACT) and other necessary requirements

on a case-by-case basis. This approach was taken because most of the sources subject to Rule 4-4 are unique as to source type and size. The specific requirements, once determined, will be enforced through an operating permit issued by the board.

Furthermore, the emission standards for nitrogen oxides in Rule 4-4 also do not contain set emission limits or other specific requirements. For this reason, the available cost impact data for Rule 4-4 is not definitive. The standards are structured to provide for the establishment of the specific emission limits achievable by the use of reasonably available control technology (RACT) and other necessary requirements on a case-by-case basis. This approach was taken because most of the sources subject to Rule 4-4 are unique as to source type and size. Included in the proposed standards, however, are exceptions to this approach. Because of the substantial number of fuel burning equipment units that will be subject to the RACT limits, the proposed standard includes specific RACT limits for this source type; however, the standard contains administrative mechanisms to allow the owner to demonstrate to the board that the presumptive RACT limits are not appropriate to the facility and recommend other limits. The specific requirements, once determined, will be enforced through an operating permit issued by the board for all source types including fuel-burning equipment units.

On the other hand, the VOC emission standards for rules other than Rule 4-4 do contain set emission limits and other specific requirements relating to compliance, testing, monitoring, recordkeeping, and reporting. For this reason, the available cost impact data for these other rules is more definitive than it is for Rule 4-4. General cost effectiveness information for these other rules is as follows:

Rule 4-24 (surface cleaning and degreasing operations): Selection of an alternative technique is usually case-specific because of the many variables that must be considered. The selection of alternative solvents, alternative cleaning processes, or no-clean technologies can have disadvantages including increased space requirements, higher energy use (especially with aqueous systems), longer drying times or the need for a separate dryer, and increased waste after discharge. The South Coast Air Quality Management District reported that the cost effectiveness of its amendments for VOC emission reductions ranges from \$92 to \$349 per ton.

EPA performed a detailed economic impact analysis of the proposed standards which shows that the economic impacts from the proposal will be beneficial. Implementation of the regulation is expected to result in an overall annual national net savings. These savings will come from the significant decrease in solvent emissions and, therefore, solvent consumption, which outweigh the overall cost of air pollution monitoring equipment and monitoring and recordkeeping costs.

Since a majority of solvent cleaning facilities that will be affected by the standard will actually experience negative costs, EPA's analysis calculated impacts only for those facilities that did not experience negative costs. With the chosen alternatives, and under the assumption that facilities experiencing positive costs cannot pass on any increase in costs from the standard to consumers, the increase in total cost of production ranges from 0.02 to 0.61%. The major reason for such small increases in production cost is the small cost share that is attributable to solvent cleaning machine uses. Due to this small increase in production cost, the impetus for facilities with positive costs to switch to substitutes for solvent cleaning operations is minor as a result of the proposed standard alone. There will also be minimal effects on the markets for the solvents themselves.

Rule 4-36 (rotogravure/flexographic printing facilities emitting 10-100 tons per year): The cost effectiveness range for add-on control devices is summarized in the following table. These values do not include the cost of installing a total enclosure.

While converting to waterborne inks can reduce VOC emissions up to 80%, the cost of converting to waterborne inks is site-specific. Accordingly, generalized cost estimates are of little value.

COST EFFECTIVENESS OF CONTROL TECHNOLOGIES FOR SMALL ROTOGRAVURE AND FLEXOGRAPHY FACILITIES PER TON OF VOC REDUCED

plant size (tons of VOC/yr)	thermal incineration	catalytic incineration	carbon adsorption
10	\$3500-4800	\$3900	\$3500
25	\$2000-3000	\$2500-2800	\$1400
50	\$1200-2400	\$960-2000	\$760-780
100	\$850-2000	\$1200-1600	\$450-460
1000	\$170-480	\$170-350	\$120

Rule 4-43 (sanitary landfill operations): EPA has conducted a cost-effectiveness analysis of a flare and extraction system at new and existing facilities. EPA's analysis indicated that the cost of reducing VOCs would be \$1,020/Mg (\$930/ton) for new facilities and \$555/Mg (\$500/ton) for existing facilities. Energy recovery systems have the potential to offset the cost of control. However, the capital costs for these systems is higher than for flares, and a site-specific study would be needed to determine the technical and economical feasibility of installing an energy recovery system for a give landfill.

The nationwide annualized cost for collecting and controlling air emissions from new municipal solid waste landfills is estimated at \$26 million. The nationwide cost of the proposed guidelines for existing facilities would be approximately \$240 million. The economic analysis indicates that the annual cost of waste disposal may increase by an average of less

than \$1 per ton. Costs per household would increase by less than \$3 per year for a household served by a new landfill and by \$5 per year for a household served by an existing landfill.

Rule 4-45 (lithographic printing operations): The results of EPA's cost analysis for add-on controls are shown in the following table. The analysis assumed that 60% of the heatset dryers were already controlled.

COST EFFECTIVENESS OF ADD-ON CONTROLS FOR LITHOGRAPHIC FACILITIES PER TON OF VOC REDUCED

control device	annual cost (\$/yr)	VOC emission reduction (tpy)	cost effectiveness (\$/ton of VOC removed)
incinerator	\$76,000-351,000	24-194	\$1,700-3,100
condenser filter (without carbon)	\$50,000-230,000	22-178	\$1,300-2,300
condenser filter (with carbon)	\$69,000-290,000	23-188	\$1,500-3,000

Decreasing alcohol consumption by employing process modifications, such as cooling the fountain solution, can provide a net savings for many facilities, depending on the reduction of alcohol used.

Using nonalcohol additives (alcohol substitutes) to reduce VOC emissions from the fountain solution can result in a savings of \$920 per ton of alcohol not used. Although the additives or substitutes are more expensive than alcohol, smaller quantities are needed. Despite the potential savings, industry officials are concerned that switching to alcohol substitutes may at first decrease production due to the retraining that may be necessary. Switching to low-VOC cleaning solutions (30% VOC content) incurs an incremental annual cost ranging from \$1,100 to \$24,000 with an emissions reduction of 1.8 and 38.4 tons per year, respectively. The resulting cost effectiveness ranges from \$606 to \$628 per ton of VOC removed.

b. Costs to Agency. It is not expected that the regulation amendments will result in any cost to the Department of Environmental Quality other than what is currently in the budget.

c. Source of Agency Funds. The sources of department funds to carry out this regulation are the general fund and the grant money provided by the U.S. Environmental Protection Agency under Section 105 of the federal Clean Air Act.

Summary:

The regulation amendments concern provisions covering volatile organic compounds. The standards require owners to reduce emissions of volatile organic compounds from specific sources, and to limit those emissions to a level resulting from the use of reasonably

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available control technology. Certain exemption threshold levels are changed and coverage is extended to additional emission control areas. Some definitions are added while some others are changed. The following types of sources are affected: otherwise unregulated facilities, surface cleaning and degreasing operations using nonhalogenated solvents, rotogravure/flexographic printing facilities emitting 25-100 tons per year, sanitary landfill operations, and lithographic printing operations.

VR 120-01. Regulations for the Control and Abatement of Air Pollution.

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

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

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

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

"Air pollution" means the presence in the outdoor atmosphere of one or more substances which are or may be harmful or injurious to human health, welfare or safety; to 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 criteria: (i) information for which the owner has been taking and will continue to take measures to protect confidentiality; (ii) information that has not been and is not presently reasonably obtainable without the owner's consent by private citizens or other firms through legitimate means other than discovery based on a showing of special need in a judicial or quasi-judicial proceeding; (iii) information which is not publicly available from sources other than the owner; and (iv) information the disclosure of which would cause substantial harm to the owner.

"Consent agreement" means an agreement that the owner or any other person will perform specific actions for the purpose of diminishing or abating the causes of air pollution or for the purpose of coming into compliance with these regulations, by mutual agreement of the owner or any other person and the board.

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

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

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

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

"Criteria pollutant" means any pollutant for which an ambient air quality standard is established under 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 Environmental Quality, as designated by the director.

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

"Dispersion technique"

1. Means any technique which attempts to affect the concentration of a pollutant in the ambient air by:
 - a. Using that portion of a stack which exceeds good engineering practice stack height;
 - b. Varying the rate of emission of a pollutant according to atmospheric conditions or ambient concentrations of that pollutant; or
 - c. Increasing final exhaust gas plume rise by manipulating source process parameters, exhaust gas parameters, stack parameters, or combining exhaust gases from several existing stacks into one stack; or other selective handling of exhaust gas streams so as to increase the exhaust gas plume rise.

2. The preceding sentence does not include:

- a. The reheating of a gas stream, following use of a pollution control system, for the purpose of returning the gas to the temperature at which it was originally discharged from the facility generating the gas stream;
- b. The merging of exhaust gas streams where:
 - (1) The owner demonstrates that the facility was originally designed and constructed with such merged gas streams;
 - (2) After July 8, 1985, such merging is part of a change in operation at the facility that includes the installation of pollution controls and is accompanied by a net reduction in the allowable emissions of a pollutant. This exclusion from the definition of "dispersion techniques" shall apply only to the emission limitation for the pollutant affected by such change in operation; or
 - (3) Before July 8, 1985, such merging was part of a change in operation at the facility that included the installation of emissions control equipment or was carried out for sound economic or engineering reasons. Where there was an increase in the emission limitation or, in the event that no emission limitation was in existence prior to the merging, an increase in the quantity of pollutants actually emitted prior to the merging, the board shall presume that merging was significantly motivated by an intent to gain emissions credit for greater dispersion. Absent a demonstration by the owner that merging was not significantly motivated by such intent, the board shall deny credit for the effects of such merging in calculating the allowable emissions for the source;
- c. Smoke management in agricultural or silvicultural prescribed burning programs;
- d. Episodic restrictions on residential woodburning and open burning; or
- e. Techniques under subdivision 1 c of this definition which increase final exhaust gas plume rise where the resulting allowable emissions of sulfur dioxide from the facility do not exceed 5,000 tons per year.

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

"Emergency special order" means any order of the board issued under the provisions of § 10.1-1309 B, 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

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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 such downwash, wakes, or eddy effects and greater than a prevention of significant deterioration increment. The allowable emission rate to be used in making demonstrations under this provision shall be prescribed by the new source performance standard that is applicable to the source category unless the owner demonstrates that this emission rate is infeasible. Where such demonstrations are approved by the board, an alternative emission rate shall be established in consultation with the owner;

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

presence of a local nuisance caused by the existing stack, as determined by the board; and

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

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

"Facility" means something that is built, installed or established to serve a particular purpose; includes, but is not limited to, buildings, installations, public works, businesses, commercial and industrial plants, shops and stores, heating and power plants, apparatus, processes, operations, structures, and equipment of all types.

"Federal Clean Air Act" means 42 USC 7401 et seq., 91 Stat 685.

"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,

$$H_g = 2.5H,$$

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

b. For all other stacks,

$$H_g = H + 1.5L,$$

where:

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

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

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

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

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

"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 (H_i) of the feature, not to exceed 2 miles if such feature achieves a height (H_i) 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.

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"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 Environmental Quality or 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 of the Code of Virginia:
 - a. To owners who are permitting or causing air pollution to cease and desist from such pollution;
 - b. To owners who have failed to construct facilities in accordance with or have failed to comply with plans for the control of air pollution submitted by them to, and approved by the board, to construct such facilities in accordance with or otherwise comply with such approved plan;
 - c. To owners who have violated or failed to comply with the terms and provisions of any order or directive issued by the board to comply with such terms and provisions;
 - d. To owners who have contravened duly adopted and promulgated air quality standards and policies to cease and desist from such contravention and to comply with such air quality standards and policies; and
 - e. To require any owner to comply with the provisions of this chapter and any decision of the board; or
2. Under the provisions of § 10.1-1309.1 of the Code of Virginia requiring that an owner file with the board a plan to abate, control, prevent, remove, or contain any substantial and imminent threat to public health or the environment that is reasonably likely to occur if such source ceases operations.

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

"Stack in existence" means that the owner had:

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

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

"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);
- u. *Parachlorobenzotrifluoride (PCBTF)*;
- v. *Cyclic, branched, or linear completely methylated siloxanes*; and
- † w. 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

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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 IV.
EMISSION STANDARDS FOR GENERAL PROCESS
OPERATIONS.
(RULE 4-4)

§ 120-04-0401. Applicability and designation of affected facility.

A. Except as provided in subsections C and D of this section, the affected facility to which the provisions of this rule apply is each process operation, each process gas stream and each combustion installation.

B. The provisions of this rule apply throughout the Commonwealth of Virginia.

C. Exempted from the provisions of this rule are the following:

1. Process operations with a process weight rate capacity less than 100 pounds per hour.
2. Any combustion unit using solid fuel with a maximum heat input of less than 350,000 Btu per hour.
3. Any combustion unit using liquid fuel with a maximum heat input of less than 1,000,000 Btu per hour.
4. Any combustion unit equipment unit using gaseous fuel with a maximum heat input of less than 10,000,000 Btu per hour.

D. The provisions of this rule do not apply to affected facilities subject to other emission standards in this part.

§ 120-04-0402. Definitions.

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

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

C. Terms defined.

"Combustion installation" means all combustion units within a stationary source in operation prior to October 5, 1979.

"Combustion unit" means any type of stationary equipment in which solid, liquid or gaseous fuels and refuse are burned, including, but not limited to, furnaces, ovens, and kilns.

"Heat input" means the total gross calorific value of all fuels burned.

"Manufacturing operation" means any process operation or combination of physically connected dissimilar process operations which is operated to effect physical or chemical changes or both in an article.

"Materials handling equipment" means any equipment used as a part of a process operation or combination of process operations which does not effect a physical or chemical change in the material or in an article, such as, but not limited to, conveyors, elevators, feeders or weighers.

"Physically connected" means any combination of process operations connected by materials handling equipment and designed for simultaneous complementary operation.

"Process operation" means any method, form, action, operation or treatment of manufacturing or processing, including any storage or handling of materials or products before, during or after manufacturing or processing.

"Process unit" means any step in a manufacturing or process operation which results in the emission of pollutants to the atmosphere.

"Process weight" means total weight of all materials introduced into any process unit which may cause any emission of pollutants. Process weight includes solid fuels charged, but does not include liquid and gaseous fuels charged or combustion air for all fuels.

"Process weight rate" means a rate established as follows:

- a. For continuous or long-run steady-state process operations, the total process weight for the entire period of continuous operation or for a typical portion thereof, divided by the number of hours of such period or portion thereof.
- b. For cyclical or batch process operations, the total weight for a period that covers a complete operation or an integral number of cycles, divided by the hours of actual process operation during such a period.

"Reasonably available control technology" means the lowest emission limit that a particular source is capable of meeting by the application of control technology that is reasonably available, considering technological and economic feasibility.

"Rated capacity" means, the capacity as stipulated in the purchase contract for the condition of 100% load, or such other capacities as mutually agreed to by the board and owner using good engineering judgment.

"Total capacity" means with reference to a combustion installation, the sum of the rated capacities (expressed as heat input) of all units of the installation which must be operated simultaneously under conditions or 100% use load.

§ 120-04-0403. Standard for particulate matter (AQCR 1-6).

A. No owner or other person shall cause or permit to be discharged into the atmosphere from any process unit any particulate emissions in excess of the limits in Table 4-4A.

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TABLE 4-4A

Process Weight Rate		Maximum Allowable Emission Rate Lb/Hr
Lb/Hr	Tons/Hr	
100	0.05	0.551
200	0.10	0.877
400	0.20	1.40
600	0.30	1.83
800	0.40	2.22
1000	0.50	2.58
1500	0.75	3.38
2000	1.00	4.10
2500	1.25	4.76
3000	1.50	5.38
3500	1.75	5.96
4000	2.00	6.52
5000	2.50	7.58
6000	3.00	8.56
7000	3.50	9.49
8000	4.00	10.4
9000	4.50	11.2
10000	5.00	12.0
12000	6.00	13.6
16000	8.00	16.5
18000	9.00	17.9
20000	10.00	19.2
30000	15.00	25.2
40000	20.00	30.5
50000	25.00	35.4
60000	30.00	40.0
70000	35.00	41.3
80000	40.00	42.5
90000	45.00	43.6
100000	50.00	44.6
120000	60.00	46.3
140000	70.00	47.8
160000	80.00	49.1
200000	100.00	51.3
1000000	500.00	69.0
2000000	1000.00	77.6
6000000	3000.00	92.7

B. Except as provided in subsections C and D of this section, interpretation of the emission standard in subsection A of this section shall be in accordance with Appendix Q.

C. Interpolation of the data in Table 4-4A for process weight rates up to 60,000 lb/hr shall be accomplished by use of the following equation:

$$E = 4.10 P^{0.67}$$

where:

E = emission rate in lb/hr.

P = process weight rate in tons/hr.

D. Interpolation and extrapolation of the data for process weight rates in excess of 60,000 lb/hr shall be accomplished by use of the following equation:

$$E = 55.0 P^{0.11} - 40$$

where:

E = emission rate in lb/hr.

P = process weight rate in tons/hr.

§ 120-04-0404. Standard for particulate matter (AQCR 7).

A. No owner or other person shall cause or permit to be discharged into the atmosphere from any process unit any particulate emissions in excess of the limits in Table 4-4B.

TABLE 4-4B

Process Weight Rate		Maximum Allowable Emission Rate Lb/Hr
Lb/Hr	Tons/Hr	
100	0.050	0.46
150	0.075	0.66
200	0.100	0.85
250	0.125	1.03
300	0.150	1.20
350	0.175	1.35
400	0.200	1.50
450	0.225	1.63
500	0.250	1.77
550	0.275	1.85
600	0.300	2.01
650	0.325	2.12
700	0.350	2.24
750	0.375	2.34
800	0.400	2.43
850	0.425	2.53
900	0.450	2.62
950	0.475	2.72
1000	0.500	2.80
1100	0.55	2.97
1200	0.60	3.12
1300	0.65	3.26
1400	0.70	3.40
1500	0.75	3.54
1600	0.80	3.66
1700	0.85	3.79
1800	0.90	3.91
1900	0.95	4.03
2000	1.00	4.14
2100	1.05	4.24
2200	1.10	4.34
2300	1.15	4.44
2400	1.20	4.55
2500	1.25	4.64
2600	1.30	4.74
2700	1.35	4.84
2800	1.40	4.92
2900	1.45	5.02
3000	1.50	5.10
3100	1.55	5.18
3200	1.60	5.27
3300	1.65	5.36
3400	1.70	5.44
3500	1.75	5.52
3600	1.80	5.61
3700	1.85	5.69
3800	1.90	5.77
3900	1.95	5.85
4000	2.00	5.93

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4100	2.05	6.01
4200	2.10	6.08
4300	2.15	6.15
4400	2.20	6.22
4500	2.25	6.30
4600	2.30	6.37
4700	2.35	6.45
4800	2.40	6.52
4900	2.45	6.60
5000	2.50	6.67
5500	2.75	7.03
6000	3.00	7.37
6500	3.25	7.71
7000	3.50	8.05
7500	3.75	8.39
8000	4.00	8.71
8500	4.25	9.03
9000	4.50	9.36
9500	4.75	9.67
10000	5.00	10.00
11000	5.50	10.63
12000	6.00	11.28
13000	6.50	11.89
14000	7.00	12.50
15000	7.50	13.13
16000	8.00	13.74
17000	8.50	14.36
18000	9.00	14.97
19000	9.50	15.58
20000	10.00	16.19
30000	15.00	22.22
40000	20.00	28.30
50000	25.00	34.30
60000 or more	30.00 or more	40.00

B. Interpretation of the emission standard in subsection A of this section shall be in accordance with Appendix Q.

§ 120-04-0405. Standard for sulfur dioxide.

A. Noncombustion process operations. No owner or other person shall cause or permit to be discharged into the atmosphere from any process operation any sulfur dioxide emissions in excess of an in-stack concentration of 2000 ppm by volume.

B. Combustion installations.

1. No owner or other person shall cause or permit to be discharged into the atmosphere from any combustion installation any sulfur dioxide emissions in excess of the following limits:

- $S = 2.64K$ (AQCR 1 through 6)
- $S = 1.06K$ (for liquid or gaseous fuels - AQCR 7)
- $S = 1.52K$ (for solid fuels - AQCR 7)

where:

S = allowable emission of sulfur dioxide expressed in lbs/hr.

K = actual heat input at total capacity expressed in Btu x 10^6 per hour.

2. Where there is more than one unit in a combustion installation and where the installation can be shown, to the satisfaction of the board, to be in compliance when the installation is operating at total capacity, the installation will be deemed to still be in compliance when the installation is operated at reduced load or one or more units are shut down for maintenance or repair, provided that the same type of fuel with the same sulfur content, or an equivalent, is continued in use.

3. For installations in AQCR 7 at which different fossil fuels are burned simultaneously, whether in the same or different units, the allowable emissions shall be determined by proration using the following formula:

$$PS = K \left[\frac{X(1.06) + Y(1.52)}{X + Y} \right]$$

where:

PS = prorated allowable emissions of sulfur dioxide expressed in lb/hr.

X = percentage of actual heat input at total capacity derived from liquid or gaseous fuel.

Y = percentage of actual heat input at total capacity derived from solid fuels.

K = actual heat input at total capacity expressed in Btu x 10^6 per hour.

§ 120-04-0406. Standard for hydrogen sulfide.

No owner or other person shall cause or permit to be discharged into the atmosphere from any process gas stream any hydrogen sulfide emissions in excess of a concentration greater than 15 grains per 100 cubic feet of gas without burning or removing H_2S in excess of this concentration, provided that SO_2 emissions in the burning operation meet the requirements of § 120-04-0405 A.

§ 120-04-0407. Standard for volatile organic compounds.

A. No owner or other person shall cause or permit to be discharged from any affected facility any volatile organic compound emissions in excess of that resultant from using reasonably available control technology.

B. The provisions of this section apply to all facilities that (i) are within a stationary source in the Northern Virginia or Richmond Emissions Control Area (see Appendix P) and (ii) are within a stationary source that has a theoretical potential to emit ~~50~~ 25 tons per year or greater in the Northern Virginia Emissions Control Area or 100 tons per year or greater in the Richmond Emissions Control Area. Theoretical potential to emit shall be based on emissions at design capacity or maximum production and maximum operating hours (8,760 hours/year) before add-on controls, unless the facility is subject to state and federally enforceable permit conditions which limit production rates or hours of operation. Emissions from all facilities, including facilities exempt from any other emission standard for volatile organic compounds in Part IV, shall be added together to determine theoretical potential to emit.

C. For facilities subject to the provisions of this section, the owners shall within three months of the effective date of this emission standard (i) notify the board of their applicability status, (ii) commit to making a determination as to what constitutes reasonably available control technology for the facilities and (iii) provide a schedule acceptable to the board for making this determination and for achieving compliance with the emission standard as expeditiously as possible but not later than ~~May 31, 1995~~, the following dates:

1. For facilities in the Northern Virginia Emissions Control Area with a theoretical potential to emit 50 tons per year or greater, May 31, 1995.
2. For facilities in the Northern Virginia Emissions Control Area with a theoretical potential to emit 25 tons per year or greater, but less than 50 tons per year, May 31, 1996.
3. For facilities in the Richmond Emissions Control Area with a theoretical potential to emit 100 tons per year or greater, May 31, 1995.

§ 120-04-0408. Standard for nitrogen oxides.

A. No owner or other person shall cause or permit to be discharged from any affected facility any nitrogen oxides emissions in excess of that resultant from using reasonably available control technology.

B. Unless the owner demonstrates otherwise to the satisfaction of the board, compliance with the provisions of subsection A of this section shall be achieved for the applicable source types by the use of reasonably available control technology as defined in Appendix T.

C. The provisions of this section apply to all facilities that (i) are within a stationary source in the Northern Virginia or Richmond Emissions Control Area (see Appendix P) and (ii) are within a stationary source that has a theoretical potential to emit 50 tons per year or greater in the Northern Virginia Emissions Control Area or 100 tons per year or greater in the Richmond Emissions Control Area. Theoretical potential to emit shall be based on emissions at design capacity or maximum production and maximum operating hours (8,760 hours/year) before add-on controls, unless the facility is subject to state and federally enforceable permit conditions which limit production rates or hours of operation. Emissions from all facilities, including facilities exempt from any other emission standard for nitrogen oxides in Part IV, shall be added together to determine theoretical potential to emit.

D. For facilities subject to the provisions of subsection A of this section, the owners shall within three months of the effective date of the emission standard (i) notify the board of their applicability status, (ii) commit to making a determination as to what constitutes reasonably available control technology for the facilities and (iii) provide a schedule acceptable to the board for making this determination and for achieving compliance with the emission standard as expeditiously as possible but no later than ~~May 31, 1995~~, the following dates:

1. For facilities in the Northern Virginia Emissions Control Area with a theoretical potential to emit 50 tons per year or greater, May 31, 1995.

2. For facilities in the Richmond Emissions Control Area with a theoretical potential to emit 100 tons per year or greater, May 31, 1996.

E. For facilities to which the provisions of subsection B of this section are applicable, the owners shall within three months of the effective date of the emission standard (i) notify the board of their applicability status, (ii) commit to accepting the emission standard as reasonably available control technology for the applicable facilities or to submitting a demonstration as provided in subsection B of this section and (iii) provide a schedule acceptable to the board for submitting the demonstration no later than January 1, 1994, for facilities in the Northern Virginia Emissions Control Area, and July 1, 1995, for facilities in the Richmond Nonattainment Area, and for achieving compliance with the emission standard as expeditiously as possible but no later than ~~May 31, 1995~~, the following dates:

1. For facilities in the Northern Virginia Emissions Control Area with a theoretical potential to emit 50 tons per year or greater, May 31, 1995.
2. For facilities in the Richmond Emissions Control Area with a theoretical potential to emit 100 tons per year or greater, May 31, 1996.

§ 120-04-0409. Standard for visible emissions.

The provisions of Rule 4-1 (Emission standards for visible emissions and fugitive dust/emissions) apply.

§ 120-04-0410. Standard for fugitive dust/emissions.

The provisions of Rule 4-1 (Emission standards for visible emissions and fugitive dust/emissions) apply.

§ 120-04-0411. Standard for odor.

The provisions of Rule 4-2 (Emission standards for odor) apply.

§ 120-04-0412. Standard for noncriteria pollutants.

The provisions of Rule 4-3 (Emission Standards for Non-Criteria Toxic Pollutants) apply.

§ 120-04-0413. Compliance.

The provisions of § 120-04-02 (Compliance) apply.

§ 120-04-0414. Test methods and procedures.

The provisions of § 120-04-03 (Emission testing) apply.

§ 120-04-0415. Monitoring.

The provisions of § 120-04-04 (Monitoring) apply.

§ 120-04-0416. Notification, records and reporting.

The provisions of § 120-04-05 (Notification, Records and Reporting) apply.

§ 120-04-0417. Registration.

The provisions of § 120-02-31 (Registration) apply.

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§ 120-04-0418. Facility and control equipment maintenance or malfunction.

The provisions of § 120-02-34 (Facility and Control Equipment Maintenance or Malfunction) apply.

§ 120-04-0419. Permits.

A permit may be required prior to beginning any of the activities specified below and the provisions of Part V (New and Modified Sources) and Part VIII (Permits for New and Modified Sources) may apply. Owners contemplating such action should contact the appropriate regional office for guidance.

- A. 1. Construction of a facility.
- B. 2. Reconstruction (replacement of more than half) of a facility.
- C. 3. Modification (any physical change to equipment) of a facility.
- D. 4. Relocation of a facility.
- E. 5. Reactivation (restart-up) of a facility.
- 6. Operation of a facility.

PART IV.
EMISSION STANDARDS FOR SOLVENT METAL
CLEANING OPERATIONS USING NONHALOGENATED
SOLVENTS.
(RULE 4-24)

§ 120-04-2401. Applicability and designation of affected facility.

A. The affected facility to which the provisions of this rule apply is each solvent metal cleaning operation, *including, but not limited to, cold or vapor degreasing at service stations; motor vehicle repair shops; automobile dealerships; machine shops; and any other metal refinishing, cleaning, repair, or fabrication facility.*

B. The provisions of this rule apply only to sources of volatile organic compounds in volatile organic compound emissions control areas designated in Appendix P.

§ 120-04-2402. Definitions.

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

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

C. Terms defined.

"Cold cleaning" means the batch process of cleaning and removing foreign matter from metal surfaces by spraying, brushing, flushing or immersion while maintaining the solvent below its boiling point. Wipe cleaning is not included in this definition.

"Conveyorized degreasing" means the continuous process of cleaning and removing foreign matter from metal surfaces by operating with either cold or vaporized solvents.

"Freeboard height"

- a. For cold cleaners, the distance from the liquid solvent level in the degreaser tank to the lip of the tank.
- b. For open top vapor degreasers, the distance from the ~~solvent vapor level~~ *solvent-to-air interface* in the tank to the lip of the tank.
- c. For conveyorized degreasers, the distance from the *solvent-to-air interface to the bottom of the entrance or exit opening, whichever is lower.*

"Freeboard ratio" means the freeboard height divided by the width of the degreaser.

"Lower explosive limit" means the lower limit of flammability of a gas or vapor at ordinary ambient temperatures expressed in percent of the gas or vapor in air by volume.

"Nonhalogenated solvent" means any solvent other than *methylene chloride, perchloroethylene, trichloroethylene, 1,1,1-trichloroethane, carbon tetrachloride, or chloroform.* Nonhalogenated solvents may include trace quantities of halogenated solvents which are:

- a. *Unintended residues in recycled solvents, or*
- b. *Unintended impurities resulting from chemical reaction in the manufacturing process.*

"Open top vapor degreasing" means the batch process of cleaning and removing foreign matter from metal surfaces by condensing hot solvent vapor on the colder metal parts.

"Solvent" means organic materials which are liquid at standard conditions and which are used as dissolvers, viscosity reducers or cleaning agents.

"Solvent metal cleaning" means the process of cleaning foreign matter from metal surfaces by cold cleaning or open top vapor degreasing or conveyorized degreasing.

§ 120-04-2403. Standard for volatile organic compounds.

A. Conveyorized degreasing.

- 1. No owner or other person shall use or permit the use of any conveyorized degreaser unless such degreaser is equipped with a control method that will remove, destroy or prevent the discharge into the atmosphere of at least 70% by weight of volatile organic compound emissions.
- 2. Achievement of the emission standard in ~~subsection~~ *subdivision A 1* of this section by use of the methods in § 120-04-2404 A and D will be acceptable to the board.

B. Open top vapor degreasing.

- 1. No owner or other person shall use or permit the use of any open top vapor degreaser unless such degreaser is equipped with a control method that will remove, destroy or prevent the discharge into the atmosphere of

at least 75% by weight of volatile organic compound emissions.

2. Achievement of the emission standard in ~~subsection~~ *subdivision* B 1 of this section by use of the methods in § 120-04-2404 B and D will be acceptable to the board.

C. Cold cleaning.

1. No owner or other person shall use or permit the use of any cold cleaner unless such cleaner is equipped with a control method that will remove, destroy or prevent the discharge into the atmosphere of at least 85% by weight of volatile organic compound emissions.

2. Achievement of the emission standard in ~~subsection~~ *subdivision* C 1 of this section by use of the methods in § 120-04-2404 C and D will be acceptable to the board.

§ 120-04-2404. Control technology guidelines.

A. Conveyorized degreasing.

1. Control requirements.

a. The degreaser (if the air/vapor interface is larger than 20 ft²) should be equipped with one of the following vapor control methods:

(1) Refrigerated chiller (a secondary set of condensing coils operating with a coolant of less than 40°F).

(2) Carbon adsorption system, with ventilation of 50 cfm/ft² or greater of conveyor opening area (when down-time covers are open), and exhausting less than 25 ppm of solvent by volume averaged over a complete adsorption cycle.

(3) Any method of equal or greater control efficiency to the methods in ~~subsections~~ *subdivisions* A 1 a (1) and (2) of this section, provided such method is approved by the board.

b. The degreaser should be equipped with either a drying tunnel, or other means such as rotating (tumbling) basket, sufficient to prevent cleaned parts from carrying out solvent liquid or vapor.

c. The degreaser should be equipped with all of the following control devices:

(1) A device to prevent heat input unless there is adequate coolant.

(2) The spray shall be equipped with a device that will prevent spraying unless the degreaser is operating normally.

(3) A device to shut off the heat if the vapor level rises above a predetermined level.

d. Entrances and exits should silhouette work loads so that the average clearance (between the largest parts and the edge of the degreaser opening) is either four inches or 10% of the width of the opening, whichever is less.

e. Covers should be provided for closing off the entrance and exit during shutdown, heat-up and cool-down.

2. Operating requirements.

a. Exhausting ventilation should not exceed 65 cfm/ft² of degreaser open area, unless necessary to meet the requirements of any regulations promulgated by the U.S. Occupational Safety and Health Administration. Fans shall not be used near the degreaser opening.

b. Carry-out vapor losses should be minimized by racking parts to allow full drainage and maintaining vertical conveyor speed at less than 11 ft/min.

c. Waste solvent should not be disposed of or transferred to another party such that greater than 20% of the waste (by weight) can evaporate into the atmosphere. Waste solvent should only be stored in closed containers.

d. Solvent leaks should be repaired immediately or the degreaser should be shutdown.

e. Water should not be visibly detectable in the solvent exiting the water separator.

f. Down-time cover should be placed over entrances and exits of conveyorized degreaser immediately after the conveyor and exhaust are shutdown and removed just before they are started up.

B. Open top vapor degreasing.

1. Control requirements.

a. Covers should be provided that can be opened and closed easily without disturbing the vapor zone.

b. The degreaser should be equipped with all of the following control devices:

(1) A device to prevent heat input unless there is adequate coolant.

(2) The spray should be equipped with a method that will prevent spraying unless the degreaser is operating normally.

c. Degreaser (if the open area is larger than 40 13 ft²) should be equipped with one of the following vapor control methods:

(1) Freeboard ratio equal to or greater than 0.75, and the cover should be powered.

(2) Refrigerated chiller (a secondary set of condensing coils operating with a coolant of less than 40°F).

(3) Enclosed design (cover or door opens only when the dry part is actually entering or exiting the degreaser).

(4) Carbon adsorption system, with ventilation of 50 cfm/ft² or greater of air/vapor area (when cover is open), and exhausting less than 25 ppm solvent by volume averaged over one complete adsorption cycle.

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(5) Any method of equal or greater control efficiency to the methods in ~~subsections subdivisions~~ B 1 c (1) through (4) of this section, provided such method is approved by the board.

d. A permanent label, summarizing operating procedures in ~~subsections subdivisions~~ B 2 a through f of this section, should be placed in a conspicuous location on or near the degreaser.

2. Operating requirements.

a. The cover should be kept closed at all times except when processing work loads through the degreaser.

b. Carry-out vapor losses should be minimized by:

(1) Racking parts to allow full drainage;

(2) Moving parts in and out of the degreaser at less than 11 ft/min;

(3) Degreasing the work load in the vapor zone at least 30 seconds or until condensation ceases, whichever is longer;

(4) Tipping out any pools of solvent on the cleaned parts before removal; and

(5) Allowing parts to dry within the degreaser for at least 15 seconds or until visually dry, whichever is longer.

c. Porous or absorbent materials, such as cloth, leather, wood or rope should not be degreased.

d. Work loads should not occupy more than half of the degreaser's open top area.

e. The vapor level should not drop more than four inches when the work load enters the vapor zone. However, for certain specific solvent vapor degreasing operations where of necessity very large masses are required to be degreased at one time, such as large castings and fabricated assemblies, the manufacturers design should accommodate a drop of the vapor-air interface of more than four inches. This introduction of such large masses of necessity causes significant vapor-air interface drop and so the problem must be resolved by engineering of the degreaser in these cases rather than by limiting the amount of air-vapor interface drop.

f. Spraying above the vapor level should not be done.

g. Solvent leaks should be repaired immediately or the degreaser shutdown.

~~h. Waste solvent should not be disposed of or transferred to another party such that greater than 20% of the waste (by weight) can evaporate into the atmosphere. Waste solvent should be stored only in closed containers. Waste solvent, still, and sump bottoms shall be collected and stored in closed containers. The closed containers may contain a device that would allow pressure relief, but would not allow liquid solvent to drain from the container.~~

i. Exhaust ventilation should not exceed 65 cfm/ft² of degreaser open area, unless necessary to meet OSHA requirements. Fans should not be used near the degreaser opening.

j. Water should not be visually detectable in solvent exiting the water separator.

C. Cold cleaning.

1. Control requirements.

~~a. Covers or enclosed remote reservoirs should be provided and if solvent volatility is greater than 0.3 psi measured at 100°F, solvent is agitated or solvent is heated, then the covers should be designed so that they can be easily operated with one hand. (Covers for larger degreasers may require mechanical assistance, by spring loading, counterweighting or powered systems).~~

~~b. External or internal drainage facilities should be provided and if solvent volatility is greater than about 0.6 psi measured at 100°F, then the drainage facilities should be internal, so that parts are enclosed under the cover while draining. The drainage facilities may be external for applications where an internal type cannot fit into the cleaning system, to collect and return the solvent to a closed container or a solvent cleaning machine.~~

c. A permanent label, summarizing the operating procedures in ~~subsections subdivisions~~ C 2 a through c of this section, should be placed in a conspicuous location on or near the degreaser.

d. If used, the solvent spray should be a solid, fluid stream (not a fine, atomized or shower type spray) and at a pressure which does not cause excessive splashing.

e. If a solvent volatility is greater than 0.6 psi measured at 100°F, or if solvent is heated above 120°F, then the degreaser (if the open area is greater than 20 ft²) should be equipped with one of the following vapor control methods:

(1) Freeboard ratio that is equal to or greater than 0.7.

(2) Water cover (solvent should be insoluble in and heavier than water).

(3) Refrigerated chiller (a secondary set of condensing coils operating with a coolant of less than 40°F).

(4) Carbon adsorption system, with ventilation of 50 cfm/ft² or greater of air/vapor area (when down-time covers are open), and exhausting less than 25 ppm of solvent by volume averaged over a complete adsorption cycle.

(5) Any method of equal or greater control efficiency to the methods in ~~subsections subdivisions~~ C 1 e (1) through (4) of this section, provided such method is approved by the board.

2. Operating requirements.

- a. Waste solvent should not be disposed of or transferred to another party, such that greater than 20% of the waste (by weight) can evaporate into the atmosphere. Store waste solvent only in closed containers.
- b. The degreaser cover should be closed whenever not handling parts in the cleaner.
- c. Cleaned parts should drain for at least 15 seconds or until dripping ceases.

D. Disposal of waste solvent from solvent metal cleaning operations should be by one of the following methods:

- 1. Reclamation (either by outside services or in-house).
- 2. Incineration.
- 3. ~~Chemical landfills approved by the board.~~

§ 120-04-2405. Standard for visible emissions.

The provisions of Rule 4-1 (Emission Standards for Visible Emissions and Fugitive Dust/Emissions) apply.

§ 120-04-2406. Standard for fugitive dust/emissions.

The provisions of Rule 4-1 (Emission Standards for Visible Emissions and Fugitive Dust/Emissions) apply.

§ 120-04-2407. Standard for odor.

The provisions of Rule 4-2 (Emission Standards for Odor) apply.

§ 120-04-2408. Standard for noncriteria pollutants.

The provisions of Rule 4-3 (Emission Standards for Noncriteria Toxic Pollutants) apply.

§ 120-04-2409. Compliance.

The provisions of 120-04-02 (Compliance) apply.

§ 120-04-2410. Test methods and procedures.

The provisions of § 120-04-03 (Emission Testing) apply.

§ 120-04-2411. Monitoring.

The provisions of § 120-04-04 (Monitoring) apply.

§ 120-04-2412. Notification, records and reporting.

The provisions of § 120-04-05 (Notification, Records and Reporting) apply.

§ 120-04-2413. Registration.

The provisions of § 120-02-31 (Registration) apply.

§ 120-04-2414. Facility and control equipment maintenance or malfunction.

The provisions of § 120-02-34 (Facility and Control Equipment Maintenance or Malfunction) apply.

§ 120-04-2415. Permits.

A permit may be required prior to beginning any of the activities specified below and the provisions of Part V (New and Modified Sources) and Part VIII (Permits for New and

Modified Sources) may apply. Owners contemplating such action should contact the appropriate regional office for guidance.

- A. 1. Construction of a facility.
- B. 2. Reconstruction (replacement of more than half) of a facility.
- C. 3. Modification (any physical change to equipment) of a facility.
- D. 4. Relocation of a facility.
- E. 5. Reactivation (restart-up) of a facility.
- 6. Operation of a facility.

PART IV.

EMISSION STANDARDS FOR GRAPHIC ARTS PRINTING PROCESSES FLEXOGRAPHIC, PACKAGING ROTOGRAVURE, AND PUBLICATION ROTOGRAVURE PRINTING LINES.
(RULE 4-36)

§ 120-04-3601. Applicability and designation of affected facility.

A. Except as provided in subsections ~~C and D~~ C, D, and E of this section, the affected facility to which the provisions of this rule apply is each ~~graphic arts printing process flexographic, packaging rotogravure, or publication rotogravure printing line which uses a substrate other than a textile.~~

B. The provisions of this rule apply only to sources of volatile organic compounds in volatile organic compound emissions control areas designated in Appendix P.

C. Exempted from the provisions of this rule are ~~graphic arts plants which emit, or have the potential to emit, flexographic, packaging rotogravure, and publication rotogravure facilities in the Northern Virginia Volatile Organic Compound Emissions Control Area whose potential to emit is less than 400 25 tons per year of volatile organic compounds, provided the emission rates are determined in a manner acceptable to the board. All volatile organic compound emissions from clean-up or washing solvents printing inks and cleaning solutions shall be considered in applying the exemption levels specified in this subsection.~~

D. Exempted from the provisions of this rule are ~~flexographic, packaging rotogravure, and publication rotogravure facilities in the Richmond and Hampton Roads Volatile Organic Compound Emissions Control Areas whose potential to emit is less than 100 tons per year of volatile organic compounds, provided the emission rates are determined in a manner acceptable to the board. All volatile organic compound emissions from printing inks and cleaning solutions shall be considered in applying the exemption levels specified in this subsection.~~

~~D. E.~~ The provisions of this rule do not apply to the following:

- 1. Printing processes used exclusively for determination of product quality and commercial acceptance provided:
 - a. The operation is not an integral part of the production process;

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b. The emissions from all product quality printing processes do not exceed 400 pounds in any 30 day period; and

c. The exemption is approved by the board.

2. Lithography or letterpress printing.

3. *Electrostatic duplication*.

§ 120-04-3602. Definitions.

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

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

C. Terms defined.

"Carbon adsorption system" means a device containing activated carbon as the adsorbent material, an inlet and outlet for exhaust gases, and a system to regenerate the saturated adsorbent. The carbon adsorption system must provide for the proper disposal or reuse of all volatile organic compounds in the adsorbate.

"Compliant ink or surface coating" means an ink or surface coating conforming to the definition of a high-solids, low-volatile organic compound or a waterborne ink or surface coating.

"Cleaning solutions" means any liquid used to remove ink and debris from the operating surface of a printing press and its parts.

"Electrostatic duplication" means a process using a plate or takeoff sheet that is electrically charged to attract developer to the image area only.

"Flexographic printing" means the application of words, designs and or pictures to a substrate by means of a roll printing technique in which both the pattern to be applied is raised above the printing roll and the image carrier is made of rubber or other elastomeric materials by a rubber or elastomeric image carrier in which the image area is raised above the nonimage area.

"High-solids ink or surface coating" means an ink or surface coating which contains 60% or more nonvolatile compounds by volume.

"Letterpress printing" means a printing process which uses raised image transfer elements fixed upon a metal backing.

"Lithographic printing" means a planographic printing process in which the image and nonimage areas are chemically differentiated with the image area being oil receptive and the nonimage area being water receptive.

"Low-solvent ink or surface coating" means an ink or surface coating which contains not more than 0.5 pounds of volatile organic compounds per pound of nonvolatile compounds and is used on a packaging rotogravure printing or flexographic printing press.

"Noncompliant ink or surface coating" means an ink or surface coating which does not conform to the definition of a high-solids, low-volatile organic compound or waterborne ink or surface coating.

"Packaging rotogravure printing" means printing upon an intaglio printing process in which the ink is transferred from minute etched wells on an image carrier, typically a cylinder, to paper, paper board, metal foil, plastic film and other substrates, which are, in subsequent operations, formed into containers and labels for articles to be sold.

"Printing" means the formation of words, designs and pictures, usually by a series of application rolls each with only partial coverage a photomechanical process in which a transfer of text, designs, and images occurs through contact of an image carrier with a substrate.

"Printing line" means all of the equipment between a web feed input and the finished rolled or cut and stacked product wherein printing ink or a combination of printing inks and surface coatings are applied, dried, or cured and which is subject to the same emission standard. Such equipment may include decks, stations, press units, devices, ink stations, and any other equipment which applies, conveys, dries, or cures ink or surface coatings. Such equipment may include but is not limited to flow coaters, flashoff areas, air dryers, drying areas, and ovens. It is not necessary for a printing line to have an oven, flashoff area, or drying area to be included in this definition.

"Printing process" means any operation or system wherein printing ink or a combination of printing ink and surface coating is applied, dried or cured and which is subject to the same emission standard. May include any equipment which applies, conveys, dries or cures inks or surface coatings, including, but not limited to, flow coaters, flashoff areas, air dryers, drying areas and ovens. It is not necessary for a printing process to have an oven, flashoff area or drying area to be included in this definition.

"Publication rotogravure printing" means printing upon an intaglio printing process in which the ink is transferred from minute etched wells on an image carrier, typically a cylinder, to paper which is subsequently formed into books, magazines, catalogues, brochures, directories, newspaper supplements or any other types of printed materials not included under the definition of packaging rotogravure printing.

"Roll printing" means the application of words, designs and pictures to a substrate by means of hard rubber or steel rolls.

"Surface coating" means all nonink liquids and liquid-solid mixtures containing volatile organic compounds which are applied to the substrate by printing units.

"Waterborne inks ink or surface coating" means an ink or surface coating whose volatile portion consists of 75% or more by volume of water and 25% or less by volume of volatile organic compounds.

"Web" means a continuous roll of printing substrate.

§ 120-04-3603. Standard for volatile organic compounds.

A. No owner or other person shall use or permit the use of any packaging rotogravure, publication rotogravure or

flexographic printing process line employing solvent containing ink or surface coating containing volatile organic compounds unless:

1. The ink or surface coating, as it is applied to the substrate, is a waterborne ink or surface coating;
2. The ink or surface coating, as it is applied to the substrate, is a high-solids ink or surface coating;
3. The ink or surface coating, as it is applied to the substrate, is a low-solvent ink or surface coating; or
4. The owner installs and operates an emission control system which achieves the emission reductions specified below in subsection subdivision A 4 a through c of this section. The reduction in volatile organic compound emissions from each printing process line shall be at least:
 - a. 75% by weight of volatile organic compounds of all noncompliant inks and surface coatings where a publication rotogravure printing process is employed;
 - b. 65% by weight of volatile organic compounds of all noncompliant inks and surface coatings where a packaging rotogravure printing process is employed; or
 - c. 60% by weight of volatile organic compounds of all noncompliant inks and surface coatings where a flexographic printing process is employed.

B. The provisions of this section shall be applicable to the production of packaging materials and to printing (graphic arts) operations to the extent provided in subsection C of this section.

C. The production of packaging materials involves two principal operations which emit volatile organic compounds: the coating and laminating of paper, film and foil, and the printing of words, designs and pictures upon webs of paper, film and foil. For the purposes of applicability of the above emission standard, coating is the application of a layer of material across any portion of the web and printing is the formation of words, designs and pictures, usually by a series of application rolls each with only partial coverage. The emission standard in Rule 4-31 applies to coating and laminating operations in the production of packaging materials, and the above emission standards apply to printing operations in the production of packaging materials and to publication rotogravure printing operations. However, all units in a machine which has both coating and printing units will be considered as performing a printing operation. A typical operation is as follows: the first unit applies a uniform background color, subsequent units print additional colors, the final unit applies a varnish overcoat. Such a machine would be subject to the above emission standards, but not to the emission standard in Rule 4-31.

B. All units in a machine which has printing units and coating or laminating units shall be subject to this rule and exempt from Rule 4-31.

§ 120-04-3604. Reserved.

§ 120-04-3605. Standard for visible emissions.

The provisions of Rule 4-1 (Emission Standards for Visible Emissions and Fugitive Dust/Emissions) apply.

§ 120-04-3606. Standard for fugitive dust/emissions.

The provisions of Rule 4-1 (Emission Standards for Visible Emissions and Fugitive Dust/Emissions) apply.

§ 120-04-3607. Standard for odor.

The provisions of Rule 4-2 (Emission Standards for Odor) apply.

§ 120-04-3608. Standard for noncriteria toxic pollutants.

The provisions of Rule 4-3 (Emission Standards for Noncriteria Toxic Pollutants) apply.

§ 120-04-3609. Compliance.

A. The provisions of § 120-04-02 (Compliance) apply.

B. The emission standards in § 120-04-3603 A apply ink by ink and coating by coating or to the volume weighted average of inks or surface coatings where the inks and surface coatings are used on a single printing process line and the inks and surface coatings are of the same type or perform the same function. Such averaging shall not exceed 24 hours. Compliance with the emission standards in § 120-04-3603 A 4 shall be determined using the applicable methods and procedures specified in Appendix S. Inks meeting the criteria in § 120-04-3603 A 1 through A 3 (i.e., compliant inks) may be used, on the same printing process, with inks subject to the control requirements in § 120-04-3603 A 4 (i.e., noncompliant inks) to meet those control requirements. In this case, compliance is determined by credits generated by the weight of volatile organic compounds by which the compliant inks are less than the applicable criteria in § 120-04-3603 A 1 through A 3. Compliance is demonstrated if the total credits in pounds of volatile organic compounds is equal to or greater than the total weight of volatile organic compound reduction required of the noncompliant inks, over a time period not exceeding 24 hours.

C. Inks and surface coatings meeting the criteria in § 120-04-3603 A 1 through 3 (compliant inks and coatings) may be used on the same printing line with inks and surface coatings subject to the control requirements in § 120-04-3603 A 4 (noncompliant inks and coatings) to meet the control requirements of § 120-04-3603 A 4 without the installation of an add-on control system. When this is the case, compliance is determined by credits generated by the weight of volatile organic compounds by which the compliant inks or coatings are less than the applicable criteria in § 120-04-3603 A 1 through 3. Compliance is demonstrated if the total credits in pounds of volatile organic compounds is equal to or greater than the total weight of volatile organic compound reduction required of the noncompliant inks over a time period not exceeding 24 hours.

D. Compliance with the requirements of § 120-04-3609 B and C and the emission standards in § 120-04-3603 A shall apply as follows:

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1. To each printing line, and to parts of a printing line individually designated by the owner; or

2. To multiple printing lines controlled by a single solvent recovery system. For this option, the most stringent standard applicable to any of the printing lines is applied to all the lines controlled by the same solvent recovery system.

E. The emission standards in § 120-04-3603 A shall apply to each successive compliance averaging period. This compliance averaging period shall not exceed:

1. 24 hours; or

2. The minimum compliance averaging period acceptable to the board, provided that:

a. The owner demonstrates to the satisfaction of the board that an averaging period of 24 hours or less does not adequately represent the reduction of volatile organic compound emissions over the same time period because of the physical or operational characteristics of an add-on control system;

b. The owner demonstrates to the satisfaction of the board the minimum compliance averaging period which adequately represents the reduction of volatile organic compound emissions; and

c. The owner determines compliance for each day or partial day of operation using the minimum compliance averaging period acceptable to the board.

§ 120-04-3610. Test methods and procedures.

A. The provisions of § 120-04-03 (Emission Testing) apply.

B. Testing for compliance with the emission standards in § 120-04-3603 A 4 shall be performed using the applicable methods and procedures specified in Appendix S.

§ 120-04-3611. Monitoring.

The provisions of § 120-04-04 (Monitoring) apply.

§ 120-04-3612. Notification, records and reporting.

The provisions of § 120-04-05 (Notification, Records and Reporting) apply.

§ 120-04-3613. Registration.

The provisions of § 120-02-31 (Registration) apply.

§ 120-04-3614. Facility and control equipment maintenance or malfunction.

The provisions of § 120-02-34 (Facility and Control Equipment Maintenance or Malfunction) apply.

§ 120-04-3615. Permits.

A permit may be required prior to beginning any of the activities specified below and the provisions of Part V (New and Modified Sources) and Part VIII (Permits for New and Modified Sources) may apply. Owners contemplating such action should contact the appropriate regional office for guidance.

A. 1. Construction of a facility.

B. 2. Reconstruction (replacement of more than half) of a facility.

C. 3. Modification (any physical change to equipment) of a facility.

D. 4. Relocation of a facility.

E. 5. Reactivation (restart-up) of a facility.

6. Operation of a facility.

PART IV.

EMISSION STANDARDS FOR SANITARY LANDFILLS.

(RULE 4-43)

§ 120-04-4301. Applicability and designation of affected facility.

A. The affected facility to which the provisions of this rule apply is each sanitary landfill which has accepted waste at any time since November 8, 1987, or which has additional capacity for future waste deposition.

B. The provisions of this rule apply only to sources of volatile organic compounds in the Northern Virginia Volatile Organic Compound Emissions Control Area designated in Appendix P.

§ 120-04-4302. Definitions.

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

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

C. Terms defined.

"Commercial waste" means all types of solid waste generated by establishments engaged in business operations other than manufacturing or construction. This category includes, but is not limited to, solid waste resulting from the operation of stores, markets, office buildings, restaurants, and shopping centers.

"Design capacity" means the maximum amount of waste a landfill can accept, including refuse on site, within the permit limits of the entire facility.

"Gas management system" means a method for the collection and destruction or use of landfill gases.

"Household waste" mean any waste material, including garbage, trash and refuse, derived from households. Households include single and multiple residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds and day-use recreational areas. Household wastes do not include sanitary waste (septage) in septic tanks which are regulated by other state agencies.

"Industrial waste" means any solid waste generated by manufacturing or industrial process that is not a regulated hazardous waste. Such waste may include, but is not limited to, waste resulting from the following manufacturing

processes: electric power generation; fertilizer and agricultural chemicals; food and related products and by-products; inorganic chemicals; iron and steel manufacturing; leather and leather products; nonferrous metals manufacturing and foundries; organic chemicals; plastics and resins manufacturing; pulp and paper industry; rubber and miscellaneous plastic products; stone, glass, clay, and concrete products; textile manufacturing; transportation equipment; and water treatment. This term does not include mining waste or oil and gas waste.

"Landfill gas" means any gas derived from the decomposition of organic waste deposited in a sanitary landfill or from the evolution of volatile organic species in the waste. Emissions from sanitary landfills is equivalent to landfill gas emissions.

"NMOC" or "NMOCs" means nonmethane organic compounds, as measured according to the provisions of § 120-04-4307.

"Offsite gas migration" means underground landfill gases detected at any point on the landfill perimeter.

"Refuse" means trash, rubbish, garbage, and other forms of solid or liquid waste, including, but not limited to, wastes resulting from residential, agricultural, commercial, industrial, institutional, trade, construction, land clearing, forest management, and emergency operations.

"Sanitary landfill" means an engineered land burial facility for the disposal of household waste which is located, designed, constructed, and operated according to Part V of the Solid Waste Management Regulations (VR 672-20-10) and in which waste is contained and isolated so that it does not pose a substantial present or potential hazard to human health or the environment. A sanitary landfill may also receive commercial waste, sludges, and industrial solid waste.

"Sludge" means any solid, semi-solid, 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 of those materials defined as "solid waste" in Part III of the Virginia Solid Waste Landfill Regulations (VR 672-20-10).

§ 120-04-4303. Standard for volatile organic compounds.

A. This section shall apply to affected facilities meeting the following conditions:

1. The design capacity is 1.1 million tons (1 million Mg) or greater; and
2. The nonmethane organic compound (NMOC) emission rate is 25 tons of NMOC or greater per year.

B. Affected facilities meeting the provisions of subsection A of this section shall install and operate a well-designed gas management system that employs one of the following control devices:

1. An open flare designed and operated in accordance with the parameters established in 40 CFR 60.18;
2. An enclosed combustor designed and operated to reduce the outlet NMOC concentration to 20 ppmvd at 3.0% oxygen;
3. A control device that is designed and operated so as to reduce NMOC by 98% or more; or
4. A system having a control efficiency equal to or greater than that of the systems in subdivisions 1, 2 and 3 of this subsection, provided such system is approved by the board.

C. Affected facilities meeting the provisions of subsection A of this section shall install and operate a well-designed gas management system in which the gas collection systems shall:

1. Be designed to handle the maximum expected gas flowrate over the lifetime of the gas control or treatment system equipment from the entire area of the landfill that warrants control over the equipment lifetime;
2. Collect gas from each area, cell, or group of cells in the landfill in which refuse has been placed for one year or more;
3. Collect gas at a sufficient extraction rate, maximizing the amount of gas extracted while preventing fires or damage to the collection system; and
4. Be in compliance with Part V of the Solid Waste Management Regulations (VR 672-20-10).

D. Affected facilities required to meet the provisions of subdivision A 1 of this section shall install and operate a gas management system within 30 months after (insert effective date). For each affected facility meeting the conditions of subdivision A 1 of this section whose NMOC emission rate on (insert effective date) is less than that stated in subdivision A 2 of this section, the installation and operation of a gas management system capable of meeting the requirements of subsection B of this section shall be accomplished within 30 months of the date of the first annual NMOC emission rate which equals or exceeds the rate stated in subdivision A 2 of this section.

§ 120-04-4304. Standard for fugitive dust/emissions.

The provisions of Rule 4-1 (Emission Standards for Visible Emissions and Fugitive Dust/Emissions) apply.

§ 120-04-4305. Standard for odor.

The provisions of Rule 4-2 (Emission Standards for Odor) apply.

§ 120-04-4306. Compliance.

A. The provisions of § 120-04-02 (Compliance) apply.

B. Owners subject to § 120-04-4303 shall comply with the provisions of Part V of the Solid Waste Management Regulations (VR 672-20-10) pertaining to the control of landfill gases.

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C. Owners required to install a gas collection system and control device shall use the following methods to determine whether the gas collection system is in compliance with § 120-04-4303 C:

1. For the purposes of calculating the maximum expected gas generation flowrate from the landfill to determine compliance with § 120-04-4303 C 1, the following equation shall be used:

$$Q_M = 2L_0R(1 - \exp(-kt))$$

where:

Q_M = maximum expected gas generation flow rate, m^3/Mg refuse.

L_0 = refuse methane generation potential, m^3/Mg refuse.

R = average annual acceptance rate, Mg/yr .

k = methane generation rate, $1/yr$.

t = age of the landfill plus the gas mover equipment life or active life of the landfill, whichever is less, in years.

A value of $170 m^3/Mg$ shall be used for L_0 . If Reference Method 2E has been performed, the value of k determined from the test shall be used; if not, a value of 0.05 years^{-1} shall be used. A value of 15 years shall be used for gas mover equipment life. The active life of the landfill is the age of the landfill plus the estimated number of years until closure.

2. For the purposes of calculating the area of influence of the gas collection system to determine compliance with § 120-04-4303 C 2, the owner should use Reference Method 2E in Appendix A of 40 CFR Part 60.

3. For the purpose of demonstrating whether the gas collection system flowrate is sufficient to determine compliance with § 120-04-4303 C 3, the owner shall measure gauge pressure in the gas collection header. If a positive pressure exists, the gas collection system flowrate shall be increased until a negative pressure is measured.

4. If the gauge pressure at a wellhead is positive, the valve shall be opened to restore negative pressure. If negative pressure cannot be achieved, an additional well shall be added.

D. To determine whether the control device designed and operated according to the parameters established in § 60.18 of 40 CFR Part 60 (for open flares), or for other control devices the parameters in the performance test to reduce NMOCs by 98 weight-percent, is in compliance with § 120-04-4303 B, the parameters shall be monitored as provided in § 120-04-4308.

§ 120-04-4307. Test methods and procedures.

A. The owner shall estimate the NMOC emission rate according to the schedule as provided in § 120-04-4309 B using either of the equations provided in subdivision 1 or 2 of this subsection.

1. a. The following equation shall be used if the actual year-to-year acceptance rate is known.

$$Q_T = \sum_{i=1}^n 2k L_0 M_i \exp(-kt_i) C_{NMOC} * 3.595 \times 10^{-9}$$

where:

Q_T = Total NMOC emission rate from the landfill, Mg/yr .

k = landfill gas generation constant, $1/yr$.

L_0 = methane generation potential, m^3/Mg .

t_i = age of i^{th} section, yrs.

C_{NMOC} = concentration of NMOC, ppmv.

3.595×10^{-9} = conversion factor.

The NMOC emission rate is the sum of each NMOC emission rate for each yearly submass.

b. The following equation shall be used if the actual year-by-year refuse acceptance rate is unknown.

$$M_{NMOC} = 2L_0R(1 - \exp(-kt)) C_{NMOC} * 3.595 \times 10^{-9}$$

where:

M_{NMOC} = Mass emission rate of NMOC, Mg/yr .

L_0 = refuse methane generation potential, m^3/Mg .

R = average annual acceptance rate, Mg/yr .

k = methane generation rate constant, $1/yr$.

t = age of landfill, yrs.

C_{NMOC} = concentration of NMOC, ppmv as hexane.

3.595×10^{-9} = conversion factor.

In the absence of site-specific data, the values to be used for k , L_0 , and NMOC concentration are $0.05/yr$, $170 m^3/Mg$, and $4,000$ ppmv as hexane, respectively.

2. The owner shall compare the calculated NMOC mass emission rate to the standard of 25 tpy.

a. If the calculated NMOC emission rate is less than 25 tpy, then the owner shall submit an emission rate report as provided in § 120-04-4309 B 1 and shall recalculate the NMOC mass emission rate annually.

b. If the calculated NMOC emission rate is equal to or greater than 25 tpy, then the owner shall either install controls in compliance with § 120-04-4303 B or determine a site-specific NMOC concentration using the procedures provided below in subdivision 3 of this subsection.

3. The owner shall estimate the NMOC mass emission rate using the following sampling procedure. The owner shall install a minimum of five sample probes. The owner shall collect and analyze at least one sample of landfill gas from each probe for NMOC concentration using Reference Method 25C in Appendix A of 40 CFR Part 60. The owner shall recalculate the NMOC mass emission rate using the average NMOC concentration from the collected samples instead of the default value in the equation provided in subsection A of this section.

a. If the resulting mass emission rate is equal to or greater than 25 tpy, then the owner shall install controls in compliance with § 120-04-4303, or determine the site-specific gas generation rate constant using the procedure provided below in subdivision 4 of this subsection.

b. If the resulting NMOC mass emission rate is less than 25 tpy, then the owner shall demonstrate that the NMOC mass emission rate is below the level of the standard with 80% confidence.

(1) The owner shall use the following equation to determine the number of samples required to show 80% confidence:

$$n = \frac{(t_{.20})^2 s^2}{D^2}$$

where:

n = number of samples required to demonstrate 80% confidence.

$t_{.20}$ = Student's t value for a two-tailed confidence interval and a probability of .20.

s = standard deviation of the initial set of samples, ppmv.

D = difference between resulting NMOC mass emission rate as determined in § 120-04-4307 A 3 b and the regulatory emissions limit of 25 tons per year.

The owner shall install the required number of probes or 50 probes, whichever is less. At least one sample of landfill gas from each probe must be collected and analyzed using Reference Method 25 C in Appendix A of 40 CFR Part 60.

(2) The owner shall recalculate the NMOC mass emission rate using the new average NMOC concentration in the formula provided in subsection A of this section.

c. The owner shall compare the NMOC mass emission rate obtained above in subdivision 3 b (2) of this subsection to the standard of 25 tpy.

(1) If the NMOC mass emission rate is equal to or greater than 25 tpy, then the owner shall install controls in compliance with § 120-04-4303 B, or proceed to subdivision 4 of this subsection.

(2) If the NMOC emission rate is less than 25 tpy, the owner shall submit an annual or a five-year estimate of the emission rate report as provided in § 120-04-4309 B 1 b and shall update the site-specific NMOC concentration using the procedures provided in § 120-04-4307 A 3 every five or 10 years. If the average NMOC mass emission rate plus two standard deviations is less than 25 tpy, the owner shall update the site-specific NMOC concentration every 10 years. If the average NMOC mass emission rate plus two standard deviations is greater

than 25 tpy, then the owner shall update the site-specific NMOC concentration every five years.

4. The owner shall estimate the NMOC mass emission rate using a site-specific landfill gas generation rate constant, k . The site-specific landfill gas generation rate constant and the resulting NMOC mass emission rate shall be determined using the procedures provided in Reference Method 2E in Appendix A of 40 CFR Part 60. The owner shall compare the resulting NMOC mass emission rate to the standard of 25 tpy.

a. If the NMOC mass emission rate is equal to or greater than 25 tpy, then the owner shall install controls in compliance with § 120-04-4303 B.

b. If the NMOC mass emission rate is less than 25 tpy, then the owner shall submit an annual emission rate report as provided in § 120-04-4309 B and shall recalculate the NMOC mass emission rate annually, using the site-specific landfill gas generation rate constant and NMOC concentration obtained in subdivision 2 of this subsection. The calculation of the landfill gas generation rate constant is performed only once, and the value obtained is used in all subsequent annual NMOC emission rate calculations.

B. After the installation of a collection and control system in compliance with § 120-04-4303, the owner shall estimate the NMOC emission rate using the equation below.

$$M_{NMOC} = 1.89 \times 10^{-3} Q_{LFG} C_{NMOC}$$

where:

M_{NMOC} = mass emission rate of NMOC, Mg/yr.

Q_{LFG} = flowrate of landfill gas, m^3/min .

C_{NMOC} = NMOC concentration, ppmv.

1. The flowrate of landfill gas, Q_{LFG} , shall be obtained by measuring the total landfill gas flowrate at the common header pipe that leads to the control device using an orifice meter as described in Reference Method 2E in Appendix A of 40 CFR Part 60.

2. The average NMOC concentration, C_{NMOC} , shall be determined by collecting and analyzing landfill gas sampled from the common header pipe using Reference Method 25C in Appendix A of 40 CFR Part 60.

§ 120-04-4308. Monitoring.

A. The provisions of § 120-04-04 (Monitoring) apply.

B. Each owner seeking to comply with § 120-04-4303 C for the gas collection system shall install a sampling port at each well and measure the gauge pressure in the gas collection header on a monthly basis.

C. Each owner seeking to comply with § 120-04-4303 B using an enclosed combustion device shall monitor the residence time and temperature established during the initial performance test to reduce NMOCs by 98%. Each owner shall calibrate, maintain, and operate according to the manufacturer's specifications, the following equipment:

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1. A temperature monitoring device equipped with a continuous recorder and having an accuracy of $\pm 1.0\%$ of the temperature being measured, expressed in degrees Celsius or $\pm 0.5^\circ\text{C}$, whichever is greater.

2. A flow indicator that provides a record of gas flow to the control device at intervals of every 15 minutes.

D. Each owner seeking to comply with § 120-04-4303 B using an open flare shall install, calibrate, maintain, and operate according to the manufacturer's specifications the following equipment:

1. A heat sensing device, such as an ultraviolet beam sensor or thermocouple, to indicate the continuous presence of a flame.

2. A flow indicator that provides a record of gas flow to the flare at intervals of every 15 minutes.

E. Each owner seeking to demonstrate compliance with § 120-04-4303 B using a device other than an open flare or a closed combustion device shall provide to the board information describing the operation of the control device and the operating parameters that would indicate proper performance. The board will specify appropriate monitoring procedures.

§ 120-04-4309. Reporting.

A. The provisions of § 120-04-05 (Notification, records and reporting) apply.

B. Each owner shall submit an initial design capacity report to the board within 90 days of (insert effective date).

1. The initial design capacity report shall contain the following information:

a. A map or plot of the landfill, providing the size and location of the landfill, and identifying all areas where refuse may be landfilled according to the provisions of the permit issued in accordance with Part VII of the Solid Waste Management Regulations (VR 672-20-10);

b. The maximum design capacity of the landfill, where the maximum design capacity is specified in the permit issued pursuant to Part VII of the Solid Waste Regulations (VR 672-20-10). A copy of the permit specifying the maximum design capacity may be submitted. If the maximum design capacity of the landfill is not specified in the permit, the maximum design capacity must be calculated using good engineering principles. The calculations must be provided, along with such parameters as depth of refuse, refuse acceptance rate, and compaction practices. The board may request other reasonable information as may be necessary to verify the maximum design capacity of the landfill.

2. An amended design capacity report must be submitted to the board, providing notification of any increase in the size of the landfill, whether the increase results from an increase in the permitted area or depth of the landfill, a change in the operating procedures, or any other means which results in an increase in the

maximum design capacity of the landfill. The amended design capacity report must be submitted within 90 days of the issuance of an amended construction or operating permit, or the actual use of additional land, or the change in operating procedures which will result in an increase in maximum design capacity, whichever comes first.

C. Each owner shall submit an annual NMOC emission rate report to the board, except as provided for below in subsection C 1 b of this section. The board may request such additional information as may be reasonably necessary to verify the reported NMOC emission rate.

1. The annual, or five-year estimate of the NMOC emission rate shall be calculated using the formula and procedures provided in § 120-04-4307.

a. The initial NMOC emission rate report shall be submitted within 90 days of the date waste acceptance commences and may be combined with the initial design capacity report required in subsection B of this section. Subsequent NMOC emission rate reports shall be submitted annually thereafter, except as provided for below in subdivisions 1 b and 1 c of this subsection.

b. The owner may elect to submit an estimate of the NMOC emission rate for the next five years in lieu of the annual report, provided that the estimated NMOC emission rate in each of the five years is less than 25 tpy. This estimate must include the current amount of refuse in place and the estimated waste acceptance rate for each of the five years for which an NMOC emission rate is estimated. All data and calculations upon which this estimate is based must be provided. This estimate must be revised at least every five years.

c. If the actual waste acceptance rate exceeds the estimated waste acceptance rate in any year reported in the five-year estimate, a revised five-year estimate must be submitted. The revised estimate shall cover the five years beginning with the year in which the actual waste acceptance rate exceeded the estimated waste acceptance rate.

2. The annual, or five-year estimate of the NMOC emission rate report shall include all the data, calculations, sample reports, and measurements used.

3. Each owner is exempted from the requirements of subsection C of this section after the installation of collection and control systems in compliance with § 120-04-4303 during such time as the collection and control system is in continuous operation and in compliance with § 120-04-4306.

D. Each owner shall submit a closure report to the board. For the purposes of this rule, closure means that refuse is no longer being placed in the landfill and that no additional wastes will be placed into the landfill without filing a notification or modification as prescribed under 40 CFR § 60.14. The board may request such additional information as may be reasonably necessary to verify that permanent closure has taken place.

E. Each owner shall submit an equipment removal report to the board prior to removal or cessation of operation of the control equipment.

1. The equipment removal report shall contain the following items:

a. A copy of the closure report submitted in accordance with subsection D of this section;

b. A copy of the initial performance test report demonstrating the 15 year minimum control period has expired;

c. Dated copies of the three successive NMOC emission rate reports demonstrating that the landfill is no longer emitting above the level of the standard.

2. The board may request such additional information as may be reasonably necessary to verify that all of the following conditions for removal have been met:

a. The landfill must no longer be accepting waste and must be permanently closed. A closure report must be submitted to the board as provided for in § 120-04-4309 D;

b. The collection and control system must have been in continuous operation a minimum of 15 years; and

c. Following the procedures in § 120-04-4307 B, the calculated NMOC emission rate must be less than 25 tpy on three successive test dates. The test dates must be no closer than three months apart, and no longer than six months apart.

F. Each owner shall submit to the board semiannual reports of the following recorded information. The initial report shall be submitted within 90 days of installation and startup of the collection and control system and shall include the initial performance test report required under § 60.8 of 40 CFR Part 60.

1. Exceedance of parameters monitored under § 120-04-4308 B and C 1.

2. All periods when the gas stream is diverted from the control device or has no flowrate.

3. All periods when the control device was not operating.

4. For control devices using open or enclosed flares, all periods when the pilot flame of the flare was absent.

§ 120-04-4310. Recordkeeping.

A. The provisions of § 120-04-05 (Notification, records and reporting) apply.

B. Each owner subject to the provisions of § 120-04-4303 A 2 shall keep up-to-date, readily accessible records of the maximum design capacity, the current amount of refuse in place, and the year-by-year waste acceptance rate.

C. Each owner shall keep up-to-date, readily accessible records of the following data measured during the initial performance test/compliance determination for the life of the control equipment. Records of subsequent tests must be maintained for a minimum of two years.

1. Where an owner seeks to demonstrate compliance with § 120-04-4303 B:

a. The calculated maximum expected gas generation flow rate using Reference Method 2E in Appendix A of 40 CFR Part 60.

b. The calculated area of influence of the extraction wells.

c. Gauge pressure in the gas collection header at the point where each well is connected to the gas collection header pipe.

2. Where an owner seeks to demonstrate compliance with § 120-04-4303 B 2 through use of an enclosed combustion device:

a. The average combustion temperature measured every 15 minutes and averaged over the same time period of the performance testing; and

b. The percent reduction of NMOC determined as specified in § 120-04-4306 B achieved by the control device.

3. Where an owner seeks to demonstrate compliance with § 120-04-4303 B 3 through use of a boiler:

a. A description of the location at which the process vent stream is introduced into the boiler or process heater; and

b. The average combustion temperature of the boiler or process heater with a design heat input capacity of less than 44 MW (150 million Btu/hr) measured at least every 15 minutes and averaged over the same time period of the performance testing.

4. Where an owner seeks to demonstrate compliance with § 120-04-4303 B 1 through use of an open flare, the flare type (i.e., steam-assisted, air-assisted, or nonassisted), all visible emission readings, heat content determination, flowrate measurements, and exit velocity determinations made during the performance test continuous records of the flare pilot flame monitoring, and records of all periods of operations during which the pilot flame is absent.

D. Each owner shall keep up-to-date, readily accessible continuous records of the equipment operating parameters specified to be monitored under § 120-04-4308, as well as up-to-date, readily accessible records for periods of operation during which the parameter boundaries established during the most recent performance test are exceeded.

1. For enclosed combustion devices except for boilers and process heaters with design heat input capacity of 150 million Btu/hour (44 MW) or greater and nonenclosed flares, all three-hour periods of operation during which the average combustion temperature was more than 50°F (28°C) below the average combustion temperature during the most recent performance test at which compliance with § 120-04-4303 B was determined.

2. For boilers or process heaters, whenever there is a change in the location at which the vent stream is

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introduced into the flame zone as required under subsection C 3 a of this section.

3. Each owner shall keep up-to-date, readily accessible continuous records of the indication of flow specified under § 120-04-4308, as well as up-to-date, readily accessible records of all periods when the gas stream is diverted from the control device or has no flowrate.

4. Each owner who uses a boiler or process heater with a design heat input capacity of 150 million Btu/hour (44 MW) or greater to comply with § 120-04-4303 B shall keep an up-to-date, readily accessible record of all periods of operation of the boiler or process heater. Such records shall include but not be limited to records of steam use, fuel use, or monitoring data collected pursuant to other state or federal regulatory requirements.

5. Each owner shall keep up-to-date, readily accessible continuous records of the flare pilot flame monitoring specified under § 120-04-4308 D 1, as well as up-to-date, readily accessible records of all periods of operation in which the pilot flame is absent.

§ 120-04-4311. Registration.

The provisions of § 120-02-31 (Registration) apply.

§ 120-04-4312. Facility and control equipment maintenance or malfunction.

The provisions of § 120-02-34 (Facility and control equipment maintenance or malfunction) apply.

§ 120-04-4313. Permits.

A. A permit may be required prior to beginning any of the activities specified below and the provisions of Part V (New and Modified Sources) and Part VIII (Permits for New and Modified Sources) may apply. Owners contemplating such action should contact the appropriate regional office for guidance.

1. Construction of a facility.
2. Reconstruction (replacement of more than half) of a facility.
3. Modification (any physical change to equipment) of a facility.
4. Relocation of a facility.
5. Reactivation (restart-up) of a facility.
6. Operation of a facility.

B. Sanitary landfills required to install a gas management system according to the provisions of § 120-04-4303 shall apply for a permit amendment in accordance with Part VII of the Solid Waste Management Regulations (VR 672-20-10).

PART IV. EMISSION STANDARDS FOR LITHOGRAPHIC PRINTING PROCESSES. (RULE 4-45)

§ 120-04-4501. Applicability and designation of affected facility.

A. Except as provided in subsections C, D, and E of this section, the affected facility to which the provisions of this rule apply is each lithographic printing process which uses a substrate other than a textile.

B. The provisions of this rule apply only to sources of volatile organic compounds in the Northern Virginia or Richmond Volatile Organic Compound Emissions Control Area designated in Appendix P.

C. Exempted from the provisions of this rule are facilities in the Northern Virginia Volatile Organic Compound Emissions Control Area whose potential to emit is less than 10 tons per year of volatile organic compounds, provided the emission rates are determined in a manner acceptable to the board. All volatile organic compound emissions from printing inks, coatings, cleaning solutions, and fountain solutions shall be considered in applying the exemption levels specified in this subsection.

D. Exempted from the provisions of this rule are facilities in the Richmond Volatile Organic Compound Emissions Control Area whose potential to emit is less than 100 tons per year of volatile organic compounds, provided the emission rates are determined in a manner acceptable to the board. All volatile organic compound emissions from printing inks, coatings, cleaning solutions, and fountain solutions shall be considered in applying the exemption levels specified in this subsection.

E. The provisions of this rule do not apply to the following:

1. Printing processes used exclusively for determination of product quality and commercial acceptance provided:
 - a. The operation is not an integral part of the production process;
 - b. The emissions from all product quality printing processes do not exceed 400 pounds in any 30 day period; and
 - c. The exemption is approved by the board.
2. Photoprocessing, typesetting, or imagesetting equipment using water-based chemistry to develop silver halide images.
3. Platemaking equipment using water-based chemistry to remove unhardened image-producing material from an exposed plate.
4. Equipment used to make blueprints.
5. Any sheet-fed offset lithographic press with a cylinder width of 26 inches or less.

§ 120-04-4502. Definitions.

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

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

C. Terms defined.

"Alcohol" means any of the following compounds when used as a fountain solution additive: ethanol, n-propanol, and isopropanol.

"Alcohol substitute" means any nonalcohol additive that contains volatile organic compounds and is used in the fountain solution.

"Batch" means a supply of fountain solution that is prepared and used without alteration until completely used or removed from the printing process.

"Cleaning solution" means any blanket or roller wash used to remove ink and debris from the operating surface of a printing press.

"Composite partial vapor pressure" means the sum of the partial pressures of the compounds defined as volatile organic compounds. Composite partial vapor pressure is calculated as follows:

$$PP_c = \sum_{i=1}^n \frac{(W_i)(VP_i) / MW_i}{\frac{W_w}{MW_w} + \frac{W_e}{MW_e} + \sum_{i=1}^n \frac{W_i}{MW_i}}$$

where:

W_i = Weight of the "i"th VOC compound, in grams.

W_w = Weight of water, in grams.

W_e = Weight of exempt compound, in grams.

MW_i = Molecular weight of the "i"th VOC compound, in $\frac{g}{g\text{-mole}}$.

MW_w = Molecular weight of water, in $\frac{g}{g\text{-mole}}$.

MW_e = Molecular weight of exempt compound, in $\frac{g}{g\text{-mole}}$.

PP_c = VOC composite partial pressure at 20°C, in mm Hg.

VP_i = Vapor pressure of the "i"th VOC compound at 20°C, in mm Hg.

"Fountain solution" means any mixture of water, volatile and nonvolatile chemicals, and additives applied to a lithographic plate to repel ink from the non-image area on the plate.

"Heatset" means a lithographic printing process in which heat from a dryer is used to evaporate ink oils from the substrate.

"Lithographic printing" means a planographic printing process in which the image and nonimage areas are chemically differentiated with the image area being oil-receptive and the nonimage area being water-receptive.

"Non-heatset" means a lithographic printing process in which the printing inks are set and dried by absorption or oxidation rather than heat. For the purposes of this rule, UV-cured and electron beam-cured inks are considered non-heatset.

"Press" means a printing production assembly composed of one or more units to produce a printed substrate (sheet or web).

"Printing" means a photomechanical process in which a transfer of text, designs, and images occurs through contact of an image carrier with a substrate.

"Printing process" means any operation or system wherein printing ink or a combination of printing ink and surface coating is applied, dried or cured and which is subject to the same emission standard. May include any equipment which applies, conveys, dries or cures inks or surface coatings, including, but not limited to, flow coaters, flashoff areas, air dryers, drying areas and ovens. It is not necessary for a printing process to have an oven, flashoff area or drying area to be included in this definition.

"Sheet-fed" means a lithographic printing process in which individual sheets of substrate are fed into the press sequentially.

"Unit" means the smallest complete printing component, composed of an inking and dampening system, of a printing press.

"Web" means a continuous roll of printing substrate.

§ 120-04-4503. Standard for volatile organic compounds.

A. No owner or other person shall use or permit the use of any lithographic printing process employing a fountain solution containing alcohol or an alcohol substitute unless:

1. The monthly average of the weight of the alcohol or alcohol substitute in the fountain solution as applied is no more than:
 - a. 1.6% alcohol when a lithographic web printing process is employed;
 - b. 5.0% alcohol when a lithographic sheet-fed printing process is employed;
 - c. 5.0% alcohol substitute when any lithographic printing process is employed; or
2. The owner installs and operates a refrigeration system which maintains the fountain solution at a temperature of less than 60°; or
3. The owner installs and operates a system which achieves a reduction of volatile organic compound emissions from the fountain solution of at least:
 - a. 70% where a lithographic heatset web printing process is employed;
 - b. 90% where a lithographic non-heatset web printing process is employed;
 - c. 50% where a lithographic non-heatset sheet-fed printing process is employed; or

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d. 10% where a lithographic non-heatset news printing process is employed.

4. When it can be demonstrated to the satisfaction of the board that it is technologically or economically infeasible for a lithographic printing operation subject to this rule to comply with subdivision 1, 2, or 3 of this subsection, the board may establish site-specific standards upon being presented with the necessary demonstration.

B. No owner or other person shall use or permit the use of any heatset web offset lithographic printing process unless:

1. A system is installed which achieves an emission reduction from the press dryer exhaust vent of 90% by weight of volatile organic compounds (minus methane and ethane);

2. The maximum dryer exhaust outlet concentration is maintained at 50 ppmv as carbon (minus methane and ethane); or

3. Inks with an average hourly volatile organic compound content of 2.5 pounds per gallon or less are used.

C. No owner or other person shall use or permit the use of any lithographic printing process employing a cleaning solution containing volatile organic compounds unless:

1. The monthly average of the cleaning solution as applied contains no more than 30% volatile organic compounds by weight;

2. The monthly average of the volatile organic compound portion of the cleaning solution as applied has a composite partial vapor pressure of 10 millimeters of mercury or less at 68°F (20°C); or

3. The cleaning solution and applicators are stored in covered containers or machines with remote reservoirs when not in use.

D. All printing inks, fountain solutions, cleaning solutions, and other products containing 25% or more volatile organic compounds by weight shall be disposed of by one of the following methods:

1. Reclamation, either in-house or by outside services; or

2. Incineration.

§ 120-04-4504. Reserved.

§ 120-04-4505. Standard for visible emissions.

The provisions of Rule 4-1 (Emission Standards for Visible Emissions and Fugitive Dust/Emissions) shall not apply.

§ 120-04-4506. Standard for fugitive dust/emissions.

The provisions of Rule 4-1 (Emission Standards for Visible Emissions and Fugitive Dust/Emissions) shall not apply.

§ 120-04-4507. Standard for odor.

The provisions of Rule 4-2 (Emission Standards for Odor) apply.

§ 120-04-4508. Standard for toxic pollutants.

The provisions of Rule 4-3 (Emission Standards for Toxic Pollutants) apply.

§ 120-04-4509. Compliance.

A. The provisions of § 120-04-02 (Compliance) apply.

B. For the purpose of demonstrating compliance with § 120-04-4503 B, the affected facility shall reduce its emissions of volatile organic compounds at least 15% from its permitted limit within one year following (insert effective date). The affected facility shall be in full compliance with § 120-04-4503 B no later than April 30, 1997.

§ 120-04-4510. Test methods and procedures.

A. The provisions of § 120-04-03 (Emission testing) apply.

B. For the purpose of demonstrating compliance with the emission control requirements of this rule, the affected facility shall be run under typical operating conditions and flow rates compatible with scheduled production during any emission testing.

C. Emissions tests shall include an initial test within 90 days of start-up when the control device is installed and operating that demonstrates compliance with the emission standard in § 120-04-4503.

D. The following reference methods (cited in 40 CFR part 60, Appendix A) shall be used to demonstrate compliance with the emission limit or percent reduction efficiency requirement in § 120-04-4503. Alternate methods may be used with the approval of the board.

1. Reference Method 1 or 1A, as appropriate, shall be used to select the sampling sites. The control device sampling sites for determining efficiency in reducing volatile organic compounds (excluding methane and ethane) from the dryer exhaust shall be placed before the control device inlet (after the dryer) and at the outlet of the control device.

2. Reference Method 2, 2A, 2C, or 2D, as appropriate, shall be used to determine the velocity and volumetric flow rate of the exhaust stream.

3. Reference Method 18, 25, or 25A shall be used to determine the volatile organic compound concentration of the exhaust stream entering and exiting the control device. Good judgment is required in determining the best applicable volatile organic compound test method for each situation. The method selected shall be based on consideration of the diversity of organic species present and their total concentration and on consideration of the potential presence of interfering gases. Because of the different response factors for the many organic compounds formed during the combustion process, only Reference Method 25, which measures volatile organic compounds as a carbon, shall be used; except in cases where the expected outlet volatile organic compound concentration of the control device is less than 100 ppmv as carbon, in which case Reference Method 25A shall be used.

a. If average, non-methane volatile organic compound concentrations in the outlet of a thermal or catalytic oxidizer measured by Reference Method 25A are found to be greater than 100 ppmv as carbon, the board may request a repeat test to be conducted using Reference Method 18 or 25.

b. A test shall consist of three separate runs, each lasting a minimum of 60 minutes, unless the board determines that process variables dictates shorter sampling times.

c. Reference Method 25 specifies a minimum probe and temperature of 265°F. To prevent condensation, the probe should be heated to at least the gas stream temperature, typically close to 350°F.

E. The volatile organic compound content of each batch of fountain solution shall be determined by one of the following procedures:

1. Analysis by Reference Method 24 of a sample of the batch of fountain solution; or

2. Calculation which combines Reference Method 24 analytical volatile organic compound content data for the concentrated materials used to prepare the press-ready batch based on records of the proportions in which they are mixed to make the batch. The analysis of the concentrated materials may be performed by the supplier of the materials.

F. A thermometer or other temperature detection device capable of reading to 0.5°F shall be used to ensure that any refrigerated fountain solution recirculating reservoirs are maintained at or below 60°F at all times.

G. The volatile organic compound or volatile organic compound partial vapor pressure of each cleaning solution shall be determined by one of the following procedures:

1. Analysis by Reference Method 24 for volatile organic compound content or by an appropriate method for composite partial vapor pressure of a sample of the cleaning solution; or

2. Calculation for volatile organic compound content which combines Reference Method 24 analytical volatile organic compound content data for the concentrated materials used to prepare the press-ready batch based on records of the proportions in which they are mixed to make the batch. The analysis of the concentrated materials may be performed by the supplier of the material.

§ 120-04-4511. Monitoring.

A. The provisions of § 120-04-04 (Monitoring) apply.

B. Add-on dryer exhaust control device.

1. The owner of a subject heatset web offset lithographic printing press shall install, calibrate, maintain, and operate a temperature monitoring device according to the manufacturer's instructions at the outlet of the control device. The monitoring temperature shall be set during the testing required to demonstrate compliance with the

emission standard in § 120-04-4503 B. Monitoring shall be performed only when the unit is operational.

2. The temperature monitoring device shall be equipped with a continuous recorder and shall have an accuracy of 0.5°F.

3. The dryer pressure shall be maintained lower than the pressroom air pressure so that air flows into the dryer at all times when the press is operating. A 100% emissions capture efficiency for the dryer shall be established using an air flow direction indicator, such as a smoke stick or aluminum ribbons.

C. Fountain solution volatile organic compound concentration.

1. The purpose of monitoring the volatile organic compound concentration in the fountain is to provide data that can be correlated to the amount of material used when the fountain solution contains alcohol and complies with the limits listed in § 120-04-4503. The following methods may be used to determine the concentration of alcohol in the fountain solution in lieu of calculating the alcohol concentration using the protocol of § 120-04-4510 E. The monitoring requirements of subdivisions 1 a through c of this subsection shall be required only if noncompliance with § 120-04-4503 A is established.

a. The owner of any offset lithographic printing press shall monitor the alcohol concentration of the fountain solution with a refractometer that is corrected for temperature at least once for each eight-hour shift or once per batch, whichever is longer. The refractometer shall have a visual, analog, or digital readout with an accuracy of 0.5%. A standard solution shall be used to calibrate the refractometer for the type of alcohol used in the fountain. Alternatively, the refractometer shall be standardized against measurements performed to determine compliance according to the procedures described in § 120-04-4510 D.

b. Alternatively, the owner of any offset lithographic printing press shall monitor fountain solution alcohol concentration with a hydrometer equipped with a temperature correction at least once for each eight-hour shift or once per batch, whichever is longer. The hydrometer shall have a visual, analog, or digital readout with an accuracy of 0.5%. A standard solution shall be used to calibrate the hydrometer for the type of alcohol used in the fountain. Alternatively, the hydrometer shall be standardized against measurements performed to determine compliance according to the procedures described in § 120-04-4510 D.

c. The volatile organic compound content of the fountain solution may be monitored with a conductivity meter if it is determined that a refractometer or hydrometer cannot be used for monitoring the type of volatile organic compounds in the fountain solution. The conductivity meter reading for the fountain

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solution shall be referenced to the conductivity of the incoming water.

2. If, through recordkeeping for a period of six months or more, the printing process is shown to consistently meet the requirements in § 120-04-4510 D, the monitoring requirement may be waived or extended to a longer period of time.

D. Fountain solution temperature.

1. The owner of any offset lithographic printing press using refrigeration equipment on the fountain shall install, maintain, and continuously operate a temperature monitor of the fountain solution reservoir.

2. The temperature on the temperature monitor shall be read and recorded at least once per operating day to verify that the refrigeration system is operating properly.

E. Cleaning solution. For any offset lithographic printing press with continuous cleaning equipment, flow meters are required to monitor water and cleaning solution flow rates. The flow meters should be calibrated so that the volatile organic compound content of the mixed solution complies with the requirements of § 120-04-4510 G.

§ 120-04-4512. Notification, records and reporting.

A. The provisions of § 120-04-05 (Notification, records and reporting) apply.

B. The owner of any offset lithographic printing press shall record and report the following key parameters on a monthly basis:

1. The type of control device operating on the heatset offset lithographic printing press and the operating parameters specified in § 120-04-4511 B;

2. The equipment standard selected to comply with the requirements listed in § 120-04-4503 B;

3. The volatile organic compound content of the fountain and cleaning solutions, to comply with § 120-04-4503;

4. The temperature of the fountain solution, to comply with the requirements listed in § 120-04-4503 A, if applicable;

5. For manual cleaning, the amount of cleaning solution concentrate and water per batch of cleaning solution mixed;

6. For automatic cleaning, the flow rates of cleaning solution concentrate and water, as specified in § 120-04-4503 C; and

7. Corrective actions taken when exceedances of any parameters monitored according to the requirements of §§ 120-04-4510 through 120-04-4511 occur.

§ 120-04-4513. Registration.

The provisions of § 120-02-31 (Registration) apply.

§ 120-04-4514. Facility and control equipment maintenance of malfunction.

The provisions of § 120-02-34 (Facility and control equipment maintenance or malfunction) apply.

§ 120-04-4515. Permits.

A permit may be required prior to beginning any of the activities specified below and the provisions of Part V (New and Modified Sources) and Part VIII (Permits for New and Modified Sources) may apply. Owners contemplating such action should contact the appropriate regional office for guidance.

1. Construction of a facility.
2. Reconstruction (replacement of more than half) of a facility.
3. Modification (any physical change to equipment) of a facility.
4. Relocation of a facility.
5. Reactivation (restart-up) of a facility.
6. Operation of a facility.

APPENDIX S.

AIR QUALITY PROGRAM POLICIES AND PROCEDURES.

I. General.

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

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

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

D. Copies of materials listed in this appendix may be examined by the public at the headquarters office of the Department of Air Pollution Control, Eighth Floor, Ninth Street Office Building, 200-202 North Ninth Street, Environmental Quality, 629 E. Main Street, Richmond, Virginia, between 8:30 a.m. and 4:30 p.m. of each business day.

II. Specific documents.

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

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

C. Procedures for the Measurement of Capture Efficiency for Determining Compliance with Volatile Organic Compound Emission Standards Covering Surface Coating Operations, AQP-3, ~~July 1, 1991~~ (*effective date of this revision*).

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

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

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

VA.R. Doc. No. R95-549; Filed June 7, 1995, 11:32 a.m.

FINAL REGULATIONS

For information concerning Final Regulations, see Information Page.

Symbol Key

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

AUCTIONEERS BOARD

Title of Regulation: VR 150-01-2. Rules and Regulations of the Virginia Auctioneers Board (REPEALED).

Title of Regulation: VR 150-01-2:1. Rules and Regulations of the Virginia Auctioneers Board.

Statutory Authority: §§ 54.1-201 and 54.1-602 of the Code of Virginia.

Effective Date: August 1, 1995.

Summary:

The final regulations allow for the implementation of a licensure program for auctioneers and auction firms. The regulations provide definitions of auctioneering terms such as absolute auction, estate auction, reserve auction, regular business and owner which are applicable to the auctioneer industry. In addition, the regulations establish entry requirements for licensure, which include successfully completing a course of study at a school of auctioneering approved by the board or having conducted at least 25 auctions within the past eight years at which the applicant has called the bids; passing the auctioneers examination administered by the board; and providing evidence of a surety bond executed by a surety company authorized to do business in Virginia. The regulations allow individuals residing outside of Virginia to obtain a license by reciprocity provided an agreement has been established with that state and the requirements and standards under which the license was issued are substantially equivalent to Virginia's. Application procedures and examination content are also outlined in the final regulation.

Fees for initial application, examination, renewal and reinstatement of licenses have been established in accordance with § 54.1-113 of the Code of Virginia and are based on the current regulated population. Procedures regarding renewal, late renewal and reinstatement are addressed. Regarding renewal, licenses will be staggered and will expire two years from the date the license was issued. Verification of current surety bond will be required and must be provided to the board at the time of renewal.

The standards of practice section deals with advertising, contracts, conduct at auctions, documentation, escrow funds, record retention, the display of licenses, and procedures regarding changes of address. In reference to contracts, the regulations will require all auctioneers agreeing to conduct an auction to include the following in their contracts: a detailed list of the property received for sale; specific information on the auctioneer; the date, time and place of the auction; the fee or percentage of gross sales charged to the owner and what services are included in the fee; statement as to availability of the

clerk sheets; and a statement as to the acceptance of the terms of the contract. Once the contract is executed a legible copy shall be given to the owner. In addition, auctioneers will be required to deposit proceeds in an auctioneer escrow account if they are not disbursed to the owner on auction day. Proceeds due to the owner shall be disbursed no later than 30 days after the date of each auction. If the goods are not sold at a single auction, then the auctioneer shall give notice as to the date of auction of the remaining personal or real property. The regulations outline in greater detail the specifics of auctioneer escrow accounts.

The regulations address the standards of conduct for auctioneers and the board's means for fining, revoking, or suspending an individual or firm license for violating such provisions.

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 Mark N. Courtney, Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, VA 23230, telephone (804) 367-8514.

VR 150-01-2:1. Rules and Regulations for the Virginia Auctioneers Board.

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:

"Absolute auction" means an auction where at the time of the auction sale the real or personal property to be sold will pass to the highest bidder regardless of the amount of the highest and last bid.

"Auction" means the sale of goods or real estate by means of exchanges between an auctioneer and members of his audience, the exchanges consisting of a series of invitations for offers made by the auctioneer, offers made by members of the audience, and acceptance by the auctioneer of the highest or more favorable offer.

"Auctioneer" means any person who conducts or offers to conduct an auction.

"Auction firm" means any corporation, partnership or entity, except a sole proprietorship, performing any of the acts of an auctioneer as defined in this section.

"Board" means the Auctioneers Board.

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

"Estate auctions" means the liquidation at auction of real or personal property of a specified person.

"Owner" means the bona fide owner of the real or personal property being offered for sale; in the case of a corporation, partnership, or other entity, except a sole proprietorship, an authorized officer, director, or partner may be deemed to be "owner" of the real or personal property being offered for sale, provided such entity is licensed to do business in the Commonwealth of Virginia.

"Person" means any natural person, association, partnership, or corporation, and the officers, directors, and employees of a corporation.

"Regular business" means recurring, routine, planned activities performed for profit by those persons, corporations, partnerships, entities, charitable, religious, fraternal or political and all other profit or nonprofit organizations who do not meet the exemptions of § 54.1-601 of the Code of Virginia.

"Reserve auction" means the auctioneer reserves the right to reject any and all bids.

PART II. ENTRY REQUIREMENTS.

§ 2.1. Licensure.

All persons or firms as defined in § 54.1-600 of the Code of Virginia who conduct auctions or offer their services to sell at auction in the Commonwealth are required to file a licensure application and pay the specified fee to the board. Applicants for individual licensure shall meet the following requirements:

1. Be at least 18 years of age.
2. Shall not have been convicted within the past five years of a criminal offense related to auction activity in Virginia or any other jurisdiction. Any plea of nolo contendere shall be considered a conviction for purposes of this paragraph. The record of a conviction authenticated in such form as to be admissible in evidence under the laws of the jurisdiction where convicted shall be admissible as prima facie evidence of such conviction.
3. Successfully complete a course of study at a school of auctioneering which has obtained course approval from the board, or an equivalent course or conducted at least 25 auctions within the past eight years at which the applicant has called the bids; and has passed the Virginia Licensed Auctioneer's Examination, administered by the Auctioneers Board.

§ 2.2. Bond required.

All applicants shall submit evidence that a surety bond, executed by a surety company authorized to do business in the Commonwealth and in at least the amount of \$10,000, has been obtained. Proof of current bond must be submitted in order to obtain or renew the license. Bonds shall be for a

term of two years and run concurrently with the two-year term of the license.

§ 2.3. License by reciprocity.

The board may issue a license to any applicant or active officer in a firm holding a license in any state, territory, or possession of the United States, with whom the board has established an act of reciprocity provided the requirements and standards under which the license was issued are substantially equivalent to those established by the board. At the time of application for licensure, the applicant must be currently licensed in the state in which reciprocity is established with the Commonwealth of Virginia.

Nonresident applicants shall also file with the board an irrevocable consent that service of process upon the director is valid and binding as the service of process upon the applicant.

§ 2.4. Application.

A. All applicants, corporations, firms, or active officers seeking licensure by reciprocity or examination shall submit a fully executed and notarized application with the appropriate fee or fees attached. Incomplete applications will be returned to the applicant.

Applications for licensure by examination must be received by the Department of Professional and Occupational Regulation 45 days prior to a scheduled examination in order to be eligible to sit for that examination.

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

C. All applications will be reviewed by the Auctioneers Board staff to determine eligibility for examination and licensure within 30 days of receipt at the offices of the Department of Professional and Occupational Regulation. No applicant will be approved for licensure unless all requirements of this part of these regulations are met.

D. Applicants may appeal the initial application review to the board in writing within 60 days of the staff's determination.

§ 2.5. Examination.

The examination shall test the applicant's knowledge of the following:

1. The auction business including fundamentals of auctioneering, elementary principles of real estate, preparation of contracts, advertising, final settlement statements, arithmetic and percentages, and ethics.
2. The Virginia statutes entitled Auctioneers' Licensure Act, §§ 54.1-600 through 54.1-606 of the Code of Virginia; bulk transfers, §§ 8.6-101 through 8.6-111 and 8.2-328 of the Code of Virginia; sales tax laws, Title 58.1 of the Code of Virginia; and the rules and regulations of the board.

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§ 2.6. Fees.

Fees are nonrefundable and shall not be prorated. The following fees shall apply:

1. Individual auctioneer license	\$170
2. Auctioneer firm license	\$195
3. Examination	\$140
4. Reexamination fee	\$140
5. Renewal for individual auctioneer's license	\$170
6. Renewal for firm or corporation license	\$195
7. Late renewal for an individual auctioneer's license	\$340
8. Late renewal for an auction firm or corporate license	\$390
9. Reinstatement of the individual auctioneer's license	\$340
10. Reinstatement of the firm or corporate license	\$390
11. Bad check fee	\$25
[12. Certificate of Licensure (letter of good standing)]	\$25

PART III. RENEWAL/REINSTATEMENT.

§ 3.1. Notice of renewal.

The Department of Professional and Occupational Regulation will mail a renewal notice to the licensee outlining the amount due and procedures for renewal. Failure to receive this notice shall not relieve the individual or firm licensee of the obligation to renew.

Licenses issued under these regulations shall be issued for a two-year period. Each license holder, corporation or firm shall be required to renew the license by submitting the proper fee made payable to the Treasurer of Virginia, with verification of current surety bond coverage as detailed in § 2.2 of these regulations.

§ 3.2. Failure to renew.

A. Any individual or firm licensee who fails to renew a license within [~~one calendar month~~ 30 days] after the license expires, shall be required to pay a late renewal fee which shall be equal to twice the regular renewal fee.

B. Any individual or firm licensee who fails to renew his license within six calendar months after the expiration date of the license shall be required to apply for reinstatement of the license. The applicant shall submit to the Department of Professional and Occupational Regulation a reinstatement application and fee.

C. The date the renewal application is received by the Department of Professional and Occupational Regulation or its agent will determine whether a license will be renewed without penalty or will be subject to reinstatement requirements.

D. Auctioneer individual and firm licenses issued under this regulation shall expire 24 months from the last day of the month in which the license was issued as indicated on the license.

PART IV. STANDARDS OF PRACTICE.

§ 4.1. Advertising.

A. All advertising must be truthful. Advertising shall contain no false, misleading or deceptive statements, with respect to types or conditions of merchandise offered at auction, why merchandise is being sold, who has ownership, where the merchandise was obtained, or the terms and conditions of the auction and sale.

B. In all advertisements relating to an auction, the auctioneer's name and Virginia license number or the auction firm's name and Virginia license number shall be clearly displayed.

§ 4.2. Contracts.

When an auctioneer agrees to conduct an auction, a contract shall be drawn setting forth the particulars of the terms and conditions under which the auctioneer received the real or personal property for auction and particulars for the disbursement of the proceeds. Each contract for auction shall include the following:

1. [a.] A detailed list of the real or personal property received for sale. If a list cannot be made at the time of signing of the contract, then a list must be made a part of the contract (and attached) prior to auction of the real or personal property for that day [; or
b. If the auctioneer enters into a contract to sell items on a consignment basis where the total value of all the items to be sold at any one action does not exceed \$500, and the owner of the items agrees to waive this requirement in writing on a document separate from, but made a part of, the contract, then this requirement is not applicable.]
2. The name, address, telephone number, and license number of the Virginia auctioneer or auction firm.
3. The name, address and telephone number of the [seller owner] .
4. The date, time and place of the auction or auctions at which the real or personal property is scheduled to be auctioned.
5. The fee or percentage of gross sales the auctioneer or auction firm will charge the [seller owner] and what services are included in the fee, such as preparation, travel, labor, advertising and any other auction related expenses.
6. By what date the [seller owner] is to be paid and [~~the name of the individual~~] who is responsible for disbursing the funds.
7. A statement that the clerk sheets, or other evidence to properly account for all items sold, shall be given or

made available for inspection by the [seller owner] on a daily basis.

8. The following statement above the [seller's owner's] signature line: "I have read and accepted the terms of this contract."

9. A legible executed copy of the contract shall be given to the [seller owner] at the time of execution.

§ 4.3. Conduct at auctions.

A. No auctioneer shall attempt to escalate bidding through false bids, or through collusion with another (shills). The auctioneer shall not bid on the [seller's owner's] behalf nor knowingly accept a bid made by the [seller owner] or made on the [seller's owner's] behalf unless notice has been given that liberty for such bidding has been reserved.

B. If a licensed Virginia auctioneer or auction firm contracts with a nonlicensed (in Virginia) auctioneer, corporation or firm to conduct auctions in Virginia, the Virginia auctioneer, corporation or firm shall be considered the principal and shall assume full responsibility for the auction and auctioneers subcontracted.

§ 4.4. Display of license.

Auctioneers shall carry their pocket cards on their person and shall produce them upon request. Auction firms shall display their license in a conspicuous location at the address of record. The address of record shall not be a post office box as detailed in § 4.8 C.

§ 4.5. Documentation.

Upon completion of the auctioneer's or auction firm's service, each [seller owner] shall be given legible copies of bills of sale, clerk sheets, consignment sheets, settlement papers, balance sheets or other evidence to properly account for all items sold at auction.

§ 4.6. Escrow funds.

A. Proceeds of a personal property auction not disbursed to the [seller owner] on auction day shall be deposited in an auction escrow account by the auctioneer [/auction firm] no later than the next banking day following the date of auction or sale of the goods, whichever occurs first.

B. Auctioneers [/auction firms] shall use federally insured depositories in the Commonwealth of Virginia.

C. Proceeds due [from the sale of goods other than real property] shall be disbursed to the [seller owner] no later than 30 days after the date of each auction.

D. Funds from a real estate auction shall be held in escrow until settlement in accordance with the agreement of sale.

E. If the [sellers' personal or real property is owners' goods are] not sold in a single auction, proceeds due shall be disbursed to the [seller owner] within 30 days after each auction [for goods other than real property, or in accordance with the agreement of sale for the sale of real property] . Notice must be given to the [seller owner] of tentative date

of auction of the remaining [~~personal or real property goods~~]

F. The auction escrow account shall be used solely for the preservation and guarantee of auction proceeds until disbursed at settlement. Funds for any other purpose shall not be commingled with the auction escrow account. Contingency accounts established to guarantee checks accepted on the [seller's owner's] behalf shall not be considered commingling of funds. Moneys due to the auctioneer or auction firm shall not be withdrawn from the auction escrow account until final settlement is made with the [seller owner] .

§ 4.7. Records.

The contract drawn with each [seller owner] ; auction records, including but not limited to lists of buyers and their addresses; and clerk sheets showing the items sold including the buyers' numbers or names and the selling prices and the final settlement papers shall be retained for a period of four years from the date of settlement. These business records shall be available for inspection by the board or its designees as deemed appropriate and necessary.

§ 4.8. Change of address.

A. An auctioneer's or auction firm's license shall not be transferable and shall bear the same name and physical address as the business.

B. Written notice shall be given within 30 days to the board by each individual or firm licensee of any change of physical business address or location, whereupon the board shall issue an amended license without fee for the unexpired portion of the biennial period.

C. A post office box is not an acceptable physical business address.

PART V. STANDARDS OF CONDUCT.

§ 5.1. Discipline.

A. The board has the power to fine any individual or firm licensee, or to suspend or revoke any license issued under the provisions of Chapter 6 (§ 54.1-600 et seq.) of Title 54.1 of the Code of Virginia and the regulations of the board [~~at any time after a hearing is conducted~~] pursuant to the provisions of the Administrative Process Act (§ 9-6.14:1 et seq. of the Code of Virginia) if it finds that:

1. The license was obtained or renewed through fraud or misrepresentation;
2. The licensed auctioneer or firm has been found guilty by the board or by a court of any criminal offense or material misrepresentation in the course of performing his auctioneer duties;
3. The licensed auctioneer or firm has not demonstrated reasonable care, judgment, or application of his knowledge and ability in the performance of his auctioneering duties;
4. The license auctioneer or firm violated or induced another person to violate any provisions of Chapters 1,

Final Regulations

2, 3, and 6 of Title 54.1 of the Code of Virginia, or any provisions of these regulations; or

5. The licensee, auction firm, or firm owner refuses or fails, upon request or demand, to produce to the board or any of its agents any document, book, or copy thereof in licensee's or owner's possession concerning the performance of auctioneering duties.

B. The board, in its discretion, may refuse to grant or renew a license of any person for any of the reasons specified in subsection A of this section.

PART VI. SCHOOLS OF AUCTIONEERING.

§ 6.1. Application for course approval.

Schools seeking approval of their courses shall file a request with the board. The request shall include the following information:

1. Name and address of the school;
2. Locations where classes will be held;
3. Length of the course and total number of hours of instruction;
4. Subjects covered together with number of instruction hours assigned;
5. Names and qualifications of instructors (area of expertise and experience).

§ 6.2. Requirements for course approval.

To receive course approval the institution must offer a minimum of 80 hours of classroom and field instruction in the conduct of auction business to include fundamentals of auctioneering, elementary principles of real estate, brokerage, contract drawing, advertising, sale preparation, bid calling, settlement statements and ethics. There must be at least five instructors who have been licensed or certified auctioneers for at least five years and who specialize in different fields of the auction business.

VA.R. Doc. No. R95-545; Filed June 6, 1995, 3:31 p.m.



Commonwealth of Virginia
Auctioneers Board

Department of Professional & Occupational Regulation
3600 West Broad Street
Richmond, Virginia 23230-4917
(804) 367-8506

FOR OFFICE USE ONLY	
Perd.#	_____
Fee	_____
Class	_____
Lic.#	_____
Date	_____
Code	_____

APPLICATION FOR A VIRGINIA AUCTIONEERS LICENSE

Please check one and submit appropriate fee: _____ License by Reciprocity - \$170
_____ Examination - \$140 *
_____ Reexamination - \$140 *
_____ License by Reinstatement - \$340

Make check or money order payable to the *Treasurer of Virginia*. All fees are nonrefundable.

(* Once you have passed the examination, you will be required to submit the license application fee of \$170 before you receive your license. DO NOT SEND THIS FEE AT THIS TIME, YOU WILL BE NOTIFIED WHEN TO SUBMIT THIS FEE.)

PART I: TO BE COMPLETED BY ALL APPLICANTS

FULL NAME _____

STREET ADDRESS _____

CITY _____ STATE _____ ZIP _____

RESIDENCE PHONE _____ BUSINESS PHONE _____

DATE OF BIRTH _____ BIRTHPLACE _____

SOCIAL SECURITY NUMBER _____ - _____ - _____

RESIDENT OF _____ (INDICATE STATE)
 (If not a Virginia resident, you must complete Part VI of this application)

MAILING ADDRESS _____
 (if different from above)

PART II: ALL APPLICANTS SHALL RESPOND TO THE FOLLOWING QUESTIONS

- Do you hold a license as an auctioneer in another jurisdiction? Yes No
 State _____ License Number _____
If yes, attach a letter from your State Licensing Board certifying that you are currently licensed as an auctioneer and in good standing. A copy of your license or pocket card is not acceptable.
If no, attach a copy of diploma or certificate of completion from an approved school of auctioneering.
- Have you ever been denied an auctioneer license in Virginia or any other state or jurisdiction?
 Yes No
If yes, attach a separate statement giving complete details.
- Have you ever had an auctioneer license suspended, revoked or surrendered or have you ever been disciplined by the licensing authorities in Virginia or in any other state or jurisdiction? Yes No
If yes, attach a separate sheet with complete details.
- Have you ever pleaded guilty, entered a plea of nolo contendere or been convicted of any criminal offense related to auction activity or is there any criminal charge now pending against you? Yes No
If yes, attach a separate statement giving complete details.
- Do you presently hold an auction *firm* license in the Commonwealth of Virginia or have you applied for one?
 Yes No
 If yes, give: Name of Firm: _____
 License Number: _____
- HAVE YOU READ THE COMMONWEALTH OF VIRGINIA CODE AND REGULATIONS OF THE AUCTIONEER LICENSING BOARD? Yes No

ALL APPLICANTS MUST HAVE THE BOND FORM, AFFIDAVIT AND ACKNOWLEDGEMENT OF SURETY, AND ACKNOWLEDGEMENT OF PRINCIPAL ON THE FOLLOWING PAGES (PARTS III-V) EXECUTED BY A SURETY COMPANY.

PART III: BOND FORM

Bond No. _____
Effective Through: _____

KNOW ALL MEN BY THESE PRESENTS that _____
(name of auctioneer or firm)

located at _____, as
Principal or Principals jointly and severally, and _____
(bond company), a corporation of _____
as surety are held and firmly bound unto the Commonwealth of
Virginia in the full sum of Ten Thousand and No/100 Dollars (\$10,000.00), for which sum
well and truly paid, said Principal(s) and Surety bind themselves, their heirs, executors,
administrators, successors and assignees jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH that whereas, the Principal(s) have
requested the licensure from the Virginia Auctioneers Board (the Board) pursuant to Virginia
Code § 54.1-603 for the purpose of engaging in the business of conducting auctions, as defined
in Virginia Code § 54.1-600 within the Commonwealth of Virginia;

NOW, THEREFORE, if the Principal(s) shall, during the period that this license is in effect,
faithfully observe and honestly comply with the provisions of Title 54.1, Chapter 6, Code of
Virginia (1950), as amended, regulations auctioneers; and if the Principal(s) shall pay all
damages occasioned to any person by reason of any misstatement, misrepresentation, fraud or
deceit of the Principal(s) or their agents or employees, then this obligation shall become void;
otherwise it shall remain in force and effect; provided, however, that this Bond is issued subject
to the following conditions and privileges:

1. (a) The surety shall have the right to cancel this bond at any time by written notice
to the Board at the address of the Department of Professional and Occupational
Regulation, at 3600 West Broad Street, Richmond, Virginia 23230, and to each
Principal at the address given above.
- (b) The written notice shall state the effective date of the cancellation, and shall be
personally served or sent by registered mail, return receipt requested.
- (c) The notice shall be served upon or received by the Board and the Principal(s) at
least 60 days prior to the effective date of the cancellation.
2. (a) Should the notice of cancellation not be received by the Board and the Principal(s)
at least 60 days prior to the effective date of cancellation, the cancellation shall
become effective 60 days from the date of receipt by the Board and the
Principal(s).

(Bond Form cont.)

- (b) Should the notice be received on different dates by the parties to this bond, the date
of receipt by the Department of Professional and Occupational Regulation, as
documented by the Postal Service, shall control the state of cancellation.
3. (a) This bond shall remain in full force and effect until cancelled as provided above.
- (b) It is expressly agreed and understood that the surety shall remain fully liable and
default of breach under the terms of this Bond occurring at any time prior to the
expiration of the Bond.
4. Any person aggrieved by any act of the Principal(s) in violation of the provisions of Title
54.1, Chapter 6, Code of Virginia (1950), as amended, may proceed against the
Principal(s), or Surety, or both, to recover damages not in excess of the penalty of the
bond.
5. In no event shall the Surety be liable for damages greater than the sum of this Bond.

IN WITNESS WHEREOF, the Principal(s) have hereunder affixed their signature(s) and seal,
and the Surety has caused this document to be executed by _____,
and is duly authorized Attorney-in-Fact, this _____ day of _____, 19 _____.

(Corporate Principal) (SEAL)

BY _____
(Individual Principal)

(Title)

(Corporate Surety) (SEAL)

BY _____
(Attorney-in-Fact)

(Title)

PART IV: AFFIDAVIT AND ACKNOWLEDGEMENT OF SURETY

STATE OF _____

CITY OR COUNTY OF: _____

I, _____, a Notary Public in and for the _____ aforesaid, in the State aforesaid, do certify that _____ personally appeared before me in my _____ aforesaid and made oath that he is _____ of the _____ that he is duly authorized to execute the foregoing bond by virtue of a certain power of attorney of said company, dated _____ and recorded in the Clerk's office of the _____ of _____ in Deed Book No. _____, Page _____, that said power of attorney has not been revoked; that the said company has complied with all requirements of law regulating the admission of such companies to transact business in the State of Virginia; that said company is solvent and fully able to meet promptly all of its obligations, and the said thereupon, in the name and on behalf of the said company, acknowledged and foregoing writing as its act and deed.

Subscribed and sworn to before me this _____ day of _____, 19 _____.

Signature of Notary Public: _____
My commission expires: _____

PART V: ACKNOWLEDGEMENT OF PRINCIPAL

STATE OF: _____

CITY OR COUNTY OF: _____

I, _____, a Notary Public in and for the Commonwealth of Virginia, do certify that _____ whose name(s) is/are signed to the above bond, dated _____, 19 _____, personally appeared before me at _____, and acknowledged the same.

Sworn and subscribed to before me this _____ day of _____, 19 _____.

Signature of Notary Public: _____
My commission expires: _____

PART VI: IRREVOCABLE DESIGNATION OF AGENT FOR SERVICE OF PROCESS

ALL NON-RESIDENT APPLICANTS MUST COMPLETE THIS SECTION!

KNOW ALL MEN BY THESE PRESENTS:

The undersigned, _____ (auctioneer/owner of firm), being an applicant for licensure as a non-resident Auctioneer of the Commonwealth of Virginia, does hereby irrevocably designate and appoint the Director of the Virginia Department of Professional and Occupational Regulation, as his (her, its) agent for the purpose of accepting service of any and all processes issued by any court located in the Commonwealth of Virginia, as well as service of all pleadings and other papers, relating in any way to any action, suit or legal proceeding arising out of or pertaining to his (her, its) duties or responsibilities as an Auctioneer in Virginia. The undersigned further consents, stipulates and agrees that any lawful process served upon aforesaid agent shall have the same legal force and validity as if served upon the undersigned personally within _____ (State of Legal Residence) and that the authority contained herein shall continue in force and effect so long as any liability against the undersigned remains outstanding in the Commonwealth of Virginia.

This _____ day of _____, 19 _____.

Signature of Auctioneer/Owner of Firm

(If a corporation, a corporate seal must be affixed and a certified copy of the resolution by the proper officers or managing board, authorizing the member or office to execute the consent must be attached.)

PART VII: AFFIDAVIT (To be executed by applicant before a notary public)

STATE OF _____

CITY/COUNTY OF _____

The undersigned, in making this application to the Virginia Auctioneers Board, swears or affirms that he or she is the applicant named herein and that the answers and information contained herein are true to the best of his or her knowledge and belief, that he/she has not withheld or suppressed any information that might affect this application, and that he/she has read and understands this affidavit.

Signature of applicant: _____

Signature of notary public: _____

Subscribed and sworn to before me this _____ day of _____, 19 _____.

My commission expires: _____

(SEAL)



Commonwealth of Virginia
Auctioneers Board

Department of Professional & Occupational Regulation
3600 West Broad Street
Richmond, Virginia 23230-4917
(804) 367-8506

FOR OFFICE USE ONLY	
Pend.#	_____
Fee	_____
Class	_____
Lic.#	_____
Date	_____
Code	_____

APPLICATION FOR A VIRGINIA AUCTIONEER FIRM LICENSE

Please check one and submit appropriate fee: Firm License - \$195
 License by Reinstatement - \$390

Make check or money order payable to the *Treasurer of Virginia*. All fees are nonrefundable.

PART I: TO BE COMPLETED BY ALL APPLICANTS

- FIRM'S LEGAL NAME _____
If firm is incorporated outside of Virginia, a copy of the certificate of authority from the State Corporation Commission (SCC) must be submitted with this application. If the firm is incorporated under the laws of Virginia, certified true copies of the articles of incorporation, bylaws and charter issued by the SCC must be submitted with this application.
TRADING-AS-NAME (if applicable) _____
- BUSINESS ADDRESS (location) _____
(If the firm is located outside of Virginia, Part VI of this application must be completed.)
- BUSINESS PHONE _____ EMPLOYER ID# _____

PART II: ALL APPLICANTS SHALL RESPOND TO THE FOLLOWING QUESTIONS

- Have you ever held an auctioneer firm license in Virginia or in another jurisdiction? Yes No
State _____ License Number _____
- Have you ever been denied an auctioneer firm license in the state of Virginia or any other state or jurisdiction?
 Yes No
If yes, attach a separate statement giving complete details.
- Have you ever had an auctioneer firm license suspended, revoked or surrendered or have you ever been disciplined by the licensing authorities in Virginia or in any other state or jurisdiction? Yes No
If yes, attach a separate sheet with complete details.

Part II (cont.)

- Have you ever had any other business or professional license of any type suspended, revoked or surrendered in Virginia or in any other state or jurisdiction? Yes No
If yes, attach a separate sheet giving complete details.
- Are you aware that a Virginia licensed auctioneer is required to be employed by the firm to call all auctions?
 Yes No
- HAVE YOU READ THE COMMONWEALTH OF VIRGINIA CODE AND REGULATIONS OF THE AUCTIONEER LICENSING BOARD? Yes No

ALL APPLICANTS MUST HAVE THE BOND FORM, AFFIDAVIT AND ACKNOWLEDGEMENT OF SURETY, AND ACKNOWLEDGEMENT OF PRINCIPAL ON THE FOLLOWING PAGES (PARTS III-V) EXECUTED BY A SURETY COMPANY.

PART III: BOND FORM

Bond No. _____
Effective Through: _____

KNOW ALL MEN BY THESE PRESENTS that _____
(name of auctioneer or firm)
located at _____, as
Principal or Principals jointly and severally, and _____
(bond company), a corporation of _____
as surety are held and firmly bound unto the Commonwealth of
Virginia in the full sum of Ten Thousand and No/100 Dollars (\$10,000.00), for which sum
well and truly paid, said Principal(s) and Surety bind themselves, their heirs, executors,
administrators, successors and assignees jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH that whereas, the Principal(s) have
requested the licensure from the Virginia Auctioneers Board (the Board) pursuant to Virginia
Code § 54.1-603 for the purpose of engaging in the business of conducting auctions, as defined
in Virginia Code § 54.1-600 within the Commonwealth of Virginia;

NOW, THEREFORE, if the Principal(s) shall, during the period that this license is in effect,
faithfully observe and honestly comply with the provisions of Title 54.1, Chapter 6, Code of
Virginia (1950), as amended, regulations auctioneers; and if the Principal(s) shall pay all
damages occasioned to any person by reason of any misstatement, misrepresentation, fraud or
deceit of the Principal(s) or their agents or employees, then this obligation shall become void;
otherwise it shall remain in force and effect; provided, however, that this Bond is issued subject
to the following conditions and privileges:

1. (a) The surety shall have the right to cancel this bond at any time by written notice to the Board at the address of the Department of Professional and Occupational Regulation, at 3600 West Broad Street, Richmond, Virginia 23230, and to each Principal at the address given above.
- (b) The written notice shall state the effective date of the cancellation, and shall be personally served or sent by registered mail, return receipt requested.
- (c) The notice shall be served upon or received by the Board and the Principal(s) at least 60 days prior to the effective date of the cancellation.
2. (a) Should the notice of cancellation not be received by the Board and the Principal(s) at least 60 days prior to the effective date of cancellation, the cancellation shall become effective 60 days from the date of receipt by the Board and the Principal(s).

(Bond Form cont.)

- (b) Should the notice be received on different dates by the parties to this bond, the date of receipt by the Department of Professional and Occupational Regulation, as documented by the Postal Service, shall control the state of cancellation.
3. (a) This bond shall remain in full force and effect until cancelled as provided above.
- (b) It is expressly agreed and understood that the surety shall remain fully liable and default of breach under the terms of this Bond occurring at any time prior to the expiration of the Bond.
4. Any person aggrieved by any act of the Principal(s) in violation of the provisions of Title 54.1, Chapter 6, Code of Virginia (1950), as amended, may proceed against the Principal(s), or Surety, or both, to recover damages not in excess of the penalty of the bond.
5. In no event shall the Surety be liable for damages greater than the sum of this Bond.

IN WITNESS WHEREOF, the Principal(s) have hereunder affixed their signature(s) and seal, and the Surety has caused this document to be executed by _____, and is duly authorized Attorney-in-Fact, this _____ day of _____, 19 _____.

(Corporate Principal) (SEAL)

BY _____
(Individual Principal)

(Title)

(Corporate Surety) (SEAL)

BY _____
(Attorney-in-Fact)

(Title)

PART IV: AFFIDAVIT AND ACKNOWLEDGEMENT OF SURETY

STATE OF _____

CITY OR COUNTY OF: _____

I, _____, a Notary Public in and for the _____ aforesaid, in the State aforesaid, do certify that _____ that _____ personally appeared before me in my _____ aforesaid and made oath that he is _____ of the _____ that he is duly authorized to execute the foregoing bond by virtue of a certain power of attorney of said company, dated _____ and recorded in the Clerk's office of the _____ of _____ in Deed Book No. _____, Page _____, that said power of attorney has not been revoked; that the said company has complied with all requirements of law regulating the admission of such companies to transact business in the State of Virginia; that said company is solvent and fully able to meet promptly all of its obligations, and the said _____ thereupon, in the name and on behalf of the said company, acknowledged and foregoing writing as its act and deed.

Subscribed and sworn to before me this _____ day of _____, 19 ____.

Signature of Notary Public: _____
My commission expires: _____

PART V: ACKNOWLEDGEMENT OF PRINCIPAL

STATE OF: _____

CITY OR COUNTY OF: _____

I, _____, a Notary Public in and for the Commonwealth of Virginia, do certify that _____, whose name(s) is/are signed to the above bond, dated _____, 19 _____, personally appeared before me at _____, and acknowledged the same.

Sworn and subscribed to before me this _____ day of _____, 19 ____.

Signature of Notary Public: _____
My commission expires: _____

PART VI: IRREVOCABLE DESIGNATION OF AGENT FOR SERVICE OF PROCESS

ALL NON-RESIDENT APPLICANTS MUST COMPLETE THIS SECTION!

KNOW ALL MEN BY THESE PRESENTS:

The undersigned, _____ (auctioneer/owner of firm), being an applicant for licensure as a non-resident Auctioneer of the Commonwealth of Virginia, does hereby irrevocably designate and appoint the Director of the Virginia Department of Professional and Occupational Regulation, as his (her, its) agent for the purpose of accepting service of any and all processes issued by any court located in the Commonwealth of Virginia, as well as service of all pleadings and other papers, relating in any way to any action, suit or legal proceeding arising out of or pertaining to his (her, its) duties or responsibilities as an Auctioneer in Virginia. The undersigned further consents, stipulates and agrees that any lawful process served upon aforesaid agent shall have the same legal force and validity as if served upon the undersigned personally within _____ (State of Legal Residence) and that the authority contained herein shall continue in force and effect so long as any liability against the undersigned remains outstanding in the Commonwealth of Virginia.

This _____ day of _____, 19 ____.

Signature of Auctioneer/Owner of Firm

(If a corporation, a corporate seal must be affixed and a certified copy of the resolution by the proper officers or managing board, authorizing the member or office to execute the consent must be attached.)

PART VII: AFFIDAVIT (To be executed by applicant before a notary public)

STATE OF _____

CITY/COUNTY OF _____

The undersigned, in making this application to the Virginia Auctioneers Board, swears or affirms that he or she is the applicant named herein and that the answers and information contained herein are true to the best of his or her knowledge and belief, that he/she has not withheld or suppressed any information that might affect this application, and that he/she has read and understands this affidavit.

Signature of applicant: _____

Signature of notary public: _____

Subscribed and sworn to before me this _____ day of _____, 19 ____.

My commission expires: _____

(SEAL)

DEPARTMENT OF LABOR AND INDUSTRY

Safety and Health Codes Board

REGISTRAR'S NOTICE: The following amendments are exempt from the Administrative Process Act in accordance with § 9-6.14:4.1 C 4(a) of the Code of Virginia, which excludes regulations that are necessary to conform to changes in Virginia statutory law or the appropriation act where no agency discretion is involved. The Department of Labor and Industry will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: VR 425-01-75. Boiler and Pressure Vessel Regulations.

Statutory Authority: § 40.1-51.6 of the Code of Virginia.

Effective Date: August 1, 1995.

Summary:

Chapter 97 of the 1995 Acts of Assembly enacted changes to the Boiler and Pressure Vessel Safety Act. The legislation eliminates certificate inspections of uninsured boilers by state personnel thereby allowing the private sector or local governments to conduct all inspections for the required certification of boilers and pressure vessels.

Added language in the Code of Virginia restricts the commissioner or his agent's right of access to a boiler or pressure vessel to those reviews or investigations required elsewhere under the law. There is no right of access for primary boiler inspections. The misdemeanor penalty is eliminated. Operating a boiler or pressure vessel without a certificate will now be subject to a civil penalty not to exceed \$100 per day. The collected penalties will go into the general fund.

Employers will have the same procedural rights they had if they had been assessed an occupational safety and health penalty: notice of violation, right of contest, and trial in circuit court. Fees are retained for national accreditation surveys for boiler and pressure vessel manufacturers and repair organizations, second hand or used boiler views, variance reviews, and emergency repair reviews.

The legislation required the following revisions to VR 425-01-75, Boiler and Pressure Vessel Rules and Regulations:

- 1. Deputy inspectors (state employee inspectors for certificate inspections) are eliminated and special inspectors (private sector) will now be certified rather than appointed.*
- 2. A new class of inspectors called Commonwealth Inspectors was added. These inspectors are state employee inspectors who do not perform certificate inspections but conduct various other inspections and reviews of objects such as used boiler review, second-*

hand boiler review, emergency repair review and variance review.

3. A new type of Special Inspector, a contract fee inspector, is established and will be allowed to collect fees.

4. Since special inspectors will no longer be appointed under § 40.1-51.9 of the Code of Virginia, the appointed representative language was deleted in the regulation.

5. All primary inspections by the department and the associated fees are eliminated.

VR 425-01-75. Boiler and Pressure Vessel 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:

"Act" means the Boiler and Pressure Vessel Safety Act, Chapter 3.1 (§§ 40.1-51.5 through 40.1-51.19) of Title 40.1 of the Code of Virginia.

"Alteration" means any change in the item described on the original manufacturers' data report which affects the pressure containing capability of the boiler or pressure vessel. Nonphysical changes, such as an increase in the maximum allowable working pressure (internal or external) or design temperature of a boiler or pressure vessel, shall be considered an alteration. A reduction in minimum temperature such that additional mechanical tests are required shall also be considered an alteration.

"Approved" means acceptable to the board, commissioner or Chief Inspector as applicable.

"ASME Code" means the Boiler and Pressure Vessel Code of the American Society of Mechanical Engineers with such revisions, amendments, and interpretations thereof as are made, approved and adopted by governing council of such society and approved and adopted by the board. Copies of the code may be obtained from the American Society of Mechanical Engineers at 345 East 47th Street, New York, NY 10017.

"Authorized Inspection Agency" means one of the following:

1. A department or division established by a state, commonwealth or municipality of the United States, or a province of Canada which has adopted one or more sections of the Boiler and Pressure Vessel Code of the ASME and whose inspectors hold valid commissions with the National Board of Boiler and Pressure Vessel Inspectors; or equivalent qualifications as defined and set forth in §§ 2.4 and 2.6;
2. An inspection agency of an insurance company which is authorized (licensed) to write boiler and pressure vessel insurance in those jurisdictions which have examined the agency's inspectors to represent such

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jurisdictions as is evident by the issuance of a valid certificate of competency to the inspector;

3. An owner/user inspection agency as defined in this section; ; or

4. A contract fee inspector.

"Board" means the Virginia Safety and Health Codes Board.

"Boiler" means a closed vessel in which water is heated, steam is generated, steam is superheated, or any combination thereof, under pressure or vacuum for use externally to itself by the direct application of heat. The term boiler shall include fired units for heating or vaporizing liquids other than water where these units are separate from processing systems and are complete within themselves.

"Certificate of competency" means a certificate issued by the commissioner to a person who has passed the prescribed examination as provided for in § 2.4. See §§ 40.1-51.9 and 40.1-51.9:1 of the Act.

"Certificate inspection" means an inspection, the report of which is used by the Chief Inspector to decide whether or not a certificate, as provided for in § 40.1-51.10 of the Act may be issued. This certificate inspection shall be an internal inspection when required; otherwise, it shall be as complete an inspection as possible.

"Chief Inspector" means the Chief Boiler and Pressure Vessel Inspector of the Commonwealth appointed under § 40.1-51.9 of the Act.

"Commission, National Board" means the commission issued by the National Board to a holder of a Certificate of Competency for the purpose of conducting inspections in accordance with the National Board Bylaws and these rules and regulations. The employer must submit the inspector's application to the National Board for a commission.

"Commissioner" means the Commissioner of the Department of Labor and Industry.

"Commonwealth Inspector" means any agent appointed by the commissioner under the provisions of § 40.1-51.9 of the Act.

"Condemned boiler or pressure vessel" means a boiler or pressure vessel that has been inspected and declared unsafe for use or disqualified by legal requirements and to which a stamping or marking designating its condemnation has been applied by the Chief or Deputy Inspector.

"Department" means the Department of Labor and Industry.

"Deputy Inspector" means any inspector appointed by the Commissioner under the provisions of § 40.1-51.9 of the Act and employed by the Commonwealth.

"Division" means the Boiler Safety Enforcement Division of the Department of Labor and Industry.

"Electric boiler" means a boiler in which the source of heat is electricity.

"Examining Board" means persons appointed by the Chief Inspector to monitor examinations of inspectors.

"Existing installation" means and includes any boiler or pressure vessel constructed, installed, placed in operation or contracted for before July 1, 1974.

"External inspection" means an inspection of the exterior of the boiler or pressure vessel and its appliances when the item is in operation.

"Heating boiler" means a steam or vapor boiler operating at pressures not exceeding 15 psig, or a hot-water boiler operating at pressures not exceeding 160 psig or temperature not exceeding 250°F at or near the boiler outlet.

"High-pressure, high-temperature water boiler" means a water boiler operating at pressures exceeding 160 psig or temperatures exceeding 250°F at or near the boiler outlet.

"Hobby boiler" means a steam boiler which serves no commercial purpose and is used solely for hobby or display and operated solely for the enjoyment of the owner.

"Hot-water supply boiler" means a boiler furnishing hot water to be used externally to itself at pressures not exceeding 160 psig or temperatures not exceeding 250°F at or near the boiler outlet, with the exception of boilers which are directly fired by oil, gas or electricity where none of the following limitations are exceeded:

Heat input of 200,000 BTU per hour,

Water temperature of 210°F, or

Nominal water containing capacity of 120 gallons.

"Hot-water supply storage tanks" means those heated by steam or any other indirect means where any one of the following limitations are exceeded:

Heat input of 200,000 BTU per hour,

Water temperature of 210°F, or

Nominal water containing capacity of 120 gallons.

"Inspection certificate" means a certificate issued by the Chief Inspector for the operation of a boiler or pressure vessel as required in § 40.1-51.10 of the Act.

"Inspector" means the Chief Inspector, ~~or any Deputy Inspector~~ Commonwealth Inspector, or Special Inspector.

"Internal inspection" means a complete examination of the internal and external surfaces of a boiler or pressure vessel and its appliances while it is shut down and manhole plates, handhole plates or other inspection openings removed.

"Lap seam crack" means a failure in a lap joint extending parallel to the longitudinal joint and located either between or adjacent to rivet holes.

"Miniature boiler" means any boiler which does not exceed any one of the following limits:

16 inches inside diameter of shell;

20 square feet heating surface;

Five cubic feet gross volume, exclusive of casing and insulation;

100 psig maximum allowable working pressure.

"National Board" means the National Board of Boiler and Pressure Vessel Inspectors, 1055 Crupper Avenue, Columbus, OH 43229, whose membership is composed of the chief inspectors of government jurisdictions who are charged with the enforcement of the provisions of the ASME Code.

"National Board Inspection Code" means the manual for boiler and pressure vessel inspectors published by the National Board. Copies of this code may be obtained from the National Board.

"New boiler or pressure vessel installation" means all boilers or pressure vessels constructed, installed, placed in operation or contracted for after July 1, 1974.

"NFPA" means the National Fire Protection Association.

"Nonstandard boiler or pressure vessel" means a boiler or pressure vessel that does not bear the stamp of the Commonwealth of Virginia, the ASME stamp or the National Board stamp when applicable.

"Owner" or "user" means any person, partnership, firm or corporation who is legally responsible for the safe operation of a boiler or pressure vessel within the Commonwealth.

"Owner-user inspection agency" means any person, partnership, firm or corporation registered with the Chief Inspector and approved by the board as being legally responsible for inspecting pressure vessels which they operate in this Commonwealth.

"Portable boiler" means an internally fired boiler which is primarily intended for temporary location and whose construction and usage permit it to be readily moved from one location to another.

"Power boiler" means a boiler in which steam or other vapor is generated at a pressure of more than 15 psig.

"Pressure vessel" means a vessel in which the pressure is obtained from an external source, or by the application of heat from an indirect source, or from a direct source, other than those boilers defined in Part I.

"PSIG" means pounds per square inch gauge.

"Reinstalled boiler or pressure vessel" means a boiler or pressure vessel removed from its original setting and reinstalled at the same location or at a new location.

"Repair" means work necessary to return a boiler or pressure vessel to a safe and satisfactory operating condition, provided there is no deviation from the original design.

"Secondhand boiler or pressure vessel" means a boiler or pressure vessel which has changed both location and ownership since the last certificate inspection.

"Special Inspector" means an inspector holding a Virginia Certificate of Competency, and who is either regularly employed by an insurance company authorized (licensed) to

write boiler and pressure vessel insurance in this Commonwealth, or an inspector continuously employed by any company operating pressure vessels in this Commonwealth used or to be used by the company, or a contract fee inspector.

"Standard boiler or pressure vessel" means a boiler or pressure vessel which bears the stamp of the Commonwealth of Virginia, the ASME stamp and the National Board stamp when applicable.

"Underwriters' Laboratories" means Underwriters' Laboratories, Inc., 333 Pfingsten Road, Northbrook, Illinois 60062, which is a nonprofit, independent organization testing for public safety. It maintains and operates laboratories for the examination and testing of devices, systems, and materials to determine their relation to life, fire, casualty hazards and crime prevention.

"Water heater" means a vessel used to supply: (i) potable hot water; or (ii) both space heat and potable water in combination which is directly heated by the combustion of fuels, electricity, or any other source and withdrawn for use external to the system at pressures not to exceed 160 psi or temperatures of 210°F. This term also includes fired storage water heaters defined by the Virginia Uniform Statewide Building Code as a "water heater."

PART II. ADMINISTRATION.

§ 2.1. Minimum construction standards for boilers and pressure vessels.

A. Boilers and pressure vessels to be installed for operation in this Commonwealth shall be designed, constructed, inspected, stamped and installed in accordance with the applicable ASME Boiler and Pressure Vessel Code and the addenda to it and these rules and regulations.

B. Boilers and pressure vessels shall bear the National Board stamping, except cast iron boilers and UM vessels. A copy of the Manufacturers' Data Report, signed by the manufacturer's representative and the National Board commissioned inspector, shall be filed by the owner or user with the Chief Inspector prior to its operation in the Commonwealth.

C. Pressure Piping - (including welded piping) - Piping external to power boilers from the boiler extending to the first stop valve of a single boiler, and to the second stop valve in a battery of two or more boilers is subject to the requirements of ASME Power Boiler Code, Section I, and the design, fabrication, installation and testing of the valves and piping shall be in conformity with the applicable paragraphs of ASME Code. Applicable ASME data report forms for this piping shall be furnished by the owner to the Chief Inspector. Construction rules for materials, design, fabrication, installation and testing both for the boiler external piping and the power piping beyond the valve or valves required by ASME Power Boiler Code, Section I, are referenced in ANSI B31.1, Power Piping, and the code.

D. Boilers and pressure vessels brought into the Commonwealth and not meeting code requirements shall not

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be operated unless the owner/user is granted a variance in accordance with § 40.1-51.19 of the Act.

The request for variance shall include all documentation related to the boiler or pressure vessel that will provide evidence of equivalent fabrication standards, i.e., design specification, calculations, material specifications, detailed construction drawings, fabrication and inspection procedures and qualification records, examination, inspection and test records, and any available Manufacturers' Data Report.

In order to facilitate such a variance approval, the submission of documentation, in the English language and in current U.S. standard units of measure would be helpful. The following list of documents, while not all inclusive, would be useful in providing evidence of safety equivalent to ASME Code construction:

1. List of materials used for each pressure part.
2. The design calculations to determine the maximum allowable working pressure in accordance with the ASME Boiler and Pressure Vessel Code, applicable section, edition and addenda.
3. The design code used and the source of stress values for the materials used in the design calculations.
4. The welding procedures used and the qualification records for each procedure.
5. The material identification for each type of welding material used.
6. The performance qualification records for each welder or welding operator used in the construction of the boiler or pressure vessel.
7. The extent of any Non-Destructive Examination (NDE) performed and the qualification records of NDE operators.
8. Record of final pressure test signed by a third party inspector.
9. Name and organization of the third party inspection agency.
10. A certification from a licensed professional engineer stating that the boiler or pressure vessel has been constructed to a standard providing equivalent safety to that of the ASME Boiler and Pressure Vessel Code. A signature, date and seal of the certifying engineer is required.
11. Where applicable, a matrix of differences between the actual construction of the boiler or pressure vessel for which a variance is requested and a similar boiler or pressure vessel that is code stamped.
12. Where applicable, a letter from an insurance company stating that it will insure the boiler or pressure vessel.

After notification of a violation of these rules and regulations an owner/user desiring a variance shall submit a request for variance within 30 days.

The Chief Inspector shall respond to any request for a variance within 30 days of receipt of all required documentation, and shall submit a recommendation to the commissioner, who will make the decision on the variance.

E. If a boiler or pressure vessel is of a special design or one that does not conform to ASME and National Board requirements, the following information shall be submitted to the Chief Inspector prior to construction or installation for approval by the Commissioner for "Commonwealth of Virginia Special" status; detailed construction drawings; materials specifications; design calculations; welding details and procedures, and procedure and performance qualification tests; and a detailed quality control program used to control all phases of construction.

Note: All documents submitted shall be in the English language, and all dimensions, pressures, temperatures, materials specifications, etc., shall be in the same units as used in the ASME Boiler and Pressure Vessel Code.

F. Before secondhand equipment is installed, application for permission to install shall be filed by the owner or user with the Chief Inspector and approval obtained.

G. Electric boilers, subject to the requirements of the Act and these rules and regulations, shall bear the Underwriters' Laboratories label on the completed unit or assembly by the manufacturer. This label shall be in addition to the code symbol stamping requirements of the ASME and the National Board.

§ 2.2. Frequency of inspections of boilers and pressure vessels.

A. Power boilers and high-pressure, high-temperature water boilers shall receive an annual internal inspection for certification. Such boilers shall also receive, where possible, an annual external inspection, given while under representative operating conditions.

B. Heating boilers shall receive a certificate inspection biennially.

1. Steam boilers shall receive an internal inspection where construction permits.

2. Water boilers shall receive an external inspection with an internal inspection at the discretion of the inspector where construction permits.

C. Except as provided for in subsection E of this section, pressure vessels subject to internal corrosion shall receive a certificate inspection biennially. This inspection shall be an internal inspection conducted at the discretion of the inspector where construction permits.

D. Except as provided for in subsection E of this section, pressure vessels not subject to internal corrosion shall receive a certificate inspection biennially. This inspection shall be an external inspection, with an internal inspection conducted at the discretion of the inspector where construction permits.

E. Pressure vessels that are under the supervision of an authorized owner/user inspection agency shall be inspected at intervals in a manner as agreed upon between the commissioner and that agency.

F. Boiler and pressure vessel components of nuclear power plants, that are included in the Act, shall be inspected as provided by Section XI of the ASME Boiler and Pressure Vessel Code.

G. Based upon documentation of such actual service conditions by the owner or user of the operating equipment, the commissioner may permit variations in the inspection requirements as provided in the Act.

§ 2.3. Notification of inspection.

A. Certificate inspections shall be scheduled in accordance with the frequency established in § 40.1-51.10 of the Act and at a time mutually agreeable to the inspector and owner or user.

B. External inspections may be performed by the inspector during normal working hours and without prior notification.

C. When, as a result of external inspection or determination by other objective means, it is the inspector's opinion that continued operation of the boiler or pressure vessel constitutes a menace to public safety, the inspector may require an internal inspection or an appropriate pressure test to evaluate conditions. In these instances the owner or user shall prepare the boiler or pressure vessel for an internal inspection or appropriate pressure test as the inspector designates.

§ 2.4. Examination for an inspector's certificate of competency.

A. Examination for an inspector's certificate of competency in accordance with the requirements of § 40.1-51.9 shall be held at the office of the commissioner or at any other location selected by the commissioner, four times each year, on the first Wednesday and Thursday of March, June, September and December.

B. An applicant for an examination shall have education and experience equal to at least one of the following:

1. A degree from an accredited school in mechanical engineering plus one year of experience in design, construction, operation or inspection of high-pressure boilers and pressure vessels.

2. A degree in a branch of engineering, other than mechanical engineering, plus two years of experience in design, construction, operation or inspection of high-pressure boilers and pressure vessels.

3. The equivalent of a high school education plus three years of experience in one of the following:

a. High-pressure boiler and pressure vessel construction or repair;

b. As an operating engineer in charge of high-pressure boiler operation; or

c. As an inspector of high-pressure boilers and pressure vessels.

C. Applications for examination shall be in writing on a form furnished by the commissioner stating the education of the applicant, a list of his employers, his period of employment and position held with each employer.

D. Applications containing willful falsifications or untruthful statements shall be rejected.

E. If the applicant's education and experience are acceptable to the examining board, he shall be given a written examination dealing with the construction, installation, operation, maintenance and repair of boilers and pressure vessels and their appurtenances, and the applicant shall be accepted or rejected on the merits of this examination.

F. If the applicant passes the written examination, a certificate of competency may be issued by the commissioner when the inspector is employed by an authorized inspection agency as defined in Part I.

G. After 90 days, an applicant who fails to pass the examination will be permitted to take another written examination and his acceptance or rejection will be determined on the basis of this examination. Applicants who fail to obtain a passing grade on the examination after three attempts shall not be permitted to take the examination for at least one year following the last attempt.

§ 2.5. Examination fees.

A fee of \$50 will be charged for each applicant taking the examination for a certificate of competency. In the event an applicant fails the examination, the applicant may be re-examined within one year of the initial test date without additional charge. Checks or money orders for examination fees shall be made payable to the Treasurer of Virginia and sent to the Chief Inspector.

§ 2.6. Certificate of competency and identification card.

A. Upon request and subject to subsection B of this section, a certificate of competency and an identification card shall be issued by the commissioner to:

1. An inspector who is employed full time by a governmental authority having an authorized inspection agency as defined in Part I.

2. An inspector who is employed by an insurance company which is authorized (licensed) to write boiler and pressure vessel insurance in this Commonwealth.

3. An inspector who is employed by a company which operates unfired pressure vessels in Virginia and has a valid owner/user inspection agency agreement as provided in § 2.11.

4. A contract fee inspector.

B. The applicant must pass the examination as set forth in § 2.4 and pay the application fee of \$50; or hold a valid commission or certificate of competency from a state that has a standard of examination substantially equal to that of Virginia, and a valid commission and identification card issued by the National Board.

C. Requests for a certificate of competency and identification card shall be completed on forms provided by the Chief Inspector and shall be accompanied by, when applicable, a facsimile of the applicant's commission, certificate of competency and identification cards, named above, and a processing fee of \$10 payable to the Treasurer of Virginia.

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D. The Virginia ~~certificate of competency~~ and valid identification card shall be returned to the Chief Inspector when the certificate holder is no longer employed by the organization employing him at the time that the certificate was issued *or, in the case of a self-employed contract fee inspector, has ceased inspection activities.*

E. Each person holding a valid Virginia certificate of competency and who conducts inspections as provided by the Act shall apply to the Chief Inspector on forms provided by the Chief Inspector and obtain an identification card biennially, not later than June 30 of the year in which the card is due for renewal. A processing fee of \$10 for each card, payable to the Treasurer of Virginia, shall accompany the application.

F. An inspector's certificate of competency may be suspended by the Chief Inspector after due investigation and recommendation by the commissioner, for incompetence or untrustworthiness of the holder of the certificate, or for willful falsification of any matter or statement contained in his application, or in a report of any inspection made by him. Written notice of any suspension shall be given by the Chief Inspector to the inspector and his employer. Persons whose certificate of competency has been suspended shall be entitled to an appeal to the board as provided for in the Act and to be present in person or to be represented by counsel at the hearing of the appeal.

§ 2.7. Inspectors to have no other interests.

Inspectors shall not engage in the sale of any article or device relating to boilers, pressure vessels or their appurtenances.

§ 2.8. Inspection reports to be submitted by special inspectors.

A. Special Inspectors shall submit first inspection reports to the Chief Inspector on Form NB-5 of the National Board Inspection Code for each boiler and pressure vessel subject to registration and inspection in this Commonwealth. Complete data shall be submitted on Form NB-5 for each nonstandard boiler or pressure vessel.

B. Except as provided in subsection E of this section, subsequent inspections of both standard and nonstandard boilers and pressure vessels shall be reported on Forms NB-6 and NB-7 of the National Board Inspection Code or Commonwealth Form BPV 6-7.

C. Inspection reports, as required in subsections A and B of this section, shall be submitted within 30 days from date of inspection.

D. When hazardous conditions are found in a boiler or pressure vessel which would present an immediate threat to life or property, the owner or user shall immediately take action to correct the hazardous conditions or remove the object from service. The inspector shall notify the office of the Chief Inspector immediately by telephone followed by a written report. A complete and thorough inspection shall be conducted to evaluate the hazardous conditions and to make recommendations for necessary corrective measures. The boiler or pressure vessel shall not be returned to service until

it has been restored to a safe operating condition under the requirements of these rules and regulations.

E. Owner inspection agencies may report subsequent inspections of both standard and nonstandard pressure vessels on Form NB-7 or at their option, upon forms approved by the Board. The report shall be filed as provided in § 2.11.

~~§ 2.9. Insurance companies to notify chief inspector of new, cancelled or suspended insurance on boiler and pressure vessels.~~

§ 2.9. Insurance companies and contract fee inspectors to notify Chief Inspector of contractual changes.

All insurance companies shall notify the Chief Inspector, within 30 days, of all boilers or pressure vessels on which insurance is written, cancelled, not renewed, or suspended because of unsafe conditions.

All contract fee inspectors shall notify the Chief Inspector, within 30 days, of all boilers or pressure vessels on which they contract to provide inspection services.

§ 2.10. Special Inspectors to notify Chief Inspector of unsafe boilers and pressure vessels.

~~A. If a Special Inspector, upon first inspection of a new facility, finds that a boiler or pressure vessel, or any appurtenance of that vessel, is in a condition that his company would refuse insurance, the company shall immediately notify the Chief Inspector and submit a report on the defects.~~

~~B. If, upon inspection, a Special Inspector finds a boiler or pressure vessel to be unsafe for initial or further operation, he shall promptly notify the owner or user, stating what repairs or other corrective measures are required to bring the object into compliance with these rules and regulations. Unless the owner or user agrees to make the repairs or adopt such other corrective measures promptly, the Special Inspector shall immediately notify the Chief Inspector. Until corrections have been made, no further operation of the boiler or pressure vessel involved shall be permitted. If an inspection certificate for the object is required and is in force, it shall be suspended by the Chief Inspector. When necessary repairs have been made or corrective actions have been taken and the boiler or pressure vessel is determined to be safe to operate by the Inspector, the Chief Inspector shall be notified. At that time a certificate of inspection, where applicable, may be issued.~~

§ 2.11. Owner/user inspection agency.

A. Any person, firm, partnership or corporation operating pressure vessels in this Commonwealth may seek approval and registration as an owner/user inspection agency by filing an application with the Chief Inspector on forms prescribed and available from the department, and request approval by the board. Each application shall be accompanied by a fee of \$25 and a bond in the penal sum of \$5,000 which shall continue to be valid during the time the approval and registration of the company as an owner/user inspection agency is in effect.

B. The application and registration shall show the name of the agency and its principal address in this Commonwealth,

and the name and address of the person or persons having supervision over inspections made by the agency. Changes in supervisory personnel shall be reported to the Chief Inspector within 30 days after any change.

C. Each owner/user inspection agency as required by the provisions of the Act and these rules and regulations shall:

1. Maintain its own inspection group under the supervision of one or more individuals who have qualified as an inspector under the provisions of the National Board Inspection Code.
2. Conduct inspections of unfired pressure vessels, not exempt by the Act, utilizing only qualified inspection personnel, certified pursuant to §§ 2.4, 2.5 and 2.6.
3. Retain on file at the location where the equipment is inspected a true record or copy of the report of the latest of each inspection signed by the inspector who made the inspection.
4. Execute and deliver to the owner or user (management) a true report of each inspection together with appropriate requirements or recommendations that result from the inspections.
5. Promptly notify the Chief Inspector of any unfired pressure vessel which does not meet the requirements of safe operating conditions.
6. Maintain inspection records which will include a list of each unfired pressure vessel covered by the Act, showing a serial number and an abbreviated description as may be necessary for identification; the date of last inspection of each unit and approximate date for the next inspection, arrived at by applying the appropriate rules to all data available at the time the inspection record is compiled (Frequency and type of inspection, see § 2.2). This inspection record shall be readily available for examination by the Chief Inspector or his authorized representative during normal business hours.
7. File a statement annually, on a date mutually agreed upon, with the Chief Inspector. This statement shall be signed by the individual having supervision over the inspections made during the period covered. The statement shall include the number of vessels, covered by the Act, inspected during the year and certifying that each inspection was conducted pursuant to the inspection requirements provided for by the Act and in a format acceptable to the Chief Inspector. The annual statement shall be accompanied by a filing fee in accordance with the schedule in § 40.1-51.11:1 of the Act as follows:
 - a. For statements covering not more than 25 vessels - \$7.00 per vessel;
 - b. For statements covering more than 25 vessels but less than 101 vessels - \$200;
 - c. For statements covering more than 100 but less than 501 vessels - \$400 and,
 - d. For statements covering more than 500 vessels - \$800.

§ 2.12. Defective conditions disclosed at time of external inspection.

If, upon an external inspection, there is evidence of a leak or crack, sufficient covering of the boiler or pressure vessel shall be removed to permit the inspector to satisfactorily determine the safety of the boiler or pressure vessel. If the covering cannot be removed at that time, *the inspector* may order the operation of the boiler or pressure vessel stopped until the covering can be removed and proper examination made.

§ 2.13. Owner or user to notify chief inspector of accident.

When an accident occurs which renders a boiler or pressure vessel inoperative, the owner or user shall immediately notify the Chief Inspector and the authorized inspector shall submit a detailed report of the accident. In case of a serious accident, as in a personal injury or an explosion, notice shall be given immediately by telephone, telegraph, facsimile or messenger, and neither the boiler or pressure vessel, nor any parts of it, shall be removed or disturbed before an inspection has been made by the inspector, except for the purpose of conserving human life and limiting consequential damage.

§ 2.14. Inspection certificate and inspection fees.

A. Upon the inspection and determination that a boiler or pressure vessel is suitable and conforms to these rules and regulations, the owner or user shall remit the sum of \$20 to the commissioner for each item required to be inspected under the Act. A certificate of inspection shall not be issued to the owner or user until receipt of funds by the department. Checks and money orders for payment of inspection certificate fees should be made payable to the Treasurer of Virginia.

B. The Chief Inspector may extend an inspection certificate for up to three additional months beyond a two-month grace period following the expiration of a certificate. Such extension is subject to a satisfactory external inspection of the boiler or pressure vessel and receipt of a fee of \$20 for each month of extension.

C. When inspected by the department, an additional fee for the inspection service, as required by § 40.1-51.15 of the Act, shall be paid before the inspection certificate is issued.

D. The review of a manufacturer's or repair organization's facility for the purpose of national accreditation will be performed by the Chief Inspector or his qualified designee for an additional fee as required by § 40.1-51.15 of the Act.

E. The owner or user who causes a boiler or pressure vessel to be operated without a valid certificate shall be subject to the penalty as provided for in § 40.1-51.12 of the Act.

F. Inspection certificates are not required for unfired pressure vessels inspected by an authorized owner/user inspection agency. However, the agency shall keep on file in its office in the establishment where the equipment is located a true record or copy of the report of the latest of each inspection signed by the inspector who made the inspection.

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§ 2.15. Validity of inspection certificate.

An inspection certificate, issued in accordance with § 2.14, shall be valid until expiration unless some defect or condition affecting the safety of the boiler or pressure vessel is disclosed. The certificate issued for a boiler or pressure vessel inspected by ~~a Special Inspector~~ *an inspection agency of an insurance company* shall be valid only if the boiler or pressure vessel for which it was issued continues to be insured by an insurance company authorized (licensed) to write boiler and pressure vessel insurance in this Commonwealth.

§ 2.16. Restamping boilers and pressure vessels.

When the stamping on a boiler or pressure vessel becomes indistinct, the inspector shall instruct the owner or user to have it restamped. Request for permission to restamp the boiler or pressure vessel shall be made to the Chief Inspector and proof of the original stamping shall accompany the request. The Chief Inspector may grant the authorization. Restamping authorized by the Chief Inspector shall be done only in the presence of an inspector, and shall be identical with the original stamping, except that it will not be required to restamp the ASME Code Symbol. Notice of completion of restamping shall be filed with the Chief Inspector by the inspector who witnessed the stamping on the boiler or pressure vessel, together with facsimile of the stamping applied.

§ 2.17. Penalty for operation of unsafe boilers and pressure vessels.

If, upon inspection, a boiler or pressure vessel is found to be unsafe to operate, the inspector shall notify the Chief Inspector as required in § 2.10, and the inspection certificate shall be suspended by the Chief Inspector. Any person, firm, partnership or corporation causing a boiler or pressure vessel to continue to be operated shall be subject to the penalty provided in the Act.

§ 2.18. Condemned boilers and pressure vessels.

A. Any boiler or pressure vessel having been inspected and declared unsafe by the Chief Inspector or Deputy Inspector shall be stamped by the inspector with the letters "XXX" on both sides of the postal abbreviation of this Commonwealth, as shown by the following facsimile, which will designate a condemned boiler or pressure vessel:

XXX VA XXX

B. Any person, firm, partnership, or corporation using or offering for sale a condemned boiler or pressure vessel for operation within this Commonwealth shall be subject to the penalties provided by the Act.

§ 2.19. Reinstallation of standard boilers or pressure vessels.

If a standard boiler or pressure vessel located in this Commonwealth is to be moved to another location for temporary use or repair, application shall be made by the owner or user to the Chief Inspector for permission to reinstall the boiler or pressure vessel.

§ 2.20. Installation or reinstallation of nonstandard boilers or pressure vessels.

A. Installation and operation of nonstandard boilers and pressure vessels in the Commonwealth is prohibited without permission from the commissioner.

B. A nonstandard boiler or pressure vessel which is moved outside the boundaries of the Commonwealth cannot be reinstalled in the Commonwealth without the owner or user securing permission from the commissioner.

§ 2.21. Installation of used or secondhand boilers or pressure vessels.

Before a used or secondhand boiler or pressure vessel can be shipped for the purpose of installation in this Commonwealth, an inspection must be made by an inspector qualified by an examination equal to that required by this Commonwealth or by an inspector holding a valid National Board Commission. Data submitted by ~~him~~ *the inspector* shall be filed by the owner or user of the boiler or pressure vessel with the Chief Inspector for his approval. Boilers and pressure vessels when installed in this Commonwealth shall be equipped with fittings and appliances that comply with the rules and regulations for new installations.

§ 2.22. Reinstalled boiler or pressure vessel.

When a boiler or pressure vessel is moved and reinstalled, the attached fittings and appliances shall comply with the rules and regulations for new installations.

§ 2.23. Factor of safety for existing installations.

Any inspector may increase the factor of safety on any existing installation if the condition of the boiler or pressure vessel warrants it. If the owner or user does not concur with the inspector's decision, the owner or user may appeal to the commissioner who may request a joint inspection by the Chief Inspector and the ~~Deputy Commonwealth~~ *Inspector* or Special Inspector. Each inspector shall make his report to the commissioner and the commissioner shall make the final decision, based upon the data contained in the inspector's reports. The decision of the commissioner may be appealed to the board pursuant to § 40.1-51.16 of the Code of Virginia.

§ 2.24. Repairs.

When repairs or alterations are to be made, permission shall be obtained from an inspector, and the repairs shall be done in accordance with the National Board Inspection Code and these rules and regulations.

§ 2.25. Removal of safety appliances.

A. No person shall attempt to remove or do any work on any safety appliance prescribed by these rules and regulations while a boiler or pressure vessel is in operation, except as provided in applicable sections of the ASME Code. Should any of these appliances be removed for repair during an outage of a boiler or pressure vessel they must be reinstalled and in proper working order before the object is again placed in service.

B. No person shall load the safety valve or valves in any manner to maintain a working pressure in excess of that stated on the inspection certificate.

§ 2.26-~~Inspection~~ Review fees.

The ~~inspection~~ fees to be charged by the Chief Inspector or Deputy Commonwealth Inspectors for the ~~inspection a review~~ or special inspection other than a certificate inspection, of a boiler or pressure vessel shall be in accordance with § 40.1-51.15 of the Act; ~~the inspection and~~ may include but not be limited to consultation, data review, engineering evaluation, or quality control review.

§ 2.27. Requirements for new installations.

A. No boiler or pressure vessel shall be installed in this Commonwealth unless it has been constructed, inspected and stamped as provided in § 2.1 A, except:

1. Those exempt by the Act.
2. Those outlined in § 2.1 D.
3. Those existing boilers and pressure vessels which are to be reinstalled.

B. All new boiler and pressure vessel installations, including reinstalled and secondhand boilers and pressure vessels, shall be installed in accordance with the requirements of the ASME Code and these rules and regulations.

C. A boiler or pressure vessel constructed equivalent to ASME standards, or having the standard stamping of another state that has adopted a standard of construction equivalent to the standard of this Commonwealth, may be accepted by the Chief Inspector. The person desiring to install the boiler or pressure vessel shall make application for the installation prior to construction and shall file the Manufacturers' Data Report for the boiler or pressure vessel with the Chief Inspector following construction and prior to installation.

D. The stamping shall not be concealed by insulation or paint and shall be exposed at all times unless a suitable record is kept of the location of the stamping so that it may be readily uncovered at any time this may be desired.

§ 2.28. Application of Commonwealth serial numbers.

A. Upon completion of the installation of a new boiler or pressure vessel or at the time of the initial certificate inspection of an existing installation each boiler or pressure vessel shall be stamped by the inspector with a serial number of the Commonwealth, consisting of the postal abbreviation for the Commonwealth and a unique series of numbers not less than 5/16 inch in height and arranged as follows:

VA 0000

B. All cast iron, low-pressure heating boilers shall have securely attached to the front of the boiler a metal tag of not less than one inch in height, which shall have the serial number of the Commonwealth stamped on it.

C. All pressure vessels constructed of cast iron, or of a material of such thickness or type that it should not be stamped, shall have securely attached a metal tag not less than one inch in height, which shall have the serial number of the Commonwealth stamped on it.

§ 2.29. Return loop connection.

The return water connections to all low-pressure, steam heating boilers supplying a gravity return heating system shall be arranged to form a loop so that the water cannot be forced out of the boiler below the safe water level. This connection, known as a "return pipe loop connection," is shown in Section IV, ASME Heating Boiler Code.

§ 2.30. Ladders, platforms, and runways.

Where valves and other appurtenances require frequent manipulation and are located so that they cannot be reached or operated from the floor, a platform or other safe means of operation shall be provided. If a platform or runway is used it shall be at least 24 inches wide and be provided with standard handrails and toeboards and have at least seven feet six inches head room. All runways shall have at least two means of exit, each exit to be remotely located from the other and connected to a permanent stairway or inclined ladder leading to the floor level, or an alternate means of escape or exit as may be practical for the specific installation.

§ 2.31. Exit from boiler room.

All boiler rooms exceeding 500 square feet floor area and containing one or more boilers having a fuel burning capacity of 1,000,000 BTU per hour, or equivalent electrical heat input, shall have at least two means of exit. Each exit shall be remotely located from the other. Each elevation in a boiler room shall have two means of exit, each remotely located from the other.

§ 2.32. Operation.

The Recommended Rules for Care of Power Boilers, Section VII, and the Recommended Rules for Care of Heating Boilers, Section VI, of the ASME Code, shall be used as a guide for proper and safe operating practices.

§ 2.33. Burner controls and safety devices.

Gas fired burner installations shall conform to the requirements of nationally recognized standards including the American Gas Association, Underwriters Laboratories, ANSI/ASME-CSD-1 or National Fire Protection Association (NFPA) No. 85 series as applicable.

§ 2.34. Repairs and renewals of boiler fittings and appliances.

Whenever repairs are made to fittings or appliances or it becomes necessary to replace them, the repairs or replacements shall comply with the requirements of the ASME Code.

PART III. EXISTING INSTALLATIONS.

§ 3.1. Power and high-pressure, high-temperature water boilers.

A. Age limits of existing boilers.

1. The age limit of any boiler of nonstandard construction, installed before July 1, 1974, other than one having a riveted, longitudinal, lap joint, shall be 30 years; however, any boiler passing a thorough internal and external inspection, and not displaying any leakage

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or distress under a hydrostatic pressure test of 1-1/2 times the allowable working pressure held for at least 30 minutes, may be continued in operation without reduction in working pressure. The age limit of any boiler having riveted, longitudinal, lap joints and operating at a pressure in excess of 50 psig shall be 20 years. This type of boiler, when removed from an existing setting, shall not be reinstalled for a pressure in excess of 15 psig. A reasonable time for replacement, not to exceed one year, may be given at the discretion of the Chief Inspector.

2. The shell or drum of a boiler in which a typical lap seam crack is discovered along a longitudinal riveted joint for either butt or lap joints shall be permanently removed from service.

3. The age limit of boilers of standard construction, installed before July 1, 1974, shall be determined from the results of a thorough internal and external inspection by an authorized inspector and the application of an appropriate pressure test. Hydrostatic test pressure shall be 1-1/2 times the allowable working pressure and maintained for 30 minutes. The boiler may be continued in service at the same working pressure provided there is no evidence of leakage or distress under these test conditions.

4. The minimum temperature of the water used for the hydrostatic test of low-pressure boilers and pressure vessels shall be 60°F. The minimum temperature of the water used for the hydrostatic test of power boilers shall be 70°F or ambient whichever is greater.

B. The maximum allowable working pressure for standard boilers shall be determined in accordance with the applicable provisions of the edition of the ASME Code under which they were constructed and stamped.

C. Maximum allowable working pressure for nonstandard boilers.

1. The maximum allowable working pressure on the shell of a nonstandard boiler shall be determined by the strength of the weakest section of the structure, computed from the thickness of the plate, the tensile strength of the plate, the efficiency of the longitudinal joint or tube ligaments, the inside diameter of the weakest course and the factor of safety allowed by these rules and regulations.

$TStE$ = maximum allowable working pressure, psig
RFS

where:

TS = ultimate tensile strength of shell plates, psig,

t = minimum thickness of shell plate, in weakest course, inches

E = efficiency of longitudinal joint:

For tube ligaments, E shall be determined by the rules in Section I of the ASME Code for Power Boilers. For riveted joints, E shall be determined by the rules in the applicable

edition of the ASME Code. For seamless construction, E shall be considered 100%.

R = inside radius of the weakest course of the shell, in inches,

FS = factor of safety permitted.

2. Tensile strength. When the tensile strength of steel or wrought iron shell plates is not known, it shall be taken as 55,000 psig.

3. Crushing strength of mild steel. The resistance to crushing of mild steel shall be taken at 95,000 psig of cross-sectional area.

4. Strength of rivets in shear. When computing the ultimate strength of rivets in shear, the following values, in pounds per square inch, of the cross-sectional area of the rivet shank shall be used.

	PSIG
Iron rivets in single shear	38,000
Iron rivets in double shear	76,000
Steel rivets in single shear	44,000
Steel rivets in double shear	88,000

When the diameter of the rivet holes in the longitudinal joints of a boiler is not known, the diameter and cross-sectional area of rivets, after driving, may be selected from Table 1, or as ascertained by cutting out one rivet in the body of the joint.

TABLE 1
SIZES OF RIVETS BASED ON PLATE THICKNESS
(in inches)

<i>Plate of Thickness</i>	<i>Rivet Diameter after Driving</i>
1/4	11/16
9/32	11/16
5/16	3/4
11/32	3/4
3/8	13/16
13/32	13/16
7/16	15/16
15/32	15/16
1/2	15/16
9/16	1-1/16
5/8	1-1/16

5. The following factors of safety shall be increased by the inspector if the condition and safety of the boiler demand it:

a. The lowest factor of safety permissible on existing installations shall be 4.5, except for horizontal-return-tubular boilers having continuous longitudinal lap seams more than 12 feet in length,

when the factor of safety shall be eight. When this type of boiler is removed from its existing setting, it shall not be reinstalled for pressures in excess of 15 psig.

b. Reinstalled or secondhand boilers shall have a minimum factor of safety of six when the longitudinal seams are of lap-riveted construction, and a minimum factor of safety of five when the longitudinal seams are of butt- and double-strap construction.

D. Cast-iron headers and mud drums. The maximum allowable working pressure on a water tube boiler, the tubes of which are secured to cast iron or malleable-iron headers, or which have cast iron mud drums, shall not exceed 160 psig.

E. Pressure on cast iron boilers. The maximum allowable working pressure for any cast iron boiler, except hot water boilers, shall be 15 psig.

F. Safety valves.

1. The use of weighted-lever safety valves, or safety valves having either the seat or disk of cast iron, shall be prohibited. Valves of this type shall be replaced by direct, spring-loaded, pop-type valves that conform to the requirements of the ASME Code, Section I.

2. Each boiler shall have at least one safety valve, and if it has more than 500 square feet of water-heating surface, or an electric power input of more than 500 kilowatts, it shall have two or more safety valves.

3. The valve or valves shall be connected to the boiler, independent of any other steam connection, and attached as close as possible to the boiler, without unnecessary intervening pipe or fittings. Where alteration is required to conform to this requirement, the Chief Inspector shall allow the owner or user reasonable time in which to complete the work.

4. No valves of any description shall be placed between the safety valve and the boiler nor on the escape pipe, if used, between the safety valve and the atmosphere, except as provided by applicable sections of the ASME Code. When an escape pipe is used, it shall be at least full size of the safety-valve discharge and fitted with an open drain to prevent water lodging in the upper part of the safety valve or escape pipe. When an elbow is placed on a safety valve escape pipe, it shall be located close to the safety-valve outlet or the escape pipe shall be anchored and supported securely. All safety valve discharges shall be located or piped as not to endanger persons working in the area.

5. The safety-valve capacity of each boiler shall be so that the safety valve or valves will discharge all the steam that can be generated by the boiler without allowing the pressure to rise more than 6.0% above the highest pressure to which any valve is set, and in no case to more than 6.0% above the maximum allowable working pressure.

6. One or more safety valves on every boiler shall be set at or below the maximum allowable working pressure. The remaining valves may be set within a range of 3.0% above the maximum allowable working pressure, but the

range of setting of all the safety valves on a boiler shall not exceed 10% of the highest pressure to which any valve is set.

7. When two or more boilers, operating at different pressures and safety valve settings, are interconnected, the lower pressure boilers or interconnected piping shall be equipped with safety valves of sufficient capacity to prevent overpressure, considering the maximum generating capacity of all boilers.

8. In those cases where the boiler is supplied with feedwater directly from water mains without the use of feeding apparatus (not to include return traps), no safety valve shall be set at a pressure higher than 94% of the lowest pressure obtained in the supply main feeding the boiler.

9. The relieving capacity of the safety valves on any boiler shall be checked by one of the three following methods and, if found to be insufficient, additional valves shall be provided:

a. Making an accumulation test, which consists of shutting off all other steam-discharge outlets from the boiler and forcing the fires to the maximum. The safety-valve capacity shall be sufficient to prevent a rise of pressure in excess of 6.0% of the maximum allowable working pressure. This method shall not be used on a boiler with a superheater or reheater.

b. Measuring the maximum amount of fuel that can be burned and computing the corresponding evaporative capacity (steam-generating capacity) upon the basis of the heating value of this fuel. These computations shall be made as outlined in the Appendix of the ASME Code, Section I.

c. Measuring the maximum amount of feedwater that can be evaporated.

When either of the methods outlined in subdivision 9 b or c of this subsection is employed the sum of the safety-valve capacities shall be equal to or greater than the maximum evaporative capacity (maximum steam-generating capacity) of the boiler.

10. The relieving capacity of safety valves for forced-flow steam generators shall be in accordance with the requirements of Section I of the ASME Boiler Code.

11. Safety valves and safety relief valves requiring repair shall be replaced with a new valve or repaired by the original manufacturer, or his authorized representative.

G. Boiler feeding.

1. Each boiler shall have a feed supply which will permit it to be fed at any time while under pressure.

2. A boiler having more than 500 square feet of water-heating surface shall have at least two means of feeding, one of which shall be an approved feed pump, or injector. A source of feed directly from water mains at a pressure 6.0% greater than the set pressure of the safety valve with the highest setting may be considered one of the means. As provided in the ASME Power Boiler Code, Section I, boilers fired by gaseous, liquid or

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solid fuel in suspension may be equipped with a single means of feeding water provided means are furnished for the immediate shutoff of heat input if the water feed is interrupted.

3. The feedwater shall be introduced into the boiler in a manner so that it will not be discharged close to riveted joints of shell or furnace sheets, or directly against surfaces exposed to products of combustion, or to direct radiation from the fire.

4. The feed piping to the boiler shall be provided with a check valve near the boiler and a valve or cock between the check valve and the boiler. When two or more boilers are fed from a common source, there shall also be a valve on the branch to each boiler between the check valve and source of supply. Whenever a globe valve is used on feed piping, the inlet shall be under the disk of the valve.

5. In all cases where returns are fed back to the boiler by gravity, there shall be a check valve and stop valve in each return line, the stop valve to be placed between the boiler and the check valve, and both shall be located as close to the boiler as is practicable. No stop valves shall be placed in the supply and return pipe connections of a single boiler installation.

6. Where deaerating heaters are not employed, the temperature of the feedwater shall not be less than 120°F to avoid the possibility of setting up localized stress. Where deaerating heaters are employed, the minimum feedwater temperature shall not be less than 215°F so that dissolved gases may be thoroughly released.

H. Water level indicators.

1. Each boiler shall have at least one water gauge glass installed and located so that the lowest visible part of the water glass shall be at least two inches above the lowest permissible water level, at which level there will be no danger of overheating any part of the boiler when in operation at that level; except as provided by the ASME Code.

2. No outlet connections (except for damper regulator, feedwater regulator, low-water fuel cutout, drain, steam gauges, or such apparatus that does not permit the escape of an appreciable amount of steam or water from it) shall be placed on the piping that connects the water column to the boiler. The water column shall be provided with a valved drain of at least 3/4-inch pipe size; the drain is to be piped to a safe location.

3. Except as provided in the ASME Code, each boiler shall have three or more gauge cocks located within the visible length of the water glass, except when the boiler has two water glasses located on the same horizontal lines. Boilers not over 36 inches in diameter, in which the heating surface does not exceed 100 square feet, need have but two gauge cocks.

4. When the direct reading of gauge glass water level is not readily visible to the operator in his working area dependable indirect indications shall be provided utilizing

remote level indicators or equipment to transmit the gauge glass image. When remote level indication is provided for the operator instead of the gauge glass, the same minimum level reference shall be clearly marked.

I. Steam gauges.

1. Each steam boiler shall have a steam gauge, with dial range not less than 1-1/2 times the maximum allowable working pressure, connected to the steam space or to the steam connection to the water column. The steam gauge shall be connected to a siphon or equivalent device of sufficient capacity to keep the gauge tube filled with water and so arranged that the gauge cannot be shut off from the boiler except by a cock placed near the gauge and provided with a tee or lever handle arranged to be parallel to the pipe in which it is located when the cock is open.

2. When a steam gauge connection longer than eight feet becomes necessary, a shutoff valve may be used near the boiler provided the valve is of the outside-screw-and-yoke type and is locked open. The line shall be of ample size with provision for free blowing.

3. Each boiler shall be provided with a connection and suitable valving which connects to the steam space of each boiler for the exclusive purpose of attaching a test gauge when the boiler is in service so that the accuracy of the boiler steam gauge may be ascertained.

J. Stop valves.

1. Except for a single-boiler, prime-mover installation, each steam outlet from a boiler (except safety valve and water column connections) shall be fitted with a stop valve located as close as practicable to the boiler.

2. In a single-boiler, prime-mover installation the steam stop valve may be omitted provided the prime-mover throttle valve is equipped with an indicator to show whether the valve is open or closed and is designed to withstand the required hydrostatic pressure test of the boiler.

3. When a stop valve is so located that water can accumulate, ample drains shall be provided. The drainage shall be piped to a safe location and shall not be discharged on the top of the boiler or its setting.

4. When boilers provided with manholes are connected to a common steam main, the steam connection from each boiler shall be fitted with two stop valves having an ample free-blow drain between them. The discharge of the drain shall be visible to the operator and shall be piped clear of the boiler setting. The stop valves shall consist preferably of one automatic nonreturn valve (set next to the boiler) and a second valve of the outside-screw-and-yoke type.

K. Blowoff connection.

1. The construction of the setting around each blowoff pipe shall permit free expansion and contraction. Careful attention shall be given to the problem of sealing these setting openings without restricting the movement of the blowoff piping.

2. All blowoff piping, when exposed to furnace heat, shall be protected by firebrick or other heat-resisting material constructed so that the piping may be inspected readily.

3. Each boiler shall have a blowoff pipe, fitted with a valve or cock, in direct connection with the lowest water space. Cocks shall be of the gland or guard type and suitable for the pressure allowed. The use of globe valves shall not be permitted. Where the maximum allowable working pressure exceeds 100 psig, each blowoff pipe shall be provided with two valves or a valve and cock; however only one valve need be provided for forced-flow steam generators with no fixed steam and waterline; high-temperature water boilers and those used for traction or portable purposes with less than 100 gallons normal water content.

4. Blowoff piping shall comply with the requirements of the ASME Code, Section I, and ANSI B31.1, from the boiler to the valve or valves, and shall be run full size without use of reducers or bushings. All piping shall be steel; galvanized steel pipe and fittings shall not be used for blowoff piping.

5. All fittings between the boiler and blowoff valve shall be of steel. In case of renewal of blowoff pipe or fittings, they shall be installed in accordance with the rules and regulations for new installations of the ASME Code.

L. Repairs and renewals of boiler fittings and appliances. Whenever repairs are made to fittings or appliances or it becomes necessary to replace them, such repairs or replacements shall comply with the requirements of the ASME Code.

M. Conditions not covered by these requirements. All cases not specifically covered by these requirements shall be treated as new installations pursuant to § 2.27 or may be referred to the Chief Inspector for instructions concerning the requirements.

§ 3.2. Heating boilers.

A. Standard boilers. The maximum allowable working pressure of standard boilers shall in no case exceed the pressure indicated by the manufacturer's identification stamped or cast on the boiler or on a plate secured to it.

B. Nonstandard riveted boilers. The maximum allowable working pressure on the shell of a nonstandard riveted heating boiler shall be determined in accordance with § 3.1 C covering Existing Installations, Power Boilers, except that in no case shall the maximum allowable working pressure of a steam heating boiler exceed 15 psig, or a hot water boiler exceed 160 psig or 250°F temperature.

C. Nonstandard welded boilers. The maximum allowable working pressure of a nonstandard steel or wrought iron heating boiler of welded construction shall not exceed 15 psig for steam. For other than steam service, the maximum allowable working pressure shall be calculated in accordance with Section IV of the ASME Code.

D. Nonstandard cast iron boilers.

1. The maximum allowable working pressure of a nonstandard boiler composed principally of cast iron

shall not exceed 15 psig for steam service or 30 psig for hot-water service.

2. The maximum allowable working pressure of a nonstandard boiler having cast iron shell or heads and steel or wrought iron tubes shall not exceed 15 psig for steam service or 30 psig for hot water service.

E. Safety valves.

1. Each steam boiler must have one or more officially rated (ASME stamped and National Board rated) safety valves of the spring pop type adjusted to discharge at a pressure not to exceed 15 psig. Seals may be attached in a manner to prevent the valve from being taken apart without breaking the seal. The safety valves shall be arranged so that they cannot be reset to relieve at a higher pressure than the maximum allowable working pressure of the boiler. A body drain connection below seat level shall be provided by the manufacturer and this drain shall not be plugged during or after field installation. For valves exceeding two inch pipe size, the drain hole or holes shall be tapped not less than 3/8 inch pipe size. For valves less than two inches, the drain hole shall not be less than 1/4 inch in diameter.

2. No safety valve for a steam boiler shall be smaller than 3/4 inch unless the boiler and radiating surfaces consist of a self-contained unit. No safety valve shall be larger than 4-1/2 inches. The inlet opening shall have an inside diameter equal to, or greater than, the seat diameter.

3. The minimum relieving capacity of the valve or valves shall be governed by the capacity marking on the boiler.

4. The minimum valve capacity in pounds per hour shall be the greater of that determined by dividing the maximum BTU output at the boiler nozzle obtained by the firing of any fuel for which the unit is installed by 1,000; or shall be determined on the basis of the pounds of steam generated per hour per square foot of boiler heating surface as given in Table 2. When operating conditions require a greater relieving capacity shall be provided. In every case, the requirements of subdivision 5 of this subsection shall be met.

TABLE 2

Minimum Pounds of Steam Per Hour
Per Square Foot of Heating Surface

	Fire Tube Boilers	Water Tube Boilers
Boiler Heating Surface:		
Hand fired	5	6
Stoker fired	7	8
Oil, gas, or pulverized fuel fired	8	10
Waterwall heating surface:		
Hand fired	8	8

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Stoker fired	10	12
Oil, gas, or pulverized fuel fired	14	16

Notes: When a boiler is fired only by a gas giving a heat value of not in excess of 200 BTU per cubic foot, the minimum safety valve or safety relief valve relieving capacity may be based on the value given for handfired boilers above.

The minimum safety valve or safety relief valve relieving capacity for electric boilers shall be 3-1/2 pounds per kilowatt input.

For heating surface determination see ASME Code, Section IV.

5. The safety valve capacity for each steam boiler shall be so that with the fuel burning equipment operating at maximum capacity, the pressure cannot rise more than five psig above the maximum allowable working pressure.

6. When operating conditions are changed, or additional boiler surface is installed, the valve capacity shall be increased, if necessary, to meet the new conditions and be in accordance with subdivisions 4 and 5 of this subsection. The additional valves required, on account of changed conditions, may be installed on the outlet piping provided there is no intervening valve.

7. If there is any doubt as to the capacity of the safety valve, an accumulation test shall be run (see ASME Code, Section VI, Care of Heating Boilers).

8. No valve of any description shall be placed between the safety valve and the boiler, nor on the discharge pipe between the safety valve and the atmosphere. The discharge pipe shall be at least full size and be fitted with an open drain to prevent water lodging in the upper part of the safety valve or in the discharge pipe. When an elbow is placed on the safety valve discharge pipe, it shall be located close to the safety valve outlet or the discharge pipe shall be securely anchored and supported. All safety valve discharges shall be so located or piped as not to endanger persons working in the area.

F. Safety relief valve requirements for hot water boilers

1. Each hot water boiler shall have one or more officially rated (ASME stamped and National Board rated) safety relief valves set to relieve at or below the maximum allowable working pressure of the boiler. Safety relief valves officially rated as to capacity shall have pop action when tested by steam. When more than one safety relief valve is used on hot water boilers, the additional valve or valves shall be officially rated and shall be set within a range not to exceed six psig above the maximum allowable working pressure of the boiler up to and including 60 psig and 5.0% for those having a maximum allowable working pressure exceeding 60 psig. Safety relief valves shall be spring loaded. Safety relief valves shall be so arranged that they cannot be reset at a higher pressure than the maximum permitted by this paragraph.

2. No materials liable to fail due to deterioration or vulcanization when subject to saturated steam temperature corresponding to capacity test pressure shall be used for any part.

3. No safety relief valve shall be smaller than 3/4-inch nor larger than 4-1/2 inches standard pipe size, except that boilers having a heat input not greater than 15,000 BTU per hour may be equipped with a rated safety relief valve of 1/2-inch standard pipe size. The inlet opening shall have an inside diameter approximately equal to, or greater than, the seat diameter. In no case shall the minimum opening through any part of the valve be less than 1/2-inch diameter or its equivalent area.

4. The required steam relieving capacity, in pounds per hour, of the pressure relieving device or devices on a boiler shall be the greater of that determined by dividing the maximum output in BTU at the boiler outlet obtained by the firing of any fuel for which the unit is installed by 1,000, or on the basis of pounds of steam generated per hour per square foot of boiler heating surface as given in Table 2. When necessary a greater relieving capacity of valves shall be provided. In every case, the requirements of subdivision 6 of this subsection shall be met.

5. When operating conditions are changed, or additional boiler heating surface is installed, the valve capacity shall be increased, if necessary, to meet the new conditions and shall be in accordance with subdivision 6 of this subsection. The additional valves required, on account of changed conditions, may be installed on the outlet piping provided there is no intervening valve.

6. Safety relief valve capacity for each boiler shall be so that, with the fuel burning equipment installed and operated at maximum capacity the pressure cannot rise more than six psig above the maximum allowable working pressure for pressure up to and including 60 psig and 5.0% of maximum allowable working pressures over 60 psig.

7. If there is any doubt as to the capacity of the safety relief valve, an accumulation test shall be run (see ASME Code, Section VI, Care of Heating Boilers).

8. No valve of any description shall be placed between the safety relief valve and the boiler, nor on the discharge pipe between the safety relief valve and the atmosphere. The discharge pipe shall be at least full size and fitted with an open drain to prevent water lodging in the upper part of the safety relief valve or in the discharge pipe. When an elbow is placed on the safety relief valve discharge pipe, it shall be located close to the safety relief valve outlet or the discharge pipe shall be securely anchored and supported. All safety relief valve discharges shall be so located or piped as not to endanger persons working in the area.

G. Valve replacement and repair. Safety valves and safety relief valves requiring repair shall be replaced with a new valve or repaired by the original manufacturer, or his authorized representative.

H. Pressure relieving devices. Boilers and fired storage water heaters except those exempted by the Act shall be equipped with pressure relieving devices in accordance with the requirements of Section IV of the ASME Boiler and Pressure Vessel Code.

I. Instruments, fittings and control requirements. Instruments, fittings and controls for each boiler installation shall comply with the requirements of the ASME Heating Boiler Code, Section IV.

J. Low water fuel cutoff.

1. Each automatically fired hot water heating boiler with heat input greater than 400,000 BTU's per hour shall have an automatic low water fuel cutoff which has been designed for hot water service, located so as to stop the fuel supply automatically when the surface of the water falls to the level established in subdivision 2 of this subsection (also see ASME Heating Boiler Code, Section IV).

2. As there is no normal waterline to be maintained in a hot water heating boiler, any location of the low water fuel cutoff above the lowest safe permissible water level established by the boiler manufacturer is satisfactory.

3. A coil type boiler or a water tube boiler with heat input greater than 400,000 BTU's per hour requiring forced circulation, to prevent overheating of the coils or tubes, shall have a flow sensing device installed in the outlet piping, instead of the low water fuel cutoff required in subdivision 1 of this subsection to stop the fuel supply automatically when the circulating flow is interrupted.

K. Steam gauges.

1. Each steam boiler shall have a steam gauge connected to its steam space, its water column, or its steam connection, by means of a siphon or equivalent device exterior to the boiler. The siphon shall be of sufficient capacity to keep the gauge tube filled with water and arranged so that the gauge cannot be shut off from the boiler except by a cock with a tee or lever handle placed in the pipe near the gauge. The handle of the cock shall be parallel to the pipe in which it is located when the cock is open.

2. The range of the scale on the dial of a steam boiler pressure gauge shall be not less than 30 psig nor more than 60 psig. The gauge shall be provided with effective stops for the indicating pointer at the zero point and at the maximum pressure point. The travel of the pointer from 0 to full scale 30 psig shall be at least three inches.

L. Pressure or altitude gauges.

1. Each hot water boiler shall have a pressure or altitude gauge connected to it or to its flow connection in a manner so that it cannot be shut off from the boiler except by a cock with tee or lever handle placed on the pipe near the gauge. The handle of the cock shall be parallel to the pipe in which it is located when the cock is open.

2. The range of the scale on the dial of the pressure or altitude gauge shall be not less than 1-1/2 times nor

more than three times the maximum allowable working pressure. The gauge shall be provided with effective stops for the indicating pointer at the 0 point and at the maximum pressure point.

3. Piping or tubing for pressure or altitude gauge connections shall be of nonferrous metal when smaller than one inch pipe size.

M. Thermometers. Each hot water boiler shall have a thermometer located and connected so that it shall be easily readable when observing the water pressure or altitude gauge. The thermometer shall be located so that it will at all times indicate the temperature in degrees Fahrenheit of the water in the boiler at or near the outlet.

N. Water gauge glasses.

1. Each steam boiler shall have one or more water gauge glasses attached to the water column or boiler by means of valved fittings. The lower fitting shall be provided with a drain valve of the straightaway type with opening not less than 1/4-inch diameter to facilitate cleaning. Gauge glass replacement shall be possible while the boiler is under pressure.

2. Transparent material, other than glass, may be used for the water gauge provided that the material has proved suitable for the pressure, temperature and corrosive conditions encountered in service.

O. Stop valves and check valves.

1. If a boiler can be closed off from the heating system by closing a steam stop valve, there shall be a check valve in the condensate return line between the boiler and the system.

2. If any part of a heating system can be closed off from the remainder of the system by closing a steam stop valve, there shall be a check valve in the condensate return pipe from that part of the system.

P. Feedwater connections.

1. Feedwater, make-up water, or water treatment shall be introduced into a boiler through the return piping system or through an independent feedwater connection which does not discharge against parts of the boiler exposed to direct radiant heat from the fire. Feedwater, make-up, or water treatment shall not be introduced through openings or connections provided for inspection or cleaning, safety valve, safety relief valve, surface blowoff, water column, water gauge glass, pressure gauge or temperature gauge.

2. Feedwater piping shall be provided with a check valve near the boiler and a stop valve or cock between the check valve and the boiler or return pipe system.

Q. Return pump. Each boiler equipped with a condensate return pump, where practicable, shall be provided with a water level control arranged to maintain the water level in the boiler automatically within the range of the gauge glass.

R. Repairs and renewals of boiler fittings and appliances. Whenever repairs are made to fittings or appliances, or it becomes necessary to replace them, the repairs or

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replacements shall comply with Section IV of the ASME Code for new construction.

S. Conditions not covered by these requirements. Any case not specifically covered by these rules and regulations shall be treated as a new boiler or pressure vessel installation pursuant to § 2.27 or may be referred to the Chief Inspector for instructions concerning the requirements.

§ 3.3. Pressure vessels.

A. Maximum allowable working pressure for standard pressure vessels. The maximum allowable working pressure for standard pressure vessels shall be determined in accordance with the applicable provisions of the edition of the ASME or API-ASME Code under which they were constructed and stamped. The maximum allowable working pressure shall not be increased to a greater pressure than shown on the manufacturers nameplate stamping and data report.

B. Maximum allowable working pressure for nonstandard pressure vessels.

1. For internal pressure. The maximum allowable working pressure on the shell of a nonstandard pressure vessel shall be determined by the strength of the weakest course computed from the thickness of the plate, the tensile strength of the plate, the efficiency of the longitudinal joint, the inside diameter of the weakest course and the factor set by these rules.

TS_tE

RFS = maximum allowable working pressure, psig

where:

TS = ultimate tensile strength of shell plate, psig. When the tensile strength of the steel plate is not known, it shall be taken as 55,000 psig for temperatures not exceeding 700°F.

t = minimum thickness of shell plate of weakest course, inches,

E = efficiency of longitudinal joint depending upon construction. Use the following values:

For riveted joints - calculated riveted efficiency;

For fusion-welded joints:

Single lap weld	40%
Double lap weld	50%
Single butt weld	60%
Double butt weld	70%
Forge weld	70%
Brazed steel	80%

R = inside radius of weakest course of shell, inches, provided the thickness does not exceed 10% of the radius. If the thickness is over 10% of the radius, the outer radius shall be used.

FS = factor of safety allowed by these rules.

2. For external pressure. The maximum allowable working pressure for cylindrical nonstandard pressure vessels subjected to external or collapsing pressure shall be determined by the rules in Section VIII, Division 1, of the ASME Code.

3. Factors of safety. The minimum factor of safety shall in no case be less than four for existing installations. The factor of safety may be increased when deemed necessary by the inspector to insure the operation of the vessel within safe limits. The condition of the vessel and the particular service of which it is subject will be the determining factors.

4. The maximum allowable working pressure permitted for formed heads under pressure shall be determined by using the appropriate formulas from Section VIII, Division 1, ASME Code and the tensile strength and factors of safety given in subdivisions 1 and 3 of this subsection.

C. Inspection of inaccessible parts. Where in the opinion of the inspector, as the result of conditions disclosed at the time of inspection, it is advisable to remove the interior or exterior lining, covering, or brickwork to expose certain parts of the vessel not normally visible, the owner or user shall remove the materials to permit proper inspection and to establish construction details. Metal thickness shall be determined utilizing appropriate equipment including drilling if necessary.

D. Pressure relief devices. Pressure relief devices for each pressure vessel installation, not exempt by the Act, shall comply with the requirements of ASME Pressure Vessel Code, Section VIII.

E. Safety appliances.

1. Each pressure vessel shall be protected by safety and relief valves and indicating and controlling devices which will insure its safe operation. These valves and devices shall be constructed, located and installed so that they cannot readily be rendered inoperative. The relieving capacity of the safety valves shall prevent a rise of pressure in the vessel of more than 10% above the maximum allowable working pressure, taking into account the effect of static head. Safety valve discharges shall be located or piped so as not to endanger persons working in the area.

2. Safety valves and safety relief valves requiring repair shall be replaced with a new valve or repairs shall be performed in accordance with the National Board Inspection Code by the original manufacturer, or his authorized representative.

F. Repairs and renewals of fittings and appliances. Whenever repairs are made to fittings or appliances, or it becomes necessary to replace them, the repairs or replacements shall comply with the ASME Code.

G. Conditions not covered by these requirements. All cases not specifically covered by these requirements shall be treated as new installations or may be referred to the Chief Inspector for instructions concerning the requirements.

PART IV. GENERAL REQUIREMENTS.

§ 4.1. Inspection of boilers and pressure vessels.

All boilers and pressure vessels, not exempt by the Act, shall be inspected internally and externally, as provided by these rules and regulations, by an authorized inspector. The owner or user shall prepare each boiler or pressure vessel for the inspection and for appropriate pressure tests, whenever necessary. To prepare equipment for an internal inspection the following actions shall be taken as applicable:

A. 1. Boilers.

1. a. Cool the boiler, furnace and setting sufficiently to prevent damage to any part.
2. b. Drain and wash thoroughly internal parts to be inspected and adequately ventilate all interior surfaces.
3. c. Remove manhole and handhole plates, wash out openings, drains and inspection plugs.
4. d. Remove a sufficient number of grates of internally fired boilers, as required by the inspector.
5. e. Remove brickwork, refractory and insulation, as required by the inspector, to determine condition of boiler, headers, tubes, furnace, structural supports, and other parts.
6. f. Prevent leakage of water, steam or vapors into boiler interiors that would endanger personnel.
7. g. Before opening the manhole or handhole covers and entering any parts of the steam-generating unit connected to a common header with other boilers, the nonreturn and steam stop valves must be closed, locked out and drain valves or cocks between the two valves opened. The feed and check valves must be closed, locked out and drain valves or cocks located between the two valves opened. After draining the boiler, the blowoff valves shall be closed and locked out. Blowoff lines, where practicable, shall be disconnected between pressure parts and valves. All drains and vent lines shall be opened.

8. Prepare the pressure gauge for testing.

B. 2. Pressure vessels.

1. a. Remove manhole and handhole plates, cleaning and inspection plugs.
2. b. Clean internal surfaces and adequately ventilate all interior spaces.
3. c. Isolate the unit to the extent that internal temperature, pressure and environment are not injurious to personnel and are under strict control during complete inspection.
4. d. Remove linings or coverings, as required by the inspector, to determine true physical condition of the vessel and its components.
5. e. Make protective and regulating controls readily accessible for inspection.

6. f. Prepare the pressure gauges for testing.

§ 4.2. Boilers and pressure vessels improperly prepared for inspection.

If a boiler or pressure vessel has not been properly prepared for an internal inspection, or if the owner or user fails to comply with the requirements for a hydrostatic test as set forth in these rules and regulations, the inspector may decline to make the inspection or test and the inspection certificate shall be withheld until the owner or user complies with the requirements.

§ 4.3. Removal of covering to permit inspection.

If the boiler or pressure vessel is jacketed so that the seams of shells, drums, or domes cannot be seen, sufficient jacketing, setting wall, or other form of casing or housing shall be removed to permit reasonable inspection of the seams and so that the size of the rivets, pitch of the rivets, and other data necessary to determine the safety of the boiler or pressure vessel may be obtained, provided such information cannot be determined by other means.

The inspector shall not remove any insulation or covering and may refuse to enter boiler or equipment rooms where the inspector believes an asbestos exposure exists. To determine if an asbestos exposure may exist, the inspector may request to review the owner or user's asbestos maintenance program, where applicable, under the Virginia Occupational Safety and Health (VOSH) Program, Section 1926.58, Appendix "G".

§ 4.4. Lap-seam crack.

The shell of a pressure vessel, in which a lap-seam crack is discovered along a longitudinal riveted joint, shall be shut down immediately. If the equipment is not more than 15 years of age, a complete new course of the original thickness may be installed at the discretion of the inspector and after approval by the Chief Inspector. Patching is prohibited.

§ 4.5. Hydrostatic pressure tests.

A. A hydrostatic pressure test, when applied to boilers or pressure vessels, shall not exceed 1-1/2 times the maximum allowable working pressure, except as provided by the ASME Code. The pressure shall be under proper control so that in no case shall the required test pressure be exceeded by more than 2.0%.

B. See § 3.1 A 4 for temperature limitations on particular power boiler installations.

C. When a hydrostatic test is to be applied to existing installations, the pressure shall be as follows:

1. For all cases involving the question of tightness, the pressure shall be equal to the working pressure.
2. For all cases involving the question of safety, the pressure shall be equal to 1-1/2 times the maximum allowable working pressure. During such test the safety valve or valves shall be removed or each valve disk shall be held to its seat by means of a testing clamp and not by screwing down the compression screw upon the spring.

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§ 4.6. Automatic low-water fuel cutoff or water-feeding device.

A. Each automatically fired and unattended steam or vapor system boiler shall be equipped with an automatic low water fuel cutoff located so as to cut off the fuel supply automatically when the surface of the water falls to the lowest safe water line. If a water feeding device is installed, it shall be constructed so that the water inlet valves cannot feed water into the boiler through the float chamber and located so as to supply requisite feedwater. The lowest safe water line should be not lower than the lowest visible part of the water glass.

B. The fuel cutoff or water feeding device shall be attached directly to a boiler or in the tapped openings available for attaching a water glass directly to a boiler, provided the connections are made to the boiler with nonferrous tees or Y's not less than 1/2 inch pipe size between the boiler and the water glass so that the water glass is attached directly and as close as possible to the boiler; the run of the tee or Y shall take the water glass fittings, and the side outlet or branch of the tee or Y shall take the fuel cutoff or water feeding device. The ends of all nipples shall be reamed to full-size diameter.

C. Fuel cutoffs and water feeding devices embodying a separate chamber shall have a vertical drain pipe and a blowoff valve not less than 3/4-inch pipe size, located at the lowest point in the water equalizing pipe connections so that the chamber and the equalizing pipe can be flushed and the device tested.

D. A forced circulation coil or water tube type boiler, with a heat input greater than 400,000 BTU's per hour shall have a flow sensing device installed to cut off the fuel supply at a minimum water circulation flow rate in the boiler. The boiler manufacturer's specifications for the safe minimum flow rate, setting, and location of the flow sensing device shall be utilized.

§ 4.7. Pressure-reducing valves.

A. Where pressure-reducing valves are used, one or more relief or safety valves shall be provided on the low pressure side of the reducing valve when the piping or equipment on the low-pressure side does not meet the requirements for the full initial pressure. Proper protection shall be provided to prevent injury or damage caused by the escaping fluid from the discharge of relief or safety valves if vented to the atmosphere. The combined discharge capacity of the relief or safety valves shall be such that the pressure rating of the lower pressure piping or equipment shall not be exceeded in case the reducing valve sticks open.

B. The use of hand-controlled bypasses around reducing valves is permissible. If a bypass is used around the reducing valve, the safety valve required on the low pressure side shall be sufficient capacity to relieve all the fluid that can pass through the bypass without overpressuring the low pressure side.

C. A pressure gauge shall be installed on the low pressure side of a reducing valve.

§ 4.8. Blowoff equipment.

A. The blowdown from a boiler or boilers that enters a sewer system or blowdown which is considered a hazard to life or property shall pass through blowoff equipment that will reduce pressure and temperature as required hereinafter.

B. The temperature of the water leaving the blowoff equipment shall not exceed 140°F.

C. The pressure of the blowdown leaving any type of blowoff equipment shall not exceed five psig.

D. The blowoff piping and fittings between the boiler and the blowoff tank shall comply with Section I of the ASME Code and ANSI B31.1.

E. All materials used in the fabrication of boiler blowoff equipment shall comply with Section II of the ASME Code.

F. All blowoff equipment shall be fitted with openings to facilitate cleaning and inspection.

G. Blowoff equipment which conforms to the provisions set forth in the National Board publication, "Boiler Blowoff Equipment," shall meet the requirements of this section.

§ 4.9. Location of discharge piping outlets.

The discharge of safety valves, blowoff pipes and other outlets shall be located so as to prevent injury to personnel.

§ 4.10. Repairs and alterations.

A. Prior to any repair, the owner or user shall notify the Chief Boiler Inspector, ~~Deputy Inspector~~ or Special Inspector for direction or advice regarding the method and extent of repair.

B. Repairs to boilers and pressure vessels shall be done in accordance with the National Board Inspection Code. The completed repairs shall be reviewed by and found acceptable to the inspector who authorized the repair.

C. Alterations to boilers and pressure vessels shall be performed by an organization holding an appropriate ASME Certificate of Authorization and shall be in accordance with the National Board Inspection Code.

D. All repairs and alterations shall be reported on Form R-1, Report of Welded Repair or Alteration. The completed form including proper certification shall be forwarded to the Chief Inspector by the organization performing the repair or alteration.

§ 4.11. Supports.

Each boiler and pressure vessel shall be supported by masonry or structural supports of sufficient strength and rigidity to safely support the boiler or pressure vessel and its contents. There shall be no excessive vibration in the boiler, pressure vessel, or their connected piping or fittings.

§ 4.12. Boiler door latches.

A. A water tube boiler shall have the firing doors of the inward-opening type, unless such doors are provided with substantial and effective latching or fastening devices or otherwise so constructed as to prevent them, when closed, from being blown open by pressure on the furnace side.

B. These latches or fastenings shall be of the positive self-locking type. Friction contacts, latches, or bolts actuated by springs shall not be used. The foregoing requirements for latches or fastenings shall not apply to coal openings of downdraft or similar furnaces.

C. All other doors, except explosion doors, not used in the firing of the boiler, may be provided with bolts or fastenings instead of self-locking latching devices.

D. Explosion doors, if used and if located in the setting walls within seven feet of the firing floor or operating platform, shall be provided with substantial deflectors to divert the blast.

§ 4.13. Clearance.

When boilers are replaced or new boilers are installed in either existing or new buildings, a minimum clearance of two feet on all service sides shall be provided. Boilers and pressure vessels having manholes shall have five feet clearance from the manhole opening and any wall, ceiling or piping that will prevent a person from entering the boiler or vessel. All boilers and pressure vessels shall be located so that adequate space will be provided for the proper operation of the boilers and pressure vessels and their appurtenances, for the inspection of all surfaces, tubes, waterwalls, economizers, piping, valves and other equipment, and for their necessary maintenance and repair and replacement of tubes.

§ 4.14. Ladders and runways.

When necessary for safety, there shall be a steel runway or platform of standard construction installed across the tops of adjacent boilers or pressure vessels or at some other convenient level for the purpose of affording safe access. All runways shall have at least two means of exit each to be remotely located from the other.

§ 4.15. Air and ventilation requirements.

A permanent source of outside air shall be provided for each boiler room to permit satisfactory combustion of the fuel as well as proper ventilation of the boiler room under normal operating conditions.

A. The total requirements of the burners for all fired pressure vessels in the boiler room must be used to determine the louver sizes whether fired by coal, oil or gas; however, the minimum net free louvered area must not be less than one square foot. The following table or formula shall be used to determine the net louvered area in square feet:

Input BTU Per Hour	Required Air Cu. Ft./Min.	Min. Net Louvered Area Sq.Ft.
500,000	125	1.0
1,000,000	250	1.0
2,000,000	500	1.6
3,000,000	750	2.5
4,000,000	1,000	3.3
5,000,000	1,250	4.1
6,000,000	1,500	5.0

7,000,000	1,750	5.8
8,000,000	2,000	6.6
9,000,000	2,250	7.5
10,000,000	2,500	8.3

$$\frac{(\text{BTU per hour} \div 100) \times 1.5}{60} \div 300 = \text{Min Net Area Req. Sq. Ft.}$$

B. When mechanical ventilation is used instead of subsection A of this section, the supply of combustion and ventilation air to the boiler room and the firing device shall be interlocked with the fan so the firing device will not operate with the fan off. The velocity of the air through the ventilating fan shall not exceed 500 feet per minute and the total air delivered shall be equal to or greater than shown in subsection A of this section.

§ 4.16. Jacketed kettles and miniatures boilers.

Jacketed kettles and miniature boilers are acceptable for installation if constructed and stamped in accordance with Section I, IV, or VIII, Division 1, of the ASME Code and registered with the National Board.

§ 4.17. Fuel burning apparatus and systems (flame safeguard).

Fuel burning apparatus and systems shall be equipped with regulating and protective controls in accordance with applicable standards of the American Gas Association, Underwriters Laboratories, ANSI/ASME-CSD-1, or National Fire Protection Association (NFPA) No. 85 Series, or equivalent recognized standards.

§ 4.18. ~~Shop Inspection and~~ *Inspection of secondhand or used boilers or pressure vessels.*

~~Shop inspections and~~ *Inspections of secondhand or used boilers or pressure vessels made by the Chief Inspector or a Deputy Commonwealth Inspector shall be charged for in accordance with § 40.1-51.15 of the Act.*

§ 4.19. Conditions not covered by these rules and regulations.

For any condition not covered by these requirements, the applicable provisions of the National Board Inspection Code or the ASME Code shall apply.

DOCUMENTS INCORPORATED BY REFERENCE

- API-ASME Code - Pressure Vessel Inspection Code, June 1989
- National Board Rules and Recommendations for the Design and Construction of Boiler Blowoff Systems, 1991
- The National Board of Boiler and Pressure Vessel Inspectors Bylaws, 1989
- National Fire Protection Association (NFPA) Series No. 85, 1991

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American Gas Association, Underwriters Laboratories, ANS/ASME CSD-I, Control and Safety Devices for Automatically Fired Boilers, 1992 (ASME CSD-1-1992)

ASME Code - 1992 ASME Boiler and Pressure Vessel Code, 1992

VA.R. Doc. No. R95-529; Filed May 30, 1995, 9:53 a.m.

ANSI B 31.1 - ASME Code for Pressure Piping, 1992

DESIGN CERTIFICATION

The undersigned certifies that the statements made in this report are correct and that the design changes described in this report conform to the requirements of the Virginia Boiler and Pressure Vessel Rules and Regulations.

ASME Certificate of Authorization no. _____ to use the _____ sym. exp. _____, 19____
Date _____, 19____ Signed _____ (name of organization) _____ (authorized representative)

CERTIFICATE OF REVIEW OF DESIGN CHANGE

The undersigned, holding a valid Commission and certificate of competency issued by the Commonwealth of Virginia and employed by _____ of _____, has examined the design change as described in this report and verifies that to the best of his knowledge and belief such change complies with the applicable requirements of the Virginia Boiler and Pressure Vessel Rules and Regulations. By signing this certificate, neither the undersigned nor his employer makes any warranty, expressed or implied, concerning the work described in this report. Furthermore, neither the undersigned nor his employer shall be liable in any manner for any personal injury, property damage or loss of any kind arising from or connected with this inspection, except such liability as may be provided in a policy of insurance which the undersigned's insurance company may issue upon said object and then only in accordance with the terms of said policy.

Date _____, 19____ Signed _____ (Authorized Inspector) _____ (state, prov., and no.) _____ Commissions _____

CONSTRUCTION CERTIFICATION

The undersigned certifies that the statements made in this report are correct and that all construction and workmanship on this _____ (repair or alteration) _____ conform to the requirements of the Virginia Boiler and Pressure Vessel Rules and Regulations.

Date _____, 19____ Signed _____ (repair or alteration organization) _____ (authorized representative)

CERTIFICATE OF INSPECTION

The undersigned, holding a valid Commission and certificate of competency issued by the Commonwealth of Virginia and employed by _____, is inspected the work described in this report on _____, 19____, and state to the best of my knowledge and belief this work has been done in accordance with the Virginia Boiler and Pressure Vessel Rules and Regulations. By signing this certificate neither the undersigned nor my employer makes any warranty, expressed or implied, concerning the work described in this report. Furthermore, neither the undersigned nor my employer shall be liable in any manner for any personal injury, property damage or loss of any kind arising from or connected with this inspection, except such liability as may be provided in a policy of insurance which the undersigned's insurance company may issue upon said object and then only in accordance with the terms of said policy.

Date _____, 19____ Signed _____ (Authorized Inspector) _____ (state, prov., and no.) _____ Commissions _____

COMMONWEALTH OF VIRGINIA R1 FORM, REPORT OF WELDED REPAIR OR ALTERATION as required by the provisions of the Boiler and Pressure Vessel Safety Act

1. Work performed by _____ (name of repair or alteration organization) [P.O. no., job no., etc.] _____

2. Owner _____ (address) _____ (name) _____

3. Location of installation _____ (address) _____ (name) _____

4. Unit identification: _____ (boiler, pressure vessel) _____ (address) _____ (name) _____ Name of original mfr. _____

5. Identifying nos.: _____ (Virginia no.) _____ (orig. N.B. no.) _____ (mfr's serial no.) _____ (other) _____ (if blk.) _____

6. Description of work: _____ (use separate sheet, or sketch if necessary)

_____ Pressure test, if applied _____ psi.

7. Replacement Parts: Attached are Manufacturers' Part/ Data Reports properly identified and signed by Authorized Inspectors for the following items of this report:

8. Remarks: _____ (name of part, item number, mfr's name and identifying stamp)

This form may be reproduced or obtained from the Dept. of Labor and Industry, Boiler Safety Enforcement Division, Powers-Laylor Building, 13 South Thirteenth Street, Richmond, Virginia 23219.

CVR1 REV 10

VIRGINIA DEPARTMENT OF LABOR AND INDUSTRY
 BOILER AND PRESSURE VESSEL SAFETY DIVISION
 BOILER OR PRESSURE VESSEL DATA REPORT — FIRST INTERNAL INSPECTION

Standard Form for Jurisdictions Operating Under The ASME Code

1	DATE INSPECTED MO DAY YR	CERT EXP DATE MO YR	CERT POSTED Yes No	OWNER NO.	JURISDICTION NUMBER	NAT'L BO NO.	OTHER NO.	
2	OWNER			NATURE OF BUSINESS		KIND OF INSPEC. Int Ext	CERTIFICATE INSPECTION Yes No	
3	OWNER STREET ADDRESS NUMBER			OWNERS CITY		STATE	ZIP	
4	USERS NAME - OBJECT LOCATION			SPECIFIC LOCATION IN PLANT		OBJECT LOCATION-COUNTY		
5	USERS STREET ADDRESS NUMBER			USERS CITY		STATE	ZIP	
6	TYPE <input type="checkbox"/> FT <input type="checkbox"/> WT <input type="checkbox"/> CI <input type="checkbox"/> Air Tank <input type="checkbox"/> Water Tank <input type="checkbox"/> Other		YEAR BUILT	MANUFACTURER		YEAR INST	<input type="checkbox"/> New <input type="checkbox"/> Second Hand	
7	USE <input type="checkbox"/> Power <input type="checkbox"/> Process <input type="checkbox"/> Steam Htg <input type="checkbox"/> HWH <input type="checkbox"/> HWS <input type="checkbox"/> Storage <input type="checkbox"/> Heat Exchange <input type="checkbox"/> Other		FUEL (BOILER)	METHOD OF FIRING (BOILER)		PRESSURE GAGE TESTED <input type="checkbox"/> Yes <input type="checkbox"/> No		
8	PRESSURE		SAFETY-RELIEF VALVES		EXPLAIN IF PRESSURE CHANGED			
9	This Inspection		Prev. Inspection		Set at			
10	IS CONDITION OF OBJECT SUCH THAT A CERTIFICATE MAY BE ISSUED?						HYDRO TEST <input type="checkbox"/> Yes <input type="checkbox"/> No (If "No" explain fully on back of form - listing code violations)	
11	SHELL No.	DIAMETER in. O.D.	OVERALL LENGTH ft	THICKNESS in.	TOTAL HTG SURFACE (BOILER) Sq Ft	MATERIAL ASME Spec Nos		
12	ALLOWABLE STRESS psi	BUTT STRAP <input type="checkbox"/> Single <input type="checkbox"/> Double	HEADERS - W T BOILERS Thickness in.		TYPE <input type="checkbox"/> Box <input type="checkbox"/> Sinuous <input type="checkbox"/> Wtr Wall <input type="checkbox"/> Other			
13	TYPE LONGITUDINAL SEAM <input type="checkbox"/> Lap <input type="checkbox"/> Butt <input type="checkbox"/> Welded <input type="checkbox"/> Brazed <input type="checkbox"/> Riveted			RIVETED Dia Hole in.	PITCH in. X in. X in.	SEAM EFF %		
14	HEAD THICKNESS in.	HEAD TYPE <input type="checkbox"/> Plus <input type="checkbox"/> Minus	<input type="checkbox"/> Fixed <input type="checkbox"/> Movable	RADIUS DISH in.	ELLIP RATIO	BOLTING No. Dia in. Material		
15	TUBE SHEET THICKNESS in.	TUBES Dia in.	Length ft	PITCH (W T BLRS) in. X in.	LIGAMENT EFF %			
16	FIRE TUBE BOILERS	DISTANCE UPPER TUBES TO SHELL Front in. Rear in.	STAYED AREA Front in. Rear in.	Above Tubes Below Tubes		Rear Head Below Tubes		
17	STAYS ABOVE TUBES Front No. Rear No.		TYPE <input type="checkbox"/> Head to Head <input type="checkbox"/> Diagonal <input type="checkbox"/> Welded <input type="checkbox"/> Weldless	AREA OF STAYS Front Rear				
18	STAYS BELOW TUBES Front No. Rear No.		TYPE <input type="checkbox"/> Head to Head <input type="checkbox"/> Diagonal <input type="checkbox"/> Welded <input type="checkbox"/> Weldless	AREA OF STAYS Front Rear				
19	FURNACE - TYPE Adamson (No. Sect. <input type="checkbox"/>) <input type="checkbox"/> Corrugated <input type="checkbox"/> Plain <input type="checkbox"/> Other			THICKNESS in.	TOTAL LENGTH ft	TYPE LONG. SEAM <input type="checkbox"/> Welded <input type="checkbox"/> Riveted <input type="checkbox"/> Seamless		
20	STAYBOLTS - TYPE <input type="checkbox"/> Threaded <input type="checkbox"/> Welded <input type="checkbox"/> Hollow <input type="checkbox"/> Drilled (Size Hole in.)			DIAMETER in.	PITCH in. X in.	NET AREA sq in.		
21	SAFETY-RELIEF VALVES No. Size		TOTAL CAPACITY Cfm Lbs/Hr Btu/Hr	OUTLETS No. Size		PROPERLY DRAINED <input type="checkbox"/> Yes <input type="checkbox"/> No (If "No" explain on back of form)		
22	STOP VALVES	ON STEAM LINES <input type="checkbox"/> Yes <input type="checkbox"/> No	ON RETURN LINES <input type="checkbox"/> Yes <input type="checkbox"/> No	OTHER CONNECTIONS <input type="checkbox"/> Yes <input type="checkbox"/> No	STEAM LINES PROPERLY DRAINED <input type="checkbox"/> Yes <input type="checkbox"/> No (If "No" explain on back of form)			
23	FEED PIPE Size in.	FEED APPLIANCES No.	TYRE DRIVE <input type="checkbox"/> Steam <input type="checkbox"/> Motor	CHECK VALVES	FEED LINE <input type="checkbox"/> Yes <input type="checkbox"/> No	RETURN LINE <input type="checkbox"/> Yes <input type="checkbox"/> No		
24	WATER GAGE GLASS No.	TRY COCKS No.	BLOW OFF PIPE Size in. Location	INSPECTION OPENINGS COMPLY WITH CODE <input type="checkbox"/> Yes <input type="checkbox"/> No (If "No" explain on back of form)				
25	CAST IRON BOILERS Length in. Width in. Height in.			SECTIONS in. No.	DOES WELDING ON STEAM, FEED, BLOWOFF AND OTHER PIPING COMPLY WITH CODE <input type="checkbox"/> Yes <input type="checkbox"/> No (If "No" explain on back of form)			
26	SHOW ALL CODE STAMPING ON BACK OF FORM. Give details (use sketch) for special objects NOT covered above - such as Double wall vessels etc			DOES ALL MATERIAL OTHER THAN AS INDICATED ABOVE COMPLY WITH CODE <input type="checkbox"/> Yes <input type="checkbox"/> No (If "No" explain on back of form)				
27	NAME AND TITLE OF PERSON TO WHOM REQUIREMENTS WERE EXPLAINED:							
28	HEREBY CERTIFY THIS IS A TRUE REPORT OF MY INSPECTION			IDENT NO.	EMPLOYED BY	IDENT NO.		
29	Signature of Inspector				Virginia Department of Labor & Industry Boiler & Pressure Vessel Safety Division			

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REGISTRAR'S NOTICE: The amendments to the following regulation are exempt from the Administrative Process Act in accordance with § 9-6.14:4.1 C 3, which excludes regulations which consist only of changes in style or form or corrections of technical errors, and in accordance with § 9-6.14:4.1 C 4(a) of the Code of Virginia, which excludes regulations that are necessary to conform to changes in Virginia statutory law where no agency discretion is involved. The Department of Labor and Industry will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: VR 425-02-95. Administrative Regulation for the Virginia Occupational Safety and Health Program.

Statutory Authority: § 40.1-22(5) of the Code of Virginia.

Effective Date: August 1, 1995.

Summary:

The first amendment involves removing the unnecessary language, "subsection B of," which appears in subdivision 4 of § 2.3, Notification and Posting Requirements.

The second amendment, which appears in § 2.4 A and B, reduces from 48 hours to eight hours the time limit for employers to report any work-related incident resulting in a fatality or in the hospitalization of at least three rather than five individuals. In cases where an employer does not immediately learn of a reportable incident, the employer would report within eight hours, rather than 48 hours, of learning of such incident. This amendment also requires an employer to report within eight hours, rather than 48 hours, after learning of the death of a worker who dies within 30 days of an incident; and provides specifics for information requirements and reporting methods.

Agency Contact: Copies of the regulation may be obtained from Bonnie H. Robinson, Regulatory Coordinator, Department of Labor and Industry, 13 South 13th Street, Richmond, VA 23219, telephone (804) 371-2631.

VR 425-02-95. Administrative Regulation for the Virginia Occupational Safety and Health Program.

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:

"*Abatement period*" means the period of time permitted for correction of a violation.

"*Bureau of Labor Statistics*" means the Bureau of Labor Statistics of the United States Department of Labor.

"*Citation*" means the notice to an employer that the commissioner has found a condition or conditions that violate

Title 40.1 of the Code of Virginia or the standards, rules or regulations established by the commissioner or the board.

"*Board*" means the Safety and Health Codes Board.

"*Commissioner*" means the Commissioner of Labor and Industry. Except where the context clearly indicates the contrary, any reference to the commissioner shall include his authorized representatives.

"*Commissioner of Labor and Industry*" means only the Commissioner of Labor and Industry.

"*Department*" means the Virginia Department of Labor and Industry.

"*De minimis violation*" means a violation which has no direct or immediate relationship to safety and health.

"*Employee*" means an employee of an employer who is employed in a business of his employer.

"*Employee representative*" means a person specified by employees to serve as their representative.

"*Employer*" means any person or entity engaged in business who has employees but does not include the United States.

"*Establishment*" means, for the purpose of record keeping requirements, a single physical location where business is conducted or where services or industrial operations are performed, e.g., factory, mill, store, hotel, restaurant, movie theater, farm, ranch, bank, sales office, warehouse, or central administrative office. Where distinctly separate activities are performed at a single physical location, such as contract activities operated from the same physical location as a lumberyard; each activity is a separate establishment. In the public sector, an establishment is either (i) a single physical location where a specific governmental function is performed; or (ii) that location which is the lowest level where attendance or payroll records are kept for a group of employees who are in the same specific organizational unit, even though the activities are carried on at more than a single physical location.

"*Failure to abate*" means that the employer has failed to correct a cited violation within the period permitted for its correction.

"*FOIA*" means the Freedom of Information Act.

"*Imminent danger condition*" means any condition or practice in any place of employment such that a danger exists which could reasonably be expected to cause death or serious physical harm immediately or before the imminence of such danger can be eliminated through standard enforcement procedures provided by Title 40.1 of the Code of Virginia.

"*OSHA*" means the Occupational Safety and Health Administration of the United States Department of Labor.

"*Other violation*" means a violation which is not, by itself, a serious violation within the meaning of the law but which has a direct or immediate relationship to occupational safety or health.

"Person" means one or more individuals, partnerships, associations, corporations, business trusts, legal representatives, or any organized group of persons.

"Public employer" means the Commonwealth, including its agencies, or any political subdivision or public body.

"Public employee" means any employee of a public employer. Volunteer members of volunteer fire departments, pursuant to § 27-42 of the Code of Virginia, members of volunteer rescue squads who serve without pay, and other volunteers pursuant to the Virginia State Government Volunteers Act are not public employees. Prisoners confined in jails controlled by any political subdivision of the Commonwealth and prisoners in institutions controlled by the Department of Corrections are not public employees unless employed by a public employer in a work-release program pursuant to § 53.1-60 or § 53.1-131 of the Code of Virginia.

"Recordable occupational injury and illness" means (i) a fatality, regardless of the time between the injury and death or the length of illness; (ii) a nonfatal case that results in lost work days; or (iii) a nonfatal case without lost work days which results in transfer to another job or termination of employment, which requires medical treatment other than first aid, or involves loss of consciousness or restriction of work or motion. This category also includes any diagnosed occupational illness which is reported to the employer but is not otherwise classified as a fatality or lost work day case.

"Repeated violation" means a violation deemed to exist in a place of employment that is substantially similar to a previous violation of a law, standard or regulation that was the subject of a prior final order against the same employer. A repeated violation results from an inadvertent or accidental act, since a violation otherwise repeated would be willful.

"Serious violation" means a violation deemed to exist in a place of employment if there is a substantial probability that death or serious physical harm could result from a condition which exists, or from one or more practices, means, methods, operations, or processes which have been adopted or are in use, in such place of employment, unless the employer did not, and could not with the exercise of reasonable diligence, know of the presence of the violation. The term "substantial probability" does not refer to the likelihood that illness or injury will result from the violative condition but to the likelihood that, if illness or injury does occur, death or serious physical harm will be the result.

"Standard" means an occupational safety and health standard which requires conditions, or the adoption or use of one or more practices, means, methods, operations, or processes, reasonably necessary or appropriate to provide safe or healthful employment and places of employment.

"VOSH" means Virginia Occupational Safety and Health.

"Willful violation" means a violation deemed to exist in a place of employment where (i) the employer committed an intentional and knowing, as contrasted with inadvertent, violation and the employer was conscious that what he was doing constituted a violation; or (ii) the employer, even though not consciously committing a violation, was aware that a hazardous condition existed and made no reasonable effort to eliminate the condition.

"Working days" means Monday through Friday, excluding legal holidays, Saturday, and Sunday.

PART II. GENERAL PROVISIONS.

§ 2.1. Jurisdiction.

All Virginia statutes, standards, and regulations pertaining to occupational safety and health shall apply to every employer, employee and place of employment in the Commonwealth of Virginia except where:

1. The United States is the employer or exercises exclusive jurisdiction;
2. The federal Occupational Safety and Health Act of 1970 does not apply by virtue of § 4(b)(1) of that Act. The commissioner shall consider Federal OSHA case law in determining where jurisdiction over specific working conditions has been preempted by the regulations of a federal agency; or,
3. The employer is a public employer, as that term is defined in these regulations. In such cases, the Virginia laws, standards and regulations governing occupational safety and health are applicable as stated including §§ 1.1, 2.2, 6.3, 6.4, and 6.5 of these regulations.

§ 2.2. Applicability to public employers.

A. All occupational safety and health standards adopted by the board shall apply to public employers and their employees in the same manner as to private employers.

B. All sections of these regulations shall apply to public employers and their employees. Where specific procedures are set out for the public sector, such procedures shall take precedence.

C. The following portions of Title 40.1 of the Code of Virginia shall apply to public employers: §§ 40.1-49.4.A(1), 40.1-49.8, 40.1-51, 40.1-51.1, 40.1-51.2, 40.1-51.2:1, 40.1-51.3, 40.1-51.3:2, and 40.1-51.4:2.

D. Section 40.1-51.2:2 A of the Code of Virginia shall apply to public employers except that the commissioner shall not bring action in circuit court in the event that a voluntary agreement cannot be obtained.

E. Sections 40.1-49.4 F and 40.1-51.2:2 of the Code of Virginia shall apply to public employers other than the Commonwealth and its agencies.

F. If the commissioner determines that an imminent danger situation, as defined in § 40.1-49.4 F of the Code of Virginia, exists for an employee of the Commonwealth or one of its agencies, and if the employer does not abate that imminent danger immediately upon request, the Commissioner of Labor and Industry shall forthwith petition the Governor to direct that the imminent danger be abated.

G. If the commissioner is unable to obtain a voluntary agreement to resolve a violation of § 40.1-51.2:1 of the Code of Virginia by the Commonwealth or one of its agencies, the Commissioner of Labor and Industry shall petition for redress in the manner provided in these regulations.

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§ 2.3. Notification and posting requirements.

Every employer shall post and keep posted any notice or notices, as required by the commissioner, including the Job Safety and Health Protection Poster which shall be available from the department. Such notices shall inform employees of their rights and obligations under the safety and health provisions of Title 40.1 of the Code of Virginia and these regulations. Violations of notification or posting requirements are subject to citation and penalty.

1. Such notice or notices, including all citations, petitions for variances or extensions of abatement periods, orders, and other documents of which employees are required to be informed by the employer under statute or by these regulations, shall be delivered by the employer to any authorized employee representative, and shall be posted at a conspicuous place where notices to employees are routinely posted and shall be kept in good repair and in unobstructed view. The document must remain posted for 10 working days unless a different period is prescribed elsewhere in Title 40.1 of the Code of Virginia or these regulations.
2. A citation issued to an employer, or a copy thereof, shall remain posted in a conspicuous place and in unobstructed view at or near each place of alleged violation for three working days or until the violation has been abated, whichever is longer.
3. A copy of any written notice of contest shall remain posted until all proceedings concerning the contest have been completed.
4. Upon receipt of a subpoena, the employer shall use the methods set forth in [~~subsection B of~~] this section to further notify his employees and any authorized employee representative of their rights to party status. This written notification shall include both the date, time and place set for court hearing, and any subsequent changes to hearing arrangements. The notification shall remain posted until commencement of the hearing or until an earlier disposition.

§ 2.4. Accident reports.

A. All employers, regardless of the number of their employees, shall report to the commissioner within [~~48 eight~~] hours any work-related incident which results in the death of any employee or the inpatient hospitalization of [~~five three~~] or more employees.

B. If an employer does not learn of a reportable incident at the time it occurs, and the incident would otherwise be reportable under this section, the employer shall report to the department within [~~48 eight~~] hours of the time the incident is reported to any agent or employee of the employer. Whether or not an incident is immediately reportable, if an employee dies of the effects of a reportable incident within 30 days of that incident, the employer shall report to the department within [~~48 eight~~] hours after learning of such death. Reports required by this section shall be submitted by telephone or in person to the department.

C. Each report required by this section shall relate the following information: establishment name, location of

incident, time of the incident, the number of fatalities or hospitalized employees, the extent of any injuries, a brief description of the incident, contact person and phone number. The commissioner may require additional reports in writing or otherwise, as deemed necessary, concerning the incident.

§ 2.5. Occupational injury and illness records.

A. Every employer subject to the safety and health provisions of Title 40.1 of the Code of Virginia, except those employers exempted under the current OSHA Record keeping Program, shall maintain an occupational injury and illness log and summary in each individual establishment and may use for this purpose Occupational Safety and Health Administration Form, OSHA No. 200, or a substitute that is as detailed, easily readable, and understandable as the OSHA No. 200.

B. Each recordable injury and illness shall be entered on the log and summary as early as is practicable but no later than six working days after receiving information that a recordable injury or illness has occurred.

C. Employers may maintain the log and summary at a place other than the establishment or by means of data processing equipment if:

1. There is available at the place that the log and summary is maintained sufficient information to bring the log and summary to date within six working days after receiving information that a recordable case has occurred, and
2. At each employer's establishment(s), there is available a copy of the log and summary reflecting complete and current (within 45 calendar days) the injury and illness experience of that establishment.

D. The log shall be established on a calendar year basis.

E. Every employer required to maintain a log shall also maintain a supplementary record of occupational injuries and illnesses and may use for this purpose Occupational Safety and Health Administration Form, OSHA No. 101. Employer's First Report of Accident, VWC Form No. 3 (Virginia Workers' Compensation Commission), is acceptable as a substitute for OSHA No. 101. Other forms will be acceptable if they contain the information required by OSHA Form No. 101.

F. Every employer who is required by the provisions of subsection A to maintain a log shall also compile an annual summary of occupational injuries and illnesses based on the information contained in the log. The summary for the previous calendar year must be posted in accordance with § 2.3 of these regulations by February 1 and remain posted until March 1. Occupational Safety and Health Form No. 200 shall be used for this purpose.

1. The employer or the employee who prepares the log and summary shall certify that the summary is accurate and complete. This certification shall be indicated by the signature at the bottom of the summary or by attaching a separate verifying statement to the summary.
2. For employees who do not report to any fixed establishment on a regular basis, the annual summary

shall be presented or mailed during the month of February to each employee who receives a paycheck during that month.

3. It is not necessary for multi-establishment employers to post summaries for those operations which have been closed down.

G. All safety and health records at each establishment shall be available for inspection and copying by the commissioner, officials from the Occupational Safety and Health Administration or the Bureau of Labor Statistics of the U.S. Department of Labor, and representatives of the U.S. Department of Health and Human Services conducting investigations under the Occupational Safety and Health Act.

H. The log and summary of all recordable occupational injuries and illnesses (OSHA No. 200) provided for in this section shall, upon request, be made available by the employer to any employee, former employee, and to his representatives for examination and copying in a reasonable manner and at reasonable times. The employee, former employee, and his representatives shall have access to the log for any establishment in which the employee is or has been employed.

I. Every employer shall prepare and maintain any other records determined by the commissioner to be necessary and submit, upon request of the commissioner, records pertaining to occupational safety and health.

J. All records required to be maintained in accordance with this section shall be retained in each establishment for five years after the year to which they pertain.

K. Where an employer has conveyed his ownership interests, both the new and the prior employers are responsible for maintaining records only for that period of the year during which he had any ownership interests. The new owner shall preserve those records, if any, of the previous owner required to be kept under this section. These records shall be retained for the remainder of the five year period required under subsection J of this section.

L. Employers of employees engaged in physically dispersed operations such as occur in construction, installation, repair, or service activities who do not report to any fixed establishment on a regular basis but are subject to common supervision may satisfy the provisions of this section with respect to such employees by:

1. Maintaining the required records for each operation or group of operations which is subject to common supervision, e.g., field superintendent, field supervisor, etc., in an established central place;
2. Having the address and telephone number of the central place to provide information from such records during normal business hours in response to requests by telephone or by mail from the authorized parties listed in this section, and
3. Having personnel available during normal business hours at the central place to provide by telephone or by mail requested information from such records maintained there.

§ 2.6. Annual survey.

As required by the U.S. Department of Labor and the Bureau of Labor Statistics, any employer shall complete an annual survey data form as required by the commissioner. This form shall be submitted to the commissioner and used for the compilation of statistical and other information.

§ 2.7. Access to employee medical and exposure records.

A. An employee and his authorized representative shall have access to his exposure and medical records required to be maintained by the employer.

B. When required by a standard, a health care professional under contract to the employer or employed by the employer shall have access to the exposure and medical records of an employee only to the extent necessary to comply with the requirements of the standard and shall not disclose or report without the employee's express written consent to any person within or outside the workplace except as required by the standard.

C. Under certain circumstances it may be necessary for the commissioner to obtain access to employee exposure and medical records to carry out statutory and regulatory functions. However, due to the substantial personal privacy interests involved, the commissioner shall seek to gain access to such records only after a careful determination of the need for such information and only with appropriate safeguards described at 29 CFR 1913.10(i) in order to protect individual privacy. In the event that the employer requests the commissioner to wait 24 hours for the presence of medical personnel to review the records, the commissioner will do so on presentation of an affidavit that the employer has not and will not modify or change any of the records. The commissioner's examination and use of this information shall not exceed that which is necessary to accomplish the purpose for access. Personally identifiable medical information shall be retained only for so long as is needed to carry out the function for which it was sought. Personally identifiable information shall be kept secure while it is being used and shall not be released to other agencies or to the public except under certain narrowly defined circumstances outlined at 29 CFR 1913.10(m).

D. In order to implement the policies described in subsection C of this section, the rules and procedures of 29 CFR Part 1913.10, Rules of Agency Practice and Procedure Concerning Access to Employee and Medical Records, are hereby expressly incorporated by reference. When these rules and procedures are applied to the commissioner the following federal terms should be considered to read as below:

FEDERAL TERM	VOSH EQUIVALENT
Agency	Virginia Department of Labor and Industry
OSHA	VOSH
Assistant Secretary	Commissioner
Office of the Solicitor of Labor	Office of the Attorney General

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Department of Justice

Office of the Attorney
General

Privacy Act

[~~Va. Code §§ 2.1-377
to 386~~ §§ 2.1-377 through 2.1-386
of the Code of Virginia]

§ 2.8. Release of information and disclosure pursuant to requests under the Virginia Freedom of Information Act and subpoenas.

A. Pursuant to the Virginia Freedom of Information Act (FOIA) and with the exceptions stated in subsections B through H of this section, employers, employees and their representatives shall have access to information gathered in the course of an inspection.

B. Interview statements of employers, owners, operators, agents, or employees given to the commissioner in confidence pursuant to § 40.1-49.8 of the Code of Virginia shall not be disclosed for any purpose, except to the individual giving the statement.

C. All file documents contained in case files which are under investigation, and where a citation has not been issued, are not disclosable until:

1. The decision has been made not to issue citations; or
2. Six months has lapsed following the occurrence of an alleged violation.

D. Issued citations, orders of abatement and proposed penalties are public documents and are releasable upon a written request. All other file documents in cases where a citation has been issued are not disclosable until the case is a final order of the commissioner or the court.

E. Information required to be kept confidential by law shall not be disclosed by the commissioner or by any employee of the department. In particular, the following specific information is deemed to be nondisclosable:

1. The identity of and statements of an employee or employee representative who has complained of hazardous conditions to the commissioner;
2. The identities of employers, owners, operators, agents or employees interviewed during inspections and their interview statements;
3. Employee medical and personnel records obtained during VOSH inspections. Such records may be released to the employee or his duly authorized representative upon a written, and endorsed request; and
4. Employer trade secrets, commercial, and financial data.

F. The commissioner may decline to disclose a document that is excluded from the disclosure requirements of the Virginia FOIA, particularly documents and evidence related to criminal investigations, writings protected by the attorney-client privilege, documents compiled for use in litigation and personnel records.

G. An effective program of investigation and conciliation of complaints of discrimination requires confidentiality.

Accordingly, disclosure of records of such complaints, investigations, and conciliations will be presumed to not serve the purposes of Title 40.1 of the Code of Virginia, except for statistical and other general information that does not reveal the identities of particular employers or employees.

H. All information gathered through participation in Consultation Services or Training Programs of the department shall be withheld from disclosure except for statistical data which does not identify individual employers.

I. The commissioner, in response to a subpoena, order, or other demand of a court or other authority in connection with a proceeding to which the department is not a party, shall not disclose any information or produce any material acquired as part of the performance of his official duties or because of his official status without the approval of the Commissioner of Labor and Industry.

J. The commissioner shall disclose information and statistics gathered pursuant to the enforcement of Virginia's occupational safety and health laws, standards, and regulations where it has been determined that such a disclosure will serve to promote the safety, health, and welfare of employees. Any person requesting disclosure of such information and statistics should include in his written request any information that will aid the commissioner in this determination.

§ 2.9. Complaints.

A. Any person who believes that a safety or health hazard exists in a workplace may request an inspection by giving notice to the commissioner. Written complaints signed by an employee or an authorized representative will be treated as formal complaints. Complaints by persons other than employees and authorized representatives and unsigned complaints by employees or authorized representatives shall be treated as nonformal complaints. Nonformal complaints will generally be handled by letter and formal complaints will generally result in an inspection.

B. For purposes of this section and § 40.1-51.2(b) of the Code of Virginia, the representative(s) that will be recognized as authorized by employees for such action shall be:

1. A representative of the employee bargaining unit;
2. Any member of the employee's immediate family acting on behalf of the employee; or
3. A lawyer or physician retained by the employee.

C. A written complaint may be preceded by an oral complaint at which time the commissioner will either give instructions for filing the written complaint or provide forms for that purpose. Section 40.1-51.2(b) of the Code of Virginia stipulates that the written complaint follow an oral complaint by no more than two working days. However, if an oral complaint gives the commissioner reasonable grounds to believe that a serious condition or imminent danger situation exists, the commissioner may cause an inspection to be conducted as soon as possible without waiting for a written complaint.

D. A complaint should allege that a violation of safety and health laws, standards, rules, or regulations has taken place.

The violation or hazard should be described with reasonable particularity.

E. A complaint will be classified as formal or nonformal and be evaluated to determine whether there are reasonable grounds to believe that the violation or hazard complained of exists.

1. If the commissioner determines that there are no reasonable grounds for believing that the violation or hazard exists, the employer and the complainant shall be informed in writing of the reasons for this determination.

2. An employee or authorized representative may obtain review of the commissioner's determination that no reasonable grounds for believing that the violation or hazard exists by submitting a written statement of his position with regard to the issue. Upon receipt of such written statement a further review of the matter will be made which may include a requested written statement of position from the employer, further discussions with the complainant or an informal conference with complainant or employer if requested by either party. After review of the matter, the commissioner shall affirm, modify or reverse the original determination and furnish the complainant and the employer written notification of his decision.

F. If the commissioner determines that the complaint is formal and offers reasonable grounds to believe that a hazard or violation exists, then an inspection will be conducted as soon as possible. Valid nonformal complaints may be resolved by letter or may result in an inspection if the commissioner determines that such complaint establishes probable cause to conduct an inspection.

G. If there are several complaints to be investigated, the commissioner may prioritize them by considering such factors as the gravity of the danger alleged and the number of exposed employees.

H. At the beginning of the inspection the employer shall be provided with a copy of the written complaint. The complainant's name shall be deleted and any other information which would identify the complainant shall be reworded or deleted so as to protect the complainant's identity.

I. An inspection pursuant to a complaint may cover the entire operation of the employer, particularly if it appears to the commissioner that a full inspection is warranted. However, if there has been a recent inspection of the worksite or if there is reason to believe that the alleged violation or hazard concerns only a limited area or aspect of the employer's operation, the inspection may be limited accordingly.

J. After an inspection based on a complaint, the commissioner shall inform the complainant in writing whether a citation has been issued and briefly set forth the reasons if not. The commissioner shall provide the complainant with a copy of any resulting citation issued to the employer.

§ 2.10. Discrimination; discharge or retaliation; remedy for retaliation.

A. In carrying out his duties under § 40.1-51.2:2 of the Code of Virginia, the commissioner shall consider case law, regulations, and formal policies of federal OSHA. An employee's engagement in activities protected by Title 40.1 does not automatically render him immune from discharge or discipline for legitimate reasons. Termination or other disciplinary action may be taken for a combination of reasons, involving both discriminatory and nondiscriminatory motivations. In such a case, a violation of § 40.1-51.2:1 of the Code of Virginia has occurred if the protected activity was a substantial reason for the action, or if the discharge or other adverse action would not have taken place "but for" engagement in protected activity. Employee activities protected by § 40.1-51.2:1 of the Code of Virginia include, but are not limited to:

1. Making any complaint to his employer or any other person under or related to the safety and health provisions of Title 40.1 of the Code of Virginia;
2. Instituting or causing to be instituted any proceeding under or related to the safety and health provisions of Title 40.1 of the Code of Virginia;
3. Testifying or intending to testify in any proceeding under or related to the safety and health provisions of Title 40.1 of the Code of Virginia;
4. Cooperating with or providing information to the commissioner during a worksite inspection; or
5. Exercising on his own behalf or on behalf of any other employee any right afforded by the safety and health provisions of Title 40.1 of the Code of Virginia.

Discharge or discipline of an employee who has refused to complete an assigned task because of a reasonable fear of injury or death will be considered retaliatory only if the employee has sought abatement of the hazard from the employer and the statutory procedures for securing abatement would not have provided timely protection. The condition causing the employee's apprehension of death or injury must be of such a nature that a reasonable person, under the circumstances then confronting the employee, would conclude that there is a real danger of death or serious injury and that there is insufficient time, due to the urgency of the situation, to eliminate the danger through resort to regular statutory enforcement. In addition, in such circumstances, the employee, where possible, must also have sought from his employer, and been unable to obtain, an abatement of the dangerous condition.

Disciplinary measures taken by employers solely in response to employee refusal to comply with appropriate safety rules and regulations shall not be regarded as retaliatory action prohibited by § 40.1-51.2:1 of the Code of Virginia.

B. A complaint pursuant to § 40.1-51.2:2 of the Code of Virginia may be filed by the employee himself or anyone authorized to act in his behalf. The investigation of the commissioner shall include an opportunity for the employer to furnish the commissioner with any information relevant to the

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complaint. An attempt by an employee to withdraw a previously filed complaint shall not automatically terminate the investigation of the commissioner. Although a voluntary and uncoerced request from the employee that his complaint be withdrawn shall receive due consideration, it shall be the decision of the commissioner whether further action is necessary to enforce the statute.

The filing of a retaliation complaint with the commissioner shall not preclude the pursuit of a remedy through other channels. Where appropriate, the commissioner may postpone his investigation or defer to the outcome of other proceedings.

PART III.

OCCUPATIONAL SAFETY AND HEALTH STANDARDS.

§ 3.1. General industry standards.

The occupational safety or health standards adopted as rules or regulations by the board either directly or by reference, from 29 CFR Part 1910 shall apply by their own terms to all employers and employees at places of employment covered by the Virginia State Plan for Occupational Safety and Health.

§ 3.2. Construction industry standards.

The occupational safety or health standards adopted as rules or regulations by the Virginia Safety and Health Codes Board either directly, or by reference, from 29 CFR Part 1926 shall apply by their own terms to all employers and employees engaged in either construction work or construction related activities covered by the Virginia State Plan for Occupational Safety and Health.

1. For the purposes of the applicability of such Part 1926 standards, the key criteria utilized to make such a decision shall be the activities taking place at the worksite, not the primary business of the employer. Construction work shall generally include any building, altering, repairing, improving, demolishing, painting or decorating any structure, building, highway, or roadway; and any draining, dredging, excavation, grading or similar work upon real property. Construction also generally includes work performed in traditional construction trades such as carpentry, roofing, masonry work, plumbing, trenching and excavating, tunnelling, and electrical work. Construction does not include maintenance, alteration or repair of mechanical devices, machinery, or equipment, even when the mechanical device, machinery or equipment is part of a pre-existing structure.

2. Certain standards of 29 CFR Part 1910 have been determined by federal OSHA to be applicable to construction and have been adopted for this application by the board.

3. The standards adopted from 29 CFR Part 1910.19 and 29 CFR Part 1910.20 containing respectively, special provisions regarding air contaminants and requirements concerning access to employee exposure and medical records shall apply to construction work as well as general industry.

§ 3.3. Agriculture standards.

The occupational safety or health standards adopted as rules or regulations by the board either directly, or by reference, from 29 CFR Part 1928 shall apply by their own terms to all employers and employees engaged in either agriculture or agriculture related activities covered by the Virginia State Plan for Occupational Safety and Health.

§ 3.4. Maritime standards.

The occupational safety or health standards adopted as rules or regulations by the board either directly, or by reference, from 29 CFR Part 1915 and 29 CFR Part 1917 shall apply by their own terms to all public sector employers and employees engaged in maritime related activities covered by the Virginia State Plan for Occupational Safety and Health.

§ 3.5. General duty.

Where a recognized hazard exists that is causing or likely to cause death or serious physical harm, and specific general industry, construction and agricultural standards do not apply or may not exist, the requirements of § 40.1-51.1(a) of the Code of Virginia shall apply to all employers covered by the Virginia State Plan for Occupational Safety and Health.

§ 3.6. Public participation in the adoption of standards.

Interested parties, e.g., employers, employees, employee representatives, and the general public, may offer written and oral comments in accordance with the requirements of the Public Participation Guidelines of either the board or the department, as appropriate, regarding the adoption, alteration, amendment, or repeal of any rules or regulations by the board or the commissioner to further protect and promote the safety and health of employees in places of employment over which the board or the commissioner have jurisdiction.

§ 3.7. Response to judicial action.

A. Any federal occupational safety or health standard, or portion thereof, adopted as rule or regulation by the board either directly, or by reference, and subsequently stayed by an order of any federal court will not be enforced by the commissioner until the stay has been lifted. Any federal standard which has been administratively stayed by OSHA will continue to be enforced by the commissioner until the stay has been reviewed by the board. The board will consider adoption or rejection of any federal administrative stay and will also subsequently review and then consider adoption or rejection of the lifting of such stays by federal OSHA.

B. The continued enforcement of any VOSH standard, or portion thereof, which is substantively identical to a federal standard that has been vacated by an order of any federal court, shall be at the discretion of the commissioner until such time as the standard and related federal judicial action have been reviewed by the board. The board shall consider the revocation or the repromulgation of any such standard.

PART IV.
VARIANCES.

§ 4.1. General provisions.

A. Any employer or group of employers desiring a permanent or temporary variance from a standard or regulation pertaining to occupational safety and health may file with the commissioner a written application which shall be subject to the following policies:

1. A request for a variance shall not preclude or stay a citation or bill of complaint for violation of a safety or health standard;
2. No variances on record keeping requirements required by the U.S. Department of Labor shall be granted by the commissioner;
3. An employer, or group of employers, who has applied for a variance from the U.S. Department of Labor, and whose application has been denied on its merits, shall not be granted a variance by the commissioner unless there is a showing of changed circumstances significantly affecting the basis upon which the variance was originally denied;
4. An employer to whom the U.S. Secretary of Labor has granted a variance under OSHA provisions shall document this variance to the commissioner. In such cases, unless compelling local circumstances dictate otherwise, the variance shall be honored by the commissioner without the necessity of following the formal requirements which would otherwise be applicable. In addition, the commissioner will not withdraw a citation for violation of a standard for which the Secretary of Labor has granted a variance unless the commissioner previously received notice of and decided to honor the variance; and
5. Incomplete applications will be returned within 30 days to the applicant with a statement indicating the reason or reasons that the application was found to be incomplete.

B. In addition to the information specified in §§ 4.2 A and 4.3 A of this regulation, every variance application shall contain the following:

1. A statement that the applicant has informed affected employees of the application by delivering a copy of the application to their authorized representative, if there is one, as well as having posted, in accordance with § 2.3 of these regulations, a summary of the application which indicates where a full copy of the application may be examined.
2. A statement indicating that the applicant has posted, with the summary of the application described above, the following notice: "Affected employees or their representatives have the right to petition the Commissioner of Labor and Industry for an opportunity to present their views, data, or arguments on the requested variance, or they may submit their comments to the commissioner in writing. Petitions for a hearing or written comments should be addressed to the Commissioner of Labor and Industry, Powers-Taylor

Building, 13 South Thirteenth Street, Richmond, VA 23219. Such petitions will be accepted if they are received within 30 days from the posting of this notice or within 30 days from the date of publication of the commissioner's notice that public comments concerning this matter will be accepted, whichever is later."

3. A statement indicating whether an application for a variance from the same standard or rule has been made to any federal agency or to an agency of another state. If such an application has been made, the name and address of each agency contacted shall be included.

C. Upon receipt of a complete application for a variance, the commissioner shall publish a notice of the request in a newspaper of statewide circulation within 30 days after receipt, advising that public comments will be accepted for 30 days and that an informal hearing may be requested in conformance with subsection D of this section. Further, the commissioner may initiate an inspection of the establishment in regard to the variance request.

D. If within 30 days of the publication of notice the commissioner receives a request to be heard on the variance from the employer, affected employees, the employee representative, or other employer(s) affected by the same standard or regulation, the commissioner will schedule a hearing with the party or parties wishing to be heard and the employer requesting the variance. The commissioner may also schedule a hearing upon his own motion. The hearing will be held within a reasonable time and will be conducted informally in accordance with § 9-6.14:11 of the Code of Virginia unless the commissioner finds that there is a substantial reason to proceed under the formal provisions of § 9-6.14:12 of the Code of Virginia.

E. If the commissioner has not been petitioned for a hearing on the variance application, a decision on the application may be made promptly after the close of the period for public comments. This decision will be based upon the information contained in the application, the report of any variance inspection made concerning the application, any other pertinent staff reports, federal OSHA comments or public records, and any written data and views submitted by employees, employee representatives, other employers, or the public.

F. The commissioner will grant a variance request only if it is found that the employer has met by a preponderance of the evidence, the requirements of either § 4.2 B 4, or § 4.3 B 4, of these regulations.

1. The commissioner shall advise the employer in writing of the decision and shall send a copy to the employee representative if applicable. If the variance is granted, a notice of the decision will be published in a newspaper of statewide circulation.

2. The employer shall post a copy of the commissioner's decision in accordance with § 2.3 of these regulations.

G. Any party may within 15 days of the commissioner's decision file a notice of appeal to the board. Such appeal shall be in writing, addressed to the board, and include a statement of how other affected parties have been notified of the appeal. Upon notice of a proper appeal, the

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commissioner shall advise the board of the appeal and arrange a date for the board to consider the appeal. The commissioner shall advise the employer and employee representative of the time and place that the board will consider the appeal. Any party that submitted written or oral views or participated in the hearing concerning the original application for the variance shall be invited to attend the appeal hearing. If there is no employee representative, a copy of the commissioner's letter to the employer shall be posted by the employer in accordance with the requirements of § 2.3 of these regulations.

H. The board shall sustain, reverse, or modify the commissioner's decision based upon consideration of the evidence in the record upon which the commissioner's decision was made and the views and arguments presented as provided above. The burden shall be on the party filing the appeal to designate and demonstrate any error by the commissioner which would justify reversal or modification of the decision. The issues to be considered by the board shall be those issues that could be considered by a court reviewing agency action in accordance with § 9-6.14:17 of the Code of Virginia. All parties involved shall be advised of the board's decision within 10 working days after the hearing of the appeal.

§ 4.2. Temporary variances.

A. The commissioner shall give consideration to an application for a temporary variance from a standard or regulation only if the employer or group of employers is unable to comply with that standard or regulation by its effective date for good cause and files an application which meets the requirements set forth in this section. No temporary variance shall be granted for longer than the time needed to come into compliance with the standard or one year, whichever is shorter.

B. A letter of application for a temporary variance shall be in writing and contain the following information:

1. Name and address of the applicant;
2. Address of the place or places of employment involved;
3. Identification of the standard or part thereof from which a temporary variance is sought; and
4. Evidence to establish that:
 - a. The applicant is unable to comply with a standard by its effective date because professional or technical personnel or materials and equipment needed to come into compliance with the standard are unavailable, or because necessary construction or alteration of facilities cannot be completed by the effective date;
 - b. The applicant is taking effective steps to safeguard his employees against the hazards covered by the standard; and
 - c. The applicant has an effective program for coming into compliance with the standard as quickly as practicable.

C. A temporary variance may be renewed if the application for renewal is filed at least 90 days prior to the expiration date

and if the requirements of subsection A of this section are met. A temporary variance may not be renewed more than twice.

§ 4.3. Permanent variances.

A. Applications filed with the commissioner for a permanent variance from a standard or regulation shall be subject to the requirements of § 4.1 of these regulations and the following additional requirements.

B. A letter of application for a permanent variance shall be submitted in writing by an employer or group of employers and shall contain the following information:

1. Name and address of the applicant;
2. Address of the place or places of employment involved;
3. Identification of the standard, or part thereof for which a permanent variance is sought; and
4. A description of the conditions, practices, means, methods, operations, or processes used and evidence that these would provide employment and a place of employment as safe and healthful as would be provided by the standard from which a variance is sought.

C. A permanent variance may be modified or revoked upon application by an employer, employees, or by the commissioner in the manner prescribed for its issuance at any time except that the burden shall be upon the party seeking the change to show altered circumstances justifying a modification or revocation.

§ 4.4. Interim order.

A. Application for an interim order granting the variance until final action by the commissioner may be made by the employer prior to, or concurrent with, the submission of an application for a variance.

B. A letter of application for an interim order shall include statements as to why the interim order should be granted and shall include a statement that it has been posted in accordance with § 2.3 of these regulations. The provisions contained in §§ 4.1 A, 4.1 B 1 and 4.1 B 3 of these regulations shall apply to applications for interim orders in the same manner as they do to variances.

C. The commissioner shall grant the interim order if the employer has shown by clear and convincing evidence that effective methods to safeguard the safety and health of employees have been implemented. No interim order shall have effect for more than 180 days. If an application for an interim order is granted, the employer shall be so notified and it shall be a condition of the order that employees shall be advised of the order in the same manner as used to inform them of the application for a variance.

D. If the application for an interim order is denied, the employer shall be so notified with a brief statement of the reason for denial.

PART V. INSPECTIONS.

§ 5.1. Advance notice.

A. Where advance notice of an inspection has been given to an employer, the employer, upon request of the commissioner, shall promptly notify the authorized employee representative of the inspection if the employees have such a representative.

B. An advance notice of a safety or health inspection may be given by the commissioner only in the following circumstances:

1. In cases of imminent danger;
2. Where it is necessary to conduct inspections at times other than regular working hours;
3. Where advance notice is necessary to assure the presence of personnel needed to conduct the inspection; or
4. Where the commissioner determines that advance notice will insure a more effective and thorough inspection.

§ 5.2. Walkthrough.

Walkthrough by the commissioner for the inspection of any workplace includes the following privileges.

1. The commissioner shall be in charge of the inspection and, as part of an inspection, may question privately any employer, owner, operator, agent, or employee. The commissioner shall conduct the interviews of persons during the inspection or at other convenient times.
2. As part of an inspection, the commissioner may take or obtain photographs, video recordings, audio recordings and samples of materials, and employ other reasonable investigative techniques as deemed appropriate. As used herein, the term "employ other reasonable investigative techniques" includes, but is not limited to, the use of devices to measure employee exposures and the attachment of personal sampling equipment such as dosimeters, pumps, badges and other devices to employees in order to monitor their exposures.
3. Any employee representative selected to accompany the commissioner during the inspection of the workplace shall be an employee of the employer. Additional employer representatives and employee representatives may be permitted by the commissioner to accompany the inspection team where the commissioner determines such additional persons will aid in the inspection. A different employer representative or employee representative may accompany the commissioner during each phase of the inspection if, in the determination of the commissioner, this will aid in the conduct of the inspection.
4. The commissioner may limit the number of representatives when the inspection group would be of such size as to interfere with the inspection or create possible safety hazards, or when the representative does

not represent an employer or employee present in the particular area under inspection.

5. In such cases as stated in subdivision 4 of this section, the commissioner must give each walkthrough representative the opportunity to advise of possible safety or health hazards and then proceed with the inspection without walkthrough representatives. Whenever the commissioner has limited the number of employee walkthrough representatives, a reasonable number of employees shall be consulted during the inspection concerning possible safety or health hazards.

6. Technical personnel such as safety engineers and industrial hygienists or other consultants to the commissioner or the employer may accompany the commissioner if the commissioner determines that their presence would aid in the conduct of the inspection and agreement is obtained from the employer or the commissioner obtains an order under § 40.1-6(8)(b) of the Code of Virginia. All such consultants shall be bound by the confidentiality requirements of § 40.1-51.4:1 of the Code of Virginia.

7. The commissioner is authorized to dismiss from the inspection party at any time any person or persons whose conduct interferes with the inspection.

§ 5.3. Trade secrets.

The following rules shall govern the treatment of trade secrets.

1. At the beginning of an inspection the commissioner shall request that the employer identify any areas of the worksite that may contain or reveal a trade secret. At the close of an inspection the employer shall be given an opportunity to review the information gathered from those areas and identify to the commissioner that information which contains or may reveal a trade secret.
2. The employer shall notify the commissioner prior to the case becoming a final order of any information obtained during the inspection which is to be identified as containing trade secrets.
3. Properly identified trade secrets shall be kept in a separate case file in a secure area not open for inspection to the general public. The separate case file containing trade secrets shall be protected from disclosure in accordance with § 40.1-51.4:1 of the Code of Virginia.
4. Upon the request of an employer, any employee serving as the walkthrough representative in an area containing trade secrets shall be an employee in that area or an employee authorized by the employer to enter that area. Where there is no such employee representative, the commissioner will interview a reasonable number of employees working in that area concerning matters of safety and health.

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PART VI. CITATION AND PENALTY.

§ 6.1. Issuance of citation and proposed penalty.

A. Each citation shall be in writing and describe with particularity the nature of the violation or violations, including a reference to the appropriate safety or health provision of Title 40.1 of the Code of Virginia or the appropriate rule, regulation, or standard. In addition, the citation must fix a reasonable time for abatement of the violation. The citation will contain substantially the following:

"NOTICE: This citation will become a final order of the commissioner unless contested within 15 working days from the date of receipt by the employer." The citation may be delivered to the employer or his agent by the commissioner or may be sent by certified mail or by personal service to an officer or agent of the employer or to the registered agent if the employer is a corporation.

B. A citation issued under subsection A to an employer who violates any VOSH law, standard, rule or regulation shall be vacated if such employer demonstrates that:

1. Employees of such employer have been provided with the proper training and equipment to prevent such a violation;
2. Work rules designed to prevent such a violation have been established and adequately communicated to employees by such employer and have been effectively enforced when such a violation has been discovered;
3. The failure of employees to observe work rules led to the violation; and
4. Reasonable steps have been taken by such employer to discover any such violation.

C. For the purposes of subsection B only, the term "employee" shall not include any officer, management official or supervisor having direction, management control or custody of any place of employment which was the subject of the violative condition cited.

D. The penalties as set forth in § 40.1-49.4 of the Code of Virginia shall also apply to violations relating to the requirements for record keeping, reports or other documents filed or required to be maintained and to posting requirements.

E. In determining the amount of the proposed penalty for a violation the commissioner will ordinarily be guided by the system of penalty adjustment set forth in the VOSH Field Operations Manual. In any event the commissioner shall consider the gravity of the violation, the size of the business, the good faith of the employer, and the employer's history of previous violations.

§ 6.2. Contest of citation or proposed penalty; general proceedings.

A. An employer to whom a citation or proposed penalty has been issued may contest the citation by notifying the commissioner in writing of the contest. The notice of contest must be mailed or delivered by hand within 15 working days from the receipt of the citation or proposed penalty. No

mistake, inadvertence, or neglect on the part of the employer shall serve to extend the 15 working day period in which the employer must contest.

B. The notice of contest shall indicate whether the employer is contesting the alleged violation, the proposed penalty or the abatement time.

C. The employer's contest of a citation or proposed penalty shall not affect the citation posting requirements of § 2.3 of these regulations unless and until the court ruling on the contest vacates the citation.

D. When the commissioner has received written notification of a contest of citation or proposed penalty, he will attempt to resolve the matter by settlement, using the procedures of §§ 8.1 and 8.2 of these regulations.

E. If the matter is not settled or it is determined that settlement does not appear probable, the commissioner will initiate judicial proceedings by referring the contested issues to the appropriate Commonwealth's Attorney and arranging for the filing of a bill of complaint and issuance of a subpoena to the employer.

F. A contest of the proposed penalty only shall not stay the time for abatement.

§ 6.3. General contest proceedings applicable to the public sector.

A. The commissioner will not propose penalties for citations issued to public employers.

B. Public employers may contest citations or abatement orders by notifying the commissioner in writing of the contest. The notice of contest must be mailed or delivered by hand within 15 working days from receipt of the citation or abatement order. No mistake, inadvertence, or neglect on the part of the employer shall serve to extend the 15 working day period during which the employer may contest.

C. The notice of contest shall indicate whether the employer is contesting the alleged violations or the abatement order.

D. Public employees may contest abatement orders by notifying the commissioner in the same manner as described at subsection B.

E. The commissioner shall seek to resolve any controversies or issues arising from a citation issued to any public employer in an informal conference as described in § 8.1 of these regulations.

F. The contest by a public employer shall not affect the requirements to post the citation as required at § 2.3 of these regulations unless and until the commissioner's or the court ruling on the contest vacates the citation. A contest of a citation may stay the time permitted for abatement pursuant to § 40.1-49.4 C of the Code of Virginia.

§ 6.4. Contest proceedings applicable to political subdivisions.

A. Where the informal conference has failed to resolve any controversies arising from the citation, and a timely notice of contest has been received regarding a citation

issued to a public employer other than the Commonwealth or one of its agencies, the Commissioner of Labor and Industry shall schedule a hearing in accordance with the provisions of § 9-6.14:11 of the Code of Virginia. Upon conclusion of the hearing, the commissioner will notify all participants within five working days of the decision to affirm, modify or vacate the contested aspects of the citation or abatement order.

B. Public employers may appeal decisions of the commissioner in the manner provided for in §§ 9-6.14:15 through 9-6.14:19 of the Code of Virginia.

C. Public employees and their authorized representative have full rights to notification and participation in all hearings and appeals as are given private sector employees.

D. If abatement of citations is not accomplished, the commissioner shall seek injunctive relief under § 40.1-49.4 F of the Code of Virginia.

§ 6.5. Contest proceedings applicable to the Commonwealth.

A. Where the informal conference has failed to resolve any controversies arising from a citation issued to the Commonwealth or one of its agencies, and a timely notice of contest has been received, the Commissioner of Labor and Industry shall refer the case to the Attorney General, whose written decision on the contested matter shall become a final order of the commissioner.

B. Whenever the Commonwealth or any of its agencies fails to abate a violation within the time provided in an appropriate final order, the Commissioner of Labor & Industry shall formally petition for redress as follows: For violations in the Department of Law, to the Attorney General; for violations in the Office of the Lieutenant Governor, to the Lieutenant Governor; for violations otherwise in the executive branch, to the appropriate cabinet secretary; for violations in the State Corporation Commission, to a judge of the commission; for violations in the Department of Workers' Compensation, to the Chairman of the Workers' Compensation Commission; for violations in the legislative branch of government, to the Chairman of the Senate Committee on Commerce and Labor; for violations in the judicial branch, to the chief judge of the circuit court or to the Chief Justice of the Supreme Court. Where the violation cannot be timely resolved by this petition, the commissioner shall bring the matter to the Governor for resolution.

C. Where abatement of a violation will require the appropriation of funds, the commissioner shall cooperate with the appropriate agency head in seeking such an appropriation; where the commissioner determines that an emergency exists, the commissioner shall petition the Governor for funds from the Civil Contingency Fund or other appropriate source.

PART VII. ABATEMENT.

§ 7.1. Contest of abatement period.

A. The employer, employees, or employee representative may, by written notification to the commissioner, contest the time permitted for abatement.

B. The notice of contest of abatement period must be in writing and shall have been delivered by hand or mailed to the commissioner within 15 working days from the date of the receipt of the citation and order of abatement.

C. The same procedures and requirements used for contest of citation and penalty, set forth at §§ 6.2, 6.3, 6.4, and 6.5, of these regulations, shall apply to contests of abatement period.

D. The time permitted for abatement, if contested in good faith and not merely for delay, does not begin to run until the entry of a final order of the circuit court.

§ 7.2. Extension of abatement time.

A. Where an extension of abatement is sought concerning a final order of the commissioner or of a court, the extension can be granted as an exercise of the enforcement discretion of the commissioner. While the extension is in effect the commissioner will not seek to cite the employer for failure to abate the violation in question. The employer shall carry the burden of proof to show that an extension should be granted.

B. The commissioner will consider a written petition for an extension of abatement time if the petition is mailed to or received by the commissioner prior to the expiration of the established abatement time.

C. A written petition requesting an extension of abatement time shall include the following information:

1. All steps taken by the employer, and the dates such actions were taken, in an effort to achieve compliance during the prescribed abatement period;
2. The specific additional abatement time necessary in order to achieve compliance;
3. The reasons such additional time is necessary, such as the unavailability of professional or technical personnel or of materials and equipment, or because necessary construction or alteration of facilities cannot be completed by the original abatement date;
4. All available interim steps being taken to safeguard the employees against the cited hazard during the abatement period; and
5. A certification that a copy of the petition has been posted and served on the authorized representative of affected employees, if there is one, in accordance with § 2.3 of these regulations, and a certification of the date upon which such posting and service was made.

D. A written petition requesting an extension of abatement which is filed with the commissioner after expiration of the established abatement time will be accepted only if the petition contains an explanation satisfactory to the commissioner as to why the petition could not have been filed in a timely manner.

1. The employer is to notify the commissioner as soon as possible.
2. Notification of the exceptional circumstances which prevents compliance within the original abatement period

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shall accompany a written petition which includes all information required in subsection C.

E. The commissioner will not make a decision regarding such a petition until the expiration of 15 working days from the date the petition was posted or served.

F. Affected employees, or their representative, may file a written objection to a petition for extension of abatement time. Such objections must be received by the commissioner within 10 working days of the date of posting of the employer's petition. Failure to object within the specified time period shall constitute a waiver of any right to object to the request.

G. When affected employees, or their representatives object to the petition, the commissioner will attempt to resolve the issue in accordance with § 8.1 of these regulations. If the matter is not settled or settlement does not appear probable, the Commissioner of Labor and Industry will hear the objections in the manner set forth at subsection I below.

H. The employer or an affected employee may seek review of an adverse decision regarding the petition for extension of abatement to the Commissioner of Labor and Industry within five working days after receipt of the commissioner's decision.

I. An employee's objection not resolved under subsection G of this section or an employer or employee appeal under subsection H will be heard by the Commissioner of Labor and Industry using the procedures of § 9-6.14:11 of the Code of Virginia. Burden of proof for a hearing under subsection G shall lie with the employer. Burden of proof for an appeal under subsection H shall lie with the party seeking review.

1. All parties shall be advised of the time and place of the hearing by the commissioner.
2. Within 15 working days of the hearing, all parties will be advised of the Commissioner of Labor and Industry's decision.
3. Since the issue is whether the Commissioner of Labor and Industry will exercise his enforcement discretion, no further appeal is available.

PART VIII. REVIEW AND SETTLEMENT.

§ 8.1. Informal conference.

A. An informal conference may be held for the purpose of discussing any issue raised by the inspection, citation, abatement order, proposed penalty, notice of contest, or any other disputed issue.

B. The employer, an employee, or an employee representative may request an informal conference. Neither the conference nor a request for a conference shall stay the running of time allowed for abatement of a cited violation or the time allowed for filing a notice of contest of the citation, abatement period or proposed penalty.

C. The informal conference will be held by the commissioner. However, other personnel of the Department of Labor and Industry, Department of Health, and any other state department or agency may participate as deemed necessary.

D. The time and location of the informal conference shall be at the discretion of the commissioner, except that the conference shall not be held at the employer's work site.

E. An employee representative shall be given the opportunity to participate in a conference requested by the employer. This same right will be extended to the employer when an informal conference is requested by employees. It is the duty of the employer, if he has requested a conference, to notify the employees by the means described in § 2.3 of these regulations as soon as the time and place of the conference have been established. Upon granting an employee request for a conference, the commissioner is responsible for notifying the employer. The commissioner, at his discretion, may conduct separate portions of the conference with the employer and employee representative.

F. During or following the conference the commissioner may affirm or amend the citations, penalties, or abatement period if the order has not become final. The commissioner shall notify the employer in writing of his decision. The employer shall notify employees of this decision in the manner set forth in § 2.3 of these regulations.

G. The failure to request an informal conference before the expiration of 15 working days does not preclude settlement at a later stage of the proceedings if a notice of contest has been timely filed.

§ 8.2. Settlement.

A. Settlement negotiations may be held for the purpose of resolving any dispute regarding an inspection, citation, order of abatement, proposed penalty, or any other matter involving potential litigation. Settlement is encouraged at any stage of a proceeding until foreclosed by an order becoming final. It is the policy of the commissioner that the primary goal of all occupational safety and health activity is the protection of worker safety, health and welfare; all settlements shall be guided by this policy.

B. Settlement negotiations will ordinarily take place in the medium of an informal conference. Employees shall be given notice of scheduled settlement discussions and shall be given opportunity to participate in the manner provided for in § 8.1 E of these regulations.

C. Where a settlement with the employer is reached before the 15th working day after receipt of a citation, order of abatement, or proposed civil penalty, and no notice of contest has been filed, the commissioner shall forthwith amend the citation, order of abatement, or proposed civil penalty, as agreed. The amended citation shall bear a title to indicate that it has been amended and the amended citation or an accompanying agreement shall contain a statement to the following effect: "This citation has been amended by agreement between the commissioner and the employer named above. As part of the written agreement, the employer has waived his right to file a notice of contest to this order. This agreement shall not be construed as an admission by the employer of civil liability for any violation alleged by the commissioner."

D. Following receipt of an employer's timely notice of contest, the commissioner will immediately notify the appropriate Commonwealth's Attorney and may delay the

initiation of judicial proceedings until settlement opportunities have been exhausted.

1. During this period, the commissioner may amend the citation, order of abatement, or proposed civil penalty through the issuance of an amended citation. Every such amended citation shall bear a title to indicate that it has been amended and the amended citation or the accompanying agreement shall contain a statement to the following effect: "This amended citation is being issued as a result of a settlement between the commissioner and the employer. The employer, by his signature below, agrees to withdraw his notice of contest filed in this matter and not to contest the amended citation. This agreement shall not be construed as an admission by the employer of civil liability for any violation alleged by the commissioner."

2. At the end of this period, if settlement negotiations are not successful, the commissioner will initiate judicial proceedings by causing a bill of complaint to be filed and turning over the contested case to the Commonwealth's Attorney.

E. Employees or their representative have the right to contest abatement orders arising out of settlement negotiations if the notice is timely filed with the commissioner within 15 working days of issuance of the amended citation and abatement order. Upon receipt of a timely notice of contest the commissioner will initiate judicial proceedings.

F. After a bill of complaint has been filed, any settlement shall be handled through the appropriate Commonwealth's Attorney and shall be embodied in a proposed order and presented for approval to the court before which the matter is pending. Every such order shall bear the signatures of the parties or their counsel; shall provide for abatement of any violation for which the citation is not vacated; shall provide that the employer's agreement not be construed as an admission of civil liability; and may permit the commissioner, when good cause is shown by the employer, to extend any abatement period contained within the order.

VA.R. Doc. No. R95-530; Filed May 30, 1995, 9:46 a.m.

BOARD OF OPTOMETRY

Title of Regulation: VR 510-01-1. Regulations of the Virginia Board of Optometry.

Statutory Authority: §§ 54.1-103 and 54.1-2400 and Chapter 32 (§ 54.1-3200 et seq.) of Title 54.1 of the Code of Virginia.

Effective Date: July 26, 1995.

Summary:

Major elements of the final regulations include:

1. *The elimination of the public participation provisions, since the board has adopted public participation guidelines in a separate regulation (VR 510-01-2);*

2. *The addition of a license by endorsement provision to ensure the admission of qualified optometrists into Virginia;*

3. *The adjustment of fees to comply with the requirements of § 54.1-113 of the Code of Virginia; and*

4. *The requirement of an expiration date on all prescriptions for ophthalmic goods and the specified content required on contact lens prescriptions.*

Section 1.1 has been stricken in its entirety, and § 1.2 has been renumbered § 1.

Newly numbered § 1 C provides for licensure by endorsement. Subdivision C 1 relates to the waiving of certain examination requirements provided the applicant's origin state's examination is first determined to be comparable to that used in Virginia. Subdivision C 2 provides for the filing of application for licensure by endorsement, including a requirement for graduation from an accredited optometric school or college, active clinical practice, continuing education compliance, and freedom from current disciplinary action or pending action. Provisions are also made for an applicant who serves as a federal service optometrist. Applicants for licensure by endorsement must take the Virginia Board of Optometry's State Board Examination and pay appropriate fees.

Subsection D provides for cases involving nonequivalent examinations from other states.

Newly numbered § 2 revises the fees currently collected by the board in keeping with § 54.1-113 of the Code of Virginia. Also included in the revision to this section is a new "Application for Licensure by Endorsement Fee," and "Duplicate Wall Certificate" and "Duplicate License" fees. Further, for greater clarity, the board has chosen to propose that the "Examination Fee" be further defined as the "Application for Licensure by Examination Fee" and that the "Licensure Fee" be further defined as the "Annual Licensure Renewal Fee." Also, given that all licenses must be renewed on or before October 31, including those only active for a few months, the board has proposed the "Initial Licensure Fee" be prorated per month prior to annual renewal.

The title of § 4 is "Professional designations," yet the fees associated with Professional Designations are titled "Fictitious Name" in this section. Thus, the board has proposed the renaming of the "Fictitious Name" fee and "Annual Fictitious Name Registration" fee to the "Professional Designation Application" fee and "Annual Professional Designation Renewal" fee, respectively.

The only change from the proposed regulation is that the reduction in the late fee from \$100 to \$10 has been removed, based on public objection to reducing this fee. However, without this specific fee reduction, the board's other fee reductions result in projected revenues which should not be in excess of 10% of the board's expenditures.

The phrase "if appropriate" is replaced with "in the case of a spectacle prescription, and expiration date if medically appropriate." This change still requires an expiration date be included on prescriptions for spectacles but only if necessary for the patient's health.

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In the proposed regulation, § 3 4 f had been moved to a newly created subdivision g, and subdivision f had been rewritten to provide for information required to be contained in contact lens prescriptions. Public comment indicated the need to more clearly refer to contact lens prescriptions specifically and to those which were final prescriptions. Thus, for the final regulations, the language in subdivision g is returned to subdivision f and subdivision g is removed. Further, subdivision f is moved to subdivision 6, where it more clearly refers to contact lens prescriptions for which all follow-up care has been provided (i.e., final). The language, "and medically appropriate expiration date," was also added to clarify that the expiration date for contact lens prescriptions should be based on medical reasons alone.

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 this regulation may be obtained from Carol Stamey, Board of Optometry, 6606 West Broad Street, 4th Floor, Richmond, VA 23230-1919, telephone (804) 662-9910.

VR 510-01-1. Regulations of the Virginia Board of Optometry.

[PART I.]

GENERAL PROVISIONS. [LICENSURE QUALIFICATIONS; FEES.]

§ 1.1. Public Participation Guidelines.

A. Mailing list.

~~The executive director of the board will maintain a list of persons and organizations who will be mailed the following documents as they become available:~~

- ~~1. "Notice of intent" to promulgate regulations.~~
- ~~2. "Notice of public hearing" or "informational proceedings", the subject of which is proposed or existing regulations.~~
- ~~3. Final regulation adopted.~~

B. Being placed on list: deletion.

~~Any person wishing to be placed on the mailing list may have their name added by writing the board. In addition, the board may, at its discretion, add to the list any person, organization, or publication it believes will serve the purpose of responsible participation in the formation or promulgation of regulations. Those on the list will be provided all information stated in Subsection A of this section.~~

~~Those on the list may be periodically requested to indicate their desire to continue to receive documents or to be deleted from the list. When mail is returned as undeliverable, or when no timely response is forthcoming, they will be deleted from the list.~~

C. Notice of intent.

~~At least 30 days prior to publication of the notice of intent, an informational proceeding as required by § 9-6.14:7.1, of~~

~~the Code of Virginia the board will publish a "notice of intent." This notice will contain a brief and concise statement of the possible regulation and will address and invite any person to provide written comment on the subject matter. Such notice shall be transmitted to the Registrar for inclusion in the Virginia Register of Regulations.~~

D. Information proceedings or public hearings for existing rules:

~~At least once each biennium, the board will conduct an informational proceeding, which may take the form of a public hearing, to receive public comment on existing regulations. The purpose of the proceeding will be to solicit public comment on all existing regulations as to their effectiveness, efficiency, necessity, clarity, and cost of compliance. Notice of such proceeding will be transmitted to the Registrar for inclusion in the Virginia Register. Such proceedings may be held separately or in conjunction with other informational proceedings.~~

E. Petition for rulemaking.

~~Any person may petition the board to adopt, amend, or delete any regulation. Any petition received in a timely manner shall appear on the next agenda of the board. The board shall have the sole authority to dispose of the petition.~~

F. Notice of formulation and adoption.

~~Prior to any meeting of the board or subcommittee of the board at which the formulation or adoption of regulations is to occur, the subject matter shall be transmitted to the Registrar for inclusion in the Virginia Register.~~

G. Advisory committees.

~~The board may appoint advisory committees as it may deem necessary to provide for adequate citizen participation in the formation, promulgation, adoption and review of regulations.~~

§ 1.2. [1.1. Applicants. 1. Licensure qualifications.]

A. The applicant, in order to be qualified to be examined by the board for licensure to practice optometry in the Commonwealth, shall:

- Be a graduate of a school of optometry approved by the Council on Optometric Education; have the registrar of the school provide an official transcript to the board;
- File at least 30 days prior to the date of examination, on a form supplied by the board, a completed application which shall have affixed securely in the space provided, two identical recent passport-type photographs of himself, not less than 2 1/2 by 2 1/2 inches in size;
- Submit an official report from the National Board of Examiners in Optometry of the scores received on all parts of the examination of the National Board of Examiners in Optometry; and
- Submit the prescribed examination fee.

B. If any applicant withdraws from the examination at least 30 days prior to the examination date, all but the prescribed administrative fee will be refunded. If the applicant withdraws in 30 days or fewer prior to the examination date, only the

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licensure fee will be refunded. If an applicant is unsuccessful in passing the examination, the applicant shall receive upon request a refund of the licensure fee.

C. The provisions for licensure by endorsement are established in this subsection.

1. When a license is issued without examination, subsections A, B, and D of this section may be waived once the board determines that the examination from the state from which the applicant is applying for endorsement was approximately comparable at the time of the initial licensure.

2. An application for licensure by endorsement shall be filed that certifies the following:

a. The applicant has successfully completed an examination in optometry in any state of the United States that is approximately comparable to Virginia examination;

b. The applicant has been engaged in active clinical practice for at least 36 months out of the last 60 months immediately preceding application;

c. The applicant has completed all continuing education requirements from the state in which he is currently licensed;

d. The applicant has been certified to be in good standing from each state in which he is currently licensed;

e. The applicant has not committed any act which would constitute a violation of § 54.1-3204 of the Code of Virginia, and is not the respondent in any pending or unresolved board action or malpractice claim;

f. The applicant has graduated from an accredited school or college of optometry.

3. In the case of a federal service optometrist, the commanding officer shall provide proof of credentialing and quality assurance review to satisfy subdivisions 2 b, 2 c, 2 e, and 2 f of this subsection. The state board of optometry in which the federal service optometrist is currently licensed shall provide the remainder of information required from this subsection.

4. The applicant must take and pass the law portion of the Virginia State Board Examination.

5. All appropriate fees must be paid as prescribed in § [1-2 2].

D. In the event the examinations for initial licensure are determined not comparable, the board may require the applicant to take and pass a regional or national practical examination.

§ 1-3. [1-2. 2.] Fees.

The following fees are required:

	<i>Fiscal years</i>		
	94/95	95/96	Thereafter
Application for Licensure by Examination Fee	\$150	\$150	\$150
Initial Licensure Fee (Prorated \$8.00/month prior to annual renewal)	\$95*	\$95*	\$95*
First Examination (January) after Renewal	\$150		
Second Examination (July) after Renewal	\$75		
Application for Licensure by Endorsement Fee (Includes initial licensure fee)	\$195	\$195	\$195
Examination Fee, certification to use diagnostic pharmaceutical agents	\$100	\$100	\$100
Annual Licensure Renewal Fee (renewed annually) (due October 31)	\$150	\$20	\$150
Late Fee	\$100	[\$40 \$100]	[\$40 \$100]
Administrative Fee	\$25	\$25	\$25
Fictitious Name Professional Designation Application	\$200 \$100	\$100	\$100
Annual Fictitious Name Registration Fee Professional Designation Renewal (due 10/31 October 31)	\$50/location \$50**	\$50**	\$50**
Reinstatement Fee	\$250	\$250	\$250
Duplicate Wall Certificate	\$25	\$25	\$25
Duplicate License	\$10	\$10	\$10

*Maximum **per location

[PART II. EXAMINATIONS.]

§ [2-4. 2.] Examinations.

A. For the purpose of § 54.1-3211 of the Code of Virginia, the board adopts all parts of the examination of the National Board of Examiners in Optometry as its written examination for licensure.

B. In addition, upon receiving a passing score on all parts of the examination of the National Board of Examiners in Optometry, an applicant shall pass a practical examination administered or accepted by the Virginia Board of Optometry. If the board chooses to use a regional or national practical

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examination, the applicant must pass this examination prior to licensure.

C. All candidates must take and pass the law portion of the examination.

D. A candidate may take or retake the practical examination or law examination upon payment of the prescribed examination fee.

[PART III. UNPROFESSIONAL CONDUCT.]

§ [3-1-3.] Unprofessional conduct.

It shall be deemed unprofessional conduct for any licensed optometrist in the Commonwealth to:

1. Fail to use in connection with the optometrist's name wherever it appears relating to the practice of optometry one of the following: the word "optometrist," the abbreviation "O.D.," or the words "doctor of optometry."

2. Practice optometry under a name other than the optometrist's own name, except to the extent authorized by § [4-1-4], "Professional Designations."

3. Fail to maintain records on each patient for not less than five years from the date of the most recent service rendered.

a. A complete record of all examinations and treatment made of a patient shall include but not be limited to:

(4) a. During a comprehensive eye examination:

(a) (1) [~~Care Case~~] history;

(b) (2) Acuity measure;

(c) (3) Internal tissue health evaluation;

(d) (4) External tissue health evaluation;

(e) (5) Refraction;

(f) (6) Treatment, recommendations and directions to the patients, including prescriptions; and

(g) (7) Name of attending optometrist.

(2) b. During a contact lens examination:

(a) (1) The requirements of subdivision 3 a (4) of this section;

(b) (2) Assessment of corneal curvature;

(c) (3) Acuity through the lens;

(d) (4) Directions for the care and handling of lenses and an explanation of the implications of contact lenses with regard to eye health and vision; and

(e) (5) Name of attending optometrist.

(3) c. During a follow-up contact lens examination:

(a) (1) Assessment of fit of lens;

(b) (2) Acuity through the lens;

(c) (3) Such further instructions as in § 3-1-3 a (2)(d) subdivision 3 b (4) above as necessary for the individual patient; and

(d) (4) Name of attending O.D.

4. Fail to include the following information on a prescription for ophthalmic goods:

a. The printed name of the prescribing optometrist;

b. The address and telephone number at which the patient's records are maintained and the optometrist can be reached for consultation;

c. The name of the patient;

d. The signature of the optometrist;

e. The date of the examination, and ~~if appropriate, [expiration date of the prescription;], in the case of a spectacle prescription, an expiration date, if medically appropriate.]~~

[~~f. Sufficient information for complete and accurate filling of a contact lens prescription. This shall include but not be limited to the power, the fit, the material or manufacturer, the curve or appropriate designation, and the diameter when appropriate.]~~

f. [~~g. f.] Any special instructions.~~

5. Refuse to provide a written prescription for spectacle lenses upon the request of the patient once all fees have been paid.

6. Refuse to provide a written prescription for contact lenses upon the request of the patient once all fees have been paid and the prescription has been established and the follow-up care completed. Follow-up care will be presumed to have been completed if there is no reappointment scheduled within 30 days after the last visit.

[~~Sufficient information for complete and accurate filling of an established contact lens prescription shall include but not be limited to the power, the fit, the material or manufacturer, the curve or appropriate designation, the diameter when appropriate, and medically appropriate expiration date.]~~

7. Advertise in a manner that is false, misleading, or deceptive. False, misleading and deceptive advertising shall include, but not be limited to, when the price of ophthalmic goods or services (or both) is advertised, to fail to state what goods and services the advertised price includes.

8. Administer any diagnostic pharmaceutical agents, specified in § 54.1-3221 of the Code of Virginia, without certification of the Board of Optometry to use such agent.

9. Fail to post conspicuously in the entrance or reception area of the optometric office, a chart or directory listing the names of all optometrists practicing at that particular location.

10. Violate any provision of these regulations pertaining to professional designations.

11. Fail to maintain patient records, perform procedures or make recommendations during any eye examination contact lens examination or treatment as necessary to protect the health and welfare of the patient.

12. Practicing on an invalid license shall occur when the requirements as set forth in § [5-1 5] A and C or § [6-4 6] A and B have not been met.

[PART IV. PROFESSIONAL DESIGNATIONS.]

§ [4-4 4] Professional designations.

A. An optometrist may practice in an office that uses any of the following professional designations.

1. The name of the optometrist as it appears on his license or renewal certificate; or
2. The name of an optometrist who employs him and practices in the same office; or
3. A partnership name composed of some or all names of optometrists practicing in the same office; or
4. A fictitious name, if the conditions set forth in subsection B of this section are fulfilled.

B. Optometrists licensed in this Commonwealth who practice as individuals, partnerships, associations, or other group practices may use a fictitious name for the optometric office in which they conduct their practices, provided the following conditions are met:

1. Each fictitious name shall be registered with the board by a licensed optometrist, who must be associated with the optometric office and who shall assume responsibility for compliance with this section. Each fictitious name shall be approved by the board and a fee shall be paid as prescribed by board regulations prior to use of the name. Names which, in the judgment of the board, are false, misleading, or deceptive will be prohibited.
2. No licensed optometrist may, at any time, register to practice optometry under more than one fictitious name.
3. All advertisements, including but not limited to signs, printed advertisements, and letterheads, shall contain the word "optometry" or reasonably recognizable derivatives thereof unless the name of the optometrist is used with the fictitious name with the O.D. designation, Doctor of Optometry or optometrist.
4. In the entrance or reception area of the optometric office, a chart or directory listing the names of all optometrists practicing at that particular location shall be kept at all times prominently and conspicuously displayed.
5. The names of all optometrists who practice under the fictitious name shall be maintained in the records of the optometric office for five years following their departure from the practice.
6. Subsequent to the administration of any optometric service, the optometrist of record shall place his name in the record of the patient following a description of the

service rendered. If the treatment is rendered by an optometrist other than the optometrist of record, the name of that optometrist shall be placed in the record of the patient.

7. The name of the licensed optometrist providing care shall appear on the initial statement of charges and on the receipts given to patients.

8. No fictitious name may be used which contains the name of an inactive, retired, removed, or deceased optometrist, except that for a period of no more than one year from the date of succession to a practice, an optometrist may list the name of the inactive, retired, removed, or deceased optometrist, so long as he does so in conjunction with his own name, together with the words, "succeeded by," "succeeding," or "successor to."

[PART V. RENEWAL OF LICENSURE; REINSTATEMENT.]

§ [5-4 5. *Renewal of licensure; reinstatement;*] renewal fees.

A. Every person authorized by the board to practice optometry shall, on or before October 31 of every year, pay to the executive director of the Board of Optometry the prescribed annual licensure fee.

B. It shall be the duty and responsibility of each licensee to assure that the board has the licensee's current address. All changes of mailing address or name shall be furnished to the board within five days after the change occurs. All notices required by law or by these rules and regulations are to be deemed to be validly tendered when mailed to the address given and shall not relieve the licensee of the obligation to comply.

C. It shall be the duty of each person so licensed to return the renewal application with the prescribed fee prior to the expiration of their license postmarked no later than October 31. Upon expiration of the license, the executive director of the board shall notify the licensee of expiration and reinstatement procedures. The license of every person who does not return the completed form and fee by October 31 of each year shall be extended for 30 days until November 30 and may be renewed by paying the prescribed late fee, postmarked no later than November 30 provided the requirements of § [6-4 6] have been met. After November 30, an unrenewed license is invalid. The executive director may grant reinstatement provided that the applicant can demonstrate continuing competence; that the applicant has satisfied requirements for continuing education during the lapsed period; and that the applicant has paid all unpaid renewal fees from the time the license lapsed, and the prescribed reinstatement fee. In addition to the foregoing reinstatement procedure, the failure to renew a license may subject the licensee to disciplinary action by the board.

D. The board may, in its discretion, require an applicant who cannot satisfy §§ [4-2 1 and 2] and the requirement of subsection C of § [5-4 5] of these regulations, to pass all parts of the written examination of the National Board of Examiners in Optometry or the practical examination administered or accepted by the board, or both.

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[PART VI,
CONTINUING EDUCATION.]

§ [~~6-4.~~ 6.] Continuing education.

A. Each license renewal shall be conditioned upon submission of evidence to the board of 12 hours of continuing education taken by the applicant during the previous license period.

B. It shall be the responsibility of each licensee to submit evidence substantiating attendance of continuing education courses, as required by subsection A of this section, no later than October 31 of the license period.

C. The board will review courses for acceptability for purposes of continuing education requirements if the following information is provided:

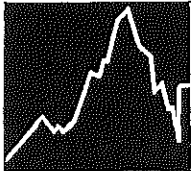
1. The title of the course;
2. The sponsoring organization(s);
3. The name of the lecturer;
4. The qualifications of the lecturer;
5. An outline of the course's content;
6. The length of the course in clock hours;
7. The method of certification of attendance or completion if offered as a correspondence course; and
8. Number of credit hours requested.

D. The titles of all courses approved by the board will be kept on a list maintained by the board. All courses approved by the board shall pertain directly to the care of the patient. Courses excluded by the board shall include:

1. Courses which are designed to promote the sale of specific instruments or products;
2. Courses offering instruction on augmenting income; and
3. Courses which are neither advertised nor in fact available to all optometrists or any courses for which there is no independent assurance that no part of the educational session is devoted to the promotion of specific instruments, products, or marketing philosophies.

E. When the annual license fee is submitted to the executive director of the board, the licensee shall enclose with it the required forms to indicate fulfillment of the continuing education requirements for the previous period. All continuing education must be completed prior to October 31 unless extension or waiver has been granted by the Continuing Education Committee. In the event that continuing education has not been completed by October 31, the executive director of the board shall notify the licensee that their license has lapsed. The board may reinstate the license, upon showing of disability or undue hardship, or upon showing that the licensee has complied with the requirements of subsection B of this section.

VA.R. Doc. No. R95-541; Filed June 6, 1995, 12:03 p.m.



COMMONWEALTH OF VIRGINIA
Board of Optometry

Department of Health Professions
6606 West Broad Street, 4th Floor
Richmond, Virginia 23230-1717
(804) 662-9910

APPLICATION FOR A LICENSE TO PRACTICE OPTOMETRY

Date of Application: ___/___/___

Please include a check for the \$150 Examination Fee and a Licensure Fee in the amount of \$8 per month for each month prior to October.

PLEASE INDICATE WHICH CLINICAL SKILLS PRACTICAL EXAMINATION YOU HAVE TAKEN OR PLAN TO TAKE:

NBE0 NERCOATS DATE _____ JURISDICTION _____

HAVE YOU TAKEN THE VIRGINIA LAW EXAM THRU: DATE & LOCATION YOU PLAN TO TAKE THE VIRGINIA LAW EXAM: _____

NBE0 NERCOATS DATE TAKEN _____

Each question must be answered fully, truthfully and accurately. If the space for any answer is insufficient, the applicant must complete his/her answer on a rider signed by him/her specifying the number of question to which it relates and enclose with this application. DO NOT STAPLE ENCLOSURES TO THIS APPLICATION BLANK.

I hereby make application for issuance to me of a license to practice optometry in the Commonwealth of Virginia, all in accordance with and subject to the regulations of the Board of Optometry and the laws governing the practice of optometry in Virginia.

I. APPLICANT - Please provide the information requested below. (Print or Type) Use full name, not initials. ALL SECTIONS MUST BE COMPLETE			
Name (Last, First, M.I., Suffix, Maiden)		Social Security Number	Graduation Date
Street Address	City	State Zip Code	Area Code & Telephone Number
Date of Birth	Place of Birth	Prof. School Degree	School, City, State
Date National Board Examination Taken		Jurisdiction Taken	
Have you ever been known by any other name? Yes ___ No ___ If yes, state in full every other name by which you have been known, the reason therefore, and inclusive dates so shown. If change was made by court order, enclose herein a Certified Copy of such order.			
FOR OFFICE USE ONLY	Applicant #	License Number	Exam/Fee Date Issued

2. Name two persons who will always know your address:

(Name)	(Name)
(Address)	(Address)
(City, State, Zip Code)	(City, State, Zip Code)

3. Professional Experience. (Provide a complete statement in reverse chronological order of applicant's entire career.)

Inclusive Dates		Name of Practice and Address	Type of Activity	Status of Candidate (Employee, Owner, Partner)
Began	Ended			

4. Membership in Societies or Association: (Professional, Scientific or Technical)

COLLEGES ATTENDED

5. Name and location of institution attended: (Include City and State) Period of Attendance (Example: Sept. 1991 to June 1992)

1st year _____

2nd year _____

3rd year _____

4th year _____

I received the degree of _____ from _____ on the _____ day of _____, 19____.

OPTOMETRIC EDUCATION

6. List in chronological order months, years and schools of optometry

From	To*	Name of School of Optometry	Degree

*(For Example: 4-9-90 to 6-1-92)

In addition to the above, I am enclosing official transcripts of my school of optometry credits to date. In the event I am a current year graduate, arrangements will be made to have my school of optometry send final grades when completed to the Office of the Board.

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7. I am licensed to practice optometry in the following jurisdictions and no others:

Jurisdiction	How Licensed	License Number	Date of Issuance	Years of Practice

ALL QUESTIONS MUST BE ANSWERED. If any of the following questions is answered YES, explain and substantiate with available documentation. Letters must be submitted by any treating professionals regarding treatment. These shall include diagnosis, treatment, and prognosis.

8. Have you ever failed the optometry examination given by another jurisdiction? Yes No

If yes, they are as follows: _____

9. Have you been refused an optometry examination given by another jurisdiction? Yes No

If yes, they were as follows and no others: (Give dates and jurisdiction). _____

10. Have you ever been reprimanded, had your license suspended, or cancelled, or revoked by any jurisdiction? Yes No

If yes, give jurisdiction, reasons and dates. _____

11. Have you ever been convicted of a violation of a violation of a federal, state, or local statute, regulation, or ordinance, or entered into any plea bargaining relating to a felony or misdemeanor? (Excluding traffic violations, except convictions for driving under the influence.) Please provide written statement of explanation. Yes No

12. Have you had any malpractice suits brought against you in the last ten years? Yes No

13. Have you, within the last two (2) years, received treatment for or been hospitalized for a nervous, emotional or mental disorder which could impair your practice now? If yes, provide a letter from your treating professional summarizing diagnosis, treatment, and prognosis. Yes No

14. Do you have a physical disease or diagnosis which could affect your performance of professional duties? If yes, please provide a letter from the treating professional. Yes No

15. Have you, within the last two (2) years, been treated by, consulted with or been under the care of a professional for any substance abuse? If yes, please provide a letter from the treating professional. Yes No

16. Have you, within the last five (5) years, been adjudged mentally incompetent or been Yes No

17. In addition to the foregoing, I add the following:

(a) I have read the laws and regulations of the Virginia Board of Optometry. I solemnly declare upon my honor that if granted a license to practice optometry in Virginia, I will respectfully comply with any law or regulation governing the practice of optometry in the Commonwealth, and will do my best to uphold and maintain the ethics of the profession.

(b) I hereby give permission to the Virginia Board of Optometry to secure additional information concerning me or any statement in this application from any person or any source the Board may desire. I further agree to submit to questioning by the Board or any Agent thereof, and to substantiate any statements if desired by the Board.

(c) I shall present any credentials required or requested by the Board.

(d) I have attached a money order or check in the amount of \$ _____, made payable to the Treasurer of Virginia.

(e) I hereby certify that in applying to the Virginia Board of Optometry for a license to practice optometry in Virginia, I have made no fraudulent or deceitful statement, nor have I made any misrepresentation of a material fact. I agree that if I am granted a license I will practice my profession of optometry in an ethical manner, that I will not participate directly in any illegal or unethical modes of practice; that I will not practice optometry under a false or assumed name; that I will not knowingly enter the employment of or the association with any person, firm or corporation engaged in the practice of optometry contrary to the laws of the Commonwealth of Virginia; I further certify that I will at all times obey the regulations of the Virginia Board of Optometry and the laws of the Commonwealth of Virginia relating to the practice of optometry.

(f) I, _____, the applicant herein, depose and say that all facts, statements, and answers contained in this application are true and correct; I am not omitting any information which might be of value to this Board in determining my qualifications and character, whether it is called for or not; and I agree that any falsification, omission, or withholding of information of facts concerning my qualification as an applicant shall be sufficient grounds for the suspension, cancellation, or revocation of my Virginia Board of Optometry License even though it is not discovered until after issuance.

Applicant's Signature _____

State _____ City/County _____

Before me, the undersigned authority, on this day personally appeared _____ who after being duly sworn by me on this or her oath that all facts, statements, and answers contained in this application are true and correct in every respect, and that the attached photograph is a true likeness of the applicant.

Applicant's Signature (Signed in presence of Notary) _____

Sworn and subscribed to before me this _____ day of _____ 19____, to certify which witness my hand and official seal of office.

Notary Public _____

My Commission Expires _____

VIRGINIA SMALL BUSINESS FINANCING AUTHORITY

REGISTRAR'S NOTICE: Section 9-208 of the Code of Virginia exempts the activities of the Virginia Small Business Authority from the Administrative Process Act; however, its regulations are subject to the Virginia Register Act.

Title of Regulation: VR 612-01-02. Virginia Private Activity Bond Regulations.

Statutory Authority: § 15.1-1399 of the Code of Virginia.

Effective Date: July 1, 1995.

Summary:

Chapter 33.2 of Title 15.1 of the Code of Virginia, Private Activity Bonds, was passed to allocate Virginia's total private activity bond issuing authority to those issuing authorities empowered to issue private activity bonds.

The federal Tax Reform Act of 1986 imposes restrictions on the issuance of industrial development bonds, housing bonds, exempt facility bonds, and student loan bonds, designated in the Act as "private activity bonds." These restrictions include limitations on the aggregate amount of private activity bonds that may be issued in each state in each calendar year that may be regarded as exempt from federal income taxation. The Act provides authority for each state to establish a system for the allocation of the state ceiling on private activity bonds.

Effective July 1, 1995, the Virginia Private Activity Bond Program will be administered by the Virginia Small Business Financing Authority. Accordingly, VSBFA has established regulations which detail the administrative policies and procedures of the private activity bond program in the Commonwealth. Specific application, allocation, and reporting requirements are provided in the regulations.

VR 612-01-02. Virginia Private Activity Bond Regulations.

PART I. DEFINITIONS.

§ 1.1. Definitions.

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

"Allocation" or "award" means the notice given by the Commonwealth to provide a project with a specified amount from the state ceiling for a specific issue of bonds.

"Carryforward purpose" means certain projects that are eligible to receive an allocation during a calendar year and issue the bonds from the allocation in a later year pursuant to § 146 of the Code.

"Code" means the Internal Revenue Code of 1986, as amended, together with the regulations and rulings issued pursuant thereto.

"Exempt project" means a project requiring allocation from the state ceiling for financing of any of the following:

- 1. Sewage, solid waste, and qualified hazardous waste disposal facilities; and facilities for the local furnishing of electric energy or gas;
2. Facilities for the furnishing of water (including irrigation systems);
3. Mass commuting facilities; and
4. Local district heating and cooling facilities.

"Governing body" means the board of supervisors of each county and the council of each city and of each town.

"Housing bonds" means multifamily housing bonds and single family housing bonds requiring allocation from the state ceiling.

"Industrial development bond" means any obligation requiring allocation from the state ceiling for financing any of the following:

- 1. Manufacturing facility,
2. Exempt project.

"Issued" means that the private activity bonds have been issued within the meaning of § 103 of the Code.

"Issuing authority" means any political subdivision, governmental unit, authority, or other entity of the Commonwealth which is empowered to issue private activity bonds.

"Local housing authority" means any issuer of multifamily housing bonds or single family housing bonds, created and existing under the laws of the Commonwealth, excluding the Virginia Housing Development Authority.

"Locality" or "localities" means the individual and collective cities, towns and counties of the Commonwealth.

"Manufacturing facility" means any facility which is used in the manufacturing or production of tangible personal property, including the processing resulting in a change of condition of such property.

"Multifamily housing bond" means any obligation which constitutes an exempt facility bond under federal law for the financing of a qualified residential rental project within the meaning of § 142 of the Code.

"Population" means the most recent estimate of resident population for Virginia and the counties, cities, and towns published by the United States Bureau of the Census or the Center for Public Service of the University of Virginia before January 1 of each calendar year.

"Private activity bond" means a part or all of any bond (or other instrument) required to obtain an allocation from the Commonwealth's volume cap pursuant to § 146 of the Code in order to be tax exempt, including but not limited to the following:

- 1. Exempt project bonds;
2. Manufacturing facility bonds;

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3. Industrial development bonds;
4. Multifamily housing bonds;
5. Single family housing bonds;
6. Student loan bonds;
7. Any other bond eligible for a tax exemption as a private activity bond pursuant to § 141 of the Code.

"Project" means the facility (as described in the application) proposed to be financed, in whole or in part, by an issue of bonds.

"Qualified mortgage bond" means any obligation described as a qualified mortgage bond in § 143 of the Code.

"Qualified redevelopment bond" means any bond requiring an allocation from the state ceiling to be used for one or more redevelopment purposes in any designated blighted area in accordance with § 144(c) of the Code.

"State allocation" means the portion of the state ceiling set aside for projects of state issuing authorities and for projects of state or regional interest as determined by the Governor.

"State ceiling" means the amount of private activity bonds that the Commonwealth may issue in any calendar year under the provisions of the Code.

"Student loan bond" means an issue to finance student loans as defined in § 144(b) of the Code.

"VSBFA" means the Virginia Small Business Financing Authority.

PART II. ADMINISTRATION.

§ 2.1. Virginia Small Business Financing Authority.

VSBFA shall administer the private activity bond program in the Commonwealth. In administering the program, VSBFA's activities shall include, but are not limited to, the following:

1. To determine the state ceiling on private activity bonds each year based on the federal per capita limitation on private activity bonds and the population.
2. To set aside the proper amount of the state ceiling on private activity bonds for each project type as specified in state legislation, Chapter 33.2 (§§ 15.1-1399.10 through 15.1-1399.17) of Title 15.1 of the Code of Virginia.
3. To receive and review project applications for private activity bond authority to be awarded from the portion of the state ceiling not distributed to the state allocation, the Virginia Housing Development Authority or the Virginia Education Loan Authority.
4. To allocate private activity bond authority to projects requesting bond authority from the portion of the state ceiling not distributed to the state allocation, the Virginia Housing Development Authority or the Virginia Education Loan Authority.

§ 2.2. State allocation.

Pursuant to Chapter 33.2 of Title 15.1 of the Code of Virginia, a portion of the annual state ceiling on private activity bonds will be reserved for allocations to projects of state issuing authorities and projects of state or regional interest as determined by the Governor. Requests for private activity bond authority from the state allocation may be made through direct correspondence with the Governor's Office. The Governor may transfer any portion of the state allocation to VSBFA for allocation in accordance with the provisions of this regulation.

§ 2.3. Virginia Housing Development Authority.

A portion of the annual state ceiling on private activity bonds shall be allocated to the Virginia Housing Development Authority to be used to finance multifamily or single family residential projects, or both, pursuant to the restrictions provided by federal law. The Virginia Housing Development Authority shall develop project allocation criteria and housing bond authority carryforward procedures that will assure compliance with federal regulations.

§ 2.4. Virginia Education Loan Authority.

A portion of the annual state ceiling on private activity bonds shall be allocated to the Virginia Education Loan Authority to be used to finance educational loans for Virginia students. The Virginia Education Loan Authority shall develop project allocation criteria and student loan authority carryforward procedures that will assure compliance with federal regulations.

§ 2.5. Program dates.

The following is a listing of important application and allocation dates and deadlines concerning the portion of the state ceiling administered by VSBFA:

January 1 - December 15

Specified amounts of the state ceiling are reserved for different project types in the Commonwealth by either state law or Governor's Executive Order in each calendar year. Allocations of private activity bond authority will be awarded by VSBFA to projects in accordance with state law or Governor's Executive Order and this regulation. The set-aside for specified project types ends on December 15 of each calendar year; however, no allocation of private activity bond authority awarded for single family housing purposes or for multifamily housing purposes may be used after November 15.

November 15

Last day for the issuance of private activity bonds by a local housing authority for single family housing and multifamily housing.

November 1 - December 15

The \$10 million limitation on allocations from the state ceiling for exempt projects will be removed during this period of time to allow financing these projects in the calendar year the allocation is made.

December 1

Last day applications will be accepted for year-end carryforward purposes.

December 15

Last day for the issuance of private activity bonds for projects that received allocations from the state ceiling prior to this date; except for single family housing and multifamily housing projects, as provided above.

December 20 - 31

Allocations shall be made to year-end carryforward purposes in accordance with the priority system established by this regulation.

§ 2.6. Weekend and holiday deadline dates.

If any deadline dates specified are on a weekend or a holiday, the deadline shall be moved to the next following regular state working day, except where federal law precludes such extension.

§ 2.7. State regulations to change as federal law determines eligibility.

If federal law terminates the eligibility or terminates and reauthorizes the eligibility for private activity bond financing for any "private activity bond" as defined in § 1.1 of this regulation, the effect shall be to exclude or include, as the case may be, that portion of the "private activity bond" from this regulation.

PART III.

ALLOCATIONS TO INDIVIDUAL PROJECTS BY VSBFA.

§ 3.1. State private activity bond legislation.

Chapter 33.2 (§§ 15.1-1399.10 through 15.1-1399.17) of Title 15.1 of the Code of Virginia sets aside specified amounts of the Commonwealth's limited private activity bond issuing authority for different types of projects. The legislation provides that VSBFA will allocate private activity bond authority to projects requesting bond authority for the portion of the state ceiling not distributed directly to the state allocation, the Virginia Housing Development Authority, or the Virginia Education Loan Authority.

§ 3.2. Order in which allocations shall be awarded.

Bond allocations shall be made by VSBFA in chronological order of receipt of complete applications (including documentation specified in § 5.3 of this regulation) until the bond authority reserved for the project type is completely allocated. Applications of projects that do not receive allocations will be maintained by VSBFA during the year and allocations will be made to the projects in chronological order of receipt of applications as bond authority is returned to VSBFA from projects that received allocation awards but were unable to issue bonds within the effective period of the award.

§ 3.3. Limitation on size of allocations.

All industrial development bond allocations awarded by VSBFA prior to November 1 of each year shall be limited to \$10 million per project. There shall be no limitation on the

size of allocations awarded for housing bond projects during a calendar year. If federal law terminates the eligibility of manufacturing facilities for private activity bond financing, exempt facility projects may receive allocations in excess of \$10 million prior to November 1 of each calendar year upon approval by the Board of Directors of VSBFA.

§ 3.4. Effective period of allocations.

An allocation for each project, other than single family housing and multifamily housing projects, shall be effective for 90 days after the allocation award date or until December 15, whichever is earlier. An allocation of private activity bond authority for single family housing and multifamily housing shall be effective for 90 days after the allocation award date or until November 15, whichever is earlier.

§ 3.5. Reapplying for a second allocation for the same project.

A project that receives an allocation and is unable to issue bonds within the effective period of the award may reapply for another allocation upon the expiration or return of the original allocation. The reapplication will be dated by VSBFA as received on the date the reapplication request is submitted and no portion of the original allocation is outstanding. Each project shall be limited to two allocations during any calendar year. An exempt project that receives an allocation in excess of \$10 million prior to December 15 shall not be eligible to receive a carryforward purpose allocation at the end of the calendar year.

PART IV.

YEAR-END ALLOCATIONS TO CARRYFORWARD PURPOSES.

§ 4.1. Local housing authorities.

In order to allow the Commonwealth to effectively utilize all of its annual private activity bond capacity, any bond issuing authority remaining in the portion of the state ceiling reserved for local housing authorities after November 15 shall be transferred to the Virginia Housing Development Authority upon their written request after notification by VSBFA of the amount of bond authority available. Any bond authority that remains with VSBFA shall be allocated to other carryforward purposes.

§ 4.2. Virginia Housing Development Authority.

Any portion of the state ceiling reserved for the Virginia Housing Development Authority during the year that has not been issued by December 15 shall be retained by the Virginia Housing Development Authority to carry forward pursuant to the Code, or shall be transferred by the Virginia Housing Development Authority on December 15 to VSBFA to be allocated to other carryforward purposes.

§ 4.3. Virginia Education Loan Authority.

Any portion of the state ceiling reserved for the Virginia Education Loan Authority during the year that has not been issued by December 15 may be retained by the Virginia Education Loan Authority for student loan bond carryforward purposes or transferred by the Virginia Education Loan Authority to VSBFA to be allocated to other carryforward purposes.

Final Regulations

§ 4.4. Virginia Small Business Financing Authority.

Any bond issuing authority remaining after December 15 will be awarded beginning December 20 to applications (including all documentation specified in § 5.3 of this regulation) on file with VSBFA by December 1 in the following priority order:

1. Virginia Education Loan Authority bonds, up to \$25 million.
2. Local government projects for the following exempt facilities:
 - a. Sewage, solid waste and qualified hazardous waste disposal facilities; and facilities for the local furnishing of electric energy or gas;
 - b. Facilities for the furnishing of water, including irrigation facilities.
3. Governmental projects in which the private use portion of the bond issue exceeds \$15 million.
4. Public utility projects for the following facilities:
 - a. Sewage, solid waste, and qualified hazardous waste disposal facilities; and facilities for the local furnishing of electric energy or gas;
 - b. Facilities for the furnishing of water, including irrigation facilities.
5. Private sector projects for the following facilities:
 - a. Sewage, solid waste, and qualified hazardous waste disposal facilities; and facilities for the local furnishing of electric energy or gas;
 - b. Facilities for the furnishing of water, including irrigation facilities.
6. All other eligible exempt projects, and qualified redevelopment bonds.
7. Virginia Housing Development Authority bonds.

PART V. APPLICATION PROCEDURE.

§ 5.1. Project approval.

All projects must be approved by the appropriate elected official or governing body prior to submitting an application to VSBFA for bond authority. Any local housing authority, after the approval of the local governing body, may file an application with VSBFA to request an allocation of housing bond authority. Any local industrial development authority or locality, after the approval of the local governing body, may file an application with VSBFA to request an allocation of industrial development bond authority. Any state issuing authority, after the approval of the Governor, may file an application with VSBFA to request an allocation of industrial development bond authority.

§ 5.2. Where to apply.

Projects of state issuing authorities and projects of state or regional interest may request private activity bond authority from the state allocation through direct correspondence with

the Governor's Office. Housing projects to be financed by the Virginia Housing Development Authority shall request private activity bond authority from the state ceiling through direct correspondence with the Virginia Housing Development Authority. Student loan projects to be financed by the Virginia Education Loan Authority shall request private activity bond authority from the state ceiling through direct correspondence with the Virginia Education Loan Authority. All other project applications shall be submitted to VSBFA.

§ 5.3. Application forms.

A. All projects seeking an allocation of private activity bond authority from VSBFA must file an application. Application forms are available from VSBFA.

B. The application forms to be used are as follows:

1. Local housing authorities seeking an allocation of bond authority for housing projects shall file Form HB.
2. Manufacturing and exempt facility projects, allocation requests for the private use portion of a governmental bond in excess of \$15 million, student loan bonds, and qualified redevelopment bonds shall file Form IDB.

C. All applications and requests for private activity bond authority from VSBFA shall be accompanied by the following documentation for each project:

1. Inducement resolutions or other preliminary approvals.
2. Documentation of the appropriate elected body's or official's approval of such projects;
3. Written opinion of bond counsel that the project is eligible to utilize private activity bonds pursuant to the Code and that an allocation of bond issuing authority from the state ceiling is required;
4. A definite and binding financial commitment agreement from a buyer of the bonds or a firm commitment from a financial institution to provide a letter of credit for the project.

§ 5.4. When to apply.

Project applications may be submitted to VSBFA during each calendar year at any time prior to December 15 of each year, except for single family housing and multifamily housing as provided in § 2.5 of this regulation. Applications for year-end allocations to carryforward purposes will be accepted by VSBFA through December 1 of each calendar year.

PART VI. REPORTING REQUIREMENTS FOR ALLOCATIONS BY VSBFA.

§ 6.1. Reporting bond issuance.

For all private activity bonds issued in the Commonwealth from the portion of the state ceiling not allocated to the state allocation, the Virginia Housing Development Authority or the Virginia Education Loan Authority during any calendar year, a copy of the federal Internal Revenue Service (IRS) Form 8038 must be received by VSBFA by 5 p.m. on the expiration date of the allocation award. Bond authority that has not

been documented as having been issued by the filing of IRS Form 8038 with VSBFA by this deadline will revert to VSBFA for reallocation to other projects.

For all private activity bonds issued in the Commonwealth from the portion of the state ceiling allocated to the state allocation, the Virginia Housing Development Authority, or the Virginia Education Loan Authority during any calendar year, a copy of IRS Form 8038 must be received by VSBFA within 10 days following issuance of the bonds.

For any carryforward private activity bonds to be issued in the Commonwealth, a copy of IRS Form 8328 must be filed with VSBFA by February 15 following the calendar year that the carryforward election was taken.

§ 6.2. When to file IRS Form 8038.

IRS 8038 forms shall not be filed with VSBFA prior to the date of issuance of the bonds.

VA.R. Doc. No. R95-552; Filed June 7, 1995, 1:52 p.m.

FORM IDB
Page One

PROJECT INFORMATION SHEET

REQUEST FOR INDUSTRIAL DEVELOPMENT BOND ALLOCATION

1. GENERAL INFORMATION

A. Issuing Entity _____

B. Name of Project _____

C. Use of Bond Proceeds

Manufacturing

Exempt facility

Private use portion of governmental bond
over \$15 million threshold

Student loan bond

Qualified redevelopment bond

2. DESCRIPTION OF THE PROJECT

A. General Description of the Project.

FORM IDB
Page Two

B. Location of Project (City, County or Town) _____

C. Name, address, phone number and tax ID number of each
proposed borrower and developer.

D. Name, address and phone number of bond counsel.

E. Bond allocation requested \$ _____

F. Projected closing date for issuance
of the bonds _____

3. PROJECT INFORMATION

Number of jobs to be created (net) or retained _____

4. ATTACHMENTS

ALL FOUR ATTACHMENTS MUST BE SUBMITTED WITH THIS FORM.
ALLOCATIONS CANNOT BE AWARDED UNTIL ALL ATTACHMENTS HAVE
BEEN RECEIVED.

A. Copy of inducement resolution or other preliminary
approval.

B. Copy of appropriate elected official's or governing body's
formal approval of the project.

FORM IDB
Page Three

C. Written opinion of bond counsel that the project is eligible to utilize private activity bonds pursuant to the Internal Revenue Code of 1986, as amended, and that an allocation of bond issuing authority from the state ceiling on private activity bonds is required.

D. A definite and binding financial commitment agreement from a bond purchaser(s) agreeing to purchase the bond(s) or a firm commitment from a financial institution to issue a letter of credit for the project. The purchase agreement or letter of credit shall be for an amount equal to or greater than the amount of bond authority requested by this application.

5. CERTIFICATION

I hereby certify that the information filed herewith is accurate to the best of my knowledge.

Signature of Authorized Representative of
Issuing Entity _____
Name (please print) _____
Title _____
Date _____

FORM HB
Page One

PROJECT INFORMATION SHEET
REQUEST FOR HOUSING BOND ALLOCATION

1. GENERAL INFORMATION

A. Issuing Entity _____
B. Name of Project _____
C. Type of Project
 Single Family Multifamily
_____ Number of Units _____ Number of Units

2. DESCRIPTION OF THE PROJECT

A. General Description of the Project

Please check the appropriate response for the low income set-aside requirement if the project is a multifamily rental project.

40 % of the units will be occupied by persons having incomes of 60% of area median income or less.
 20% of the units will be occupied by persons having incomes of 50% of area median income or less.

FORM HB
Page Two

B. Location of Project (City, County or Town) _____

C. Name, address, phone number and tax ID number of each
proposed borrower and developer.

D. Name, address and phone number of bond counsel.

E. Housing Bond allocation requested \$ _____

F. Projected closing date for issuance of
the housing bonds _____

3. ATTACHMENTS

ALL FOUR ATTACHMENTS MUST BE SUBMITTED WITH THIS FORM.
ALLOCATIONS CANNOT BE AWARDED UNTIL ALL ATTACHMENTS HAVE
BEEN RECEIVED.

A. Copy of inducement resolution or other preliminary
approval.

FORM HB
Page Three

B. Copy of Governing Body's formal approval of the project.

C. Written opinion of bond counsel that the project is
eligible to utilize private activity bonds pursuant to
the Internal Revenue Code of 1986, as amended, and that
an allocation of bond issuing authority from the state
ceiling on private activity bonds is required.

D. A definite and binding financial commitment agreement
from a bond purchaser(s) agreeing to purchase the
bond(s), or a firm commitment from a financial
institution to issue a letter of credit for the project.
The purchase agreement or letter of credit should be for
an amount equal to or greater than the amount of bond
authority requested by this application.

4. CERTIFICATION

I hereby certify that the information filed herewith is
accurate to the best of my knowledge.

Signature of Authorized Representative of
Issuing Entity

Name (please print) _____

Title _____

Date _____

EMERGENCY REGULATIONS

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Title of Regulation: VR 460-03-4.1940:1. Nursing Home Payment System (Legal Fees for Nursing Facility Appeals).

Statutory Authority: § 32.1-324 of the Code of Virginia.

Effective Dates: July 1, 1995, through June 30, 1996.

Summary:

1. **REQUEST:** The Governor is hereby requested to approve this agency's adoption of the emergency regulation entitled Legal Fees for NF Appeals. This regulation establishes the standards DMAS will use to determine reimbursable costs for legal fees resulting from nursing facility providers' appeals of agency decisions.

2. **RECOMMENDATION:** Recommend approval of the Department's request to take an emergency adoption action regarding Legal Fees for NF Appeals. The Department intends to initiate the public notice and comment requirements contained in the Code of Virginia § 9-6.14:7.1.

/s/ Robert C. Metcalf, Director
Date: May 4, 1995

3. **CONCUR:**

/s/ Kay C. James
Secretary of Health and Human Resources

4. **APPROVE:**

/s/ George Allen
Governor
Date: June 5, 1995

5. **FILED WITH:**

/s/ Jane Chaffin for
Joan W. Smith
Registrar of Regulations
Date: June 7, 1995

DISCUSSION

6. **BACKGROUND:** The section of the State Plan affected by this action is Methods and Standards for Establishing Payment Rates for Long-Term Care, Nursing Home Payment System (VR 460-03-4.1940:1).

The Social Security Act § 1902(a)(13)(A) requires that the State Plan provide for payment for long-term care facility services through the use of rates that the State finds, and makes assurances satisfactory to the Secretary (of the U.S. Department of Health and Human Services), are reasonable and adequate to meet the costs that must be incurred by efficiently and economically operated facilities to provide services in conformity with State and Federal laws, regulations, and quality and safety standards. In order to secure approval from the Health Care Financing Administration (HCFA) of the State Plan (42 CFR 447.253(a)), DMAS must make assurances satisfactory to HCFA that the requirements set forth in paragraphs (b) through (i) are being met. At 42 CFR 447.253(e), DMAS is

required to provide an appeals or exception procedure that allows individual providers an opportunity to submit additional evidence and receive prompt administrative review, with respect to such issues as the agency determines appropriate, of payment rates. DMAS complies with this requirement for long-term care providers in Part III of the Nursing Home Payment System.

Nursing facilities have the right to appeal cost adjustments made by DMAS as a result of an audit of a facility's filed cost reports (42 CFR 447.253(g)). The Department currently reimburses nursing facilities for legal fees relating to administrative appeals. In order to be reimbursed, the legal fees must be reasonable, necessary, related to patient care, and within the applicable peer group ceiling for the NF claiming the fees. The legal fees are reimbursed without regard to the success or failure of the administrative appeal. The Department accepts all appeals because the Code of Federal Regulations, the Administrative Process Act, and the Virginia State Plan for Medical Assistance (Attachment 4.19D: the Nursing Home Payment System) do not afford it the latitude to consider some appeals while rejecting others. The absence of financial risk to the NF encourages the indiscriminate filing of appeals, increasing health care costs and the costs of the Commonwealth in defending these appeals.

In 1990, DMAS adopted regulations related to frivolous litigation in response to Congressional changes to the Social Security Act §1903(i). Section 4801(e) of OBRA 90 denied Federal Financial Participation (FFP) to states reimbursing NFs for legal expenses associated with any frivolous litigation initiated by the facility and dismissed on the basis that no reasonable legal ground existed for the institution of such action. For a court to take such a dismissal action, the litigation must be determined to have been frivolous, and completely lacking in legal argument and legal basis. The referenced 1990 regulations do not address the issues addressed by this emergency regulation.

In the Appropriations Act, the 1995 General Assembly required the Department to adopt regulations eliminating the reimbursement of legal fees when the NF has not substantially prevailed on the merit of the appeal. DMAS is, therefore, proposing the addition of § 3.7 to Part III of the Nursing Home Payment System.

This new section provides that the Department shall only reimburse NFs for legal fees related to informal and formal administrative appeals on which the NF has substantially prevailed on the merit. The term "substantially prevails" is defined as success on more than 50% of the issues appealed and on more than 50% of the amount under appeal in order to obtain reimbursement.

The reimbursement of legal fees remains subject to all other provisions of the State Plan. The legal fees claimed by the NF must be supported by adequate, detailed, and verifiable documentation.

This emergency regulation is intended to eliminate the incentive to indiscriminately file appeals and add to appeals issues that are not substantive. The advantage to the public's welfare is that this regulation will permit the reimbursement of legal fees that are fair and equitable but

Emergency Regulations

will discourage the filing of appeals that are not reasonable. This action will free up health care dollars for expenditure on services related to patient care. The regulation will not have an impact on the delivery of services.

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 (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, 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 July 1, 1995, effective date established by the General Assembly.

8. NEED FOR EMERGENCY ACTION: The Code § 9-6.14:4.1(C)(5) provides for regulations which an agency finds are necessitated by an emergency situation. To enable the Director, as approved by the Board of Medical Assistance Services, to comply with Item 396(E)(13), he must be permitted to adopt this emergency regulation and initiate the APA's Article 2 process. This issue qualifies as an emergency regulation as provided for in § 9-6.14:4.1(C)(5)(ii), because the Appropriation Act requires that this regulation be effective within 280 days from the enactment of the law or regulation. As such, this regulation may be adopted without public comment with the prior approval of the Governor. Since this emergency regulation will be effective for no more than 12 months and the Director wishes to continue regulating the subject entities, the Department is initiating the Administrative Process Act Article 2 procedures.

9. FISCAL/BUDGETARY IMPACT: This regulation potentially affects all 270 nursing facilities that are enrolled as providers with DMAS. NFs determine for themselves whether or not to initiate an appeal of the Department's review and audit of the submitted cost reports. DMAS receives approximately 60 appeals per year and approximately 90% of these initiated appeals are ruled in favor of the Commonwealth. DMAS has experienced an increase of appeals since 1990 with providers appealing numerous issues of small dollar-value and issues where the possibility of success is questionable. These actions are the result of NF providers determining that there is no harm in appealing since the Department bears the financial burdens.

The 1995 Appropriations Act required these regulations be adopted and reduced DMAS' FY '96 appropriations by (\$200,000) GF and (\$200,000) NGF to reflect the savings incurred. Similar savings will continue in years beyond FY '96.

There are no localities which are uniquely affected by these regulations as they apply statewide.

10. RECOMMENDATION: Recommend approval of this request to adopt this emergency regulation to become effective upon July 1, 1995, consistent with the 1995 Appropriations Act. 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. Without an effective emergency regulation, the Department lacks the authority to deny payment of legal fees which result from NF providers' appeals on which the providers' do not substantially prevail on the merit.

11. REGULATIONS AVAILABILITY and PLACE TO SEND WRITTEN COMMENTS: These regulations are available from the Department of Medical Assistance Services, Division of Policy and Research, 600 East Broad Street, Suite 1300, Richmond, VA, 23219, (804) 371 - 8850. Written comments about these regulations may be sent to the same address and are available for viewing by the public.

12. APPROVAL SOUGHT FOR 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 460-03-4.1940:1. Nursing Home Payment System (Legal Fees for Nursing Facility Appeals).

PART III. APPEALS.

§ 3.1. Dispute resolution for nonstate operated nursing facilities.

A. NF's have the right to appeal the DMAS's interpretation and application of state and federal Medicaid and applicable Medicare principles of reimbursement in accordance with the Administrative Process Act, § 9-6.14.1 et seq. and § 32.1-325.1 of the Code of Virginia.

B. Nonappealable issues.

1. The use of state and federal Medicaid and applicable Medicare principles of reimbursement.

2. The organization of participating NF's into peer groups according to location as a proxy for cost variation across facilities with similar operating characteristics. The use of individual ceilings as a proxy for determining efficient operation within each peer group.

3. Calculation of the initial peer group ceilings using the most recent cost settled data available to DMAS that reflects NF operating costs inflated to September 30, 1990.

4. The use of the moving average of the Skilled Nursing Facility market basket of routine service costs, as developed by Data Resources, Incorporated, adjusted for Virginia, as the prospective escalator.

5. The establishment of separate ceilings for direct operating costs and indirect operating costs.

6. The use of Service Intensity Indexes to identify the resource needs of given NFs patient mix relative to the needs present in other NFs.

7. The development of Service Intensity Indexes based on:

- a. Determination of resource indexes for each patient class that measures relative resource cost.
- b. Determination of each NF's average relative resource cost index across all patients.
- c. Standardizing the average relative resource cost indexes of each NF across all NF's.

8. The use of the DMAS Long Term Care Information System (LTCIS), assessment form (currently DMAS-95), Virginia Center on Aging Study, the State of Maryland Time and Motion Study of the Provision of Nursing Service in Long Term Care Facilities, and the KPMG Peat Marwick Survey of Virginia long-term care NF's nursing wages to determine the patient class system and resource indexes for each patient class.

9. The establishment of payment rates based on service intensity indexes.

§ 3.2. Conditions for appeal.

An appeal shall not be heard until the following conditions are met:

1. Where appeals result from desk or field audit adjustments, the provider shall have received a notification of program reimbursement (NPR) in writing from the DMAS.
2. Any and all moneys due to DMAS shall be paid in full, unless a repayment plan has been agreed to by the Director of the Division of Cost Settlement and Audit.
3. All first level appeal requests shall be filed in writing with the DMAS within 90 business days following the date of a DMAS notice of program reimbursement that adjustments have been made to a specific cost report.

§ 3.3. Appeal procedure.

A. There shall be two levels of administrative appeal.

B. Informal appeals shall be decided by the Director of the Division of Cost Settlement and Audit after an informal fact finding conference is held. The decision of the Director of Cost Settlement and Audit shall be sent in writing to the provider within 90 business days following conclusion of the informal fact finding conference.

C. If the provider disagrees with such initial decision the provider may, at its discretion, file a notice of appeal to the Director of the DMAS. Such notice shall be in writing and filed within 30 business days of the date of the initial decision.

D. Within 30 business days of the date of such notice of appeal, the director shall appoint a hearing officer to conduct the proceedings, to review the issues and the evidence presented, and to make a written recommendation.

E. The director shall notify the provider of his final decision within 30 business days of the date of the appointed hearing officer's written recommendation, or after the parties have filed exceptions to the recommendations, whichever is later.

F. The director's final written decision shall conclude the provider's administrative appeal.

§ 3.4. Formal hearing procedures.

Formal hearing procedures, as developed by DMAS, shall control the conduct of the formal administrative proceedings.

§ 3.5. Appeals time frames.

Appeal time frames noted throughout this section may be extended for the following reasons:

A. The provider submits a written request prior to the due date requesting an extension for good cause and the DMAS approves the extension.

B. Delays on the part of the NF documented by the DMAS shall automatically extend DMAS's time frame to the extent of the time delayed.

C. Extensions of time frames shall be granted to the DMAS for good cause shown.

D. When appeals for multiple years are submitted by a NF or a chain organization or common owners are coordinating appeals for more than one NF, the time frames shall be reasonably extended for the benefit of the DMAS.

E. Disputes relating to the time lines established in § 3.3 B or to the grant of extensions to the DMAS shall be resolved by application to the Director of the DMAS or his designee.

§ 3.6. Dispute resolution for state-operated NFs.

A. Definitions.

"DMAS" means the Department of Medical Assistance Services.

"Division director" means the director of a division of DMAS.

"State-operated provider" means a provider of Medicaid services which is enrolled in the Medicaid program and operated by the Commonwealth of Virginia.

B. Right to request reconsideration.

1. A state-operated provider shall have the right to request a reconsideration for any issue which would be otherwise administratively appealable under the State Plan by a nonstate operated provider. This shall be the sole procedure available to state-operated providers.

2. The appropriate DMAS division must receive the reconsideration request within 30 business days after the date of a DMAS Notice of Amount of Program Reimbursement, notice of proposed action, findings letter, or other DMAS notice giving rise to a dispute.

C. Informal review. The state-operated provider shall submit to the appropriate DMAS division written information specifying the nature of the dispute and the relief sought. If a reimbursement adjustment is sought, the written information must include the nature of the adjustment sought; the amount of the adjustment sought; and the reasons for seeking the adjustment. The division director or his designee shall review this information, requesting additional information as necessary. If either party so requests, they may meet to

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discuss a resolution. Any designee shall then recommend to the division director whether relief is appropriate in accordance with applicable law and regulations.

D. Division director action. The division director shall consider any recommendation of his designee and shall render a decision.

E. DMAS director review. A state-operated provider may, within 30 business days after the date of the informal review decision of the division director, request that the DMAS Director or his designee review the decision of the division director. The DMAS Director shall have the authority to take whatever measures he deems appropriate to resolve the dispute.

F. Secretarial review. If the preceding steps do not resolve the dispute to the satisfaction of the state-operated provider, within 30 business days after the date of the decision of the DMAS Director, the provider may request the DMAS director to refer the matter to the Secretary of Health and Human Resources and any other cabinet secretary as appropriate. Any determination by such secretary or secretaries shall be final.

§ 3.7. Reimbursement of legal fees associated with appeals having substantial merit.

A. *The Department of Medical Assistance Services shall reimburse a nursing facility for reasonable and necessary legal fees associated with an informal or formal appeal brought pursuant to the Administrative Process Act, only if the nursing facility substantially prevails on the merit of the appeal. The term "substantially prevails" is defined as being successful on more than 50% of the issues appealed and on more than 50% of the amount under appeal. The reimbursement of legal fees remains subject to the State Plan for Medical Assistance and all existing ceilings. Any legal fees claimed must be supported by adequate, detailed, and verifiable documentation.*

B. *Subject to the requirements of Paragraph A above, the legal fees will be included in the calculation of total allowable costs in the fiscal year the appeal process is concluded and Medicaid will reimburse the NF for its proportionate share.*

VA.R. Doc. No. R95-550; Filed June 7, 1995, 12:15 p.m.

DEPARTMENT OF SOCIAL SERVICES (STATE BOARD OF)

Title of Regulation: VR 615-01-57. The Virginia Independence Program.

Statutory Authority: § 63.1-25 of the Code of Virginia and the fourth enactment of Chapter 450 of the 1995 Acts of Assembly.

Effective Dates: July 1, 1995, contingent upon receipt of federal waivers, through June 30, 1996.

BACKGROUND

Action was taken by the 1995 session of the General Assembly to initiate welfare reform in Virginia. HB 2001 amends the Code of Virginia in Section 63.1-105, as currently

effective and as it may become effective, Section 63.1-105.1, Sections 63.11-133.41 through 63.1-133.55, and Section 63.1-251 of the Code of Virginia, and adds sections numbered 63.1-105.3 through 63.1-105.7, relating to the Aid to Families with Dependent Children (AFDC) Program and the Virginia Independence Program (VIP). The Department of Social Services is required to promulgate regulations governing the administration of public assistance programs. The emergency regulations incorporate the Virginia Independence Program (VIP) into the AFDC Program and establish the Virginia Initiative for Employment Not Welfare (VIEW) which emphasizes work and personal responsibility to reduce long-term dependence on welfare programs, such as AFDC, Medicaid, and food stamps.

NEED FOR EMERGENCY ACTION

Section 9-6.14.4.1(C)(5) provides for regulations which an agency finds are necessitated by an emergency situation. This regulation qualifies as an emergency regulation as provided in Section 9-6.14.4.1(C)(5)(ii) because the enabling state legislation requires that the law become effective within 280 days from enactment. The department will initiate action to develop final regulations as required by the Administrative Process Act during the 12-month period in which the emergency regulation is in effect.

FEDERAL WAIVER REQUEST

Federal waivers to current AFDC, Medicaid, and Food Stamp Program requirements have been requested to allow the state to implement the emergency regulations.

AUTHORITY TO ACT

The Code of Virginia, Section 63.1-25, grants to the Board of Social Services the authority to promulgate rules and regulations necessary for the operation of public assistance programs in Virginia. On June 5, 1995, the Board approved the Department's proposal to amend the Aid to Families with Dependent Children, Medicaid, and Food Stamp programs to incorporate the provisions of HB 2001.

REQUEST

The Governor is hereby requested to approve this agency's adoption of the emergency regulation entitled "The Virginia Independence Program." Approval is necessary in order to implement the revised eligibility and work requirements effective July 1, 1995, to the extent permitted under federal waivers.

/s/ Carol A. Brunty
Commissioner
Date: June 5, 1995

VR 615-01-57. The Virginia Independence Program.

These regulations shall be enforced by the local social service departments or the Virginia Department of Social Services on July 1, 1995, the effective date of the statute. However, those provisions which require approval of federal waivers shall be enforced after, and to the extent of, approval of such waivers by the Secretary of Health and Human Services.

PART I. DEFINITIONS.

§ 1.1. Definitions.

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

"Adult portion" means the AFDC amount paid on behalf of the parent or other caretaker-relative with whom the AFDC child resides, including a minor parent. This amount is the difference in the standard of assistance for a family size which includes the adult and the standard of assistance for a family size of one less person.

"Aid to Families with Dependent Children Program" or "AFDC" means the program authorized in Section 406 of the Social Security Act and administered by the Virginia Department of Social Services, through which a relative can receive monthly cash assistance for the support of his eligible children.

"AFDC-Foster Care" means a federal program authorized under Section 472 of the Social Security Act and administered by the Virginia Department of Social Services, which provides financial assistance on behalf of qualifying children.

"Aid to Families with Dependent Children-Unemployed Parent" or "AFDC-UP" means the program authorized in Section 407 of the Social Security Act and administered by the Virginia Department of Social Services, which provides aid to families with dependent children who are deprived of parental support or care by reason of the unemployment of the parent who is the principal wage earner.

"Agreement" means the written individualized Agreement of Personal Responsibility required by Code of Virginia § 63.1-133.49.

"Allotment" means the monthly food stamp benefit given to a household.

"Applicant" means a person who has applied for AFDC or AFDC-UP benefits and the disposition of the application has not yet been determined.

"Assistance unit" means those persons who have been determined categorically and financially eligible to receive assistance.

"Caretaker-relative" means the natural or adoptive parent or other relative, as specified in 45 Code of Federal Regulations, § 233.90(c)(1)(v), who is responsible for supervision and care of the needy child.

"Case management" means the process of assessing, coordinating, monitoring, delivering and/or brokering activities and services necessary for VIEW participants to enter employment or employment-related activities as quickly as possible.

"Case management services" means services which include, but are not limited to, job development and job placement, community work experience, education, skills training, and support services.

"Case manager" means the worker designated by the local department of social services, a private-sector contractor or a private community-based organization including non-profit entities, churches, or voluntary organizations that provide case management services.

"Child day care" means those services for which a participant is eligible pursuant to Child Day Care Services Policy.

"Child day care services/program" means a regularly operating service arrangement for children where, during the absence of a parent or guardian, a person or organization has agreed to assume responsibility for the supervision, protection, and well-being of children under the age of 13 (or children up to 18 years of age if they are physically or mentally incapable of caring for themselves or subject to court supervision) for less than 24-hour period.

"Community work experience" means work for benefits in a public or non-profit agency.

"Division of Child Support Enforcement" or "DCSE" means that division of the Virginia Department of Social Services which is responsible under Title IV-D of the Social Security Act to locate noncustodial parents, establish paternity, establish child support and health care orders, enforce payment of delinquent support, and collect and distribute support payments.

"Department" means the Virginia Department of Social Services.

"Diversionsary cash assistance" means a one-time lump sum payment to an individual or third-party vendor to prevent long-term receipt of AFDC.

"Family" means an AFDC assistance unit.

"Food Stamp Program" means the program administered through the Virginia Department of Social Services through which a household can receive food stamps with which to purchase food products.

"Full Employment Program" or "FEP" means full-time subsidized, training-oriented, employment which replaces the AFDC and food stamp benefits of a participant. This component of VIEW is designed to train the recipient for a specific job, increase his self-sufficiency and improve his competitiveness in the labor market.

"Full-time unsubsidized employment" means employment which is considered by the employer to be full-time, but in no case less than 30 hours per week, and for which no JOBS, VIEW, AFDC, or food stamp funds are used to pay the individual's salary.

"Grant" means the monthly AFDC benefit payment.

"Hardship exceptions" means prescribed reasons which, if applicable, would allow an extension of receipt of AFDC benefits.

"He" means a male or female as applicable.

"In loco parentis" means an adult relative of the applicant who is a brother, sister, uncle, aunt, nephew, niece, first cousin, and those of preceding generations as denoted by

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prefixes of grand, great, or great great; stepmother, stepfather, stepbrother, stepsister; a relative by adoption following entry of the interlocutory order; the spouse of any person listed previously; any relative by blood, marriage, or adoption who is within the fifth degree of relationship; legal guardian; or other adult who is acting in the place of a parent.

"Incapacitated" means a medically verified condition which renders an individual temporarily unable to work.

"Job Opportunities and Basic Skills Training Program (JOBS)" means the program authorized by Title IV-F of the Social Security Act. This program provides education, training and work experience to enhance employment opportunities for AFDC recipients who are not exempt from participation.

"Job finding" means identification of available jobs.

"Job matching" means matching a participant's minimum skills or prior work experience to available job openings.

"Job placement" means placing a participant in an unsubsidized or subsidized job. Job placement is the result of job finding and job matching.

"Job search" means a structured, time-limited period in which the participant is required to search for and obtain employment. In order to complete the job search, the participant is required to search/find and apply for a set number of jobs.

"Job skills training" means training in technical job skills or required knowledge in a specific occupational area in the labor market.

"Local agency" or "local department" means any one of the local social services or welfare agencies throughout the Commonwealth which administers the VIP program.

"Minor parent" means any parent under 18 years of age who is receiving AFDC for his child.

"On the job training" means training which is provided by an employer during routine performance of a job.

"Parent" means a mother or father, married or unmarried, natural, or adoptive following entry of an interlocutory order. The parent may be a minor parent.

"Participant" means an AFDC or AFDC-UP recipient who is participating in the VIEW program.

"Participating family" means an assistance unit including a parent who participates in the Virginia Initiative for Employment Not Welfare (VIEW) Program.

"Part-time unsubsidized employment" means employment of at least eight hours but less than 30 hours per week and for which no JOBS, VIEW, AFDC, or food stamp funds are used to pay the individual's salary.

"Post-secondary education" means formal instruction at an institution of higher education or vocational school leading to the attainment of a certificate, an associate degree, or a baccalaureate degree.

"Recipient" means an individual who is presently receiving an AFDC assistance payment.

"Sanction" means to reduce or suspend a participant's AFDC grant and/or food stamp allotment for noncompliance with these regulations and/or the statute.

"School" means (i) any public school from kindergarten through grade 12 operated under the authority of any locality within this Commonwealth; or (ii) any private or parochial school that offers instruction at any level or grade from kindergarten through grade 12.

"Support services" means services such as child care or transportation provided to program participants to enable the participant to work or to receive training or education which are intended to lead to employment.

"Time limitations" means a specified period of time, under the statute, to receive AFDC.

"Transitional support services" means child care, transportation or medical assistance provided to working participants whose AFDC has been terminated either voluntarily although still eligible for AFDC or involuntarily due to time limitations.

"Truant" means a student who is habitually absent or chronically truant as described in § 22.1-254, § 22.1-255, and § 22.1-267.

"Unsubsidized employment" means employment in which no government funds are used to subsidize directly the wages earned by a participant.

"Virginia Initiative for Employment Not Welfare" or "VIEW" means the Job Opportunities and Basic Skills Training Program as implemented in the Commonwealth.

"Virginia Independence Program" or "VIP" means the program in the Commonwealth of Virginia which is made up of the AFDC Program and the Virginia Initiative for Employment Not Welfare.

"Work activity" means participation in unsubsidized employment, FEP, part-time work, community work experience, or on the job training.

PART II.

ELIGIBILITY REQUIREMENTS.

§ 2.1. Noncooperation in identifying the parent [Code of Virginia § 63.1-105.1.]

As a condition of eligibility, the applicant must identify the parents of the child for whom aid is requested at the time of application. If the applicant is not certain of the child's paternity, she shall identify all individuals with whom the mother had sexual intercourse who may be the father.

§ 2.2. Noncooperation in establishing paternity [Code of Virginia § 63.1-105.1.]

As a condition of eligibility, each applicant or recipient of AFDC shall cooperate, pursuant to 45 CFR 232.12, with the Division of Child Support Enforcement (DCSE) and the local department of social services in establishing paternity.

A. If the applicant or recipient does not disclose any identifying information regarding the father, including, but not limited to the following, the adult portion of the grant shall be

denied or suspended until the individual has disclosed this information: name, address or location of residence, known or suspected places of employment, date of birth, mother's maiden name, relatives, places of social contact, schools attended, or banking institutions utilized.

B. If, after six months of receipt of AFDC, paternity has not been established and the local department determines that the recipient is not cooperating in establishing paternity, the local department shall suspend the entire grant for a minimum of one month and until cooperation has been achieved. An individual whose AFDC case was suspended due to such noncooperation must cooperate and file a new application for AFDC to receive further benefits.

§ 2.3. Diversionary assistance program eligibility criteria [Code of Virginia § 63.1-105.3.]

A. An assistance unit shall be eligible to receive diversionary cash assistance if:

1. Verification is provided to the local department of social services that the assistance unit has a temporary loss of income or delay in starting to receive income resulting in an emergency; and
2. The assistance unit meets AFDC requirements of the Code of Virginia specified in § 63.1-105; and
3. The local department of social services determines that diversionary assistance will resolve the emergency.

B. The amount of assistance provided shall be up to the maximum AFDC amount for 120 days that the family would otherwise be eligible to receive. The amount of the payment is based on immediate needs of the applicant. Local agencies shall strive to provide the most cost-effective appropriate solution to the one-time emergency.

C. If an assistance unit receives a diversionary assistance payment, all assistance unit members shall be ineligible for AFDC for 1.33 times the number of days for which assistance is granted, beginning with the date that the diversionary assistance is issued.

D. An assistance unit shall be eligible to receive diversionary assistance once in a sixty month period.

E. Receipt of diversionary assistance is voluntary.

F. Local social services agencies shall determine eligibility for diversionary assistance within five working days of the receipt of the final verification that substantiates eligibility, or within 45 days of the date of the receipt of the signed application, whichever occurs first.

§ 2.4. School attendance [Code of Virginia § 63.1-105.4.]

A. The Virginia Department of Social Services shall develop procedures with the Department of Education to receive notification from local school divisions of any student who is truant. If notification is received from another source, the local department shall verify such truancy by contacting the school.

B. When verified by the school of such truancy, the local social services department shall send written notice to the recipient advising them that they are in jeopardy of losing

eligibility for AFDC benefits. The recipient must contact the local department within five days of the notice to cooperate in developing a plan to achieve compliance with compulsory school attendance laws. The notice must also specify that failure to contact the local department will result in the truant recipient's ineligibility for AFDC due to noncooperation.

C. If the local department of social services denies or terminates AFDC for non-compliance, an applicant or recipient shall notify the local department in writing of his compliance with this section and file a new application for AFDC. The local department shall verify compliance by contacting the school.

§ 2.5. Minor parent residency requirement [Code of Virginia § 63.1-105.6.]

A. To be eligible to receive AFDC, a minor parent shall reside in the home maintained by his parent or person standing in loco parentis unless he meets the good cause exception outlined in subsection B of this section. The local department shall ensure that the following priority order for the minor parent's living arrangements is enforced: in a home maintained by a parent, other adult relative, legal guardian, or other adult acting in place of a parent.

B. The minor parent residency requirement shall not apply if the local department of social services determines, by clear and convincing evidence, that the physical or emotional health or safety of the minor parent or his dependent child would be jeopardized if the minor parent and dependent lived in the same residence with the minor parent's parent or person standing in loco parentis. Such a claim shall be corroborated by evidence such as court, medical, criminal, child protective services, psychological, or law enforcement records.

C. The local department of social services shall maintain a list of available housing to be used to refer a minor parent who is in need of an adult-supervised supportive living arrangement. If the local department of social services makes a referral, it will be deemed that the local department has made diligent efforts to locate such housing.

D. As a condition of eligibility, the minor parent shall reside at the local housing to which he is referred by the local department.

§ 2.6. Limitation on AFDC benefits [Code of Virginia § 63.1-105.7.]

A. A recipient family is not entitled to an increase in AFDC benefits if the mother of such recipient family gives birth to an additional child during the period of the family's eligibility for financial assistance, whether or not the family is receiving AFDC.

B. The provision to eliminate the increased benefit shall apply to a child born to or adopted by a family whose AFDC benefits are terminated due to a refusal to sign the Agreement of Personal Responsibility or otherwise comply with VIP's requirements, if the provision would have applied if the family were receiving AFDC benefits.

C. A recipient family in which the mother gives birth to a child within ten months after the family begins to receive

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AFDC is not entitled to AFDC benefits for such child if the mother has previously received notice of the provisions of § 63.1-105.7 and voluntarily closed her AFDC case while still eligible to receive AFDC financial assistance.

D. Applicants for AFDC financial assistance shall receive notice of the provisions of this section at the time of application. Recipients of AFDC financial assistance shall receive notice of the provisions of this section within sixty days of the effective date of regulations implementing this section. At application or redetermination, such applicant or recipient shall sign a notification acknowledging that they have read and understand the notice.

E. The provisions of this section shall not apply to a child born or adopted, during the 10 months following the implementation effective date nor to a child born or adopted, during the ten full calendar months following the month in which the initial assistance check is issued.

F. The provisions of this section shall apply equally to recipient families who adopt a child, except that the provision shall be applied using the date of entry of the interlocutory order instead of the child's birthdate.

PART III.

VIRGINIA INITIATIVE FOR EMPLOYMENT NOT WELFARE (VIEW).

§ 3.1. Participant eligibility [Code of Virginia § 63.1-133.43.]

A. Individuals unable to participate because of a temporary medical condition that prevents entry into employment or training, as determined by a physician, must provide to the local department a written statement from such physician to specify that he is incapacitated, the nature and scope of the incapacity, and the duration of the incapacity. The worker must re-evaluate the participant's incapacity at the time prescribed by the medical statement or every 60 days, whichever comes first. The recipient must provide verification that he continues to be incapacitated.

B. Any individual who is the sole caregiver of another member of the household who is incapacitated, and whose presence is essential for the care of the other member on a substantially continuous basis, shall be exempt from participation in VIEW. Incapacity is determined by receipt of Social Security Disability Benefits or Supplemental Security Income. The sole other condition under which an individual may be determined incapacitated is by a written medical statement from a physician.

C. AFDC recipients who meet an exemption from participation in VIEW, may volunteer for the program.

§ 3.2. Services [Code of Virginia § 63.1-133.46.]

A. The participant shall have the primary responsibility to arrange transportation in order to be employed or participate in activities required by the Agreement of Personal Responsibility. Transportation shall be provided only when the participant is unable to make the necessary arrangements.

B. The local department shall provide transitional medical assistance, in accordance with the Department of Medical Assistant Services State Plan and Regulations.

C. The local departments may provide those services itemized in Code of Virginia § 63.1-133.46C.

§ 3.3. VIEW activities [Code of Virginia § 63.1-133.49.]

A. VIEW recognizes that parents have the obligation to support their children through work/employment.

B. VIEW shall recognize clearly defined responsibilities and obligations on the part of public assistance recipients. VIEW shall require an Agreement of Personal Responsibility and the obligation to seek and obtain employment. Refusal to sign the Agreement of Personal Responsibility shall result in denial or termination of AFDC. The Agreement of Personal Responsibility shall be written for each non-exempt participant specifying, among other applicable requirements, the following:

1. The participant's obligations and responsibilities:

- a. That it is the participant's responsibility to seek employment to support his/her own family.
- b. That it is the participant's responsibility to participate in assignments made by the case manager.
- c. That it is the participant's responsibility to notify the case manager of any change in the participant's circumstances which would impact the participant's ability to satisfactorily participate in the program.
- d. That it is the participant's responsibility to accept a job offer. Refusal to accept a job offer will result in the loss of the participant household's AFDC and Food Stamps.
- e. That it is the participant's responsibility to arrange and find transportation and day care. The case manager will assist the participant in those instances in which the participant has tried but has been unable to find transportation.

2. Explanation of the two year time limit;

C. Modification of the Agreement of Personal Responsibility shall not impact or change the two year time limit for receipt of AFDC benefits.

D. A VIEW participant who does not meet an exemption and who is not employed in unsubsidized employment within ninety days of receipt of AFDC shall be required to participate in a work activity. The department shall ensure that participants are assigned to one of the following employment categories in priority order not less than 90 days after AFDC eligibility determination:

1. Unsubsidized private sector employment (full, part-time or temporary) is the preferred employment category. A participant shall be required to accept any offers of suitable employment as defined in § 60.2-618 of the Virginia Unemployment Compensation Act;
2. Subsidized full-time employment as follows:
 - a. The department shall conduct a work activity which shall be known as the Full Employment Program (FEP), which shall replace AFDC and food stamp benefits with subsidized employment.

b. The local department, employer and the full employment participant shall sign a written agreement. At the expiration of this Full Employment agreement or when the participant leaves FEP, he will be reassessed and a modified Agreement of Personal Responsibility will be developed to reassign the participant to an appropriate employment category.

c. The employer is reimbursed for the wages paid to the participant up to the monthly combined value of the participant's AFDC and Food Stamps.

(1) The employer subsidy will be based on the actual hours the participant works.

(2) The monthly value of the participant's AFDC and food stamp benefits will be based on the benefits received during the month prior to the month the participant is assigned to a Full Employment Program placement.

3. Community work experience

a. If the participant cannot be placed into an unsubsidized job or Full Employment Program, the participant must be placed into community work experience. The department and local departments shall expand the community work experience program authorized under the Job Opportunity and Basic Skills Training Program (JOBS) to include job placement in community work experience programs which serve a useful public purpose as provided in 482 (f) of the Social Security Act.

b. The department and local departments shall work with other state, regional and local agencies and governments in developing job placements. Placements shall be selected to provide skills that will make the participant more employable and serve a public function. Participation in community work experience shall be for an initial period of six months. Program participants shall not displace regular workers.

c. At the expiration of the community work experience assignment or when the participant leaves community work experience, he will be reassessed and a modified Agreement of Personal Responsibility will be developed to reassign the participant to an appropriate employment category.

d. There shall be no sick leave benefit attached to this component since participants work in exchange for their AFDC and food stamp benefits. Participants who are ill or incapacitated will continue to receive their benefits.

E. Other VIEW Activities in Conjunction with Work:

1. Education

a. Education may only be provided in conjunction with work related activities during the participant's two year time period.

(1) Only eight hours per week of community work experience hours can be provided for educational

activities during the participant's initial six month participation in community work experience. After the six months of participation in community work experience, the number of hours required in the work activity can be reduced to allow participation in education to further participant employability.

(2) Participants who enroll into education or training programs prior to coming in VIEW shall be required to meet the requirements of the program.

b. Post-secondary education

Participants assigned to post-secondary education should have demonstrated the capability to successfully complete the educational activity in the prescribed time period in an occupational area for which there is demand in the community.

2. Job Skills Training

Job skills training may only be provided in conjunction with work-related activities during the participant's two-year time period. The choice of occupational skills training offered will vary in each jurisdiction depending upon local labor market conditions. However, skills training must be related to the types of jobs which are available or are likely to become available in the community.

§ 3.4. Sanctions [Code of Virginia § 63.1-133.49.]

Local departments of social services shall be authorized to sanction participants up to the full amount of the AFDC grant and food stamp allotment for noncompliance, without good cause as defined by the JOBS State Plan, as follows:

A. A participant assigned to the Full Employment Program who does not work the required hours will only be paid for the actual hours worked. Participants that are terminated from FEP by the employer due to problems with attendance and/or performance will be sanctioned the full amount of the AFDC and Food Stamp benefits.

B. A recipient assigned to VIEW who is determined to be in noncompliance with the VIEW Program shall be sanctioned as follows:

1. For the first offense, the full amount of AFDC and food stamp benefits for the family shall be suspended for at least one calendar month or until the individual complies with the Program requirements, whichever is longer.

2. For the second offense, the full amount of AFDC and food stamp benefits for the family shall be suspended for at least three calendar months or until the individual complies with the Program requirements, whichever is longer.

3. For the third or subsequent offenses, the full amount of AFDC and food stamp benefits for the family shall be suspended for at least six calendar months or until the individual complies with the Program requirements, whichever is longer.

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§ 3.5. Hardship exceptions [Code of Virginia § 63.1-133.51.]

A. In certain circumstances, hardship exceptions may be made to the time limitations for receipt of AFDC benefits. If the participant requests a hardship exception, the local department shall make an evaluation of participation while in VIEW. This evaluation will determine if a hardship exception may be granted to allow the participant to continue receiving AFDC and to continue to participate in VIEW.

A participant is not eligible for a hardship exception unless he has complied with the requirements of the Program, including, but not limited to, satisfactorily participating in assigned program activities, not having been sanctioned more than once during the two year period for failing to comply with the requirements of the program, and not leaving a job, without good cause as defined by the JOBS State Plan, at any time during the program.

B. If the above criteria are met, a hardship exception may be granted if one of the following conditions exists:

1. If the participant has been actively seeking employment by engaging in job-seeking activities required pursuant to § 60.2-612 and is unable to find employment. The local department may extend benefits for up to three months to allow the participant to find employment.

2. If the unemployment rate in the participant's locality for the two most recent quarters for which data is available from the Virginia Employment Commission prior to the individual's two year time limit elapsed was 10% or greater. In order to qualify for this exception the participant must also be actively seeking employment as defined in subsection 1 of this section. The local department may petition the Commissioner to extend benefits for up to one year to allow the participant to find employment.

3. If the program participant loses his job as a result of factors unrelated to his job performance. Factors unrelated to job performance are defined as those situations in which the Virginia Employment Commission would determine that the individual would be eligible for unemployment compensation if the participant had worked sufficient hours to qualify. The local department may extend benefits for up to three months to allow the participant to find employment.

4. If extension of benefits for up to one year will enable a participant to continued employment-related education or training and the participant had been making satisfactory progress per program requirements.

C. Participants granted a hardship exception under subsections B2 and B4 shall be re-evaluated at least every 90 days to determine if a basis for the hardship exception continues to exist. If a hardship exception is granted, the participant must continue in the program and work activities.

PART IV

§ 4.1. Appeals process [Code of Virginia § 63.1-133.53.]

A participant aggrieved by the decision of a local board granting, denying, changing, or discontinuing assistance may appeal such decision pursuant to § 63.1-116. A participant cannot appeal the provisions of the Agreement of Personal Responsibility which was mutually developed by the participant and the local agency.

I certify that this regulation is full, true and correctly dated.

/s/ Carol A. Brunty
Commissioner
Date: June 5, 1995

Approved by:

/s/ Kay C. James
Secretary of Health and Human Resources
Date: June 5, 1995

Approved by:

/s/ George Allen, Governor
Date: June 5, 1995

Filed With:

/s/ Jane D. Chaffin for
Joan W. Smith, Registrar
Date: June 7, 1995

VA.R. Doc. No. R95-551; Filed June 7, 1995, 12:07 p.m.

STATE LOTTERY DEPARTMENT

DIRECTOR'S ORDER NUMBER NINE (95)

VIRGINIA'S INSTANT GAME LOTTERY 301, "BINGO," END OF GAME.

In accordance with the authority granted by Section 58.1-4006A of the Code of Virginia, I hereby give notice that Virginia's Instant Game 301, "Bingo," will officially end at midnight on Thursday, June 1, 1995. The last day for lottery retailers to return for credit unsold tickets from "Bingo" will be Thursday, June 22, 1995. The last day to redeem winning tickets for "Bingo" will be Tuesday, November 28, 1995, 180 days from the declared official end of the game. Claims for winning tickets from "Bingo" will not be accepted after that date. Claims which are mailed and received in an envelope bearing a United States Postal Service postmark of November 28, 1995, will be deemed to have been received on time. This notice amplifies and conforms to the duly adopted State Lottery Board regulations for the conduct of instant game lotteries.

This order is available for inspection and copying during normal business hours at the State Lottery Department headquarters, 900 East Main Street, Richmond, Virginia; and at each of the State Lottery Department regional offices. A copy may be requested by mail by writing to: Public Affairs Office, State Lottery Department, 900 East Main Street, Richmond, Virginia 23219.

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/ Penelope W. Kyle
Director
Date: May 3, 1995

VA.R. Doc. No. R95-533; Filed June 5, 1995, 12:02 p.m.

DIRECTOR'S ORDER NUMBER TEN (95)

"BONUS BINGO JAMAICA GETAWAY"; 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 "Bonus Bingo Jamaica Getaway" promotional game and drawing rules for the promotional events for Virginia's instant game lottery, "Bonus Bingo." The promotion will be conducted from Thursday, June 1 through Saturday, July 15, 1995. 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, 900 East Main Street, Richmond, Virginia, and at each of the State Lottery Department regional offices. A copy may be requested by mail by writing to: Public Affairs Division, State Lottery Department, 900 East Main Street, Richmond, Virginia 23219.

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/ Penelope W. Kyle
Director
Date: May 3, 1995

VA.R. Doc. No. R95-534; Filed June 5, 1995, 12:02 p.m.

DIRECTOR'S ORDER NUMBER ELEVEN (95)

VIRGINIA'S FORTY-NINTH INSTANT GAME LOTTERY; "HIGH ROLLER," 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 forty-ninth instant game lottery, "High Roller." 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, 900 East Main Street, Richmond, Virginia, and at each of the State Lottery Department regional offices. A copy may be requested by mail by writing to: Public Affairs Division, State Lottery Department, 900 East Main Street, Richmond, Virginia 23219.

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/ Penelope W. Kyle
Director
Date: May 16, 1995

VA.R. Doc. No. R95-535; Filed June 5, 1995, 12:02 p.m.

DIRECTOR'S ORDER NUMBER TWELVE (95)

VIRGINIA'S INSTANT GAME LOTTERY 303; "BONUS BINGO," 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 instant game lottery (Number 0303), "Bonus Bingo." 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, 900 East Main Street, Richmond, Virginia, and at each of the State Lottery Department regional offices. A copy may be requested by mail by writing to: Public Affairs Division, State Lottery Department, 900 East Main Street, Richmond, Virginia 23219.

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/ Penelope W. Kyle
Director
Date: May 31, 1995

VA.R. Doc. No. R95-536; Filed June 5, 1995, 12:02 p.m.

State Lottery Department

DIRECTOR'S ORDER NUMBER THIRTEEN (95)

"PICK 4 GREEN BALL PROMOTION," 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 "Pick 4 Green Ball Promotion" game rules for the Virginia Lottery Pick 4 promotional program to be conducted from Thursday, June 1, 1995 through Friday, June 30, 1995. 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, 900 East Main Street, Richmond, Virginia, and at each of the State Lottery Department regional offices. A copy may be requested by mail by writing to: Public Affairs Division, State Lottery Department, 900 East Main Street, Richmond, Virginia 23219.

This Director's Order becomes effective on the date of its signing and shall remain in full force and effect until July 31, 1995, unless amended or rescinded by further Director's Order.

/s/ Penelope W. Kyle

Director

Date: June 1, 1995

VA.R. Doc. No. R95-537; Filed June 5, 1995, 12:02 p.m.

DIRECTOR'S ORDER NUMBER FOURTEEN (95)

"\$UMMER FUN," VIRGINIA LOTTERY RETAILER SALES PROMOTIONAL PROGRAM RULES.

In accordance with the authority granted by Section 58.1-4006A of the Code of Virginia, I hereby promulgate the "\$ummer Fun," Virginia Lottery Retailer Sales Promotional Program Rules for the lottery retailer incentive program which will be conducted from Monday, July 3, 1995 through Wednesday, September 20, 1995. 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, 900 East Main Street, Richmond, Virginia, and at each of the State Lottery Department regional offices. A copy may be requested by mail by writing to: Public Affairs Division, State Lottery Department, 900 East Main Street, Richmond, Virginia 23219.

This Director's Order becomes effective on the date of its signing and shall remain in full force and effect until September 30, 1995, unless otherwise extended by the Director.

/s/ Penelope W. Kyle

Director

Date: May 31, 1995

VA.R. Doc. No. R95-538; Filed June 5, 1995, 12:02 p.m.

GOVERNOR

EXECUTIVE MEMORANDUM 2-95

PROVIDING FOR STATE EMPLOYEE APPEAL OF CERTAIN DECISIONS UNDER THE WORKFORCE REDUCTION PROGRAM

PURPOSE

The purpose of this Executive Memorandum is to establish an appeals process in which decisions to deny applications for voluntary separation from state employment under the Workforce Transition Act of 1995 (the "WTA") (§ 2.1-116.20 et seq. of the Code of Virginia) or the Executive Order Incentive Plan (the "Plan") created under Executive Order Number Thirty-eight (94) may be reviewed and either reaffirmed or reversed; in which any employee who was denied the opportunity to apply may have his or her application considered; and to direct each state agency head to ensure that all employees are fully aware of this appeals process so that they may avail themselves of it if they so wish.

GENERAL POLICY

Executive Order Number Forty-five (95) set forth certain directives implementing the WTA and the Plan. Executive Order Number Forty-five (95) further directed that applications for participation in the voluntary incentive program could be rejected only with the approval of the responsible Governor's Secretary and the concurrence of the Director of the Department of Planning and Budget. The Director of the Department of Personnel and Training has established criteria and guidelines for making these decisions. The objective of Executive Order Number Forty-five (95) was to maximize the number of viable voluntary separations from state government service and thereby to minimize or eliminate the need for layoffs.

APPLICABILITY

This Executive Memorandum applies to all Executive Branch agencies and institutions.

EFFECTIVE DATE

May 3, 1995.

REQUIREMENTS

I. Appeal of a Properly Filed Application

Any employee who submitted a timely application for voluntary separation under the WTA or Plan and whose application was denied may appeal that decision directly to the employee's agency head.

A. The appeal must be made in writing and postmarked or date-stamped no later than May 20, 1995, and must state the reason(s) why the employee believes the denial should be reversed.

B. The agency head shall have fifteen (15) days in which to review the appeal. Agencies will apply the criteria established by the Department of Personnel and Training and set forth in Section VI of the Administrative Procedures for the Voluntary Separation Program of the

WTA, and Section VI of the Policies and Procedures for the Incentive-Based Voluntary Separation Program under Executive Order Numbers Thirty-eight (94) and Forty-five (95). Upon consideration of the appeal, if the agency head determines that the decision to deny the application should be reversed, the agency head shall be authorized to accept the application and shall promptly notify the responsible Governor's Secretary and the Director of the Department of Planning and Budget.

C. If the agency head determines that the decision to deny the employee's application should not be reversed, the appeal shall be sent immediately to the Director of the Department of Employee Relations Counselors (DERC), who shall then consider the appeal.

D. The Director of DERC shall promptly deliver a recommendation to the responsible Governor's Secretary and the Director of the Department of Planning and Budget. Either the Secretary or the Director of the Department of Planning and Budget may reverse the original decision to deny the application; however, if both reaffirm the decision to deny, there shall be no further appeal.

E. If a decision to deny an application is reversed, the date of separation will be established by the Director of the Department of Personnel and Training.

II. Appeal of Denial of Permission to File an Application

Any eligible employee who (i) attempted to file an application in a timely manner and alleges he or she was denied the opportunity to apply, or (ii) alleges he or she was told, in advance, that his or her application would be denied, may appeal directly to the Director of DERC.

A. The appeal must be made in writing and postmarked or date-stamped no later than May 20, 1995, and must be accompanied by evidence or documentation supporting the employee's allegation that he or she was denied the opportunity to apply, or told in advance that his or her application would be denied.

B. The Director of DERC shall promptly consider the appeal.

C. If the Director of DERC determines that the employee, in fact, was denied the opportunity to apply or was told in advance that his or her application would be denied, she shall notify the agency head and employee of this determination. The employee shall then have seven (7) days in which to file an application.

D. The agency head shall then have fifteen (15) days in which to consider the application, which shall be handled in the same manner as outlined in Executive Order Number Forty-five (95) and the procedures established by the Department of Personnel and Training.

E. Any employee who is permitted to file an application under this section and whose request to participate is then denied, shall have the same right of appeal as set forth herein in Section I, except that the deadline for filing such an appeal shall be within three (3) business days following notification of the denial.

Governor

III. Grievances

Any grievance initiated challenging a WTA or Plan decision will be determined by the Deputy Director of DERC, who shall exercise this authority independently.

This Executive Memorandum shall remain in full force and effect unless rescinded or amended by further executive action.

/s/ George Allen
Governor

VA.R. Doc. No. R95-539; Filed June 6, 1995, 9:40 a.m.

EXECUTIVE MEMORANDUM 3-95

GOAL SETTING AND PERFORMANCE BUDGETING

Purpose

To provide guidelines for agencies to undertake an assessment of their activities examining elements such as the agency's role and purpose, its customer needs, organizational structure, current activities and how they are accomplished, and the critical issues facing the agency. The results of this assessment will form the basis for developing proposals for the 1996-98 biennial budget and improving overall agency management and accountability.

Applicability

All Executive Department agencies except institutions of higher education.

Effective Date

June 2, 1995.

Introduction

By virtue of the authority vested in me as Governor under Article V of the Constitution of Virginia and the laws of the Commonwealth, including but not limited to Chapter 5 of Title 2.1 of the Code of Virginia, and subject to my continuing and ultimate authority and responsibility to act in such matters, I hereby establish an initiative for goal setting and performance budgeting, which will examine the ability of the state agencies to respond effectively to the changes facing state government. The guidelines and responsibilities set out in this Executive Memorandum will govern this initiative.

Virginia has a longstanding tradition of excellence in the area of financial management. Virginians demand that public spending be undertaken to achieve the greatest value for each tax dollar spent. As state government conscientiously strives to meet this objective, it is increasingly challenged to improve its skills in allocating scarce resources to meet the needs of Virginia's citizens in the most effective way. This requires reexamining the role and structure of state government to discover ways to better serve Virginians.

The complexities of modern-day society challenge any organization or institution. The way in which an entity responds to change is critical to both its short- and long-term viability. Agencies must be willing to examine opportunities, build on strengths, foster innovation and creativity, and stress continual improvement if they are to meet the needs of

Virginia's citizens, the realities of shrinking resources, and the necessity to do more with less.

An assessment of Virginia state government is an ongoing process. Past priorities and missions must be reexamined not only in the context of today's needs, but also in light of tomorrow's expectations. Agencies must be customer-focused, results-oriented, and mission-driven. Today's well-informed citizens demand greater choice, increased customization, and quality. We must look toward relying more heavily on market mechanisms for resolving problems. Each agency must examine these factors to identify ways in which Virginia state government can become more creative, flexible, and entrepreneurial in responding to our citizens' needs.

The process outlined herein integrates planning and performance measurement with budgeting. This provides a framework for performance-based budgeting in which allocation of resources is based on agency achievement of established goals. The process of developing the 1996-98 budget will involve five major steps as follows.

Steps	General time frame
Governor issues general guidelines to agencies for the goal setting and performance budgeting process and specific guidance on policy and budget issues to Secretaries, who will communicate as needed to agencies	Early June
Agencies conduct assessments and meet with Governor's Office and Secretaries	June - September
Agencies develop budget decision packages including goals, objectives, strategies, and performance measures and * submit draft packages to Cabinet Secretary * submit final packages to DPB	August - September By October 2 By November 10
Secretaries and DPB review and analyze budget submissions	October - November
Governor makes final budget decisions and submits recommended budget to General Assembly	By December 1 December 20

Requirements

Governor's Office

1. The Governor will issue guidelines for use in implementing this process within the applicable Executive Branch agencies.
2. The Governor's Office and the responsible Secretary will meet with each agency to review the outcomes of the process and provide individual guidance.

Responsibilities of the Governor's Secretaries

1. Work with the Governor in developing any supplemental guidance for their respective agencies in carrying out their assessments.
2. Identify any specific issues that cross Secretarial lines and determine how these will be addressed.
3. Meet with agency management to disseminate and clarify guidelines and requirements.
4. Oversee and monitor implementation of the assessment process by all the applicable agencies within the Secretariat.
5. Review and approve all agency submissions generated through these activities.

Responsibilities of Affected Agency Heads

1. Designate agency staff that will participate in the process to ensure the broadest level of participation of agency employees.
2. Conduct the required activities in accordance with the guidelines provided with this memorandum and any guidance provided by the responsible Secretary.
3. Develop the materials and presentation of findings required by the guidelines.
4. Report on the outcomes to the Governor's Office and responsible Secretary, as required by the guidelines.
5. Develop the agency's 1996-98 budget proposals based on the guidance received from the Governor's Office and Secretary and the instructions issued by the Department of Planning and Budget.

Responsibilities of the Department of Planning and Budget

1. Develop the schedule for agency assessment meetings and notify each affected agency of the meeting date, time, and place.
2. Designate the appropriate DPB staff to attend the assessment meetings along with the Governor's Office and Cabinet Secretaries or their representatives.
3. Issue instructions to state agencies for developing the appropriate budget submissions for the 1996-98 biennium which support the achievement of the agency's identified goals.
4. Review the budget submissions and make recommendations to the Governor for inclusion in the Governor's budget to be submitted to the 1996 General Assembly.

This Executive Memorandum shall remain in full force and effect until December 20, 1995, unless superseded or rescinded by further executive action.

/s/ George Allen
Governor

VA.R. Doc. No. R95-540; Filed June 6, 1995, 9:40 a.m.

GOVERNOR'S COMMENTS ON PROPOSED REGULATIONS

(Required by § 9-6.12:9.1 of the Code of Virginia)

DEPARTMENT OF CORRECTIONS (BOARD OF)

Title of Regulation: VR 230-30-001. Minimum Standards for Jails and Lockups.

Governor's Comment:

I have reviewed this proposed regulation on a preliminary basis. While I reserve the right to take action authorized by the Administrative Process Act during the final adoption period, I have no objection to the proposed regulation based on the information and public comment currently available.

/s/ George Allen
Governor

Date: June 4, 1995

VA.R. Doc. No. R95-547; Filed June 7, 1995, 10:08 a.m.

BOARD OF OPTOMETRY

Title of Regulation: VR 510-01-1. Regulations of the Board of Optometry.

Governor's Comment:

I have reviewed this proposed regulation on a preliminary basis. While I reserve the right to take action authorized by the Administrative Process Act during the final adoption period, I have no objection to the proposed regulation based on the information and public comment currently available.

/s/ George Allen
Governor

Date: January 18, 1995

VA.R. Doc. No. R95-542; Filed February 1, 1995, 12:02 p.m.

SCHEDULES FOR COMPREHENSIVE REVIEW OF REGULATIONS

Governor George Allen issued and made effective Executive Order Number Fifteen (94) on June 21, 1994. This Executive Order was published in *The Virginia Register of Regulations* on July 11, 1994 (10:21 VA.R. 5457-5461 July 11, 1994). The Executive Order directs state agencies to conduct a comprehensive review of all existing regulations to be completed by January 1, 1997, and requires a schedule for the review of regulations to be developed by the agency and published in *The Virginia Register of Regulations*. This section of the *Virginia Register* has been reserved for the publication of agencies' review schedules. Agencies will receive public comment on the following regulations listed for review.

BOARD FOR CONTRACTORS

The Department of Professional and Occupational Regulation, pursuant to Executive Order Number Fifteen (94), is proposing to undertake a comprehensive review of the regulations of the Board for Contractors. As a part of this process public input and comments are being solicited; comments may be provided until August 28, 1995, to the administrator of the program, Geralde W. Morgan, at the Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia 23230. The department's goal in accordance with the Executive Order is to ensure that the regulations achieve the least possible interference in private enterprise while still protecting the public health, safety and welfare and are written clearly so they may be used and implemented by all those who interact with the regulatory process.

Regulations:

VR 220-01-02:1. Board for Contractors Regulations.

VR 220-01-00:1. Board for Contractors Public Participation Guidelines.

A public hearing on the regulations will be held on August 1, 1995, 10 a.m., at 3600 West Broad Street, Richmond, Virginia 23230.

Public comments may be submitted until August 28, 1995, to Geralde W. Morgan, Assistant Director, Virginia Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia 23230.

For additional information contact Geralde W. Morgan, Assistant Director, Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia 23230, telephone (804) 367-2785.

GENERAL NOTICES/ERRATA

Symbol Key

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



DEPARTMENT FOR THE AGING

Notice of Public Comment Period on 1996-99 State Plan for Aging Services

Notice is hereby given that the Department for the Aging will accept comments on the proposed State Plan for Aging Services developed pursuant to Titles III and VII of the Older Americans Act, as amended. Interested persons may submit data, views, and arguments, either orally or in writing, to the department.

The State Plan for Aging Services will (i) identify the Virginia Department for the Aging as the sole state agency designated to develop and administer Title III programs in Virginia; (ii) identify the geographic boundaries of each Planning and Service Area in Virginia and the Area Agency on Aging designated for each Planning and Service Area; (iii) include a plan for the distribution and proposed use of Title III funds within Virginia; (iv) set forth statewide program objectives to implement the requirements of Title III; and (v) provide prior federal fiscal year information related to low-income minority and rural older persons in Virginia.

The Older Americans Act requires that an Elder Rights Plan be included in the State Plan as an addendum. The Elder Rights Plan will describe the manner in which the department for the Aging will develop a comprehensive, coordinated Elder Rights system to carry out Title VII of the Older Americans Act, including the goals, priorities, and expected outcomes of such a system. The Plan also will describe the methods which the Department for the Aging will use to periodically assess the status of elder rights in Virginia. The State Plan for Aging Services will cover the four-year period from October 1, 1995, through September 30, 1999. The Department anticipates submitting the Plan to the federal Administration on Aging in August, 1995. At least one public hearing will be held on the proposed State Plan for Aging Services. Contact the department for information about the time and location. Persons who testify at the hearing are encouraged to provide a written copy of their comments to the hearing officer. An interpreter for the deaf and hard-of-hearing will be provided upon request. Written comments on the Plan may be submitted until 5 p.m. on July 1, 1995. Comments should be sent to: Ms. Kathy Vesley, Director, Division of Aging Consumer Services, Virginia Department for the Aging, 700 East Franklin Street - 10th Floor, Richmond, Virginia 23219-2327. To receive a copy of the proposed State Plan and to obtain further information, write to the Department for the Aging at the address above or call 804-225-2271 or toll-free in Virginia 1-800-552-3402.

DEPARTMENT OF ENVIRONMENTAL QUALITY

Notice of Availability for Public Review

An Environmental Assessment of a Proposal to Drill Coalbed Methane Gas Wells in Chesterfield County, Virginia

Purpose of notice: This notice serves to inform persons interested in reviewing and commenting on the environmental impact assessment described herein of the availability of the assessment as required by § 62.1-195.1(D) of the Code of Virginia. A general description of the proposed activity, its location, and the content of the environmental impact assessment follows.

Location: Commonwealth Energy Company, the operating affiliate of Maverick Oil and Gas Company, has proposed locating three coalbed methane gas extraction wells within the Chesterfield County portion of the Richmond Basin. The three proposed well sites are located approximately one half mile from the community of Winterpock. The actual sites are within 1,500 feet of each other in an area to the south of Route 664 (Coalboro Road) and to the west of Route 621. The proposed sites are located on the Winterpock, Virginia Quadrangle, USGS topographic map, 7.5 minute series (1987).

Project description: The purpose of the proposed well drilling operation in Chesterfield County is to explore the possibility of extracting marketable quantities of coalbed methane or natural gas from the Richmond Basin. The proposed drilling operation would require approximately a day for site preparation, 24 to 48 hours for the actual drilling operation, and two to three days for additional testing. Each well site will require a maximum area of one acre. Up to 300 gallons of waste water per day is expected to be produced from drilling operations. If gas extraction proves marketable, the gas wells will be connected to the existing natural gas pipeline of Commonwealth Gas Company which is located approximately three miles to the north of the proposed wells. Provisional plans exist for additional wells throughout the Richmond Basin, contingent upon the success of these initial wells. Upon final restoration of the site, the well monitoring meter box and access road will be the only aboveground facilities.

The environmental impact assessment submitted for the proposed project includes an executive summary, a discussion of technical issues, location and vicinity maps, descriptions of the proposed drilling and operating plans, plat maps of the affected sites, discussions of realized and potential environmental impacts, plans for mitigation and avoidance, estimation for the probability of discharges and accidents, spill/release contingency plans, an evaluation of economic impacts, and a final assessment of secondary environmental and economic impacts.

General Notices/Errata

Location of the assessment: A copy of the assessment may be reviewed during regular business hours at the offices of the Department of Environmental Quality, Office of Grants Management/Intergovernmental Affairs, 629 East Main Street, Sixth Floor, Richmond, Virginia. Another copy of the assessment will be available for review at the Chesterfield County Planning Office located in the Chesterfield County Administration Building, 9901 Lori Road, Chesterfield, Virginia.

Deadline for public comment: Written comments on the environmental impacts of the proposed drilling activities may be submitted until 5 p.m., June 29, 1995. Comments must be addressed to Michael Murphy, Department of Environmental Quality, Office of Grants Management/Intergovernmental Affairs, 629 East Main Street, 6th Floor, Richmond, Virginia 23219.

Contact: For additional information, contact Tom Griffin, Department of Environmental Quality, at the address above or call (804) 762-4330.

DEPARTMENT OF LABOR AND INDUSTRY

VIRGINIA OCCUPATIONAL SAFETY AND HEALTH REGULATIONS

VR 425-02-52. Logging, General Industry (§1910.266)

Partial Stay of Enforcement

On April 17, 1995, the Safety and Health Codes Board adopted a partial stay of enforcement of the effective date for several paragraphs of federal OSHA's final rule entitled, "Logging Operations, General Industry," §1910.266, VR 425-02-52, as published by federal OSHA on February 8, 1995 (60 Fed. Reg. 7449). Paragraphs affected by the partial stay of enforcement are as follows: (d)(1)(v), insofar as it requires foot protection to be chain-saw resistant; (d)(1)(vii), insofar as it requires face protection; (d)(2)(iii), for first-aid kits that contain all the items listed in Appendix A of the regulation; (f)(2)(iv), (f)(2)(xi), (f)(3)(ii), (f)(3)(vii), (f)(3)(viii) and (f)(7)(ii), insofar as parking brakes are required to stop the machine; (g)(1) and (g)(2), insofar as they require inspection and maintenance of employee-owned vehicles; and (h)(2)(vii), insofar as it precludes backcuts at the level of the horizontal cut of the undercut when the Humboldt cutting method is used.

The purpose of the partial stay of enforcement is to allow time for federal OSHA to clarify language in the regulatory text to more accurately express federal OSHA's intent with respect to the affected provisions.

The Virginia Occupational Safety and Health (VOSH) effective date for this partial stay of enforcement extends from June 1, 1995 until August 9, 1995. The remaining requirements of VR 425-02-52, Logging, General Industry, §1910.266, are unaffected by this partial stay and will go into effect as scheduled on June 1, 1995.

VR 425-02-113. Personal Protective and Life Saving Equipment, Construction Industry (§§1926.95 - 1926.107)

Delay of Effective Date

On April 17, 1995, the Safety and Health Codes Board adopted a delay of the effective date for Subparts E and M of federal OSHA's final rule entitled, "Fall Protection, Construction Industry," as published in the Federal Register on January 26, 1995 (60 Fed. Reg. 5131). Sections affected by the delay of the effective date of the Fall Protection standard, Subpart E, include §§1926.104, "Safety belts, lifelines, and lanyards," 1926.105, "Safety nets," and 1926.107, "Definitions applicable to this subpart," of VR 425-02-113, "Personal Protective and Life Saving Equipment, Construction Industry". The delay is necessary to permit federal OSHA to reopen the Subpart M record for supplemental comments concerning Subpart M coverage of non-building steel erection work, which also impacts Subpart E.

The Virginia Occupational Safety and Health (VOSH) effective date for this delay is from June 1, 1995 until August 6, 1995. The remaining requirements for other Fall Protection regulations in the Construction Industry are unaffected by this delay and will go into effect as scheduled on June 1, 1995.

VR 425-02-175. Safety Nets, Construction Industry (§1926.753)

Delay of Effective Date

On April 17, 1995, the Safety and Health Codes Board adopted a delay of the effective date for Subparts E and M of federal OSHA's final rule entitled, "Fall Protection, Construction Industry," as published in the Federal Register on January 26, 1995 (60 Fed. Reg. 5131). Sections affected by the delay of the Fall Protection standard, Subpart E, include VR 425-02-175, Safety nets, Construction Industry, §1926.753. The delay is necessary to permit federal OSHA to reopen the Subpart M record for supplemental comments concerning Subpart M coverage of non-building steel erection work.

The Virginia Occupational Safety and Health (VOSH) date for this delay is from June 1, 1995 until August 6, 1995. The remaining requirements of other Fall Protection regulations for the construction industry are unaffected by this delay and will go into effect as scheduled on June 1, 1995.

VR 425-02-177. Fall Protection, Construction Industry (§§1926.500 through 1926.503)

Delay of Effective Date

On April 17, 1995, the Safety and Health Codes Board adopted a delay of the effective date for Subparts E and M of federal OSHA's final rule entitled, "Fall Protection, Construction Industry," as published in the Federal Register on January 26, 1995 (60 Fed. Reg. 5131). Sections affected by the delay of the effective date of the Fall Protection

standard include sections 1926.500 through 1926.503 of the Fall Protection standard, VR 425-02-177. The delay is necessary to permit federal OSHA to reopen the Subpart M record for supplemental comments concerning Subpart M coverage of non-building steel erection work.

The Virginia Occupational Safety and Health (VOSH) effective date for this delay is from June 1, 1995 until August 6, 1995. The remaining requirements of other Fall Protection regulations in the Construction Industry are unaffected by this delay and will go into effect as scheduled on June 1, 1995.

VIRGINIA CODE COMMISSION

Notice to State Agencies

Mailing Address: Our mailing address is: Virginia Code Commission, 910 Capitol Street, General Assembly Building, 2nd Floor, Richmond, VA 23219. You may FAX in your notice; however, we ask that you FAX two copies and do not follow up with a mailed copy. Our FAX number is: (804) 692-0625.

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

All agencies are required to use the appropriate forms when furnishing material and dates for publication in *The Virginia Register of Regulations*. The forms are supplied by the office of the Registrar of Regulations. If you do not have any forms or you need additional forms, please contact: Virginia Code Commission, 910 Capitol Street, General Assembly Building, 2nd Floor, Richmond, VA 23219, telephone (804) 786-3591.

FORMS:

NOTICE of INTENDED REGULATORY ACTION - RR01
NOTICE of COMMENT PERIOD - RR02
PROPOSED (Transmittal Sheet) - RR03
FINAL (Transmittal Sheet) - RR04
EMERGENCY (Transmittal Sheet) - RR05
NOTICE of MEETING - RR06
AGENCY RESPONSE TO LEGISLATIVE OBJECTIONS -
RR08

CALENDAR OF EVENTS

Symbol Key

- † Indicates entries since last publication of the *Virginia Register*
♿ Location accessible to handicapped
☎ Telecommunications Device for Deaf (TDD)/Voice Designation

NOTICE

Only those meetings which are filed with the Registrar of Regulations by the filing deadline noted at the beginning of this publication are listed. Since some meetings are called on short notice, please be aware that this listing of meetings may be incomplete. Also, all meetings are subject to cancellation and the *Virginia Register* deadline may preclude a notice of such cancellation.

For additional information on open meetings and public hearings held by the Standing Committees of the Legislature during the interim, please call Legislative Information at (804) 786-6530.

VIRGINIA CODE COMMISSION

EXECUTIVE

BOARD FOR ACCOUNTANCY

July 18, 1995 - 10 a.m. -- Open Meeting
Department of Professional and Occupational Regulation,
3600 West Broad Street, 4th Floor, Richmond, Virginia. ♿

An open meeting to review applications and correspondence, conduct review and disposition of enforcement cases, and discuss other matters requiring board action. A public comment period will be held at the beginning of the meeting. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact the department at (804) 367-8590 at least 10 days prior to the meeting so that suitable arrangements can be made. The department fully complies with the Americans with Disabilities Act.

Contact: Nancy Taylor Feldman, Assistant Director, Board for Accountancy, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8590, FAX (804) 367-2474 or (804) 367-9753/TDD ☎

DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES (BOARD OF)

† July 6, 1995 - 9 a.m. -- Open Meeting
Marriott Hotel, 900 Prices Fork Road, N.W., Blacksburg, Virginia. ♿

A regular meeting of the board to discuss regulations and fiscal matters, and to receive reports from the staff of the Department of Agriculture and Consumer Services. The board may consider other matters relating to its responsibilities. At the conclusion of the other business, the board will review public comments for a period not to exceed 30 minutes. Any person who needs any accommodations in order to participate at the meeting should contact Roy E. Seward at least five days before the meeting date so that suitable arrangements can be made.

Contact: Roy E. Seward, Secretary to the Board, Department of Agriculture and Consumer Services, Washington Bldg., 1100 Bank St., Room 211, Richmond, VA 23219, telephone (804) 786-3535 or (804) 371-6344/TDD ☎

Virginia Farmers' Market Board

† July 6, 1995 - 1 p.m. -- Open Meeting
Donaldson-Brown Continuing Education Center, Otey Street, Blacksburg, Virginia. ♿

The board will receive reports on operations and management of network wholesale farmers' markets and process routine business. The board will entertain public comment at the conclusion of all other business for a period not to exceed 30 minutes. Any person who needs any accommodations in order to participate at the meeting should contact Susan K. Simpson at least five days before the meeting date so that suitable arrangements can be made.

Contact: Susan K. Simpson, Program Director, Department of Agriculture and Consumer Services, P.O. Box 1163, Richmond, VA 23209, telephone (804) 786-2112.

Virginia Horse Industry Board

July 11, 1995 - 10 a.m. -- Open Meeting
Virginia Cooperative Extension, Charlottesville-Albemarle Unit, 168 Spotnap Road, Lower Level Meeting Room, Charlottesville, Virginia. ♿

The board will entertain public comment at the conclusion of all other business for a period not to exceed 30 minutes. Any person who needs any accommodations in order to participate at the meeting should contact Andrea S. Heid at least five days before the meeting date so that suitable arrangements can be made.

Contact: Andrea S. Heid, Equine Marketing Specialist, Department of Agriculture and Consumer Services, 1100 Bank St., #906, Richmond, VA 23219, telephone (804) 786-5842 or (804) 371-6344/TDD ☎

Pesticide Control Board

July 13, 1995 - 9 a.m. -- Open Meeting
Department of Agriculture and Consumer Services, 1100 Bank Street, Board Room 204, Richmond, Virginia. ☎

Committee meetings and a general business meeting. Portions of the meeting may be held in closed session pursuant to § 2.1-344 of the Code of Virginia. The public will have an opportunity to comment on any matter not on the Pesticide Control Board's agenda beginning at 9 a.m. Any person who needs any accommodations in order to participate in the meeting should contact Dr. Marvin A. Lawson at least 10 days before the meeting so that suitable arrangements can be made.

Contact: Dr. Marvin A. Lawson, Program Manager, Office of Pesticide Management, Department of Agriculture and Consumer Services, 1100 Bank St., Room 401, P.O. Box 1163, Richmond, VA 23209, telephone (804) 371-6558.

Virginia Pork Industry Board

July 7, 1995 - 3:30 p.m. -- Open Meeting
Hotel Roanoke and Conference Center, 110 Shenandoah Avenue, Roanoke, Virginia. ☎ (Interpreter for the deaf provided upon request)

A meeting to elect new officers, approve projects and formulate the annual budget. The board will entertain public comment at the conclusion of all other business for a period not to exceed 30 minutes. Any person who needs any accommodations in order to participate at the meeting should contact John Parker at least five days before the meeting date so that suitable arrangements can be made.

Contact: John H. Parker, Executive Director, Virginia Pork Industry Board, Washington Building, 1100 Bank St., Richmond, VA 23219, telephone (804) 786-7092.

Virginia Winegrowers Advisory Board

† August 8, 1995 - 10 a.m. -- Open Meeting
State Capitol, 11th Street at Capitol Square, House Room 1, Richmond, Virginia. ☎

The board will hold elections of the chairman, vice-chairman and treasurer, hear project reports and conduct new business. Public comment will be heard following the conclusion of board business. Any person who needs any accommodations in order to participate at the meeting should contact Mary Davis-Barton at least 14 days before the meeting date so that suitable arrangements can be made.

Contact: Mary Davis-Barton, Secretary, Virginia Winegrowers Advisory Board, Department of Agriculture and Consumer Services, P.O. Box 1163, Richmond, VA 23209, telephone (804) 786-0481.

STATE AIR POLLUTION CONTROL BOARD

† July 26, 1995 - 11 a.m. -- Public Hearing
Department of Environmental Quality, Innsbrook Corporate Center, 4900 Cox Road, Board Room, Glen Allen, Virginia.

† July 27, 1995 - 11 a.m. -- Public Hearing
James McCort Administration Building, One County Complex Court, Board Chamber Room, Prince William, Virginia.

† August 28, 1995 -- Public comments may be submitted until 4:30 p.m. on this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Air Pollution Control Board intends to amend regulations entitled: **VR 120-01, Regulations for the Control and Abatement of Air Pollution (Revision FF -- Rule 4-4, Emission Standards for Open Burning)**. The proposed regulation amendments provide for the deregulation of certain control measures at the state level while providing an administrative mechanism to assist local governments in developing their own control programs. The proposed amendments also require a summertime ban on open burning in order to reduce emissions of volatile organic compounds in Virginia's ozone nonattainment areas.

Request for Comments: The purpose of this notice is to provide the public with the opportunity to comment on the proposed regulation and the costs and benefits of the proposal.

Localities Affected: Although any person conducting open burning will be affected by the proposed regulation, the jurisdictions within Virginia's three Volatile Organic Compound Emissions Control Areas (identified below) will experience more impact during June, July and August than jurisdictions outside these areas.

1. The Northern Virginia area: Arlington County, Fairfax County, Loudoun County, Prince William County, Stafford County, the City of Alexandria, the City of Fairfax, the City of Falls Church, the City of Manassas, and the City of Manassas Park.
2. The Richmond area: Charles City County, Chesterfield County, Hanover County, Henrico County, the City of Colonial Heights, the City of Hopewell, and the City of Richmond.
3. The Hampton Roads area: James City County, York County, the City of Chesapeake, the City of Hampton, the City of Newport News, the City of Norfolk, the City of Poquoson, the City of Portsmouth, the City of Suffolk, the City of Virginia Beach, and the City of Williamsburg.

Location of Proposal: The proposal, an analysis conducted by the department (including a statement of purpose, a statement of estimated impact and benefits of the proposed regulation, an explanation of need for the proposed regulation, an estimate of the impact of the proposed regulation upon small businesses, identification of and comparison with federal requirements, and a discussion of alternative approaches), and any other supporting documents may

Calendar of Events

be examined by the public at the department's Air Programs Section, 629 East Main Street, 8th Floor, Richmond, Virginia, and the department's regional offices (listed below) between 8:30 a.m. and 4:30 p.m., of each business day until the close of the public comment period.

Southwest Regional Office
Department of Environmental Quality
121 Russell Road
Abingdon, Virginia
Ph: (703) 676-5482

West Central Regional Office
Department of Environmental Quality
Executive Office Park, Suite D
5338 Peters Creek Road
Roanoke, Virginia
Ph: (703) 561-7000

Lynchburg Satellite Office
Department of Environmental Quality
7701-03 Timberlake Road
Lynchburg, Virginia
Ph: (804) 582-5120

Fredericksburg Satellite Office
Department of Environmental Quality
300 Central Road, Suite B
Fredericksburg, Virginia
Ph: (703) 899-4600

Piedmont Regional Office
Department of Environmental Quality
Innsbrook Corporate Center
4900 Cox Road
Glen Allen, Virginia
Ph: (804) 527-5300

Tidewater Regional Office
Department of Environmental Quality
Old Greenbrier Village, Suite A
2010 Old Greenbrier Road
Chesapeake, Virginia
Ph: (804) 424-6707

Springfield Satellite Office
Department of Environmental Quality
Springfield Corporate Center, Suite 310
6225 Brandon Avenue
Springfield, Virginia
Ph: (703) 644-0311

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

Public comments may be submitted until 4:30 p.m., August 28, 1995, to the Manager, Air Programs Section, Department of Environmental Quality, P.O. Box 10009, Richmond, Virginia 23240.

Contact: Dr. Kathleen Sands, Policy Analyst, Air Programs Section, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 762-4413.

† July 26, 1995 - 11 a.m. -- Public Hearing
Department of Environmental Quality, Innsbrook Corporate Center, 4900 Cox Road, Glen Allen, Virginia.

† July 27, 1995 - 11 a.m. -- Public Hearing
James McCort Administration Building, One County Complex Court, Prince William, Virginia.

† August 28, 1995 -- Public comments may be submitted until 4:30 p.m. on this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Air Pollution Control Board intends to amend regulations entitled: **VR 120-01. Regulations for the Control and Abatement of Air Pollution (Revision RR -- Volatile Organic Compounds)**. The standards require owners to reduce emissions of volatile organic compounds from specific sources, and to limit those emissions to a level resulting from the use of reasonably available control technology. The following types of sources are affected: otherwise unregulated facilities; surface cleaning and degreasing operations using nonhalogenated solvents; rotogravure/flexographic printing facilities emitting 25-100 tons per year; sanitary landfill operations; and lithographic printing operations.

Request for Comments: The purpose of this notice is to provide the public with the opportunity to comment on the proposed regulation and the costs and benefits of the proposal.

Localities Affected: The localities affected by the proposed regulation are as follows:

1. The Northern Virginia area: Arlington County, Fairfax County, Loudoun County, Prince William County, Stafford County, the City of Alexandria, the City of Fairfax, the City of Falls Church, the City of Manassas, and the City of Manassas Park.
2. The Richmond area: Charles City County, Chesterfield County, Hanover County, Henrico County, the City of Colonial Heights, the City of Hopewell, and the City of Richmond.

Location of Proposal: The proposal, an analysis conducted by the department (including a statement of purpose, a statement of estimated impact and benefits of the proposed regulation, an explanation of need for the proposed regulation, an estimate of the impact of the proposed regulation upon small businesses, identification of and comparison with federal requirements, and a discussion of alternative approaches), and any other supporting documents may be examined by the public at the department's Air Programs Section, 629 East Main Street, 8th Floor, Richmond, Virginia, and the department's regional offices (listed below) between 8:30 a.m. and 4:30 p.m., of each business day until the close of the public comment period.

Calendar of Events

Southwest Regional Office
Department of Environmental Quality
121 Russell Road
Abingdon, Virginia
Ph: (703) 676-5482

West Central Regional Office
Department of Environmental Quality
Executive Office Park, Suite D
5338 Peters Creek Road
Roanoke, Virginia
Ph: (703) 561-7000

Lynchburg Satellite Office
Department of Environmental Quality
7701-03 Timberlake Road
Lynchburg, Virginia
Ph: (804) 582-5120

Fredericksburg Satellite Office
Department of Environmental Quality
300 Central Road, Suite B
Fredericksburg, Virginia
Ph: (703) 899-4600

Piedmont Regional Office
Department of Environmental Quality
Innsbrook Corporate Center
4900 Cox Road
Glen Allen, Virginia
Ph: (804) 527-5300

Tidewater Regional Office
Department of Environmental Quality
Old Greenbrier Village, Suite A
2010 Old Greenbrier Road
Chesapeake, Virginia
Ph: (804) 424-6707

Springfield Satellite Office
Department of Environmental Quality
Springfield Corporate Center, Suite 310
6225 Brandon Avenue
Springfield, Virginia
Ph: (703) 644-0311

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

Public comments may be submitted until 4:30 p.m., August 28, 1995, to the Manager, Air Programs Section, Department of Environmental Quality, P.O. Box 10009, Richmond, Virginia 23240.

Contact: Karen G. Sabasteanski or Dr. Kathleen Sands, Policy Analysts, Air Programs Section, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 762-4000.

ALCOHOLIC BEVERAGE CONTROL BOARD

June 26, 1995 - 9:30 a.m. -- Open Meeting
Department of Alcoholic Beverage Control, 2901 Hermitage Road, Richmond, Virginia. ☎

A meeting to receive and discuss reports and activities from staff members. Other matters not yet determined.

Contact: W. Curtis Coleburn, Secretary to the Board, Alcoholic Beverage Control Board, 2901 Hermitage Rd., P.O. Box 27491, Richmond, VA 23261, telephone (804) 367-0712 or FAX (804) 367-1802.

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

June 30, 1995 - 9 a.m. -- Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia. ☎

A meeting to conduct general board business. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact the department at (804) 367-8514. The department fully complies with the Americans with Disabilities Act. Please notify the department of your request for accommodations at least two weeks in advance for consideration of your request.

Contact: Mark N. Courtney, Assistant Director, Board for Architects, Professional Engineers, Land Surveyors and Landscape Architects, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8514 or (804) 367-9753/TDD ☎

June 30, 1995 - 2:30 p.m. -- Public Hearing
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia. ☎

A public hearing will be held in accordance with the provisions of Executive Order 15(94) requiring a comprehensive review of all regulations relating to architects, professional engineers, land surveyors and landscape architects. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact the department at (804) 367-8514 at least 10 days prior to the meeting so that suitable arrangements can be made. The department fully complies with the Americans with Disabilities Act.

Contact: Mark N. Courtney, Assistant Director, Board for Architects, Professional Engineers, Land Surveyors and Landscape Architects, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8514 or (804) 367-9753/TDD ☎

STATE BOARD FOR COMMUNITY COLLEGES

† July 19, 1995 - 1 p.m. -- Open Meeting
James Monroe Building, 101 North 14th Street, 15th Floor, Richmond, Virginia.

Committee meetings.

Contact: Dr. Joy S. Graham, Assistant Chancellor, Public Affairs, Monroe Bldg., 101 N. 14th St., 15th Floor, Richmond, VA 23219, telephone (804) 225-2126 or (804) 371-8504/TDD ☎

Calendar of Events

† July 20, 1995 - 9 a.m. -- Open Meeting
James Monroe Building, 101 North 14th Street, 15th Floor,
Richmond, Virginia.

A regularly scheduled board meeting.

Contact: Dr. Joy S. Graham, Assistant Chancellor, Public
Affairs, Monroe Bldg., 101 N. 14th St., 15th Floor, Richmond,
VA 23219, telephone (804) 225-2126 or (804) 371-8504/TDD ☎

COMPENSATION BOARD

June 29, 1995 - 1 p.m. -- Open Meeting
July 27, 1995 - 1 p.m. -- Open Meeting
Ninth Street Office Building, 202 North Ninth Street, 9th Floor,
Room 913/913A, Richmond, Virginia. ☎ (Interpreter for the
deaf provided upon request)

A routine meeting to conduct board business.

Contact: Bruce W. Haynes, Executive Secretary,
Compensation Board, P.O. Box 710, Richmond, VA 23206-
0686, telephone (804) 786-3886, FAX (804) 371-0235 or
(804) 786-3886/TDD ☎

DEPARTMENT OF CONSERVATION AND RECREATION

July 20, 1995 - Noon -- Open Meeting
August 17, 1995 - Noon -- Open Meeting
City Hall, Planning Commission Conference Room, 5th Floor,
Richmond, Virginia.

A meeting to review river issues and programs.

Contact: Richard G. Gibbons, Environmental Program
Manager, Department of Conservation and Recreation,
Division of Planning and Recreation Resources, 203
Governor St., Richmond, VA 23219, telephone (804) 786-
4132, FAX (804) 371-7899, or (804) 786-2121/TDD ☎

BOARD FOR CONTRACTORS

June 26, 1995 - 11 a.m. -- Open Meeting
Department of Professional and Occupational Regulation,
3600 West Broad Street, Richmond, Virginia. ☎

A meeting to conduct an informal fact-finding conference
pursuant to the Administrative Process Act in order for
the board to make a case decision.

Contact: Earlyne Perkins, Legal Assistant, Board for
Contractors, 3600 W. Broad St., Richmond, VA 23230-4917,
telephone (804) 367-0946 or (804) 367-9753/TDD ☎

† July 12, 1995 - 9 a.m. -- Open Meeting
Department of Professional and Occupational Regulation,
3600 West Broad Street, Richmond, Virginia. ☎

A regularly scheduled quarterly meeting of the board to
address policy and procedural issues; review and render
decisions on applications for contractors' licenses; and

review and render case decisions on matured complaints
against licensees. The meeting is open to the public;
however, a portion of the board's business may be
discussed in Executive Session. Persons desiring to
participate in the meeting and requiring special
accommodations or interpreter services should contact
Geralde W. Morgan. The department fully complies with
the Americans with Disabilities Act. Please notify the
department of your request for accommodations at least
two weeks in advance for consideration of your request.

Contact: Geralde W. Morgan, Senior Administrator, Board
for Contractors, 3600 W. Broad St., Richmond, VA 23230-
4917, telephone (804) 367-2785.

† August 1, 1995 - 10 a.m. -- Public Hearing
Department of Professional and Occupational Regulation,
3600 West Broad Street, Richmond, Virginia. ☎

A public hearing to receive public comment on the Board
for Contractors regulations and public participation
guidelines in accordance with Executive Order 15(94).
The comment period will end on August 28, 1995.
Persons desiring to participate in the meetings and
requiring special accommodations or interpreter services
should contact the board office at (804) 367-2785 at
least 10 days prior to the meeting so that suitable
arrangements can be made. The board fully complies
with the Americans with Disabilities Act.

Contact: Geralde W. Morgan, Senior Administrator,
Department of Professional and Occupational Regulation,
3600 W. Broad St., Richmond, VA 23220-4917, telephone
(804) 367-2785.

Recovery Fund Committee

June 28, 1995 - 9 a.m. -- Open Meeting
Department of Professional and Occupational Regulation,
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
discussion may be conducted in executive session.
Persons desiring to participate in the meeting and
requiring special accommodations or interpreter services
should contact Holly Erickson. The department fully
complies with the Americans with Disabilities Act.
Please notify the department of your request for
accommodations at least two weeks in advance for
consideration of your request.

Contact: Holly Erickson, Assistant Administrator, Board for
Contractors, 3600 W. Broad St., Richmond, VA 23230,
telephone (804) 367-8561.

BOARD OF CORRECTIONAL EDUCATION

† June 30, 1995 - 10 a.m. -- Open Meeting
James Monroe Building, 101 North 14th Street, 7th Floor,
Richmond, Virginia.

A monthly meeting to discuss general business.

Contact: Patty Ennis, Board Clerk, Department of Correctional Education, Monroe Bldg., 101 N. 14th St., Richmond, VA 23219, telephone (804) 225-3314.

BOARD FOR COSMETOLOGY

June 26, 1995 - 10 a.m. -- Open Meeting
Department of Professional and Occupational Regulation,
3600 West Broad Street, Richmond, Virginia. ☎

A meeting to conduct a formal hearing in regard to the Board for Cosmetology v. Personality Beauty School. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact the department at (804) 367-8500. The department fully complies with the Americans with Disabilities Act. Please notify the department of your request at least two weeks in advance.

Contact: Carol A. Mitchell, Assistant Director, Board for Cosmetology, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8524.

BOARD OF DENTISTRY

† **July 14, 1995 - 9 a.m.** -- Open Meeting
† **July 21, 1995 - 9 a.m.** -- Open Meeting
Department of Health Professions, 6606 West Broad Street,
5th Floor, Conference Room 4, Richmond, Virginia. ☎
(Interpreter for the deaf provided upon request)

A formal hearing and informal conferences.

Contact: Marcia J. Miller, Executive Director, Board of Dentistry, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9902 or (804) 662-7197/TDD ☎

† **July 28, 1995 - 9 a.m.** -- Open Meeting
Department of Health Professions, 6606 West Broad Street,
5th Floor, Conference Room 4, Richmond, Virginia. ☎
(Interpreter for the deaf provided upon request)

Informal conferences.

Contact: Marcia J. Miller, Executive Director, Board of Dentistry, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9902 or (804) 662-7197/TDD ☎

LOCAL EMERGENCY PLANNING COMMITTEE - ARLINGTON COUNTY/CITY OF FALLS CHURCH/WASHINGTON NATIONAL AIRPORT

† **July 11, 1995 - 5:30 p.m.** -- Open Meeting
Arlington County Fire Station #1, 500 South Glebe Road,
Training Room, Arlington, Virginia. ☎ (Interpreter for the deaf
provided upon request)

A regular meeting of the committee to conduct general business.

Contact: Captain Michael Kilby, Hazardous Materials Coordinator, 1020 N. Hudson St., Arlington, VA 22201, telephone (703) 358-4652, (703) 358-4644 or (703) 358-4610/TDD ☎

LOCAL EMERGENCY PLANNING COMMITTEE - GLOUCESTER

† **July 26, 1995 - 6:30 p.m.** -- Open Meeting
County Administration Office, Conference Room, Gloucester,
Virginia. ☎ (Interpreter for the deaf provided upon request)

A quarterly meeting of the committee to address agenda matters of orientation of new committee members, annual update of County Hazardous Materials Plan, and follow-up action from the spring emergency services exercise.

Contact: Georgette N. Hurley, Assistant County Administrator, P.O. Box 329, Gloucester, VA 23061, telephone (804) 693-4042 or (804) 693-1476/TDD ☎

DEPARTMENT OF ENVIRONMENTAL QUALITY

July 19, 1995 - 9 a.m. -- Open Meeting
Department of Environmental Quality, Innsbrook Corporate
Center, 4900 Cox Road, Glen Allen, Virginia.

A meeting of the joint panel. This meeting is designed to define, assess and make recommendations in more closely aligning the Department of Environmental Quality's air, water and waste permitting procedures. This meeting date is subject to change. Please contact Kim Anderson for possible changes in meeting date or additional information.

Contact: Kim Anderson, Administrative Staff Assistant, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 762-4020, FAX (804) 762-4019 or (804) 762-4021/TDD ☎

Cost-Benefit Analysis Work Group

July 12, 1995 - 10 a.m. -- Open Meeting
August 2, 1995 - 10 a.m. -- Open Meeting
Department of Environmental Quality, 629 East Main Street,
10th Floor Conference Room, Richmond, Virginia. ☎
(Interpreter for the deaf provided upon request)

A meeting to continue assisting the agency in developing a process for conducting cost benefit analyses for each of its regulations.

Contact: Michael P. Murphy, Director, Grants Management, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240-0009, telephone (804) 762-4003, FAX (804) 762-4019, toll-free 1-800-592-5482 or (804) 762-4021/TDD ☎

Calendar of Events

STATE EXECUTIVE COUNCIL

June 30, 1995 - 9 a.m. -- Open Meeting
Department of Youth and Family Services, 700 East Franklin Street, 4th Floor, Board Room, Richmond, Virginia.

The State Executive Council is established under § 2.1-746 of the Code of Virginia. The monthly meeting of the council is to discuss and make decisions, set policies, and review and act appropriately on Comprehensive Services Act-related issues as they pertain to at-risk youth and families.

Contact: Alan G. Saunders, Director, State Executive Council, 700 E. Franklin St., Richmond, VA 23219, telephone (804) 786-5394.

BOARD OF FUNERAL DIRECTORS AND EMBALMERS

July 12, 1995 - 9 a.m. -- Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Richmond, Virginia.

A general board meeting to discuss board business. Public comments will be received at the beginning of the meeting for 15 minutes. The public hearing will begin at 10 a.m. Pursuant to Executive 15(94) requiring a comprehensive review of all regulations, the board will receive comments on the following:

- VR 320-01-2. General Regulations of the Board of Funeral Directors and Embalmers
- VR 320-01-3. Regulations for Preneed Funeral Planning
- VR 320-01-4. Resident Training Regulations.

These regulations will be reviewed to ensure that (i) it is essential to protect the health and safety of the citizens or necessary for the performance or an important government function; (ii) it is mandated or authorized by law; (iii) it offers the least burdensome alternative and the most reasonable solution; and (iv) it is clearly written and easily understandable.

Contact: Lisa Russell Hahn, Executive Director, Board of Funeral Directors and Embalmers, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9907, (804) 662-7197/TDD ☎, or FAX (804) 662-9943.

BOARD OF GAME AND INLAND FISHERIES

† **July 13, 1995 - 9 a.m. -- Open Meeting**
Department of Game and Inland Fisheries, 4010 West Broad Street, Richmond, Virginia. (Interpreter for the deaf provided upon request)

The board intends to consider regulations governing the 1995-96 migratory game birds seasons and the early resident Canada goose season, based on the framework provided by the U.S. Fish and Wildlife Service. The board will also consider the agency budget proposed for fiscal year 1995-1996. In addition, general and

administrative matters may be discussed. The board may hold an executive session.

Contact: Phil Smith, Policy Analyst, Department of Game and Inland Fisheries, 4010 W. Broad St., Richmond, VA 23230, telephone (804) 367-8341 or FAX (804) 367-2427.

DEPARTMENT OF HEALTH

Biosolids Use Regulations Advisory Committee

July 20, 1995 - 9 a.m. -- Open Meeting
The UVA Richmond Center, 7740 Shrader Road, Suite E, Richmond, Virginia. ☎

A meeting to discuss issues concerning implementation of the Biosolids Use Regulations relating to land application, marketing or distribution of biosolids.

Contact: C.M. Sawyer, Division Director, Department of Health, Office of Water Programs, P.O. Box 2448, Richmond, VA 23218, telephone (804) 786-1755 or FAX (804) 786-5567.

Biosolids Use Committee

July 20, 1995 - 1 p.m. -- Open Meeting
The UVA Richmond Center, 7740 Shrader Road, Suite E, Richmond, Virginia. ☎

A meeting to review and evaluate specific concerns relating to land application and agricultural use of biosolids including issues related to the final Biosolids Use Regulations recently adopted by the State Board of Health to regulate the land application, marketing or distribution of biosolids.

Contact: C.M. Sawyer, Division Director, Department of Health, Office of Water Programs, P.O. Box 2448, Richmond, VA 23218, telephone (804) 786-1755 or FAX (804) 786-5567.

STATE COUNCIL OF HIGHER EDUCATION FOR VIRGINIA

July 11, 1995 - 9:30 a.m. -- Open Meeting
Northern Virginia Community College, Annandale Campus, Annandale, Virginia. (Interpreter for the deaf provided upon request)

A general business meeting. For additional information about the meeting or location please contact the council.

Contact: Anne M. Pratt, Associate Director, Monroe Bldg., 101 N. 14th St., 9th Floor, Richmond, VA 23219, telephone (804) 225-2632

VIRGINIA HIV PREVENTION COMMUNITY PLANNING COMMITTEE

† July 21, 1995 - 8:30 a.m. -- Open Meeting
Sheraton Inn, 4700 South Laburnum Avenue, Richmond,
Virginia. ☎ (Interpreter for the deaf provided upon request)

The committee will continue its HIV Prevention Planning activities for 1995.

Contact: Elaine G. Martin, Coordinator, AIDS Education, Department of Health, P.O. Box 2448, Richmond, VA 23218, telephone (804) 786-0877 or toll-free 1-800-533-4148/TDD ☎

HOPEWELL INDUSTRIAL SAFETY COUNCIL

July 11, 1995 - 9 a.m. -- Open Meeting
Hopewell Community Center, Second and City Point Road, Hopewell, Virginia. ☎ (Interpreter for the deaf provided upon request)

Local Emergency Preparedness Committee Meeting on emergency preparedness as required by SARA Title III.

Contact: Robert Brown, Emergency Services Coordinator, 300 North Main Street, Hopewell, VA 23860, telephone (804) 541-2298.

BOARD OF HOUSING AND COMMUNITY DEVELOPMENT

June 26, 1995 - 10 a.m. -- Public Hearing
Department of Housing and Community Development, The Jackson Center, 501 North Second Street, Richmond, Virginia. ☎

The board will convene a public hearing to accept public comments relative to revised guidelines for operation of the Department of Housing and Community Development's Indoor Plumbing Program. A brief overview of the program will be presented. The board will adopt program guidelines at its regular monthly meeting which will follow the public hearing.

Contact: Barry W. Brown, Program Manager, Department of Housing and Community Development, The Jackson Center, 501 N. 2nd St., Richmond, VA 23219, telephone (804) 371-7030, FAX (804) 371-7093 or (804) 371-7089/TDD ☎

June 26, 1995 - Noon -- Open Meeting
Department of Housing and Community Development, The Jackson Center, 501 North Second Street, Richmond, Virginia. ☎ (Interpreter for the deaf provided upon request)

A regular monthly business meeting of the board.

Contact: Stephen Calhoun, CPA, Department of Housing and Community Development, The Jackson Center, 501 N. 2nd St., Richmond, VA 23219, telephone (804) 371-7013, FAX (804) 371-7090 or (804) 371-7089/TDD ☎

VIRGINIA HOUSING DEVELOPMENT AUTHORITY

† July 18, 1995 - 11 a.m. -- Open Meeting
Virginia Housing Development Authority, 601 South Belvidere Street, Richmond, Virginia. ☎

A regular meeting of the Board of Commissioners to review and, if appropriate, (i) approve the minutes from the prior monthly meeting; (ii) consider for approval and ratification mortgage loan commitments under its various programs; (iii) review the authority's operations for the prior month; (iv) consider, and, if appropriate, approve proposed amendments to the Rules and Regulations for Multi-Family Housing Developments, the Rules and Regulations for the Acquisition of Multi-Family Housing Developments and the Rules and Regulations for Multi-Family Housing Developments for Mentally Disabled Persons; and (v) consider such other matters and take such other actions as it may deem appropriate. Various committees of the Board of Commissioners may also meet before or after the regular meeting and consider matters within their purview. The planned agenda of the meeting will be available at the offices of the authority one week prior to the date of the meeting.

Contact: J. Judson McKellar, Jr., General Counsel, Virginia Housing Development Authority, 601 S. Belvidere St., Richmond, VA 23220, telephone (804) 782-1986.

COUNCIL ON INFORMATION MANAGEMENT

Virginia Information Technology Infrastructure Task Force

June 27, 1995 - 1 p.m. -- Open Meeting
Washington Building, 1100 Bank Street, 9th Floor Conference Room, Richmond, Virginia. ☎

A meeting to finalize a report due to the Governor by June 30, 1995.

Contact: Linda Hening, Administrative Assistant, Council on Information Management, 1100 Bank St., Suite 901, Richmond, VA 23219, telephone (804) 225-3622 or (804) 225-3624/TDD ☎

STATE LOTTERY BOARD

June 28, 1995 - 9:30 a.m. -- Open Meeting
State Lottery Department, 900 East Main Street, 8th Floor Conference Room, Richmond, Virginia. ☎ (Interpreter for the deaf provided upon request)

A regular meeting of the board. Business will be conducted according to items listed on the agenda which has not yet been determined. One period for public comment is scheduled.

Contact: Barbara L. Robertson, Legislative, Regulatory and Board Administrator, State Lottery Department, 900 E. Main St., Richmond, VA 23219, telephone (804) 692-7774 or FAX (804) 692-7775.

Calendar of Events

MARINE RESOURCES COMMISSION

June 27, 1995 - 9:30 a.m. -- Open Meeting
Marine Resources Commission, 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 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.

Contact: Sandra S. Schmidt, Secretary to the Commission, Marine Resources 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 ☎

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

August 11, 1995 -- Public comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Medical Assistance Services intends to adopt regulations entitled: **VR 460-01-66.2. Medicaid Reimbursement for Administration of Vaccines under the Pediatric Immunization Program (§ 4.19m)**. The purpose of this proposal is to promulgate permanent regulations for the payment of a fee for the administration of vaccines to children under the Vaccines for Children Program. The vaccines which are covered under this program are routine childhood immunizations which are given to prevent such childhood diseases as whooping cough, diphtheria, tetanus, polio, measles, mumps, and German measles.

The Omnibus Budget Reconciliation Act of 1993 (OBRA '93), Public Law 103-66, created the Pediatric Immunization Distribution Program (more commonly known and hereafter referred to as the Vaccines for Children (VFC) Program), which took effect on October 1, 1994. Section 13631 of OBRA '93 added § 1902 (A)(62) to the Social Security Act (the Act) to require that states provide for a program for the purpose and distribution of pediatric vaccines to program-registered providers for the immunization of vaccine-eligible children in accordance with § 1928 of the Act. Section 1928 required each state to establish a VFC Program

(which may be administered by the State Department of Health) under which certain specified groups of children are entitled to receive qualified pediatric immunizations without charge for the costs of the vaccine. The Department of Medical Assistance Services (DMAS) has complied with this requirement with the exception of the final component, the vaccine administration fee, which is needed to complete all the necessary program elements.

The establishment of a vaccine administration fee is essential to comply with OBRA '93's Vaccines for Children (VFC) Program, which ensures that certain specified groups of children receive qualified pediatric immunizations free of charge. This vaccine administration fee is mandated in the law and is intended to provide an incentive to providers to participate in the VFC program and provide immunizations to Medicaid children. Medicaid proposes to establish a fee of \$11 for the administration of such fees. The primary advantage to the Commonwealth and to providers of this regulatory action is that the federal government will provide these routine childhood vaccines free of charge. Since Medicaid recipients do not pay for such immunizations, such a change in drug distribution and payment policies is expected to be transparent to them. Actual expenditures will depend on the number of Medicaid providers who enroll in this vaccines program, the number of recipients who receive immunizations, and the number of administration fees that are actually paid to providers.

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

Public comments may be submitted until August 11, 1995, to Sally Rice, Division of Client Services, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, Virginia 23219.

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

BOARD OF MEDICINE

July 1, 1995 -- Public comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Medicine intends to amend regulations entitled: **VR 465-02-1. Regulations Governing the Practice of Medicine, Osteopathy, Podiatry, Chiropractic, Clinical Psychology and Acupuncture**. The proposed amendments clarify prohibited sexual contact with patients; remove burdensome, outdated language on acupuncture; and eliminate the requirements for a state examination for chiropractic licensure.

Statutory Authority: §§ 54.1-2400 and 54.1-2900 et seq. of the Code of Virginia.

Contact: Eugenia K. Dorson, Deputy Executive Director, Board of Medicine, 6606 W. Broad St., Richmond, VA 23230, telephone (804) 662-9925.

† **July 12, 1995 - 11 a.m.** -- Open Meeting
Roanoke Airport Marriott, Hershberger Road, Roanoke, Virginia. ☎

The informal conference committee composed of three members of the board will inquire into allegations that certain practitioners may have violated laws and regulations governing the practice of medicine and other healing arts in Virginia. The committee will meet in open and closed sessions pursuant to § 2.1-344 (a)(7) and (15) of the Code of Virginia. Public comment will not be received.

Contact: Karen W. Perrine, Deputy Executive Director, Discipline, Board of Medicine, 6606 W. Broad St., Richmond, VA 23230-1717, telephone (804) 662-7665, FAX (804) 662-9943 or (804) 662-7197/TDD ☎

Credentials Committee

† **August 12, 1995 - 8:15 a.m.** -- Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Board Rooms 3 and 4, Richmond, Virginia. ☎

The 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 to 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, Board of Medicine, 6606 W. Broad St., Richmond, VA 23230-1717, telephone (804) 662-9923 or (804) 662-7197/TDD ☎

Executive Committee

† **August 11, 1995 - 9 a.m.** -- Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Board Rooms 2 and 3, Richmond, Virginia. ☎

The committee will meet in open and closed session to review cases of files requiring administrative action, adopt amendments for approval of promulgation of regulations as presented, and act upon certain issues as presented. The chairman will entertain public comments following the adoption of the agenda for 10 minutes on agenda items.

Contact: Eugenia K. Dorson, Deputy Executive Director, Board of Medicine, 6606 W. Broad St., Richmond, VA 23230-1717, telephone (804) 662-9923 or (804) 662-7197/TDD ☎

Legislative Committee

† **July 21, 1995 - 1 p.m.** -- Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Board Room 1, Richmond, Virginia. ☎

A meeting to review and make recommendations to the board regarding patient-physician relationship; review proposed changes to VR 465-02-01 regarding examinations for chiropractors, medical acupuncture and patient sexual contact; and such other matters that may come before the committee. The committee will entertain public comments during the first 15 minutes on agenda items.

Contact: Eugenia K. Dorson, Deputy Executive Director, Board of Medicine, 6606 W. Broad St., Richmond, VA 23230-1717, telephone (804) 662-9923 or (804) 662-7197/TDD ☎

VIRGINIA MILITARY INSTITUTE

Board of Visitors

† **August 26, 1995 - 8:30 a.m.** -- Open Meeting
Smith Hall, Virginia Military Institute, Lexington, Virginia. ☎

A regular meeting of the Board of Visitors to elect president, make committee appointments, and receive committee reports. The board will provide an opportunity for public comment immediately after the Superintendent's comments at approximately 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) 464-7600.

VIRGINIA MUSEUM OF FINE ARTS

July 5, 1995 - 8 a.m. -- Open Meeting
Virginia Museum of Fine Arts, 2800 Grove Avenue, Director's Office, Richmond, Virginia. ☎

A briefing for museum officers of museum activities. Public comment will not be received at the meeting.

Contact: Emily C. Robertson, Secretary of the Museum, Virginia Museum of Fine Arts, 2800 Grove Ave., Richmond, VA 23221, telephone (804) 367-0553.

BOARD OF NURSING

† **July 24, 1995 - 9 a.m.** -- Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Richmond, Virginia. ☎ (Interpreter for the deaf provided upon request)

Two special conference committees will conduct informal conferences in the morning. A panel of the Board of Nursing will conduct formal hearings in the afternoon. Public comment will not be received.

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

Calendar of Events

† July 25, 1995 - 9 a.m. -- Open Meeting
Department of Health Professions, 6606 West Broad Street,
5th Floor, Richmond, Virginia. ☞ (Interpreter for the deaf
provided upon request)

A regular meeting to consider matters relating to education programs, discipline of licensees, licensure by examination and other matters under the jurisdiction of the board. Public comment will be received during an open forum beginning at 11 a.m. At 1 p.m. the board will consider recommendations from the Committee of the Joint Boards of Nursing and Medicine in response to comments and act on proposed amendments to VR 495-02-01 and VR 465-07-1, Regulations Governing the Licensure of Nurse Practitioners.

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

† July 26, 1995 - 9 a.m. -- Open Meeting
Department of Health Professions, 6606 West Broad Street,
5th Floor, Richmond, Virginia. ☞ (Interpreter for the deaf
provided upon request)

Two panels of the board will conduct formal hearings.

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

Education Advisory Committee

† June 30, 1995 - 9 a.m. -- Open Meeting
Department of Health Professions, 6606 West Broad Street,
5th Floor, Conference Room 4, Richmond, Virginia. ☞
(Interpreter for the deaf provided upon request)

A meeting to consider matters related to educational programs approved by the Board of Nursing and make recommendations to the board as needed.

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

BOARDS OF NURSING AND MEDICINE

Joint Committee

June 27, 1995 - 2 p.m. -- Open Meeting
Department of Health Professions, 6606 West Broad Street,
Conference Room 2, Richmond, Virginia. ☞ (Interpreter for
the deaf provided upon request)

A meeting to consider comments received on proposed VR 495-02-1 and VR 465-07-1, Regulation Governing the Licensure of Nurse Practitioners, and make a recommendation for final action to the Boards of Nursing and Medicine.

Other business relevant to the duties of the committee may be considered as time permits. Public comment will be received at 3 p.m.

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

VIRGINIA OUTDOORS FOUNDATION

June 27, 1995 - 10 a.m. -- Open Meeting
Treasury Board Conference Room, Monroe Building, 101
North 14th Street, 3rd Floor, Richmond, Virginia. ☞
(Interpreter for the deaf provided upon request)

General business meeting - agenda available upon request. Public comment will be received.

Contact: Virginia E. McConnell, Executive Director, Virginia Outdoors Foundation, 203 Governor St., Richmond, VA 23219, telephone (804) 225-2147.

POLYGRAPH EXAMINERS ADVISORY BOARD

June 27, 1995- 10 a.m. -- Open Meeting
Department of Professional and Occupational Regulation,
3600 West Broad Street, 4th Floor, Richmond, Virginia. ☞

The board will meet to review new enforcement procedures, administer the Polygraph Examiners Licensing Examination to eligible polygraph examiner interns, and to consider other matters which may require board action. A public comment period will be scheduled at the beginning of the meeting. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact the department at least 10 days prior to the meeting. The department fully complies with the Americans with Disabilities Act.

Contact: Nancy Taylor Feldman, Assistant Director, Polygraph Examiners Advisory Board, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8590 or (804) 367-9753/TDD ☞

BOARD OF PROFESSIONAL COUNSELORS

July 28, 1995 -- Public 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 Board of Professional Counselors intends to adopt regulations entitled: **VR 560-01-04. Regulations Governing the Certification of Rehabilitation Providers.** New regulations governing the certification of rehabilitation providers are proposed by the Board of Professional Counselors to provide for (i) fees to cover the application processing (\$100) and annual certification review (\$50); and (ii) standards of practice that establish guidelines for

professional conduct, grounds for disciplinary action for misconduct, and reinstatement procedures following denial of certification or disciplinary action.

Statutory Authority: §§ 54.1-2400 and 54.1-3514 of the Code of Virginia.

Contact: Evelyn B. Brown, Executive Director, Board of Professional Counselors, 6606 W. Broad St., 4th Floor, Richmond, VA 23230, telephone (804) 662-9912.

BOARD FOR PROFESSIONAL AND OCCUPATIONAL REGULATION

July 13, 1995 - 7 p.m. -- Public Hearing
Roanoke City Council Chambers, 215 Church Avenue, S.W., Roanoke, Virginia. ☎

The board will conduct public hearings in connection with its study of the feasibility of including carpenters and masons in the Tradesmen Certification Program. The study is a result of Senate Joint Resolution 321, which passed in the 1995 session of the Virginia General Assembly. Persons desiring to participate in the meetings and requiring special accommodations or interpreter services should contact the department at (804) 367-8519 at least 10 days prior to the meeting so that suitable arrangements can be made. The department fully complies with the Americans with Disabilities Act.

Contact: Debra S. Vought, Agency Management Analyst, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23220, telephone (804) 367-8519 or (804) 367-9753/TDD ☎

RECYCLING MARKETS DEVELOPMENT COUNCIL

July 14, 1995 - 10 a.m. -- Open Meeting
Department of Environmental Quality, Innsbrook Corporate Center, Board Room, 4900 Cox Road, Richmond, Virginia.

Council will continue work on developing and monitoring a plan to strengthen Virginia's recycling infrastructure and markets; setting forth strategies primarily designed to improve the supply, quantity, and quality of recyclables; and providing strategies for increasing the demand for recycled products and expanding the capacity of collectors, processors and manufacturers to handle and use specified recyclable materials.

Subcommittee meetings, if appropriate, will be held prior to or after the general council meeting. The subcommittees will meet from 10 to 11:30 a.m.; council will meet from 11:30 to 12:30 p.m.; followed by a lunch break.

Contact: Paddy Katzen, Assistant to Secretary of Natural Resources, Department of Environmental Quality, 629 E. Main St., Richmond, VA 23219, telephone (804) 762-4488.

BOARD OF REHABILITATIVE SERVICES

† **July 13, 1995 - 9:30 a.m.** -- Open Meeting
Woodrow Wilson Rehabilitation Center, Route 250, Fishersville, Virginia.

A meeting to conduct quarterly business.

Contact: Dr. Ronald C. Gordon, Commissioner, Department of Rehabilitative Services, 8004 Franklin Farms Dr., Richmond, VA 23230, telephone (804) 662-7010, toll-free 1-800-552-5019/TDD and Voice or (804) 662-9040/TDD ☎

RICHMOND HOSPITAL AUTHORITY

Board of Commissioners

† **July 27, 1995 - 4 p.m.** -- Open Meeting
Richmond Nursing Home, 1900 Cool Lane, 2nd Floor Classroom, Richmond, Virginia. ☎

A monthly board meeting to discuss nursing home operations and related matters.

Contact: Marilyn H. West, Chairman, Richmond Hospital Authority, P.O. Box 548, Richmond, VA 23204-0548, telephone (804) 782-1938.

BLUE RIBBON COMMISSION ON SCHOOL HEALTH

July 12, 1995 - 7 p.m. -- Public Hearing
Salem High School, 400 Spartan Drive, Salem, Virginia.

† **July 18, 1995 - 7 p.m.** -- Public Hearing
Thomas Eaton Middle School, 2108 Cunningham Drive, Hampton, Virginia.

The Blue Ribbon Commission on School Health plans to conduct hearings to receive comment from the public about the following aspects of school health programs: (i) parent and community involvement, (ii) health education, (iii) health services, and (iv) healthful school environment.

Contact: H. Douglas Cox, Director, Office of Student Services, Virginia Department of Education, P.O. Box 2120, Richmond, VA 23216-2120, telephone (804) 225-2402.

SEWAGE HANDLING AND DISPOSAL APPEALS REVIEW BOARD

June 28, 1995 - 10 a.m. -- Open Meeting
Ramada Inn, 1130 Motel Drive, Allegheny Room, Woodstock, Virginia. ☎

A meeting to hear all administrative appeals of denials of onsite sewage disposal systems permits pursuant to §§ 32.1-166.1 et seq. and 9-6.14:12 of the Code of Virginia, and VR 355-34-02.

Contact: Constance G. Talbert, Secretary to the Board, Sewage Handling and Disposal Appeals Review Board, 1500

Calendar of Events

E. Main St., Suite 117, P.O. Box 2448, Richmond, VA 23218, telephone (804) 786-3561.

VIRGINIA SMALL BUSINESS ADVISORY BOARD

June 29, 1995 - 9 a.m. -- Open Meeting
Virginia Department of Economic Development, Riverfront Towers West, 901 East Byrd Street, 19th Floor Board Room, Richmond, Virginia.

The board will conduct its regular meeting.

Contact: Laura McElligott, Associate State Director, Virginia Small Business Advisory Board, Virginia Department of Economic Development, 901 E. Byrd St., Suite 1800, Richmond, VA 23219, telephone (804) 371-8252 or toll-free 1-800-225-3384.

BOARD OF SOCIAL WORK

August 4, 1995 - 11 a.m. -- Public Hearing
Department of Health Professions, 6606 West Broad Street, 5th Floor, Richmond, Virginia.

August 11, 1995 -- Public 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 Board of Social Work intends to amend regulations entitled: **VR 620-01-2. Regulations Governing the Practice of Social Work.** The purpose of the proposed action is to clarify the responsibilities of a supervisor, allow candidates to be examined prior to completing experience requirements, and address problems with standards of practice.

Contact: Evelyn Brown, Executive Director, Board of Social Work, 6606 W. Broad St., 4th Floor, Richmond, VA 23230, telephone (804) 662-9914.

DEPARTMENT OF TRANSPORTATION (COMMONWEALTH TRANSPORTATION BOARD)

† **July 19, 1995 - 2 p.m.** -- Open Meeting
Department of Transportation, 1401 East Broad Street, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A work session of the board and the Department of Transportation staff.

Contact: Robert E. Martinez, Secretary of Transportation, 1401 E. Broad St., Richmond, VA 23219, telephone (804) 786-8032.

† **July 20, 1995 - 10 a.m.** -- Open Meeting
Department of Transportation, 1401 East Broad Street, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A monthly meeting of the board to vote on proposals presented regarding bids, permits, additions and

deletions to the highway system, and any other matters requiring board approval. Public comment will be received at the outset of the meeting on items on the meeting agenda for which the opportunity for public comment has not been afforded the public in another forum. Remarks will be limited to five minutes. Large groups are asked to select one individual to speak for the group. The board reserves the right to amend these conditions. Separate committee meetings may be held on call of the chairman. Contact VDOT Public Affairs at (804) 786-2715 for schedule.

Contact: Robert E. Martinez, Secretary of Transportation, 1401 E. Broad St., Richmond, VA 23219, telephone (804) 786-8032.

July 12, 1995 - 4:30 p.m. -- Public Hearing
Bluefield Rescue Squad, Bluefield, Virginia.

July 19, 1995 - 4 p.m. -- Public Hearing
Lake Taylor High School, Norfolk, Virginia.

July 31, 1995 -- Public comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Commonwealth Transportation Board intends to **repeal** regulations entitled **VR 385-01-05, Hazardous Materials Transportation Rules and Regulations at Bridge-Tunnel Facilities**, and **adopt** regulations entitled **VR 385-01-05:1, Hazardous Materials Transportation Rules and Regulations at Bridge-Tunnel Facilities**. The purpose of the proposed amendment is to change the existing Hazardous Materials Transportation Rules and Regulations at Bridge-Tunnel Facilities from a regulation based on a listing of hazardous materials to a regulation based on hazard class. All hazardous material transportation restrictions are to be lifted from the two rural interstate 77 tunnels.

Statutory Authority: §§ 33.1-12(3) and 33.1-49 of the Code of Virginia.

Contact: Perry Cogburn, Environmental Program Planner, Department of Transportation Maintenance Division, Emergency Operations Center, 1221 E. Broad St., Richmond, VA 23219, telephone (804) 786-6824, toll-free 1-800-367-7623 or (804) 371-8498/TDD

July 15, 1995 -- Public 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 Commonwealth Transportation Board intends to **repeal** regulations entitled: **VR 385-01-12. Hauling Permit Manual**, and **adopt** regulations entitled: **VR 385-01-12:1. Hauling Permit Manual**. The revised Hauling Permit Manual of the Commonwealth Transportation Board identifies

conditions under which overweight and oversize hauling permits may be granted, and sets forth the fee structure for the permits. The revised manual eliminates obsolete requirements and policies required to obtain overweight or oversize hauling permits, expands weight allowances under general blanket conditions, and makes obtaining overweight and oversize permits less restrictive.

Statutory Authority: §§ 33.1-12(3) and 33.1-49 and Article 18 (§ 46.2-1139 et seq.) of Chapter 10 of Title 46.2 of the Code of Virginia.

Contact: William R. Childress, Hauling Permit Manager, Department of Transportation, 1221 E. Broad St., Richmond, VA 23219, telephone (804) 225-3676 or toll-free 1-800-828-1120/TDD ☎

VIRGINIA RESOURCES AUTHORITY

July 11, 1995 - 9:30 a.m. -- Open Meeting
August 8, 1995 - 9:30 a.m. -- Open Meeting
The Mutual Building, 909 East Main Street, Suite 607, Board Room, Richmond, Virginia.

The board will meet to approve minutes of the prior monthly meeting; to review the authority's operations for the prior months; and to 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., The Mutual Bldg., 909 E. Main St., Suite 607, Richmond, VA 23219, telephone (804) 644-3100 or FAX (804) 644-3109.

DEPARTMENT FOR THE VISUALLY HANDICAPPED

July 28, 1995 -- 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 Department for the Visually Handicapped intends to repeal regulations entitled VR 670-01-1, **Regulation Guidelines for Public Participation and adopt regulations** entitled: **VR 670-01-100, Public Participation Guidelines.** VR 670-01-1 is being repealed so that the department can adopt new public participation regulations that meet the requirements of the Administrative Process Act, as amended in 1993. VR 670-01-100 provides guidelines for involving the public in the development and promulgation of regulations of the Department for the Visually Handicapped. With it, the department will comply with the public participation requirements of the Administrative Process Act, as amended in 1993. These guidelines do not apply to regulations that are exempt or excluded from the provisions of the Administrative Process Act (§ 9-6.14:4.1 of the Code of Virginia).

Statutory Authority: §§ 9-6.14:7.1 and 63.1-85 of the Code of Virginia.

Contact: Glen R. Slonneger, Program Director, Department for the Visually Handicapped, 397 Azalea Avenue, Richmond, VA 23227, telephone (804) 371-3140 or toll-free 1-800-622-2155.

Advisory Committee on Services

July 15, 1995 - 11 a.m. -- Open Meeting
Department for the Visually Handicapped, Administrative Headquarters, 397 Azalea Avenue, Richmond, Virginia. ☎
(Interpreter for the deaf provided upon request)

The committee meets quarterly to advise the board for the Department for the Visually Handicapped on matters related to services for blind and visually impaired citizens of the Commonwealth.

Contact: Barbara G. Tyson, Executive Secretary Senior, Department for the Visually Handicapped, 397 Azalea Ave., Richmond, VA 23227, telephone (804) 371-3140, toll-free 1-800-622-2155 or (804) 371-3140/TDD ☎

Vocational Rehabilitation Advisory Council

September 16, 1995 - 10 a.m. -- Open Meeting
Department for the Visually Handicapped, Administrative Headquarters, 397 Azalea Avenue, Richmond, Virginia. ☎
(Interpreter for the deaf provided upon request. Request must be received no later than 9/5/95 at 5 p.m.)

Council meets quarterly to advise the Virginia Department for the Visually Handicapped on matters related to vocational rehabilitation services for the blind and visually impaired citizens of the Commonwealth.

Contact: James G. Taylor, Vocational Rehabilitation Program Specialist, Department for the Visually Handicapped, 397 Azalea Ave., Richmond, VA 23227, telephone (804) 371-3140, (804) 371-3140/TDD ☎, or toll-free 1-800-622-2155.

VIRGINIA VOLUNTARY FORMULARY BOARD

June 29, 1995 - 10 a.m. -- Public Hearing
James Madison Building, 109 Governor Street, Main Floor Conference Room, Richmond, Virginia.

The board will hold a public hearing to consider the proposed adoption and issuance of revisions to the Virginia Voluntary Formulary. The proposed revisions to the formulary add and delete drugs and drug products to the formulary that became effective on May 1, 1994. Copies of the proposed revisions to the formulary are available for inspection at the Virginia Department of Health, Bureau of Pharmacy Services, James Madison Building, 109 Governor St., Richmond, Virginia 23219. Written comments sent to the above address and received prior to 5 p.m. on June 29, 1995, will be made a part of the hearing record.

Calendar of Events

Contact: James K. Thomson, Bureau of Pharmacy Services, Department of Health, Madison Bldg., 109 Governor St., Room B1-9, Richmond, VA 23219, telephone (804) 786-4326.

August 17, 1995 - 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 being considered for inclusion in the Virginia Voluntary Formulary.

Contact: James K. Thomson, Bureau of Pharmacy Services, Department of Health, Madison Bldg., 109 Governor St., Room B1-9, Richmond, VA 23219, telephone (804) 786-4326.

BOARD FOR WASTE MANAGEMENT FACILITY OPERATORS

July 27, 1995 - 10 a.m. -- Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, Conference Room 4 A and B, Richmond, Virginia. ☎

There will be a general board meeting beginning at 10 a.m., followed by a public hearing at 11 a.m. in compliance with Executive Order 15(94).

Contact: David E. Dick, Assistant Director, Board for Waste Management Facility Operators, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8595, FAX (804) 367-2475 or (804) 367-9753/TDD ☎

STATE WATER CONTROL BOARD

June 28, 1995 - 10 a.m. -- Open Meeting
Department of Environmental Quality, Innsbrook Corporate Center, 4900 Cox Road., Board Room, Glen Allen, Virginia. ☎

A regular quarterly meeting.

Contact: Cindy Berndt, Policy and Planning Supervisor, Department of Environmental Quality, 629 E. Main St., Richmond, VA 23219, telephone (804) 762-4378, FAX (804) 762-4346 or (804) 762-4021/TDD ☎

BOARD FOR WATERWORKS AND WASTEWATER WORKS OPERATORS

July 13, 1995 - 10 a.m. -- Public Hearing
Department of Professional and Occupational Regulation, 3600 West Broad Street, 4th Floor, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A public hearing will be held for the purpose of receiving comment on the board's regulations and public participation guidelines in accordance with Executive Order 15(94). The comment period will end July 31, 1995. Persons desiring to participate in the hearing and requiring special accommodations or interpreter services

should contact the board at least 10 days prior to the hearing. The board fully complies with the Americans with Disabilities Act.

Contact: Nancy Taylor Feldman, Assistant Director, Board for Waterworks and Wastewater Works Operators, 3600 W. Broad St., 4th Floor, Richmond, VA 23230-4917, telephone (804) 367-8590, FAX (804) 367-2474 or (804) 367-9753/TDD ☎

July 13, 1995 - 10 a.m. -- Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, 4th Floor, Richmond, Virginia. ☎ (Interpreter for the deaf provided upon request)

An open meeting to continue regulatory review and other matters requiring board action will be held immediately after a public hearing on Executive Order 15(94). A public comment period will be scheduled at the beginning of the meeting. Persons desiring to participate in the meeting and requiring special accommodations or interpretative services should contact the department at least 10 days prior to the meeting so that suitable arrangements can be made. The department fully complies with the Americans with Disabilities Act.

Contact: Nancy Taylor Feldman, Assistant Director, Board for Waterworks and Wastewater Works Operators, 3600 W. Broad St., 4th Floor, Richmond, VA 23230-4917, telephone (804) 367-8590, FAX (804) 367-2474 or (804) 367-9753/TDD ☎

LEGISLATIVE

JUVENILE JUSTICE SYSTEM TASK FORCE

June 27, 1995 - 10 a.m. -- Open Meeting
Tidewater area; location to be announced.

A regular meeting. HJR 604.

Contact: Joyce Huey, General Assembly Building, 910 Capitol Street, Richmond, VA 23219, telephone (804) 371-2481.

TITLE 15.1. RECODIFICATION TASK FORCE

† **June 29, 1995 - 10 a.m. -- Open Meeting**
† **July 27, 1995 - 10 a.m. -- Open Meeting**
† **August 24, 1995 - 10 a.m. -- Open Meeting**
General Assembly Building, 910 Capitol Square, 6th Floor, Speakers Conference Room, Richmond, Virginia. ☎

A meeting to review working documents for Title 15.1 recodification.

Contact: Michelle Browning, Senior Operations Staff Assistant, Division of Legislative Services, 910 Capitol St., 2nd Floor, Richmond, VA 23219, telephone (804) 786-3591.

CHRONOLOGICAL LIST

OPEN MEETINGS

June 26

Alcoholic Beverage Control Board
Contractors, Board for
Cosmetology, Board for
Housing and Community Development, Board of

June 27

Information Management, Council on
- Virginia Information Technology Infrastructure Task Force
Marine Resources Commission
Nursing and Medicine, Boards of
Outdoors Foundation, Virginia
Polygraph Examiners Advisory Board

June 28

Contractors, Board for
Lottery Board, State
Sewage Handling and Disposal Appeals Review Board
Water Control Board, State

June 29

Compensation Board
Small Business Advisory Board, Virginia
† Title 15.1 Recodification Task Force

June 30

Architects, Professional Engineers, Land Surveyors and Landscape Architects, Board for
† Correctional Education, Board of Executive Council, State
† Nursing, Board of
- Education Advisory Committee

July 5

Museum of Fine Arts, Virginia

July 6

† Agriculture and Consumer Services, Board of
- Virginia Farmers' Market Advisory Board

July 7

Agriculture and Consumer Services, Department of
- Virginia Pork Industry Board

July 11

Agriculture and Consumer Services, Department of
- Virginia Horse Industry Board
† Emergency Planning Committee - Local, Arlington County/City of Falls Church/Washington National Airport
Higher Education for Virginia, State Council on
Hopewell Industrial Safety Council
Virginia Resources Authority

July 12

† Contractors, Board for
Environmental Quality, Department of
- Cost-Benefit Analysis Work Group
Funeral Directors and Embalmers, Board of
† Medicine, Board of

July 13

Agriculture and Consumer Services, Department of
- Pesticide Control Board
† Game and Inland Fisheries, Board of
† Rehabilitative Services, Board of
Waterworks and Wastewater Works Operators, Board for

July 14

† Dentistry, Board of
Recycling Markets Development Council, Virginia

July 15

Visually Handicapped, Department for the
- Advisory Committee on Services

July 18

Accountancy, Board for
† Housing Development Authority, Virginia

July 19

† Community Colleges, State Board for
Environmental Quality, Department of
† Transportation Board, Commonwealth

July 20

† Community Colleges, State Board for
Conservation and Recreation, Department of
- Falls of the James Scenic River Advisory Board
Health, State Board of
- Biosolids Use Regulations Advisory Committee
- Biosolids Use Committee
† Transportation Board, Commonwealth

July 21

† Dentistry, Board of
† HIV Prevention Community Planning Committee, Virginia
† Medicine, Board of
- Legislative Committee

July 24

† Nursing, Board of

July 25

† Nursing, Board of

July 26

† Emergency Planning Committee - Local, Gloucester
† Nursing, Board of

July 27

Compensation Board
† Richmond Hospital Authority
- Board of Commissioners
† Title 15.1 Recodification Task Force
Waste Management Facility Operators, Board for

July 28

† Dentistry, Board of

August 2

Environmental Quality, Department of
- Cost-Benefit Analysis Work Group

Calendar of Events

August 8

† Agriculture and Consumer Services, Department of
- Virginia Winegrowers Advisory Board
Virginia Resources Authority

August 4

Social Work, Board of

August 11

† Medicine, Board of
- Executive Committee

August 12

† Medicine, Board of
- Credentials Committee

August 17

Conservation and Recreation, Department of
- Falls of the James Scenic River Advisory Board
Voluntary Formulary Board, Virginia

August 24

† Title 15.1 Recodification Task Force

August 26

† Military Institute, Virginia
- Board of Visitors

September 16

Visually Handicapped, Department for the
- Vocational Rehabilitation Advisory Council

PUBLIC HEARINGS

June 26

Housing and Community Development, Board of

June 29

Voluntary Formulary Board, Virginia

June 30

Architects, Professional Engineers, Land Surveyors and
Landscape Architects, Board for

July 12

School Health, Blue Ribbon Commission on
Transportation Board

July 13

Professional and Occupational Regulation, Board for
Waterworks and Wastewater Works Operators, Board
for

July 18

† School Health, Blue Ribbon Commission on

July 19

Transportation Board, Commonwealth

July 26

† Air Pollution Control Board, State

July 27

† Air Pollution Control Board, State

August 1

† Professional and Occupational Regulation, Department
of