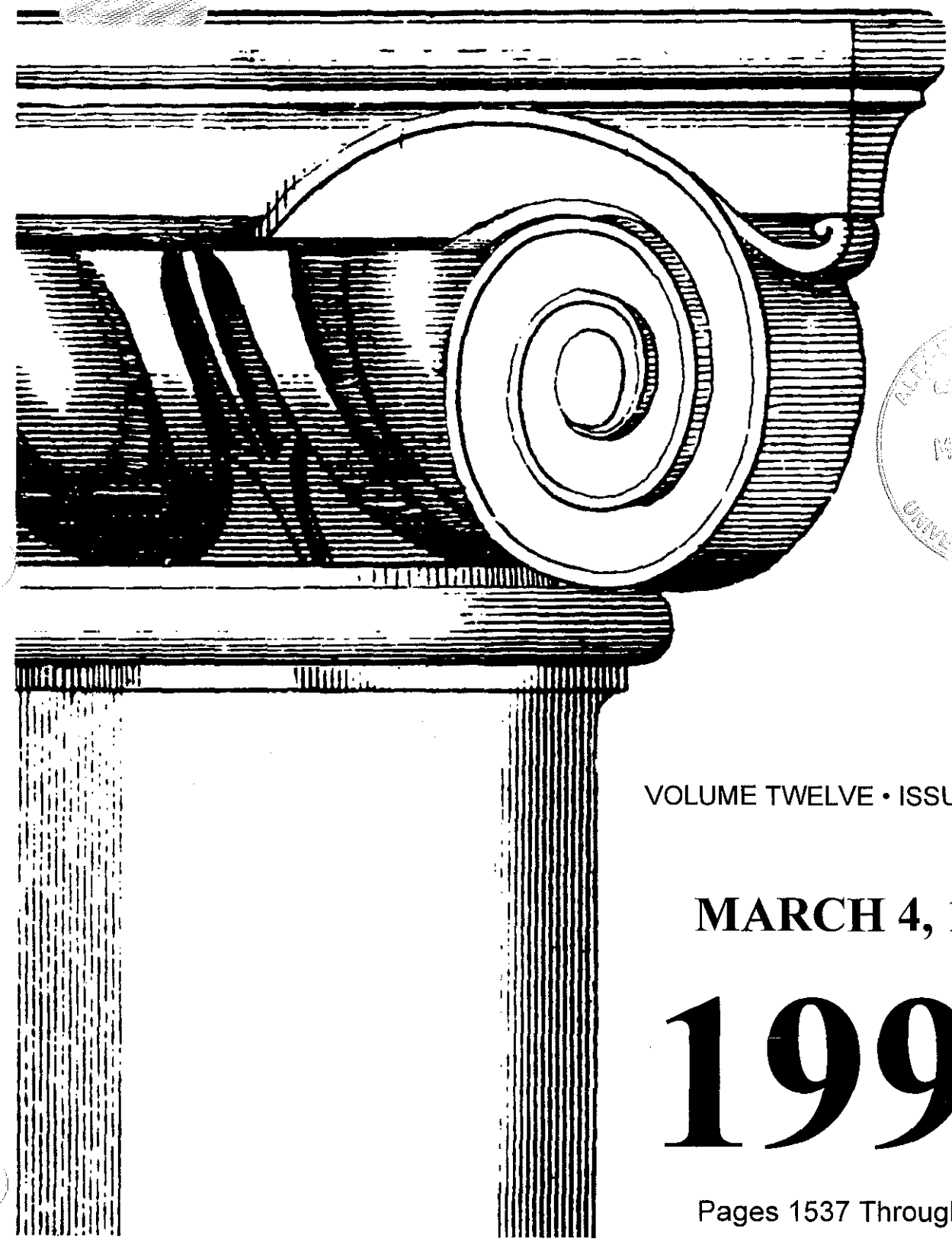
THE VIRGINIA REGISTER

OF REGULATIONS



VOLUME TWELVE • ISSUE TWELVE

MARCH 4, 1996

1996

Pages 1537 Through 1710

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

ADOPTION, AMENDMENT, AND REPEAL OF REGULATIONS

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

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

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

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

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

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

A regulation becomes effective at the conclusion of the 30-day final adoption period, or at any other later date specified by the promulgating agency, unless (i) a legislative objection has been filed, in which event the regulation, unless withdrawn, becomes effective on the date specified, which shall be after the expiration of the 21-day extension period; (ii) the Governor exercises his authority to require the agency to provide for additional public comment, in which event the regulation, unless withdrawn, becomes effective on the date specified, which shall be after the expiration of the period for which the Governor has provided for additional public comment; (iii) the Governor and the General Assembly exercise their authority to suspend the effective date of a regulation until the end of the next regular legislative session; or (iv) the agency suspends the regulatory process, in which event the regulation, unless withdrawn, becomes effective on the date specified, which shall be after the expiration of the 30-day public comment period.

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

EMERGENCY REGULATIONS

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

During the time the emergency status is in effect, the agency may proceed with the adoption of permanent regulations through the usual procedures. To begin promulgating the replacement regulation, the agency must (i) deliver the Notice of Intended Regulatory Action to the Registrar in time to be published within 60 days of the effective date of the emergency regulation; and (ii) deliver the proposed regulation to the Registrar in time to be published within 180 days of the effective date of the emergency regulation. If the agency chooses not to adopt the regulations, the emergency status ends when the prescribed time limit expires.

STATEMENT

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

CITATION TO THE *VIRGINIA REGISTER*

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

"The Virginia Register of Regulations" (USPS-001831) is published bi-weekly, except four times in January, April, July and October, for $100 per year by the Virginia Code Commission, General Assembly Building, Capitol Square, Richmond, Virginia 23219. Telephone (804) 786-3591. Second-Class Postage Rates Paid at Richmond, Virginia. **POSTMASTER:** Send address changes to *The Virginia Register of Regulations*, 910 Capitol Street, 2nd Floor, Richmond, Virginia 23219.

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

PUBLICATION DEADLINES AND SCHEDULES

March 1996 through December 1996

Material Submitted By Noon Wednesday	Will Be Published On
Volume 12	
February 14, 1996	March 4, 1996
February 28, 1996	March 18, 1996
INDEX 2 - Volume 12	**April 1996**
March 13, 1996	April 1, 1996
March 27, 1996	April 15, 1996
April 10, 1996	April 29, 1996
April 24, 1996	May 13, 1996
May 8, 1996	May 27, 1996
May 22, 1996	June 10, 1996
June 5, 1996	June 24, 1996
INDEX 3 - Volume 12	**July 1996**
June 19, 1996	July 8, 1996
July 3, 1996	July 22, 1996
July 17, 1996	August 5, 1996
July 31, 1996	August 19, 1996
August 14, 1996	September 2, 1996
August 28, 1996	September 16, 1996
FINAL INDEX - Volume 12	**October 1996**
Volume 13	
September 11, 1996	September 30, 1996
September 25, 1996	October 14, 1996
October 9, 1996	October 28, 1996
October 23, 1996	November 11, 1996
November 6, 1996	November 25, 1996
November 19, 1996 **(Tuesday)**	December 9, 1996
December 4, 1996	December 23, 1996
INDEX 1 - Volume 13	**January 1997**

TABLE OF CONTENTS

NOTICES OF INTENDED REGULATORY ACTION

PUBLIC COMMENT PERIODS - PROPOSED REGULATIONS

PROPOSED REGULATIONS

STATE AIR POLLUTION CONTROL BOARD

DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT (BOARD OF)

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

State Plan for Medical Assistance Relating to the Home Tomorrow Program.

STATE WATER CONTROL BOARD

FINAL REGULATIONS

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

State Plan for Medical Assistance Relating to Utilization Review of Case Management for Recipients of Auxiliary Grants.

EMERGENCY REGULATIONS

BOARD OF VETERINARY MEDICINE

STATE CORPORATION COMMISSION

ADMINISTRATIVE LETTER

GOVERNOR

GOVERNOR'S COMMENTS

DEPARTMENT OF STATE POLICE

STATE WATER CONTROL BOARD

SCHEDULES FOR COMPREHENSIVE REVIEW OF REGULATIONS

GENERAL NOTICES/ERRATA

DEPARTMENT OF LABOR AND INDUSTRY

Table of Contents

CALENDAR OF EVENTS

NOTICES OF INTENDED REGULATORY ACTION

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

DEPARTMENT OF CORRECTIONAL EDUCATION

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Correctional Education intends to consider promulgating regulations entitled: **6 VAC 10-10-10 et seq. Public Participation Guidelines.** The purpose of the proposed action is to provide interested parties with the means to request the development, amendment or repeal of a regulation. The agency intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: §§ 9-6.14:7.1 and 22.1-343 of the Code of Virginia.

Public comments may be submitted until April 5, 1996.

Contact: Mark Monson, Budget Manager, Department of Correctional Education, James Monroe Bldg., 101 N. 14th St., 7th Floor, Richmond, VA 23219-3678, telephone (804) 225-3310, FAX (804) 225-3255, or (804) 371-8467/TDD ☎

VA.R. Doc. No. R96-219; Filed February 13, 1996, 11:49 a.m.

DEPARTMENT OF EDUCATION (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 Education intends to consider promulgating regulations entitled: **8 VAC 20-610-10 et seq. Regulations Governing Alternative Education Pilot Projects.** The purpose of the proposed regulation is to satisfy the need to provide direction for the establishment and operation of certain alternative education programs in accordance with the Code of Virginia. The agency intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: §§ 22.1-253.13:1 and 22.1-279.3 of the Code of Virginia.

Public comments may be submitted until March 22, 1996, to Diane L. Jay, Department of Education, P.O. Box 2120, Richmond, VA 23218-2120.

Contact: James E. Laws, Jr., Administrative Assistant to the Superintendent for Board Relations, Department of Education, P.O. Box 2120, Richmond, VA 23218-2120, telephone (804) 225-2540 or FAX (804) 225-2524.

VA.R. Doc. No. R96-202; Filed January 30, 1996, 1:50 p.m.

DEPARTMENT OF HEALTH (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 Health intends to consider amending regulations entitled: **12 VAC 5-90-10 et seq. Regulations for Disease Reporting and Control.** The purpose of the proposed action is to add a new section addressing HIV testing protocol for gamete donors to comply with Chapter 519 of the 1995 Virginia Acts of Assembly (§§ 32.1-45.3 and 54.1-2971.1 of the Code of Virginia). The proposed amendment will address such testing and the rejection of ova and sperm of donors who test HIV positive prior to the use of such gametes for treating infertility. The agency does not intend to hold a public hearing on the proposed regulation after publication.

Statutory Authority: § 32.1-45.3 of the Code of Virginia.

Public comments may be submitted until April 4, 1996.

Contact: Casey W. Riley, Director, Bureau of STD/AIDS, Department of Health, P.O. Box 2448, Room 112, Richmond, VA 23218, telephone (804) 225-4844 or FAX (804) 225-3517.

VA.R. Doc. No. R96-218; Filed February 13, 1996, 10:29 a.m.

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Board of Health intends to consider amending regulations entitled: **12 VAC 5-220-10 et seq. Virginia Medical Care Facilities Certificate of Public Need Rules and Regulations.** The purpose of the proposed action is to establish a new application review process for certificate of public need proposals involving the establishment of new nursing homes or the addition of beds to existing nursing homes. The agency intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: § 32.1-102.2 of the Code of Virginia.

Public comments may be submitted until April 4, 1996.

Contact: Wendy V. Brown, Project Review Manager, Office of Resources Development, Department of Health, 1500 E. Main St., Suite 105, Richmond, VA 23219, telephone (804) 786-7463 or FAX (804) 786-6776.

VA.R. Doc. No. R96-216; Filed February 13, 1996, 10:29 a.m.

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Board of Health intends to consider amending regulations entitled: **12 VAC 5-360-10 et seq. Virginia State Medical Facilities Plan: Nursing Home Services.** The purpose of the proposed action is to

amend the project review standards for nursing home certificate of public need applications to specify the need projection methods to be used in the new application review process established in 12 VAC 5-220-10 et seq., Virginia Medical Care Facilities Certificate of Public Need Rules and Regulations. The agency intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: § 32.1-102.2 of the Code of Virginia.

Public comments may be submitted until April 4, 1996.

Contact: Wendy V. Brown, Project Review Manager, Office of Resources Development, Department of Health, 1500 E. Main St., Suite 105, Richmond, VA 23219, telephone (804) 786-7463 or FAX (804) 786-6776.

VA.R. Doc. No. R96-217; Filed February 13, 1996, 10:29 a.m.

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Medical Assistance Services intends to consider promulgating regulations entitled: **12 VAC 30-120-360 et seq., Part VI, MEDALLION II,** and amending regulations entitled **12 VAC 30-10-60 et seq., Coverage and Eligibility; and 12 VAC 30-10-530, Utilization and Control.** The purpose of the proposed action is to promulgate permanent regulations to replace the emergency regulations implementing the MEDALLION II mandatory HMO enrollment program. The agency does not intend to hold a public hearing on the proposed regulation after publication.

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

Public comments may be submitted until March 20, 1996, to Susan Prince, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, Virginia 23219.

Contact: Victoria P. Simmons or Roberta J. Jonas, Regulatory Coordinators, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 371-8850 or FAX (804) 371-4981.

VA.R. Doc. No. R96-204; Filed January 30, 1996, 4:10 p.m.

VIRGINIA WASTE MANAGEMENT BOARD

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Virginia Waste Management Board intends to consider promulgating regulations entitled: **9 VAC 20-160-10 et seq. Voluntary Remediation.** The purpose of this proposal is to promulgate voluntary remediation regulations to remain consistent with Chapters 609 and 622 of the 1995 Acts of Assembly, which established a voluntary remediation program in Virginia. The adopted legislation added §§ 10.1-1429.1 through 10.1-1429.3 to the Code of Virginia.

Basis and Statutory Authority: The basis for this proposed regulatory action is § 10.1-1429.1 of the Code of Virginia. Specifically, § 10.1-1429.1 A requires the Virginia Waste Management Board (Board) to promulgate regulations to allow persons who own, operate, have a security interest in or enter into a contract for the purchase of contaminated property to voluntarily remediate releases of hazardous substances, hazardous waste, solid waste or petroleum.

Need: The promulgation of these regulations is required § 10.1-2439.1 A of the Code of Virginia.

Subject Matter and Intent: The board proposes to create Voluntary Remediation Regulations. The regulations will establish standards and procedures for persons conducting voluntary remediation at sites where remediation has not been clearly mandated by the Environmental Protection Agency, the department, or a court pursuant to the Comprehensive Environmental Response and Liability Act (42 U.S.C. § 9601 et seq.), the Resource Conservation and Recovery Act (42 U.S.C. 6901 et seq.), the Virginia Waste Management Act (§ 10.1-1400 et seq.), the State Water Control Law (§ 62.1-44.2 et seq.), or other applicable statutory or common law or where the jurisdiction of those statutes has been waived. The regulations shall provide for:

1. The establishment of methodologies to determine site specific risk-based remediation standards.

2. The establishment of procedures that minimize delay and expense of the remediation, to be followed by a person volunteering to remediate a release and by the department in the processing of submissions and overseeing remediation.

3. The issuance of certifications of satisfactory completion of remediation, based on then-present conditions and available information, where voluntary cleanup achieves applicable cleanup standards or where the department determines that no further action is required.

4. Procedures to waive or expedite issuance of any permits required to initiate and complete a voluntary cleanup consistent with applicable federal law.

5. Registration fees to be collected from persons conducting voluntary remediation to defray the actual reasonable costs of the voluntary remediation program expended at the site not to exceed the lesser of $5,000 or one percent of the cost of the remediation.

Estimated Impacts: The intent of the proposed regulations is to provide a program that allows persons to voluntarily clean up property and to obtain a certification from DEQ that no further action is required once the property has attained applicable cleanup standards. These applicable standards would be developed through the regulations based on concern about human health and the environment and the available technology for cleanup. The department will solicit comments from the public regarding the economic impact of the regulations.

Alternatives: The board is required to promulgate Voluntary Remediation Regulations pursuant to § 10.1-1429.1 of the Code of Virginia. The regulations can be developed using presumptive standards, performance standards, risk based standards, and/or other alternative approaches. Comments made during the NOIRA process will be considered during the drafting of the regulations.

Comments: The department seeks oral and written comments from interested persons on the intended regulatory action. Written comments should be submitted to Dr. Wladimir Gulevich, Office of Technical Assistance, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240-1009, (804) 762-4218, TDD (804) 762-4021, Fax (804) 762-4224.

Intent to Hold a Public Hearing: The board intends to hold at least one public hearing on this proposed action after it is published in the Virginia Register of Regulations.

Statutory Authority: § 10.1-1429 of the Code of Virginia.

Public comments may be submitted until April 20, 1996.

Contact: Dr. Wladimir Gulevich, Office of Technical Assistance, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240-0009, telephone (804) 762-4218, FAX (804) 762-4224, or (804) 762-4021/TDD ☎

VA.R. Doc. No. R96-208; Filed January 31, 1996, 11:47 a.m.

STATE WATER CONTROL BOARD

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Water Control Board intends to consider amending regulations entitled: **9 VAC 25-260-10 et seq. (amending 9 VAC 25-260-310). Water Quality Standards.** The purpose of the proposed action is to amend 9 VAC 25-260-310 to establish a site-specific water quality standard for ammonia for Sandy Bottom Branch in Accomack County.

Need: Tyson Foods in Accomack County has petitioned the board to amend the water quality standards. This amendment would establish a site-specific standard for ammonia that would apply to the small stream, Sandy Bottom Branch, into which Tyson discharges. The site-specific standard to be proposed would be based on a study funded by Tyson and would be less stringent than the current statewide water quality standard. A site-specific standard would allow Tyson to treat the discharge to a lesser degree than currently required. The adoption of a site-specific standard based on the study designed to protect the less sensitive aquatic community at this site would allow for the protection of the environment in a less burdensome and more cost effective manner.

Subject Matter and Intent: The board intends to propose a site-specific standard for ammonia which will be based on the study by Tyson Foods. This study demonstrated that the aquatic life indigenous to Sandy Bottom Branch in Accomack County is more tolerant of ammonia than the most sensitive species protected by the Virginia water quality standard. Based on this study, the Department of Environmental Quality staff believe that a site-specific water quality standard for ammonia could be less restrictive than the Virginia ammonia standard, while protecting the aquatic community in Sandy Bottom Branch. The intent of the proposed regulation is to provide adequate protection to the aquatic life at the site, while requiring no more wastewater treatment than is necessary. This would ensure environmental protection at a reasonable cost.

Estimated Impacts: Tyson Foods is the only regulated industry that would be affected by a site-specific standard for this stream. The company may experience a cost savings due to reduced treatment requirements. The chronic standard that the department intends to propose increases the standard by approximately 29% in the summer and 267% in the winter. This site-specific standard would allow higher permit limits. However, at the present time, insufficient information is available to estimate what cost savings could be realized by any reduction in the treatment requirements.

Alternatives: One alternative considered was not to propose a site-specific standard for this site and use the existing Virginia water quality standard for ammonia to establish permit limits for this discharger. However, enough information is available to indicate that the resident aquatic life does not need this level of protection and any site-specific standard that will be proposed by the department will be designed to provide adequate protection for the aquatic community in this stream.

Another alternative considered was to propose a single site-specific chronic standard, applicable equally to both winter and summer rather than separate chronic standards applicable to cold and warm water temperatures. Use of a single, year-round chronic standard for this site is not being proposed because the available data support the view that for the resident species, chronic toxicity of ammonia is more pronounced at warmer temperatures than it is under colder conditions. Therefore, a lower criterion is necessary during warm temperatures to protect against adverse effects such as reduced reproduction, while higher concentrations of ammonia can be allowed in the winter and still protect against chronic effects.

Comments: The board requests written comments from interested persons on the department's intent to propose a site-specific standard amendment as described above. Comments are requested on the costs and benefits of the intended proposal as well as the stated alternatives or other alternatives. The agency intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: § 62.1-44.15(3a) of the Code of Virginia.

Public comments may be submitted until 4 p.m. on March 8, 1996.

Contact: Alex Barron, Office of Environmental Research and Standards, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4119.

VA.R. Doc. No. R96-187; Filed January 17, 1996, 11:59 a.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

April 8, 1996 - 10 a.m. -- Public Hearing
Department of Environmental Quality, 629 East Main Street, First Floor, Training Room, Richmond, Virginia.

April 9, 1996 - 10 a.m. -- Public Hearing
Alexandria City Hall, 301 King Street, Room 2000, Alexandria, Virginia.

May 3, 1996 -- Public comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Air Pollution Control Board intends to adopt regulations entitled: **9 VAC 5-150-10 et seq. Regulation for Transportation Conformity.** The regulation establishes criteria and procedures for the transportation planning organization to use when determining whether federally-funded transportation plans, programs, and projects are in conformance with air quality plans before they are adopted. In addition, highway or transit projects which are funded or approved by the Federal Highway Administration or the Federal Transit Administration must be found to conform before they are approved or funded by U.S. Department of Transportation or a Metropolitan Planning Organization. This will apply in the Northern Virginia, Richmond, and Hampton Roads nonattainment areas. "Conformity" means that the activity will not (i) cause or contribute to any new violation of any standard in any area, (ii) will not increase the frequency or severity of any existing violation of any standard in any area, or (iii) will not delay timely attainment of any standard or any required interim emission reductions or other milestones in any area.

A transportation activity must not adversely affect implementation of the state implementation plan or the timely attainment and maintenance of the National Ambient Air Quality Standards. This integration of transportation activities and air quality planning is intended to ensure that emissions growth projections are not exceeded, emissions reduction targets are met, and maintenance efforts are not undermined.

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 Ozone Nonattainment Area: Arlington County, Fairfax County, Fauquier County, Loudoun County, Prince William County, Stafford County, the City of Alexandria, the City of Fairfax, the City of Falls Church, the City of Manassas, and the City of Manassas Park.

2. The Richmond Ozone Nonattainment 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 Ozone Nonattainment 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.

4. Maintenance areas, i.e., the above areas when redesignated to attainment.

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 Office of Air Program Development (Eighth Floor), 629 East Main Street, Richmond, Virginia, and the department's regional offices (listed below) between 8:30 a.m. and 4:30 p.m. of each business day until the close of the public comment period.

Fredericksburg Satellite Office
Department of Environmental Quality
300 Central Road, Suite B
Fredericksburg, Virginia

Ph: (540) 899-4600

Piedmont Regional Office
Department of Environmental Quality
4949-A Cox Road
Innsbrook Corporate Center
Glen Allen, Virginia
Ph: (804) 527-5020

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., Friday, May 3, 1996 to the Director, Office of Air Program Development, Department of Environmental Quality, P.O. Box 10009, Richmond, Virginia 23240.

Contact: Mary E. Major, Policy Analyst Senior, Air Programs Section, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 762-4423.

* * * * * * * * *

April 8, 1996 - 10 a.m. -- Public Hearing
Department of Environmental Quality, 629 East Main Street, First Floor, Training Room, Richmond, Virginia.

April 9, 1996 - 10 a.m. -- Public Hearing
Alexandria City Hall, 301 King Street, Room 2000, Alexandria, Virginia.

May 3, 1996 -- Public comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Air Pollution Control Board intends to adopt regulations entitled: **9 VAC 5-160-10 et seq. Regulation for General Conformity.** The regulation establishes criteria and procedures for federal agencies to use when determining whether their nontransportation actions conform with air quality plans before they are adopted. It will apply in the Northern Virginia, Richmond, and Hampton Roads nonattainment areas. "Conformity" means that the activity will not (i) cause or contribute to any new violation of any standard in any area, (ii) will not increase the frequency or severity of any existing violation of any standard in any area, or (iii) will not delay timely attainment of any standard or any required interim emission reductions or other milestones in any area.

A federal activity must not adversely affect implementation of the state implementation plan or the timely attainment and maintenance of the National Ambient Air Quality Standards. This integration of federal activities and air quality planning is intended to ensure that emissions growth projections are not exceeded, emissions reduction targets are met, and maintenance efforts are not undermined.

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 Ozone Nonattainment Area: Arlington County, Fairfax County, Fauquier County, Loudoun County, Prince William County, Stafford County, the City of Alexandria, the City of Fairfax, the City of Falls Church, the City of Manassas, and the City of Manassas Park.

2. The Richmond Ozone Nonattainment 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 Ozone Nonattainment 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.

4. Maintenance areas, i.e., the above areas when redesignated to attainment.

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 Office of Air Program Development (Eighth Floor), 629 East Main Street, Richmond, Virginia, and the department's regional offices (listed below) between 8:30 a.m. and 4:30 p.m. of each business day until the close of the public comment period.

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
4949-A Cox Road
Innsbrook Corporate Center
Glen Allen, Virginia
Ph: (804) 527-5020

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., Friday, May 3, 1996 to the Director, Office of Air Program Development, Department of Environmental Quality, P.O. Box 10009, Richmond, Virginia 23240.

Contact: Karen G. Sabasteanski, Policy Analyst, Air Programs Section, Department of Environmental Quality, P.O. Box 10009, Richmond, Virginia 23240, telephone (804) 762-4426.

BOARD OF HOUSING AND COMMUNITY DEVELOPMENT

April 15, 1996 - -- Public Hearing
Department of Housing and Community Development, The Jackson Center, 501 North Second Street, Richmond, Virginia.

May 3, 1996 -- 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 Housing and Community Development intends to **repeal** regulations entitled: **13 VAC 5-110-10 et seq. Virginia Enterprise Zone Program Regulations** and **adopt** regulations entitled: **13 VAC 5-111-10 et seq. Virginia Enterprise Zone Program Regulations.** The purpose of the proposed regulation is to implement and administer new incentives and provisions of the Virginia Enterprise Zone Program provided in 1995 legislation. Amendments will also implement greater flexibility for businesses in qualifying for the use of these incentives. Amendments reflect an increase in number of zones statewide and greater flexibility for localities to have multiple zones.

Statutory Authority: § 59.1-278 of the Code of Virginia.

Contact: M. Shea Hollifield, Associate Director, Department of Housing and Community Development, The Jackson Center, 501 N. Second St., Richmond, VA 23219, telephone (804) 371-7030.

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

May 4, 1996 -- Public comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Medical Assistance Services intends to amend regulations entitled: **12 VAC 30-50-100, Inpatient Hospital Services; 12 VAC 30-50-140, Physician's Services; and 12 VAC 30-70-50, Hospital Reimbursement System.** The purpose of this proposal is to make permanent policies to reduce the lengths of inpatient and obstetric stays when medically appropriate in compliance with amendments to the budget. By reducing the average Medicaid length of stay in inpatient hospitals to levels similar to that of patients of private insurance, DMAS estimated that the Commonwealth could generate significant cost savings in Medicaid expenditures. These changes enhance the economical performance of Virginia's Medicaid Program by preventing reimbursement for services that are not medically necessary. DMAS completed an analysis of inpatient hospital claims which showed that the length of stay for inpatient services among Medicaid patients in Virginia, by admission diagnosis and procedure performed, is higher than the lengths of stay among patients covered by private insurance. Based on this analysis, the Governor included in his 1995 amendments to the 1994-96 Appropriations Act two amendments reducing the Medicaid budget by decreasing the average length of stay for inpatient hospital services from six days to five days and by decreasing the length of stay for obstetric services to one day.

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

Public comments may be submitted until May 4, 1996, to Margot Fritts, 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 East Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 371-8850.

STATE WATER CONTROL BOARD

April 11, 1996 - 2 p.m. -- Public Hearing
Roanoke County Administration Center, 5204 Bernard Drive, Board of Supervisors' Room, Roanoke, Virginia.

April 11, 1996 - 7 p.m. -- Public Hearing
Harrisonburg City Council Chambers, 345 South Main Street, Harrisonburg, Virginia.

April 15, 1996 - 2 p.m. -- Public Hearing
Department of Environmental Quality, 629 East Main Street, First Floor, Training Room, Richmond, Virginia.

May 6, 1996 -- Public comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Water Control Board intends to amend regulations entitled: **9 VAC 25-110-10 et seq. Virginia Pollutant Discharge Elimination System (VPDES) General Permit for Sewage Discharges of Less Than or Equal to 1,000 Gallons Per Day.** The purpose of the proposal is to readopt, with amendments, the general VPDES permit for discharges of treated wastewater from individual home treatment

works and other small volume sources of domestic sewage.

Question and Answer Period: A question and answer period will be held one-half hour prior to the public hearing at the same location. Interested citizens will have an opportunity to ask questions pertaining to the proposal at that time.

Accessibility to Persons with Disabilities: The public hearing will be held at facilities believed to be accessible to persons with disabilities. Any person with questions should contact Mr. Richard W. Ayers at the address below. Persons needing interpreter services for the deaf should notify Mr. Ayers no later than April 5, 1996.

Request for Comments: The board is seeking written comments from interested persons on both the proposed regulatory action and the draft permit. Also, comments regarding the benefits of the stated alternative or any other alternatives are welcome.

Other Information: The department has conducted analyses on the proposed regulation related to the basis, purpose, substance, issues and estimated impacts. These are available upon request from Mr. Ayers at the address below.

Statutory Authority: § 62.1-44.15(10) of the Code of Virginia.

Contact: Richard Ayers, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4075.

STATE AIR POLLUTION CONTROL BOARD

Title of Regulation: **9 VAC 5-150-10 et seq. Regulation for Transportation Conformity.**

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

Public Hearing Dates: April 8, 1996 - 10 a.m. (Richmond)
April 9, 1996 - 10 a.m. (Alexandria)
Public comments may be submitted until May 3, 1996.
(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 to establish criteria and procedures for the transportation planning organization to determine whether federally-funded transportation plans, programs, and projects are in conformance with state plans for attaining and maintaining national ambient air quality standards in the Northern Virginia, Richmond, and Hampton Roads nonattainment areas.

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

1. The geographic coverage of the regulation consists of the boundaries of localities in the following areas:

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

b. The Richmond Ozone Nonattainment Area: Charles City County, Chesterfield County, Hanover County, Henrico County, the City of Colonial Heights, the City of Hopewell, and the City of Richmond.

c. The Hampton Roads Ozone Nonattainment 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.

d. Maintenance areas, i.e., the above areas when redesignated to attainment.

2. Transportation plans and projects must conform to the purpose of the State Implementation Plan (SIP).

a. Transportation projects cannot result in new violations.

b. Transportation projects cannot cause a delay in timely attainment.

3. Transportation plans and projects must conform to the specifics of the SIP.

a. Funding for transportation control measures (TCMs) must be a priority.

b. Transportation Plans must adhere to the emissions budget.

4. Affected agencies must follow specific procedures regarding interagency consultation, public comment and conflict resolution.

a. The following agencies must be involved in interagency consultation with each other and the federal agencies in item 4b:

(1) Metropolitan Planning Organizations (MPOs).

(2) Lead Planning Organizations (LPOs).

(3) Virginia Department of Environmental Quality (DEQ).

(4) Virginia Department of Transportation (VDOT).

(5) Virginia Department of Rail and Public Transit (VDRPT).

b. Interagency consultation must also involve local or regional offices of the following federal agencies:

(1) Environmental Protection Agency (EPA).

(2) Federal Highway Administration (FHA).

(3) Federal Transit Administration (FTA).

c. Consultation procedures must be used in the development of the control strategy implementation plans, the list of TCMs in the applicable implementation plan, the unified planning work program under 23 CFR § 450.314, transportation plans, Transportation Improvement Programs (TIPs), and associated conformity determinations.

5. Conformity applies to the following transportation plans:

a. Transportation Improvement Programs (TIPs)-projects to be completed in a 3-5 year time frame.

b. Transportation Plans - projects to be completed in a 20 year time frame.

c. Federal projects that receive Intermodal Surface Transportation and Efficiency Act funding and/or require FHWA/FTA approval.

6. Conformity tests for Transportation Plans and TIPs include:

a. Regional emissions analysis, i.e., emissions budget.

b. Transportation Control Measures set by the SIP.

7. Emissions budgets:

a. Are established by control strategy implementation plans:

(1) 15% and 9% emission reduction plans,

(2) Attainment plans, and

(3) Maintenance plans.

b. Are established and act as a ceiling for point, area and mobile (highway and nonhighway) sources.

8. After the state submits a control strategy implementation plan the budget in the plan becomes the ceiling for transportation plan and TIP highway emissions until the state submits a new control strategy implementation plan with a revised emissions budget.

9. Non-Federal Projects:

a. Pre-construction requirements for projects which are regionally significant must be in TIP.

b. Project will be halted if not in a conforming transportation plan and TIP.

10. Role of DEQ:

a. Comment on conformity determinations made by VDOT and MPOs.

b. DEQ must escalate any dispute with other state agencies about conformity determinations to the Governor for resolution.

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

1. Public: Affected agencies making conformity determinations on transportation plans, programs, and projects shall establish a proactive public involvement process which provides opportunity for public review and comment prior to taking formal action on a conformity determination for all transportation plans and TIPs, consistent with the requirements of 23 CFR part 450. In addition, these agencies must specifically address in writing all public comments that known plans for a regionally significant project which is not receiving FHWA or FTA funding or approval have not been properly reflected in the emissions analysis supporting a proposed conformity finding for a transportation plan or TIP. These agencies shall also provide opportunity for public involvement in conformity determinations for projects where otherwise required by law.

2. Department:

(a) The Department of Environmental Quality (DEQ) shall develop and the DEQ Director shall issue DEQ Interagency Consultation Procedures (DEQ-ICP) which include procedures for interagency consultation (federal, state, and local) and resolution of conflicts and meet the requirements of this section.

(b) Conflicts among state agencies or between state agencies and a MPO shall be escalated to the Governor if they cannot be resolved by the heads of the involved agencies. The DEQ-ICP shall define the procedures for conflict resolution. If the DEQ appeals to the Governor, the final conformity determination shall have the concurrence of the Governor. If the DEQ does not appeal to the Governor within 14 days, the MPO or VDOT may proceed with the final conformity determination. The Governor may delegate his role in this process, but not to the DEQ Director, VDOT, Virginia Transportation Commission, or a MPO.

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

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

2. The Richmond Ozone Nonattainment 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 Ozone Nonattainment 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.

4. Maintenance areas, i.e., the above areas when redesignated to attainment.

Impact: Metropolitan Planning Organizations (MPOs) and the United States Department of Transportation (DOT) responsible for the approval of any federally-funded transportation plan, program, or project in a nonattainment area. The primary impact of this rule involves the increased requirements for MPOs to perform regional transportation and emissions modeling and document the regional air quality impacts of transportation plans and programs. The framework for consultation and transportation control measures tracking has already been established because conformity requirements have existed in some form since 1977.

The impact of this rule on MPOs may very widely depending on the pollutant for which an area is in nonattainment, the classification of the nonattainment area, the population of the area, and the technical capabilities already developed in the area. EPA reports that a survey of MPOs in ozone nonattainment areas indicated that most spend less than $50,000 for conformity determination on transportation plans.

Conformity determinations are required whenever a transportation plan or TIP is adopted or amended or at a minimum, every three years. The federal Department of Transportation already requires that transportation plans

must be reviewed and updated at least every three years. Therefore, the periodic redetermination should not impose any new burden.

The Clean Air Act (CAA) and the Intermodal Surface Transportation Efficiency Act (ISTEA) both require additional transportation modeling, therefore it is difficult to separate the costs attributable to the conformity requirements alone.

It is not expected that the regulation amendments will result in any cost to the Department of Environmental Quality beyond that currently in the budget.

The regulation will not impact facilities that meet the definition of small business provided in § 9-199 of the Code of Virginia.

Department of Planning and Budget's Economic Impact Analysis

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

Summary of the proposed regulation

This regulation, which is required pursuant to the 1990 Clean Air Act, requires that transportation plans in Virginia conform to the State Implementation Plan.

Executive Summary

The interim transportation conformity rule is expensive to administer. It costs the Commonwealth from $400,000 to $1,100,000 each year. Other than these administrative costs, there is little evidence that the rule has caused any significant shift in the mix of transportation services being planned. Plus there is reason to believe that the plans made under the interim rule will be changed a great deal once the final rule is in effect. This rule may have contributed to the decision by the Disney Corporation not to develop its theme park in Virginia.

The final conformity rule has three potential impacts:

(1) The costs of the planning required under the rule will be in the range of $250,000 to $500,000. It is possible that some of this planning would have occurred in the absence of the rule but this cannot be easily determined.

(2) The rule gives environmental agencies more input in transportation planning decisions. It is possible that this will prevent transportation planners from committing to plans that do not satisfy the State Implementation Plan. Such a mistake could possibly cost Virginia millions of dollars in federal aid and could slow improvement in air quality. The probability of such an eventuality is not known. It depends on what the level of cooperation would be between VDOT and DEQ in the absence of the rule.

(3) The rule limits the transportation sector to an emissions budget specified in the SIP. The artificial distinction between chemicals that come from cars and those that come from other sources could add significantly to the costs of meeting the air quality standards in the Clean Air Act. The limitation on Virginia's ability to reallocate emissions budgets to where they have the most benefit could be quite costly. There is evidence that costs of compliance with other provisions of the CAA have been increased by this inflexibility. Depending on how difficult it is to revise the SIP to adjust emission budgets, the conformity rule could add millions of dollars to the cost of compliance in the Commonwealth. The planning requirements in the rule could be implemented without the added costly inflexibility of emission budgets.

Overall, it appears that the conformity rule is a costly regulation that may provide little in the way of benefits for Virginia. Most of the expected costs are associated not with the final planning requirements but interim planning rules and with the inflexibility in the allocation of emission budgets.

Estimated Economic Impact

Under the Clean Air Act Amendments of 1990 (CAA), the State Implementation Plan (SIP) is the means by which a state monitors, controls, maintains, and enforces compliance with the National Ambient Air Quality Standards (NAAQS). The SIP must set numerical goals for each emissions sector and must establish enforceable measures to attain them. The Act also requires that, in nonattainment areas, metropolitan transportation plans and transportation improvement programs must "conform" to the purpose of the SIP. This means that the transportation plans and programs must ensure that the transportation sector contributes its planned share of emissions reductions. If the plans fail to do so, either they must be modified or the SIP must be changed to offset the shortfall in emissions reductions. Transportation plans must conform before they are implemented. A wide array of federal highway and transit funding must be withheld from nonconforming plans.

The CAA requires that the SIP establish emission budgets for the transportation sector. States choose what part of total emissions they want to allocate to the transportation sector. This budget is a regional cap on transportation emissions. Once the budget is established, all conforming transportation plans must demonstrate that emissions from the transportation sector do not exceed the budget. Before the SIP is finalized, states must apply a "build/no build" test. This test states that emissions from the transportation sector must be less after the transportation plan is built compared to what they would have been had no transportation spending taken place at all. The emissions must also be less than 1990 transportation sector emissions. The interim test is much more restrictive than the final test and greatly complicates the planning process.

Once the emission budget is established, changing the allocation of the budget between the transportation sector and other emissions sources requires a change in the SIP.

In maintenance areas, the maintenance plan establishes a budget with a 10 year life. In nonattainment areas the budget must be reduced according to a schedule that brings the area into compliance along a certain trajectory.

The reason for the conformity requirement is that growth in emissions is the most challenging problem in achieving and maintaining air quality that satisfies the NAAQS. The CAA attacked this problem by requiring emission offsets during review of new stationary sources and by requiring that the transportation sector limit its emissions to the level specified in the budget.

The transportation sector was singled out for a conformity requirement because much of the growth in emissions is expected to come from increased transportation emissions and because changes in the transportation infrastructure are subject to long lead times and great irreversibilities. This led to the decision by Congress that special restrictions should be put in place that ensures that the assumptions on which the SIP is based reflect the actual (future) state of the transportation sector. This required a decision process that more carefully integrated management of the airshed and design of the transportation infrastructure.

The transportation conformity requirement is not, then, an air quality rule. It is a planning rule that is intended to prevent mistakes in the implementation of SIPs. It requires two things: establishing transportation emission budgets (or in the interim passing the build/no build test) and integrating the long-range planning of SIP implementation and transportation infrastructure.

Measuring the economic impact of the transportation conformity regulation involves the consideration of a number of factors. First, there are costs associated with administering the program and with changing the transportation infrastructure. It is also likely that the total cost of controlling air quality will be increased by the fairly rigid division of the overall emission budget into transportation and nontransportation sectors. There may be costs and benefits to transportation consumers of any changes in the mix of transportation services due to the conformity requirement. Finally, it is important to assess what sort of benefits the conformity requirement may provide in terms of air quality improvements and the smoother integration of airshed and transportation management.

Administrative Costs

One of the explicit intentions of the conformity requirement is to induce states to develop more sophisticated modeling and planning capabilities in order to integrate more fully the transportation planning process and the SIP. Transportation plans are subject to conformity determinations every three years. This determination must be supported by sophisticated modeling of emissions from the transportation sector and must involve the active cooperation of state transportation agencies, metropolitan planning organizations (MPOs) and state environmental agencies.

All commentators seem to agree that much more effort is being applied to assessing the impact of transportation plans on future air quality. In Virginia, while MPOs make the final decision on transportation plans, the Department of Transportation (VDOT) takes the lead in this process; the Department of Environmental Quality also participates.

VDOT calculates its costs of undertaking the conformity analysis at about one million dollars per year.[1] Much of the analysis is carried out by a contractor, ICF/Kaiser. This analysis costs between $700,0000 and $800,000 per year. In addition, the department employs 3 to 4 full-time equivalents (for another $150,000 to $200,000) to aid in environmental analysis and transportation planning for the purposes of satisfying the conformity requirement.

Some commentators felt that $850,000 to $1 million seemed unreasonably high and that they would have expected something like a third of what VDOT estimates that it costs them per year.[2] It was suggested that either VDOT is doing more than is explicitly required by the conformity requirement or that some of what VDOT is charging to conformity analysis would be done even if the conformity requirement were not in force.

Thus our estimated range for VDOT costs is $300,000 to $1 million per year. A more precise estimate would require a detailed analysis of VDOT's activities that would go far beyond the resources available for this analysis.

DEQ has one FTE committed to conformity analysis. This costs approximately $50,000 per year.[3]

According to the conformity rule, the actual decision on transportation plans is made by the MPOs. While this is officially true, the reality is that MPOs cannot match VDOT's resources for undertaking this analysis and so they often do not do much more than approve of the plan presented by VDOT. And much of MPO operations are paid for by federal grants. For example, transportation planning for the Metropolitan Washington, DC area has a FY96 budget of $260,000. Of this amount, 80% is paid for by the federal government. Of the $50,000 covered by state and local governments, only about a third comes from Virginia and not all of that is for conformity determinations alone. Virginia's contributions to MPO conformity analysis in the DC area is probably somewhat less than $10,000 per year. Conformity analysis in northern Virginia, Richmond, and Hampton Roads MPOs probably does not cost more than $50,000 per year. There may be some other costs incurred by local governments in response to the conformity requirement but these are small relative to those already estimated and are harder to determine with great reliability.

It is our conclusion that the administrative costs of the transportation conformity requirement is between $400,000 and $1,100,000 per year. These are the costs of undertaking the interim "build/no build" test. A number of sources indicated that the costs of the analysis will likely fall once the transportation emissions budget in the SIP becomes

[1] This information is taken from conversations with Ahmet Anday at VDOT.

[2] Per conversations with Jim Shrouds and Mario Jarquera at the FHWA and by Don Pickerel at the Volpe National Transportation Systems Center.

[3] This information was provided by Bob Mann at DEQ.

effective. It is unknown, what the costs of conformity analysis will be under the emissions budget rule.

We now shift to examining the actual consequences of the conformity rule. These may be broken down into two categories. First, the conformity rule has changed and is continuing to change the transportation planning process. Second, the rule may have an impact on the actual transportation infrastructure and on air quality.

Changes in the transportation planning

As indicated by the substantial administrative costs already detailed, the conformity rule is already having a large impact on the way transportation planning is carried out. The rule is explicitly aimed at forcing the integration of transportation and air quality planning. To be approved, a plan must be based on sophisticated modeling of emissions from the transportation sector and the affect of those emissions on air quality. This is to ensure that the assumptions on which the transportation plan is predicated are consistent with the assumptions about emissions in the SIP.

However laudable this goal sounds, the changes in transportation planning that have actually occurred in response to the rule have, in spite of their expense, had very little beneficial impact. One reason for this ineffectiveness is in the design of the interim rule that is in effect until the SIP is in place. The "build/no build" test requires a very expensive modeling exercise but has had no apparent economic benefit.

The interim test requires that transportation plans achieve two results: (1) that transportation sector emissions resulting from implementing the plan be lower than 1990 emissions and (2) that actually going ahead with the plan will result in less emissions than not doing the things that are in the plan. The first of these requirements is trivial and the second is expensive to do without producing any benefits.

Aggregate emissions of criteria pollutants and precursors from mobile sources have declined substantially since the early 1980s (except for PM_{10}) due primarily to changes in vehicle technology and fuel formulations. This has occurred in spite of a very large increase in the number of vehicle miles traveled and the number of trips taken. This trend is expected to continue until early in the next century due to a continued turnover in the stock of vehicles. Highly polluting older cars are slowly being replaced by newer, cleaner cars. Thus, the requirement that emissions stay below the 1990 level is simply not binding. It will occur under almost any conceivable transportation plan.

Requiring that implementing the plan be designed in such a way that, if it were implemented, it would produce less emissions of the criteria pollutants than not doing anything greatly increases the cost of planning because it imposes several extra constraints on the planning process. These increased costs earn very little; everyone (outside of EPA) agrees that the interim rule will have no impact on air quality. The main reason for this is that transportation planning has a very long lead time but this rule is only effective until the SIP is approved. So the rule doesn't really require that anything be done, only that it be put in the plans until the SIP is approved.

That many of the transportation control measures (TCMs) in the plans will never be implemented is fortunate. The TCMs chosen for inclusion in transportation plans to date have been extremely expensive in terms of emissions removed per dollar. The TCMs chosen for plans have concentrated on investments to reduce congestion[4] and to make available less emission-intensive alternatives. By themselves, these measures are simply not very effective at reducing emissions and, hence, tend to be very expensive per pound removed.

In mature urban areas, any single construction project will be small relative to the existing transportation infrastructure and so will have only a marginal impact on the total emissions. Because the number of vehicle miles traveled and the number of trips are so large, any increase in mass transit would have to be an enormous percentage increase in order to have any measurable impact on emissions. The most cost-effective TCMs are considered to be too unpalatable to most planning organizations: restrictions on vehicle use or economic incentives based on congestion and emissions charges.

The "build/no build" test is especially difficult to pass due to the characteristics of nitrogen oxide (NOx) and volatile organic chemical (VOC) emissions. These emissions from mobile sources are inversely related. VOC emissions decrease with speed while NOx emissions increase with speed. So, reducing congestion will reduce VOCs but may increase NOx. It is not these compounds themselves that are a problem but the ozone that is naturally produced in their presence. By concentrating on the levels of both VOCs and NOx, planners are not at liberty to choose the most effective way of reducing ozone itself. In addition, it is increasingly apparent that ozone levels are, in large part, the result of regional emissions of these precursor chemicals and that these levels do not respond readily to local control of precursor emissions. So the interim rule is doubly ineffective and could conceivably worsen the problem by focusing efforts on local rather than regional solutions.

The best available evidence at this time indicates that the composition of transportation investments has not changed much in response to the conformity rule.[5] Since these plans will be allowed to change after the SIP is approved, then the additional costs imposed by the interim rule over the final rule seem to have produced no benefit whatsoever for all of the money spent.

This conclusion does not necessarily carry over to the final rule. This rule eliminates the "build/no build" rule and requires only that budgets for transportation emissions of criteria pollutants be established and that transportation planners use the best available modeling tools to show that the budget will not be exceeded by the transportation sector once the plan has been implemented. Total emission budgets for criteria pollutants and precursors are set in the SIP to ensure that nonattainment areas achieve compliance within a certain time frame and that maintenance areas do

[4] Of course, many of these measures would have been implemented in the absence of any conformity requirement.

[5] See Clean Air Through Transportation and Air Quality Case Studies Report.

not revert to nonattainment status even in the presence of emissions growth. The allocation of emissions budgets between mobile and other sources is made by the state.

In the short run, emissions from mobile sources should continue to fall as the vehicle stock continues to turn over. During this period, the mobile source budget constraint should not be difficult to meet. However, emissions are expected to start increasing again in the next decade. Since transportation planning horizons are long, the expected future growth should already be a factor in long range planning under the final conformity rule. As the emissions continue to grow, keeping transportation emissions within their budget will become increasingly difficult.

It is possible that, in the absence of the conformity rule, transportation infrastructure could be planned and built in a way that would make it difficult to meet the requirements of the SIP. Advocates of the rule argue that it is not actually an air quality rule but a rule that will prevent states from making costly mistakes in making irreversible investments in their transportation infrastructure that will require substantial dislocations in other sectors to avoid violating the NAAQS. Representatives of a number of environmental agencies are on record as supporting the rule because they believe that transportation planners could use the irreversible character of their investments to force emissions control onto the stationary and area source categories.[6] Once a large financial commitment is made to a project, it would be very difficult for the environmental agencies to force a change.

Supposing that this is a problem for a moment, it is by no means clear that separating the budget into source categories and requiring each category to meet its separate budget constraint would not appear to be an efficient solution. Breaking the emissions budget up into parts based on source type imposes two extra constraints[7] on the ability of air quality managers to achieve and maintain compliance with the NAAQS.

The efficient solution to the air quality management problem is to always require the next increment of cleanup from the source for whom the reduction would be the least expensive. Splitting the emissions budget by type will certainly drive a wedge between the emission control costs of the different sectors. In fact, the TCMs being considered under the interim conformity rule almost without exception have higher marginal control costs above that for the stationary and area sources. This increases the overall costs of meeting the air quality standards.

Even under the final conformity rule, the division of the emissions budget by source type could cost the Commonwealth millions of dollars. For example, the conformity rule was apparently a major issue with the Disney Corporation when it was considering locating a theme park in Virginia. The facility would have generated very large amounts of traffic. Under the conformity rule, it the decision had been made that the cost of increased emissions reduction in the stationary and area source categories would have been worth the benefits of having the Disney facility, then DEQ would have had to apply for a revision to the SIP to change the budget allocation.

Even if you were to accept the argument that a planning requirement is needed to give environmental agencies more actual influence over transportation planning, it does not follow that the budget need be split into sectors. It would be much more efficient to give the Commonwealth an overall budget that it could meet by any allocation of budget that it chooses as long as the implementation plan is supported by appropriate modeling. The political choice of how to allocate budget between various sectors in Virginia is arguably best made at the state level since that is where the costs and benefits are felt.

In evaluating the costs of the conformity rule, it is important to go beyond measuring the increased costs of building and operating the transportation system. Many of the TCMs mentioned in transportation plans will impose costs on transportation consumers. These might be directly through increased costs or indirectly through less privacy, more congestion or less ready access to preferred housing markets. These costs are extremely difficult to evaluate because we do not know the value that consumers place on these things. We don't know these values because all transportation services are under-priced; that is, in general, people using transportation services do not pay the full marginal cost of these services.[8]

The under-charging for transportation services raises two issues. First, it means that we cannot argue that the consumption of these services is evidence of their value to the consumers. It is bound to be true that when something is made available at a fraction of its cost, people will consume much more of it than they would if they were charged the full cost.

That leads to the second issue. In the end, consumers as taxpayers, consumers waiting in lines of traffic, consumers placed at increased risk and consumers breathing auto exhaust are all paying implicitly for transportation. It is generally recognized that the most cost-effective of the TCMs available to transportation planners are those strategies that require transportation consumers to pay explicitly for the resources they use. These strategies involve asking consumers to pay a cash price for transportation services rather than an implicit price that is not directly related to usage.

In considering the costs of the conformity requirement, we need to assess the costs that satisfying that requirement will place on consumers, businesses and taxpayers. Our answer to that question will depend critically on what sort of strategies are chosen for keeping transportation programs under the emissions budget in the SIP. As transportation emissions increase, if no adjustments are made in the SIP budget allocation and if TCMs do not include the more cost-

[6] It should be noted that this argument was not made by DEQ staff.

[7] Three categories implies two constraints.

[8] Aside from the many direct subsidies, a person driving an extra mile on a public road doesn't pay for the marginal increase in damage to the roads, the congestion costs to others, the costs of adding to auto emissions, or the extra law enforcement activity implied by that increased use.

effective incentive-based measures, control costs could be millions of dollars higher than if a more efficient combination of controls is used. The magnitude of these extra costs is limited by the cost of revising the SIP. It should also be noted that in the Los Angeles air basin, some transfer of budget has actually taken place by market transactions. Stationary sources were allowed to invest in reducing transportation emissions in return for credits. Any flexibility in the budget boundary will lower the cost of the rule.

So, it is not really possible to assess at this time the additional costs on the Commonwealth that will arise due to the conformity rule itself. If the limits on moving emissions between sectors were eliminated, the costs of the conformity requirement would mostly be limited to the extra planning expenses: probably in the range of $250,000 to $500,000 per year.[9]

It is also important to know whether controls of regional pollutants will be administered at the regional level of state by state. Especially with nitrogen oxides, regional rather than local emissions are important. Controlling these emissions at the state rather than regional level would almost certainly increase total costs considerably. It would also penalize faster growing states who might otherwise benefit by obtaining (possibly through purchase) emission reductions from other, slower growing, states in the region.

Businesses and entities affected

The conformity rule will, if the budgets remain divided by sector, result in higher costs to businesses that make heavy use of the transportation sector. The division of the emissions budget may also affect stationary and area emission sources. These businesses may find it attractive to make emission reductions and sell them for transportation sector use. These transactions would be severely limited by the current conformity rule.[10]

Localities particularly affected

The conformity rule will have its greatest impact on the three nonattainment areas in Virginia. Even after they achieve maintenance status, the conformity rule will still apply.

Projected impact on employment

The conformity rule may increase the costs of the transportation infrastructure, may increase the costs associated with using transportation services, and may make it difficult for large firms to locate operations in nonattainment and maintenance areas. Since transport is such a significant portion of economic activity, the employment effects could be substantial and cannot be pinpointed in any particular sector of the economy. The case of the Disney development is instructive.

The impact on employment will depend on how difficult it is to move emissions between sector budgets.

Impact on the use and value of private property

In aggregate, the development of the transportation infrastructure has considerable impact on property values. This regulation will not have a significant direct effect on property values but will have an impact on property values insofar as it affects the performance of the transportation system and the funds required to build and operate it.

Summary

The interim transportation conformity rule is expensive to administer. It costs the Commonwealth from $400,000 to $1,100,000 each year. Other than these administrative costs, there is little evidence that the rule has caused any significant shift in the mix of transportation services being planned. Plus there is reason to believe that the plans made under the interim rule will be changed a great deal once the final rule is in effect. This rule may have contributed to the decision by the Disney Corporation not to develop its theme park in Virginia.

The final conformity rule has three potential impacts:

(1) The costs of the planning required under the rule will be in the range of $250,000 to $500,000. It is possible that some of this planning would have occurred in the absence of the rule but this cannot be easily determined.

(2) The rule gives environmental agencies more input in transportation planning decisions. It is possible that this will prevent transportation planners from committing to plans that do not satisfy the State Implementation Plan. Such a mistake could possibly cost Virginia millions of dollars in federal aid and could slow improvement in air quality. The probability of such an eventuality is not known. It depends on what the level of cooperation would be between VDOT and DEQ in the absence of the rule.

(3) The rule limits the transportation sector to an emissions budget specified in the SIP. The artificial distinction between chemicals that come from cars and those that come from other sources could add significantly to the costs of meeting the air quality standards in the Clean Air Act. The limitation on Virginia's ability to reallocate emissions budgets to where they have the most benefit could be quite costly. There is evidence that costs of compliance with other provisions of the CAA have been increased by this inflexibility. Depending on how difficult it is to revise the SIP to adjust emission budgets, the conformity rule could add millions of dollars to the cost of compliance in the Commonwealth. The planning requirements in the rule could be implemented without the added costly inflexibility of emission budgets.

Overall, it appears that the conformity rule is a costly regulation that may provide little in the way of benefits for Virginia. Most of the expected costs are associated not with the final planning requirements but interim planning rules and with the inflexibility in the allocation of emission budgets.

[9] Again, it is worth mention that as transportation emissions increased, the Commonwealth might choose to spend some of these funds on planning even in the absence of the conformity rule. So, the costs of the rule would be lower.

[10] Although the magnitude of this effect is not known, the potential is already there. VDOT reports that they have already been approached by a large stationary source about the potential interest in such a trade.

Sources

Anderson, J. P. and A. M. Howitt, "Clean Air Act: SIPs, Sanctions, and Conformity." *Transportation Quarterly* 49:67-78, 1995.

Apogee Research, Inc. Cost Effectiveness of Transportation Control Measures: A Review and Analysis of the Literature. 1994.

Federal Highway Administration, *Air Quality Case Studies Report.* FHWA-PD-95-034, 1994.

U.S. Department of Transportation and Environmental Protection Agency, *Clean Air Through Transportation: Challenges in Meeting National Air Quality Standards.* 1995.

Interviews with:

Bob Mann, DEQ
Ahmet Anday, VDOT
Mike Clifford, Metropolitan Washington COG
Arnold M. Howitt, Kennedy School of Government, Harvard
James M. Shrouds and Mario Jarquera, Federal Highway Administration
Keith Bartholomew, 1000 Friends of Oregon
Bob Yunke, Environmental Defense Fund
Don Pickrell, Chief Economist, Volpe National Transportation Systems Center

Agency's Response to Department of Planning and Budget's Economic Impact Analysis:

1. ". . . there is little evidence . . ." Granted there is little evidence that the rule has caused any significant shift in the mix of transportation services being planned, but it has definitely caused a change in the direction of transportation planning by promoting the awareness of transportation impact to air quality and by fostering a partnership between the state and local transportation and the air quality planning agencies to work toward healthier air.

A change in the mix of transportation services does not happen overnight and is influenced by demand. Without broadening the awareness of the planning officials and the public and without an impetus to force serious consideration for alternative plans and transportation mix options, the public will not have the opportunity to make an informed transportation service decision, and what we will have is a continuous expansion of transportation capacity without owning up to our share of the emission reduction.

2. "This rule may have contributed . . ." The Disney project was, in fact, determined to conform.

3. Without the rule, an impetus for better and cooperative planning and understanding of the air quality issues would be lost. Transportation planning (i.e., what roadways to build or improve) has always been influenced by local needs, while the air quality issues are a regional problem.

4. "The artificial distinction . . ." The distinction between chemicals that come from cars and those that come from other sources is not artificial. The three pollutants that are monitored are volatile organic compounds (VOC), nitrogen oxides (NO_X), and carbon monoxide (CO). There are about a hundred VOCs that are considered photochemically reactive and therefore, are precursors of ozone. Each industry may emit a group of VOCs that is different from the other. The VOCs emitted from vehicle exhaust and refueling are different from those emitted by stationary sources. Depending on the source's operational parameters, the rates of VOC emissions are different as well. According to photochemical reactivity studies, VOCs from vehicle emissions are more photochemically reactive than most stationary source VOCs. Therefore, on a theoretical basis, it would be most effective to control the most reactive VOC. However, it may not be cost effective or practical to do so.

5. "The limitation on Virginia's ability . . ." In the case of Richmond ozone nonattainment area, the Clean Air Act requires Virginia to develop a 15% VOC reduction plan, from which the VOC emission budget is derived. The allocation of the SIP emission budget is equitably designed. The total emission budget pie is allocated to stationary and area sources as a whole, and to on-road mobile sources (transportation) based on existing activities and projected growth. The plan requires what can practicably be achieved and enforceable. The transportation conformity permits that enforceability on the transportation sector. However, a 15% reduction in VOC does not equate to a 15% reduction in ozone formation because of the reactivity factor. As demonstrated by photochemical modeling, additional reductions in VOC or NO_X or both may be required to reduce ozone to the attainment level. These additional reductions could be obtained from specific industries if cost is not prohibitive or could be requested from sources generating more reactive VOCs. It would be a challenge to require industry to shoulder a larger portion of emission reductions because their marginal costs are lower.

6. ". . . the total cost of controlling air quality will be increased. . . " It is unclear on what information this statement is based.

7. "DEQ has one FTE. . . " DEQ has *one tenth* of one FTE committed to conformity analysis and review. This costs approximately $5,000 per year, not $50,000.

8. The Richmond and Hampton Roads nonattainment areas are in the phase II interim period for NO_X evaluation and the transitional period for VOC evaluation. Under the former, the NO_X emissions should be less than that of 1990 and the no-build scenario. Under the latter, the VOC emissions from the build scenario must be less than the 1990 emissions, the no-build scenario, and the submitted SIP VOC budget. The revised SIP budget is about 58% of the 1990 base emission level.

Of the problems stemming from the interim rule, none have been realized other than the excessive estimates of money spent for conformity determination. Notwithstanding, it is worth the money spent to continue to receive federal highway funding. Virginia's three

nonattainment areas have, thus far, been able to meet the conformity test. VDOT has contracted a consultant with sophisticated modeling capabilities that can offer the transportation planners the flexibility to add, remove, modify the design and scope of, or postpone transportation projects based on the constraints posed by VOC and NO_X.

The argument against the interim rule is moot at this stage. However, the debate is not on whether the interim rule is "ineffective and could conceivably worsen the problem by focusing efforts on local rather than regional solutions," but on whether is it possible to solve a regional problem without having to work toward a local solution. How are "regional" and "local" defined? Does a group of counties and cities such as the metropolitan Richmond area comprise a region, or is a region a group such as the Northeast or West-Central states? Either way, there will always be a degree of local-level resistance. What are the costs for doing something now compared to the costs for doing something later with potentially heavier consequences? As supported by one of this document's conclusions, "As the emissions continue to grow, keeping transportation emissions within their budget will become increasingly difficult," it would be wise to do something now, concurrently, on the local and regional levels.

9. "Breaking the emissions budget . . ." How is this conclusion derived? Based on what data and assumptions?

10. Preventing the generation of the additional increment of pollution necessary for cleanup is a better and more efficient approach to air quality and pollution management. Many cost-benefit analyses have demonstrated that pollution prevention is more cost effective than cleanup. The transportation conformity process is a mechanism allowing preventive, proactive transportation planning to meet air quality goals while still allowing for growth.

11. The current conformity rule does not prohibit emission trading.

12. In nonattainment areas, the costs of doing business are always higher. It may not be appropriate to continue to shift costs to existing stationary sources in order to attract new business. It is recognized that transportation is driven by land use and employment, as in the case of Disney development; hence, means to shift transportation usage costs to land developers and new or large employers should be seriously considered.

13. As long as VDOT retains out-of-state consultant services to provide conformity determination for the Richmond and Hampton Roads nonattainment areas, the cost of the planning will be substantially higher than what is estimated by the study.

Summary:

The regulation establishes criteria and procedures for the transportation planning organization to use when determining whether federally-funded transportation plans, programs, and projects are in conformance with air quality plans before they are adopted. In addition, highway or transit projects which are funded or approved by the Federal Highway Administration or the Federal Transit Administration must be found to conform before they are approved or funded by U.S. Department of Transportation or a Metropolitan Planning Organization. This will apply in the Northern Virginia, Richmond, and Hampton Roads nonattainment areas. "Conformity" means that the activity will not: (i) cause or contribute to any new violation of any standard in any area, (ii) will not increase the frequency or severity of any existing violation of any standard in any area, or (iii) will not delay timely attainment of any standard or any required interim emission reductions or other milestones in any area.

A transportation activity must not adversely affect implementation of the SIP or the timely attainment and maintenance of the National Ambient Air Quality Standards. This integration of transportation activities and air quality planning is intended to ensure that emissions growth projections are not exceeded, emissions reduction targets are met, and maintenance efforts are not undermined.

9 VAC 5-150-10 et seq. Regulation for Transportation Conformity.

CHAPTER 150.
REGULATION FOR TRANSPORTATION CONFORMITY.

PART I.
GENERAL DEFINITIONS.

9 VAC 5-150-10. General.

A. For the purpose of this regulation and subsequent amendments or any orders issued by the board, the words or terms shall have the meanings given them in 9 VAC 5-150-20.

B. Unless specifically defined in the Virginia Air Pollution Control Law or in this regulation, terms used shall have the meaning given them by the federal Clean Air Act, Titles 23 and 49 USC, other U.S. Environmental Protection Agency regulations, other USDOT regulations, or commonly ascribed to them by recognized authorities, in that order of priority.

9 VAC 5-150-20. Terms defined.

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

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

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

"Applicable implementation plan" means the portion or portions of the state implementation plan, or the most recent revision thereof, which has been approved under § 110 of the federal Clean Air Act, or promulgated under § 110(c) of the federal Clean Air Act, or promulgated or approved pursuant to regulations promulgated under § 301(d) of the federal Clean Air Act and which implements the relevant requirements of the federal Clean Air Act.

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

"Cause or contribute to a new violation" means, with respect to a project:

1. To cause or contribute to a new violation of a standard in the area substantially affected by the project or over a region which would otherwise not be in violation of the standard during the future period in question, if the project were not implemented; or

2. To contribute to a new violation in a manner that would increase the frequency or severity of a new violation of a standard in the area.

"Confidential Information" means secret formulae, secret processes, secret methods, or other trade secrets which are proprietary information certified by the signature of the responsible person for the owner to meet the following criteria: (i) information for which the owner has been taking and will continue to take measures to protect confidentiality; (ii) information that has not been and is not presently reasonably obtainable without the owner's consent by private citizens or other firms through legitimate means other than discovery based on a showing of special need in a judicial or quasi-judicial proceeding; (iii) information which is not publicly available from sources other than the owner; and (iv) information the disclosure of which would cause substantial harm to the owner.

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

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

"Control strategy implementation plan revision" means the applicable state implementation plan which contains specific strategies for controlling the emissions of and reducing ambient levels of pollutants in order to satisfy federal Clean Air Act requirements for demonstrations of reasonable further progress and attainment (§§ 182(b)(1), 182(c)(2)(A), 182(c)(2)(B), 187(a)(7), 189(a)(1)(B), and 189(b)(1)(A); and §§ 192(a) and 192(b) for nitrogen dioxide of the federal Clean Air Act).

"Control strategy period" means, with respect to particulate matter (PM_{10}), carbon monoxide (CO), nitrogen dioxide (NO_2), or any combination of the preceding, ozone precursors (volatile organic compounds and oxides of nitrogen), that period of time after EPA approves control strategy implementation plan revisions containing strategies for controlling PM_{10}, NO_2, CO, ozone, or any combination of the preceding as appropriate. This period ends when a state submits and EPA approves a request under § 107(d) of the federal Clean Air Act for redesignation to an attainment area.

"Criteria pollutant" means any pollutant for which a national ambient air quality standard is established in 40 CFR Part 50.

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

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

"Design concept" means the type of facility identified by the project, e.g., freeway, expressway, arterial highway, grade-separated highway, reserved right-of-way rail transit, mixed-traffic rail transit, exclusive busway, etc.

"Design scope" means the design aspects which will affect the proposed facility's impact on regional emissions, usually as they relate to vehicle or person carrying capacity and control, e.g., number of lanes or tracks to be constructed or added, length of project, signalization, access control including approximate number and location of interchanges, preferential treatment for high-occupancy vehicles, etc.

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

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

"EPA" means the U.S. Environmental Protection Agency.

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

"Federal Clean Air Act" means 42 USC 7401 et seq.

"FHWA" means the Federal Highway Administration of U.S. Department of Transportation (USDOT).

"FHWA/FTA project" means any highway or transit project which is proposed to receive funding assistance and approval through the Federal-Aid Highway Program or the Federal Mass Transit Program, or requires Federal Highway Administration (FHWA) or Federal Transit Administration (FTA) approval for some aspect of the project, such as connection to an interstate highway or deviation from applicable design standards on the interstate system.

"FTA" means the Federal Transit Administration of USDOT.

"Forecast period" means, with respect to a transportation plan, the period covered by the transportation plan pursuant to 23 CFR Part 450.

"Formal hearing" means board processes other than those informational or factual inquiries of an informal nature provided in §§ 9-6.14:7.1 and 9-6.14:11 of the Administrative Process Act and includes only (i) opportunity for private parties to submit factual proofs in formal proceedings as provided in § 9-6.14:8 of the Administrative Process Act in connection with the making of regulations, or (ii) a similar right of private parties or requirement of public agencies as provided in § 9-6.14:12 of the Administrative Process Act in connection with case decisions.

"Highway project" means an undertaking to implement or modify a highway facility or highway-related program. Such an undertaking consists of all required phases necessary for implementation. For analytic purposes, it shall be defined sufficiently to:

1. Connect logical termini and be of sufficient length to address environmental matters on a broad scope;

2. Have independent utility or significance, i.e., be usable and be a reasonable expenditure even if no additional transportation improvements in the area are made; and

3. Not restrict consideration of alternatives for other reasonably foreseeable transportation improvements.

"Horizon year" means a year for which the transportation plan describes the envisioned transportation system according to 9 VAC 5-150-40.

"Hot-spot analysis" means an estimation of likely future localized CO and PM_{10} pollutant concentrations and a comparison of those concentrations to the national ambient air quality standards. Pollutant concentrations to be estimated should be based on the total emissions burden which may result from the implementation of a single, specific project, summed together with future background concentrations (which can be estimated using the ratio of future to current traffic multiplied by the ratio of future to current emission factors) expected in the area. The total concentration shall be estimated and analyzed at appropriate receptor locations in the area substantially affected by the project. Hot-spot analysis assesses impacts on a scale smaller than the entire nonattainment or maintenance area, including, for example, congested roadway intersections and highways or transit terminals, and uses an air quality dispersion model to determine the effects of emissions on air quality.

"Incomplete data area" means any ozone nonattainment area which the U.S. Environmental Protection Agency has classified, in 40 CFR Part 81, as an incomplete data area.

"Increase the frequency or severity" means to cause a location or region to exceed a standard more often or to cause a violation at a greater concentration than previously existed or would otherwise exist, or both, during the future period in question, if the project were not implemented.

"ISTEA" means the Intermodal Surface Transportation Efficiency Act of 1991.

"LPO" or "Lead Planning Organization" means the organization certified by the state as being responsible for the preparation of control strategy implementation plan revisions for nonattainment areas under § 174 of the federal Clean Air Act. The organization includes elected officials of local governments in the affected nonattainment area, and representatives of DEQ, VDOT, the MPO(s) for the affected area, and other agencies and organizations that have responsibilities for developing, submitting or implementing any of the plan revisions. It is the forum for cooperative air quality planning decision-making.

"Maintenance area" means any geographic region of the United States previously designated nonattainment under § 107 of the federal Clean Air Act and subsequently redesignated to attainment subject to the requirement to develop a maintenance plan.

"Maintenance period" means, with respect to a pollutant or pollutant precursor, that period of time beginning when the state submits and the U.S. Environmental Protection Agency approves a request under § 107(d) of the federal Clean Air Act for redesignation to an attainment area, and lasting for 20 years, unless the applicable implementation plan specifies that the maintenance period shall last for more than 20 years.

"Maintenance plan" means a revision to the applicable implementation plan, meeting the requirements of § 175A of the federal Clean Air Act.

"MPO" or "Metropolitan Planning Organization" means the organization designated as being responsible, together with the state, for conducting the continuing, cooperative, and comprehensive planning process under 23 USC 134 and 49 USC 1607. It is the forum for cooperative transportation decision-making.

"Milestone" means as defined in §§ 182(g) and 189(c)(1) of the federal Clean Air Act. A milestone consists of an emissions level and the date on which it is required to be achieved.

"Motor vehicle emissions budget" means that portion of the total allowable emissions defined in a revision to the applicable implementation plan (or in an implementation plan revision which was endorsed by the Governor or a designee, subject to a public hearing, and submitted to the U.S. Environmental Protection Agency, but not yet approved by the U.S. Environmental Protection Agency) for a certain date for the purpose of meeting reasonable further progress milestones or attainment or maintenance demonstrations, for any criteria pollutant or its precursors, allocated by the applicable implementation plan to highway and transit vehicles. The applicable implementation plan for an ozone nonattainment area may also designate a motor vehicle emissions budget for nitrogen oxides for a reasonable further progress milestone year if the applicable implementation plan demonstrates that this nitrogen oxides budget will be achieved with measures in the implementation plan (as an implementation plan must do for volatile organic compound milestone requirements). The applicable implementation plan for an ozone nonattainment area includes a nitrogen oxides budget if nitrogen oxide reduction are being substituted for reductions in volatile organic compounds in milestone years required for reasonable further progress.

"National ambient air quality standards (NAAQS)" means those standards established pursuant to § 109 of the federal Clean Air Act.

"NEPA" means the National Environmental Policy Act of 1969 as amended (42 USC 4321 et seq.)

"NEPA process completion" means, with respect to FHWA or FTA, the point at which there is a specific action to make a determination that a project is categorically excluded, to make a Finding of No Significant Impact, or to issue a record of decision on a Final Environmental Impact Statement under NEPA.

"Nonattainment area" means any geographic region of the United States which has been designated as nonattainment under § 107 of the federal Clean Air Act for any pollutant for which a national ambient air quality standard exists.

"Not-classified area" means any carbon monoxide nonattainment area which the U.S. Environmental Protection Agency has not classified as either moderate or serious.

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

"Owner" means any person, including bodies politic and corporate, associations, partnerships, personal representatives, trustees and committees, as well as individuals, who owns, leases, operates, controls, or supervises a source or facility.

"Party" means any person named in the record who actively participates in the administrative proceeding or offers comments through the public participation process. The term "party" also means the DEQ.

"Person" means an individual, corporation, partnership, association, a governmental body, a municipal corporation, or any other legal entity.

"Phase II of the interim period" means, with respect to a pollutant or pollutant precursor, that period of time after December 27, 1993, lasting until the earlier of the following:

1. Submission to the U.S. Environmental Protection Agency of the relevant control strategy implementation plan revisions which have been endorsed by the Governor or a designee and have been subject to a public hearing, or

2. The date that the federal Clean Air Act requires relevant control strategy implementation plans to be submitted to the U.S. Environmental Protection Agency, provided the U.S. Environmental Protection Agency has notified the state, MPO, and USDOT of the state's failure to submit any such plans. The precise end of Phase II of the interim period is defined in 9 VAC 5-150-360.

"PM_{10}" means particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers as measured by the applicable reference method or an equivalent method.

"Project" means a highway project or a transit project.

"Public hearing" means, unless indicated otherwise, an informal proceeding, similar to that provided for in § 9-6.14:7.1 of the Administrative Process Act, held to afford persons an opportunity to submit views and data relative to a matter on which a decision of the board is pending.

"Recipient of funds designated under Title 23 USC or the Federal Transit Act" means any agency at any level of state, county, city, or regional government that routinely receives Title 23 USC or Federal Transit Act funds to construct FHWA/FTA projects, operate FHWA/FTA projects or equipment, purchase equipment, or undertake other services or operations via contracts or agreements. This definition does not include private landowners or developers, or contractors or entities that are only paid for services or products created by their own employees.

"Regionally significant project" means a transportation project (other than an exempt project) that is on a facility which serves regional transportation needs (such as access to and from the area outside of the region, major activity centers in the region, major planned developments such as new retail malls, sports complexes, etc., or transportation terminals as well as most terminals themselves) and would normally be included in the modeling of a metropolitan area's transportation network, including at a minimum all principal arterial highways and all fixed guideway transit facilities that offer an alternative to regional highway travel.

"Rural transport ozone nonattainment area" means an ozone nonattainment area that does not include, and is not adjacent to, any part of a Metropolitan Statistical Area or, where one exists, a Consolidated Metropolitan Statistical Area (as defined by the United States Bureau of the Census) and is classified under § 182(h) of the federal Clean Air Act as a rural transport area.

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

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

1. Under the provisions of § 10.1-1309 of the Code of Virginia:

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

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

c. To owners who have violated or failed to comply with the terms and provisions of any order or directive

issued by the board to comply with the terms and provisions;

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

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

2. Under the provisions of § 10.1-1309.1 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 the source ceases operations.

"Standard" means a national ambient air quality standard.

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

"Submarginal area" means any ozone nonattainment area which the U.S. Environmental Protection Agency has classified as submarginal in 40 CFR Part 81.

"Transit" is mass transportation by bus, rail, or other conveyance which provides general or special service to the public on a regular and continuing basis. It does not include school buses or charter or sightseeing services.

"Transit project" means an undertaking to implement or modify a transit facility or transit-related program; purchase transit vehicles or equipment; or provide financial assistance for transit operations. It does not include actions that are solely within the jurisdiction of local transit agencies, such as changes in routes, schedules, or fares. It may consist of several phases. For analytical purposes, it shall be defined inclusively enough to:

1. Connect logical termini and be of sufficient length to address environmental matters on a broad scope;

2. Have independent utility or independent significance, i.e., be a reasonable expenditure even if no additional transportation improvements in the area are made; and

3. Not restrict consideration of alternatives for other reasonably foreseeable transportation improvements.

"Transitional area" means any ozone nonattainment area which the U.S. Environmental Protection Agency has classified as transitional in 40 CFR Part 81.

"Transitional period" means, with respect to a pollutant or pollutant precursor, that period of time which begins after submission to the U.S. Environmental Protection Agency of the relevant control strategy implementation plan revision which has been endorsed by the Governor or a designee and has been subject to a public hearing. The transitional period lasts until the U.S. Environmental Protection Agency takes final approval or disapproval action on the control strategy implementation plan submission or finds it to be incomplete. The precise beginning and end of the transitional period is defined in 9 VAC 5-150-360.

"Transportation control measure (TCM)" means any measure that is specifically identified and committed to in the applicable state implementation plan that is either one of the types listed in § 108 of the federal Clean Air Act, or any other measure for the purpose of reducing emissions or concentrations of air pollutants from transportation sources by reducing vehicle use or changing traffic flow or congestion conditions. Notwithstanding the above, vehicle technology-based, fuel-based, and maintenance-based measures which control the emissions from vehicles under fixed traffic conditions are not transportation control measures.

"Transportation improvement program" means a staged, multiyear, intermodal program of transportation projects covering a metropolitan planning area which is consistent with the metropolitan transportation plan, and developed pursuant to 23 CFR Part 450.

"Transportation plan" means the official intermodal metropolitan transportation plan that is developed through the metropolitan planning process for the metropolitan planning area, developed pursuant to 23 CFR Part 450.

"Transportation project" means a highway project or a transit project.

"USDOT" means the U.S. Department of Transportation.

"Variance" means the temporary exemption of an owner or other person from this regulation, or a temporary change in this regulation as it applies to an owner or other person.

"VDOT" means the Virginia Department of Transportation.

"VDRPT" means the Virginia Department of Rail and Public Transit.

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

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

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

PART II.
GENERAL PROVISIONS.

9 VAC 5-150-30. Applicability.

A. The provisions of this regulation, unless specified otherwise, shall apply to the following actions:

1. Except as provided for in subsection C of this section or 9 VAC 5-150-420, conformity determinations are required for:

a. The adoption, acceptance, approval or support of transportation plans developed pursuant to 23 CFR Part 450 or 49 CFR Part 613 by a MPO or USDOT;

b. The adoption, acceptance, approval or support of TIPs developed pursuant to 23 CFR Part 450 or 49 CFR Part 613 by a MPO or USDOT; and

c. The approval, funding, or implementation of FHWA/FTA projects.

2. Conformity determinations are not required under this regulation for individual projects which are not FHWA/FTA projects. However, 9 VAC 5-150-370 applies to the projects if they are regionally significant.

3. This regulation shall be effective on and apply to conformity determinations for which the final decision is made on or after the effective date of the approval of this regulation by EPA.

B. The provisions of this regulation, unless specified otherwise, shall apply to the following geographic areas:

1. The provisions of this regulation shall apply in all nonattainment and maintenance areas for transportation-related criteria pollutants for which the area is designated nonattainment or has a maintenance plan.

2. The provisions of this regulation apply with respect to emissions of the following criteria pollutants: ozone, carbon monoxide, nitrogen dioxide, and particulate matter (PM_{10}).

3. The provisions of this regulation apply with respect to emissions of the following precursor pollutants:

a. Volatile organic compounds and nitrogen oxides in ozone areas (unless the Administrator determines under § 182(f) of the federal Clean Air Act that additional reductions of NO_X would not contribute to attainment);

b. Nitrogen oxides in nitrogen dioxide areas; and

c. Volatile organic compounds, nitrogen oxides, and PM_{10} in PM_{10} areas if:

(1) During the interim period, the EPA Regional Administrator or the DEQ Director has made a finding that transportation-related precursor emissions within the nonattainment area are a significant contributor to the PM_{10} nonattainment problem and has so notified the MPO and USDOT; or

(2) During the transitional, control strategy, and maintenance periods, the applicable implementation plan (or implementation plan submission) establishes a budget for the emissions as part of the reasonable further progress, attainment or maintenance strategy.

C. The applicability of this regulation, unless specified otherwise, shall be subject to the following limitations:

1. Projects subject to this regulation for which the NEPA process and a conformity determination have been completed by FHWA or FTA may proceed toward implementation without further conformity determinations if one of the following major steps has occurred within the past three years: NEPA process completion; start of final design; acquisition of a significant portion of the right-of-way; or approval of the plans, specifications and estimates. All phases of such projects which were considered in the conformity determination are also included, if those phases were for the purpose of funding, final design, right-of-way acquisition, construction, or any combination of these phases.

2. A new conformity determination for the project shall be required if there is a significant change in project design concept and scope, if a supplemental environmental document for air quality purposes is initiated, or if no major steps to advance the project have occurred within the past three years.

9 VAC 5-150-40. Authority of board and DEQ.

A. No provision of this regulation shall limit the power of the board to take such appropriate action as necessary to control and abate air pollution in emergency situations.

B. In accordance with the Virginia Air Pollution Control Law and the Administrative Process Act and by the adoption of this regulation, the board confers upon the DEQ the administrative, enforcement and decision making authority enumerated in this regulation.

C. The board reserves the right to exercise its authority in any of the powers delegated in this regulation should it choose to do so.

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

9 VAC 5-150-50. Establishment of regulations and orders.

A. This regulation is established to implement the provisions of the Virginia Air Pollution Control Law and the federal Clean Air Act.

B. This regulation shall be adopted, amended, or repealed in accordance with the provisions of § 10.1-1308 of the Virginia Air Pollution Control Law, Articles 1 and 2 of the Administrative Process Act and the Public Participation Procedures in Appendix E of Chapter 10 (9 VAC 5-10-10 et seq.).

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

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

E. The Administrative Process Act and Virginia Register Act provide that state regulations may incorporate documents by reference. Throughout this regulation, documents of the

types specified below have been incorporated by reference, and in some cases, they have been cross-referenced.

1. United States Code.

2. Code of Virginia.

3. Code of Federal Regulations.

4. Federal Register.

5. Technical and scientific reference documents.

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

9 VAC 5-150-60. Enforcement of regulations and orders.

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

1. The DEQ may negotiate to obtain compliance through administrative means. The means may be a variance, control program, consent agreement or any other mechanism that requires compliance by a specific date. The means and the associated date shall be determined on a case-by-case basis and shall not allow an unreasonable delay in compliance. In cases where the use of an administrative means is expected to result in compliance within 90 days or less, preferential consideration shall be given to the use of a consent agreement.

2. The DEQ may obtain compliance through legal means pursuant to § 10.1-1316 or § 10.1-1320 of the Virginia Air Pollution Control Law.

B. Nothing in this section shall prevent the DEQ from making efforts to obtain voluntary compliance through conference, warning, or other appropriate means.

C. Orders, consent orders, special orders, and emergency special orders are considered administrative means and the board reserves the right to use these means in lieu of or to provide a legal basis for the enforcement of any administrative means negotiated or approved by the DEQ under subsection A of this section.

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

E. Case decisions regarding the enforcement of regulations and orders shall be made by the DEQ or board. Case decisions of the DEQ that are made pursuant to a formal hearing (i) may be regarded as a final decision of the board and appealed pursuant to subsection C of 9 VAC 5-150-90; or (ii) may be directly considered by the board as provided in subsection F of this section, with the review being on the record and not de novo with opportunity for oral argument. Case decisions of the DEQ that are made pursuant to an informal proceeding (i) may be appealed to the board pursuant to subsection A of 9 VAC 5-150-90, or (ii) may be directly considered by the board according to subsection F of this section.

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

G. The submittal of the request under subsection F of this section by itself shall not constitute a stay of decision. A stay of decision shall be sought through appropriate legal channels.

9 VAC 5-150-70. Hearings and proceedings.

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

1. The public hearing and informational proceeding required before considering regulations, in accordance with § 10.1-1308 of the Virginia Air Pollution Control Law. The procedure for a public hearing and informational proceeding shall conform to § 9-6.14:7.1 of the Administrative Process Act, except as modified by §§ 10.1-1307 F and 10.1-1308 of the Virginia Air Pollution Control Law, and to the Public Participation Procedures in Appendix E of Chapter 10 (9 VAC 5-10-10 et seq.).

2. The public hearing required before considering variances and amendments to and revocation of variances, in accordance with § 10.1-1307 C of the Virginia Air Pollution Control Law. The procedure for a public hearing shall conform to § 10.1-1307 C of the Virginia Air Pollution Control Law and to the provisions of 9 VAC 5-150-80.

3. The informal proceeding used to make case decisions. The procedure for an informal proceeding shall conform to § 9-6.14:11 of the Administrative Process Act.

4. The formal hearing for the enforcement or review of orders and for the enforcement of regulations, in accordance with §§ 10.1-1307 D and 10.1-1322 A of the Virginia Air Pollution Control Law. The procedure for a formal hearing shall conform to § 9-6.14:12 of the Administrative Process Act, except as modified by § 10.1-1307 D and F of the Virginia Air Pollution Control Law.

5. The special order hearing or emergency special order hearing for the enforcement or review of orders and for the enforcement of regulations, in accordance with § 10.1-1309 of the Virginia Pollution Control Law. The procedures for the special order hearing or emergency special order hearing shall conform to § 9-6.14:12 of the Administrative Process Act, except as modified by §§ 10.1-1307 F and 10.1-1309 of the Virginia Air Pollution Control Law.

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

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

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

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

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

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

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

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

3. Any person desiring a copy of the transcript of a special order, emergency special order or formal hearing recorded by a court reporter may purchase the copy directly from the court reporter; if not transcribed, the additional cost of preparation shall be paid by the person making the request.

9 VAC 5-150-80. Relationship of state regulations to federal regulations.

A. In order for the Commonwealth to fulfill its obligations under the federal Clean Air Act, some provisions of this regulation are required to be approved by the U.S. Environmental Protection Agency and when approved those provisions become federally enforceable.

B. In cases where this regulation specifies that procedures or methods shall be approved by, acceptable to, or determined by the board or DEQ or other similar phrasing or specifically provide for decisions to be made by the board or DEQ, it may be necessary to have the actions (approvals determinations, exemptions, exclusions, or decisions) reviewed and confirmed as acceptable or approved by the U.S. Environmental Protection Agency in order to make them federally enforceable. Determination of which state actions require federal confirmation or approval and the administrative mechanism for making associated confirmation or approval decisions shall be made on a case-by-case basis in accordance with U.S. Environmental Protection Agency regulations and policy.

9 VAC 5-150-90. Appeals.

A. Any owner or other party significantly affected by any action of the board taken without a formal hearing, or by inaction of the board, may request a formal hearing in accordance with § 9-6.14:12 of the Administrative Process Act, provided a petition requesting the hearing is filed with the board. In cases involving actions of the board, the petition shall be filed within 30 days after notice of the action is mailed or delivered to the owner or party requesting notification of the action.

B. Prior to any formal hearing, an informal fact finding shall be held pursuant to § 9-6.14.11 of the Administrative Process Act, unless waived by the board.

C. Any decision of the board resultant from a formal hearing shall constitute the final decision of the board.

D. Judicial review of a final decision of the board shall be afforded in accordance with § 10.1-1318 of the Virginia Air Pollution Control Law and § 9-6.14:16 of the Administrative Process Act.

E. Nothing in this section shall prevent disposition of any case by consent.

F. Any petition for a formal hearing or any notice or petition for an appeal by itself shall not constitute a stay of decision or action.

9 VAC 5-150-100. Availability of information.

A. Emission data in the possession of the board or DEQ shall be available to the public without exception.

B. Any other records, reports or information in the possession of the board or DEQ shall be available to the public with the following exception.

The board or DEQ shall consider the records, reports or information, or particular part thereof, confidential in accordance with §§ 10.1-1314 and 10.1-1314.1 of the Virginia Air Pollution Control Law upon a showing satisfactory to the board or DEQ by any owner that the records, reports or information, or particular part thereof, meet the criteria in subsection C of this section and the owner provides a certification to that effect signed by a responsible party for the owner. The records, reports or information, or particular part thereof, may be disclosed, however, to other officers, employees or authorized representatives of the Commonwealth of Virginia and the U.S. Environmental Protection Agency concerned with carrying out the provisions of the Virginia Air Pollution Control Law and the federal Clean Air Act.

C. In order to be exempt from disclosure to the public under subsection B of this section, the record, report or information shall satisfy the following criteria:

1. Information for which the owner has been taking and shall continue to take measures to protect confidentiality;

2. Information that has not been and is not presently reasonably obtainable without the owner's consent by private citizens or other firms through legitimate means

other than discovery based on a showing of special need in a judicial or quasi-judicial proceeding;

3. Information which is not publicly available from sources other than the owner; and

4. Information the disclosure of which would cause substantial harm to the owner.

D. The board or DEQ shall have the right to substitute information which is not confidential for information claimed as confidential and to inquire as to the basis of the confidentiality claim. Upon approval of the board or DEQ, an owner may substitute information which is not confidential for information claimed as confidential. Information substituted shall be limited to that which would have the same substantive effect in analyses conducted by the board or DEQ as the information for which the inquiry is made.

E. Any responsible party for an owner who files information as confidential which does not meet the criteria in subsection C of this section shall be in violation of the Virginia Air Pollution Control Law.

PART III.
CRITERIA AND PROCEDURES FOR MAKING CONFORMITY DETERMINATIONS.

9 VAC 5-150-110. Priority.

When assisting or approving any action with air quality-related consequences, FHWA and FTA shall give priority to the implementation of those transportation portions of an applicable implementation plan prepared to attain and maintain the NAAQS. This priority shall be consistent with statutory requirements for allocation of funds among states or other jurisdictions.

9 VAC 5-150-120. Frequency of conformity determinations.

A. Conformity determinations and conformity redeterminations for transportation plans, TIPs, and FHWA/FTA projects shall be made according to the requirements of this section and the applicable implementation plan.

B. In addition to the requirements of subsection A of this section, conformity determinations and conformity redeterminations for transportation plans shall be made according to the following requirements:

1. Each new transportation plan shall be found to conform before the transportation plan is approved by the MPO or accepted by USDOT.

2. All transportation plan revisions shall be found to conform before the transportation plan revisions are approved by MPO or accepted by USDOT, unless the revision merely adds or deletes exempt projects listed in 9 VAC 5-150-420. The conformity determination shall be based on the transportation plan and the revision taken as a whole.

3. Conformity of existing transportation plans shall be redetermined within 18 months of the following, or the existing conformity determination shall lapse:

a. November 24, 1993;

b. EPA approval of an implementation plan revision which:

(1) Establishes or revises a transportation-related emissions budget (as required by §§ 175A(a), 182(b)(1), 182(c)(2)(A), 182(c)(2)(B), 187(a)(7), 189(a)(1)(B), and 189(b)(1)(A); and §§ 192(a) and 192(b), for nitrogen dioxide of the federal Clean Air Act); or

(2) Adds, deletes, or changes TCMs; and

c. EPA promulgation of an implementation plan which establishes or revises a transportation-related emissions budget or adds, deletes, or changes TCMs.

4. In any case, conformity determinations shall be made no less frequently than every three years, or the existing conformity determination will lapse.

C. In addition to the requirements of subsection A of this section, conformity determinations and conformity redeterminations for transportation improvement programs shall be made according to the following requirements:

1. A new TIP shall be found to conform before the TIP is approved by the MPO or accepted by USDOT.

2. A TIP amendment requires a new conformity determination for the entire TIP before the amendment is approved by the MPO or accepted by USDOT, unless the amendment merely adds or deletes exempt projects listed in 9 VAC 5-150-420.

3. After a MPO adopts a new or revised transportation plan, conformity shall be redetermined by the MPO and USDOT within six months from the date of adoption of the plan, unless the new or revised plan merely adds or deletes exempt projects listed in 9 VAC 5-150-420. Otherwise, the existing conformity determination for the TIP shall lapse.

4. In any case, conformity determinations shall be made no less frequently than every three years or the existing conformity determination shall lapse.

D. In addition to the requirements of subsection A of this section, conformity determinations and conformity redeterminations for FHWA/FTA projects shall be made according to the following requirements:

FHWA/FTA projects shall be found to conform before they are adopted, accepted, approved, or funded. Conformity shall be redetermined for any FHWA/FTA project if none of the following major steps has occurred within the past three years: NEPA process completion; start of final design; acquisition of a significant portion of the right-of-way; or approval of the plans, specifications and estimates.

9 VAC 5-150-130. Consultation.

A. The MPOs, LPOs, DEQ, VDOT and VDRPT shall undertake the procedures prescribed in this section for interagency consultation, conflict resolution and public consultation with each other and with local or regional offices of EPA, FHWA, and FTA on the development of control strategy implementation plan revisions, the list of TCMs in the

applicable implementation plan, the unified planning work program under 23 CFR 450.314, transportation plans, TIPs, and associated conformity determinations required by this regulation.

B. Until EPA grants approval of this regulation, the MPOs, and VDOT and VDRPT, prior to making conformity determinations, shall provide reasonable opportunity for consultation with LPOs, DEQ and EPA on the issues in subdivision D 1 of this subsection.

C. The provisions of this subsection shall be followed with regard to general factors associated with interagency consultation.

1. Representatives of the MPOs, VDOT, VDRPT, FHWA, and FTA shall undertake an interagency consultation process, in accordance with subdivisions 1 and 3 of this subsection and subsection D of this section, with the LPOs, DEQ and EPA on the development of the unified planning work program under 23 CFR 450.314, transportation plans, TIPs, any revisions to the preceding documents, and associated conformity determinations.

a. MPOs shall be the lead agencies responsible for preparing the final document or decision and for assuring the adequacy of the interagency consultation process with respect to the development of the unified planning work program under 23 CFR 450.314, the transportation plan, the TIP, and any amendments or revisions thereto. In the case of nonmetropolitan areas, VDOT shall be the lead agency responsible for preparing the final document or decision and for assuring the adequacy of the interagency consultation process with respect to the development of the statewide transportation plan, the statewide TIP, and any amendments or revisions thereto. The MPOs shall be the lead agencies responsible for preparing the final document or decision and for assuring the adequacy of the interagency consultation process with respect to any determinations of conformity under this regulation for which the MPO is responsible.

b. It shall be the affirmative responsibility of the lead agency to initiate the process by notifying other participants, convene meetings, assure that all relevant documents and information are supplied to all participants in the consultation process in a timely manner, prepare summaries of consultation meetings, maintain a written record of the consultation process, provide final documents and supporting information to each agency after approval or adoption, and to assure the adequacy of the interagency consultation process with respect to the subject document or decision.

c. Regular consultation on major activities (such as the development of a transportation plan, the development of a TIP, or any determination of conformity on transportation plans or TIPs) shall include meetings beginning on a date determined by the lead agency to be adequate to meet the date a final document is required and continuing at frequency mutually determined by the affected agencies. In addition, technical meetings shall be convened as necessary.

d. Each lead agency in the consultation process shall confer with all other agencies identified under subdivision 1 of this subsection with an interest in the document to be developed, provide all information to those agencies needed for meaningful input, solicit early and continuing input from those agencies, and prior to taking any action, consider the views of each agency and respond to those views in a timely, substantive written manner prior to any final decision on the documents. The views and written responses shall be made part of the record of any decision or action.

e. It shall be the responsibility of each agency specified in subdivision 1 of this subsection, when not fulfilling the responsibilities of lead agency, to confer with the lead agency and other participants in the consultation process, review and comment as appropriate (including comments in writing) on all proposed and final documents and decisions in a timely manner, attend consultation and decision meetings, provide input on any area of substantive expertise or responsibility, and provide technical assistance to the lead agency or to the consultation process when requested.

2. Representatives of the LPOs, DEQ, and EPA shall undertake an interagency consultation process, in accordance with subdivisions 2 and 3 of this subsection, with MPOs, VDOT, VDRPT, FHWA, and FTA on the development of control strategy implementation plan revisions, the list of TCMs in the applicable implementation plan, and any revisions to the proceeding documents.

a. The DEQ, in conjunction with the LPOs, shall be the lead agency responsible for preparing the final document or decision and for assuring the adequacy of the interagency consultation process with respect to the development of control strategy implementation plan revisions, the credits associated with the list of TCMs in the applicable implementation plan, and any amendments or revisions thereto.

b. It shall be the affirmative responsibility of the lead agency to initiate the process by notifying other participants, convene meetings, assure that all relevant documents and information are supplied to all participants in the consultation process in a timely manner, prepare minutes of consultation meetings, maintain a written record of the consultation process, provide final documents and supporting information to each agency after approval or adoption, and to assure the adequacy of the interagency consultation process with respect to the subject document or decision.

c. Regular consultation on the development of any control strategy implementation plan revision shall include meetings beginning on a date determined by the lead agency to be adequate to meet the date a final document is required and continuing at frequency

mutually determined by the affected agencies. In addition, technical meetings shall be convened as necessary.

d. Each lead agency in the consultation process shall confer with all other agencies identified under subdivision 1 of this subsection with an interest in the document to be developed, provide all information to those agencies needed for meaningful input, solicit early and continuing input from those agencies, and prior to taking any action, consider the views of each agency and respond to those views in a timely, substantive written manner prior to any final decision on the documents. The views and written responses shall be made part of the record of any decision or action.

e. It shall be the responsibility of each agency specified in subdivision 1 of this subsection, when not fulfilling the responsibilities of lead agency, to confer with the lead agency and other participants in the consultation process, review and comment as appropriate (including comments in writing) on all proposed and final documents and decisions in a timely manner, attend consultation and decision meetings, provide input on any area of substantive expertise or responsibility, and provide technical assistance to the lead agency or to the consultation process when requested.

3. The specific roles and responsibilities of various participants in the interagency consultation process shall be as follows:

a. The MPOs shall be responsible for the following:

(1) Developing metropolitan transportation plans and TIPs in accordance with 23 CFR Part 450 and 49 CFR Part 613 and Intermodal Surface Transportation and Efficiency Act.

(2) Adopting conformity determinations in conjunction with the adoption of transportation plans and TIPs and any revisions to the documents.

(3) In cooperation with VDOT, with assistance from VDRPT:

(a) Developing conformity assessments and associated documentation.

(b) Evaluating potential TCM projects and impacts.

(c) (i) Developing or approving transportation and related socio-economic data and planning assumptions, or both, and (ii) providing the data and assumptions for use in air quality analysis for SIP tracking and conformity of transportation plans, TIPs and projects.

(d) Monitoring regionally significant projects.

(e) Providing technical and policy input into the development of emissions budgets.

(f) Assuring the proper completion of transportation modeling, regional emissions analyses and documentation of timely implementation of TCMs needed for conformity assessments.

(g) Involving the DEQ and LPOs continuously in the process.

(h) Consulting with FHWA and FTA on (i) timely action on final findings of conformity, after consultation with other agencies as provided in this section and 9 VAC 5-150-130; and (ii) guidance on conformity and the transportation planning process to agencies in interagency consultation.

(i) Consulting with EPA on (i) review and approval of updated motor vehicle emissions factors, emission inventories and budgets; and (ii) guidance on conformity criteria and procedures to the agencies involved in the interagency consultation process.

b. The VDOT, with assistance from the VDRPT, shall be responsible for the following:

(1) Developing statewide transportation plans and statewide TIPs.

(2) Providing demand forecasting and on-road mobile source emission inventories.

(3) Circulating draft and final project environmental documents to other agencies.

(4) Convening air quality technical review meetings on specific projects as needed or when requested by other agencies.

(5) In cooperation with the MPOs:

(a) Developing conformity assessments and associated documentation.

(b) Evaluating potential TCM projects and impacts.

(c) (i) Developing or approving transportation and related socio-economic data and planning assumptions, or both, and (ii) providing the data and assumptions for use in air quality analysis for SIP tracking and conformity of transportation plans, TIPs and projects.

(d) Monitoring regionally significant projects.

(e) Providing technical and policy input into the development of emissions budgets.

(f) Assuring the proper completion of transportation modeling, regional emissions analyses and documentation of timely implementation of TCMs need for conformity assessments.

(g) Involving the DEQ and LPOs continuously in the process.

(h) Consulting with FHWA and FTA on (i) timely action on final findings of conformity, after consultation with other agencies as provided in this section and 9 VAC 5-150-130; and (ii) guidance on conformity and the transportation planning process to agencies in interagency consultation.

(i) Consulting with EPA on (i) review and approval of updated motor vehicle emissions factors, emission inventories and budgets; and (ii) guidance on conformity criteria and procedures to the agencies involved in the interagency consultation process.

c. The LPOs shall be responsible for the following:

(1) Developing emissions inventories and budgets.

(2) Developing control strategy implementation plan revisions and maintenance plans.

(3) Providing a staff liaison to the MPOs for conformity and to be responsive to MPO requests for information and technical guidance.

(4) Involving the MPOs, VDOT AND VDRPT continuously in the process.

d. The DEQ shall be responsible for the following:

(1) Developing emissions inventories and budgets.

(2) Tracking attainment of air quality standards, and emission factor model updates.

(3) Gaining final approval at state level for control strategy implementation plan revisions and maintenance plans.

(4) Providing a staff liaison to the LPOs for conformity and to be responsive to LPO requests for information and technical guidance.

(5) Involving the LPOs continuously in the process.

e. The FHWA and FTA shall be responsible for the following:

(1) Assuring timely action on final findings of conformity, after consultation with other agencies as provided in this section and 9 VAC 5-150-130.

(2) Providing guidance on conformity and the transportation planning process to agencies in interagency consultation.

f. The EPA shall be responsible for the following:

(1) Reviewing and approving updated motor vehicle emissions factors.

(2) Providing guidance on conformity criteria and procedures to agencies in interagency consultation.

(3) Assuring timely action on conformity analysis and findings and SIP revisions.

D. The provisions of this subsection shall be followed with regard to specific processes associated with interagency consultation.

1. An interagency consultation process involving the MPOs, LPOs, DEQ, VDOT, VDRPT, EPA, FHWA, and FTA shall be undertaken for the following:

a. Evaluating and choosing each model (or models) and associated methods and assumptions to be used in hot-spot analyses and regional emission analyses, including vehicle miles traveled (VMT) forecasting, to be initiated by VDOT, in consultation with the MPOs, and conducted in accordance with subdivisions C 1 and 3 of this section.

b. Determining which transportation projects should be considered "regionally significant" for the purpose of regional emission analysis (in addition to those functionally classified as principal arterial or higher; or fixed guideway systems or extensions that offer an alternative to regional highway travel), and which projects should be considered to have a significant change in design concept and scope from the transportation plan or TIP, to be initiated by VDOT, in consultation with the MPOs, and conducted in accordance with subdivisions C 1 and 3 of this section.

c. Evaluating whether projects otherwise exempted from meeting the requirements of 9 VAC 5-150-420 and 9 VAC 5-150-430, should be treated as nonexempt in cases where potential adverse emissions impacts may exist for any reason, to be initiated by VDOT, in consultation with the MPOs, and conducted in accordance with subdivisions C 1 and 3 of this section.

d. Making a determination, as required by 9 VAC 5-150-210 C 1, whether past obstacles to implementation of TCMs that are behind the schedule established in the applicable implementation plan have been identified and are being overcome, and whether state and local agencies with influence over approvals or funding for TCMs are giving maximum priority to approval or funding for TCMs, to be initiated by VDOT as lead agency, in consultation with the MPOs and VDRPT, and conducted in accordance with subdivisions C 1 and 3 of this section. This consultation process shall also consider whether delays in TCM implementation necessitate revisions to the applicable implementation plan to remove TCMs or substitute TCMs or other emission reduction measures.

e. Notifying all parties to the consultation process of transportation plan or TIP revisions or amendments which merely add or delete exempt projects listed in 9 VAC 5-150-420, to be initiated by VDOT in consultation with the MPOs, and conducted in accordance with subdivisions C 1 and 3 of this section.

f. Determining what forecast of vehicle miles traveled (VMT) to use in establishing or tracking emissions budgets, developing transportation plans, TIPs, or control strategy implementation plan revisions, or

making conformity determinations, to be initiated by VDOT, in consultation with the MPOs, and in accordance with subdivisions C 1 and 3 of this section.

g. In cases where there are PM_{10} nonattainment areas, VDOT, in consultation with the MPOs, shall initiate a process conducted in accordance with subdivisions C 1 and 3 of this section to identify, as required by 9 VAC 5-150-390 D, projects located at sites in PM_{10} nonattainment areas which have vehicle and roadway emission and dispersion characteristics which are essentially identical to those sites which have violations verified by monitoring, and therefore require quantitative PM_{10} hot-s t analysis.

2. An interagency cons tion process in accordance with subsection C of this section involving the MPOs, LPOs, DEQ, VDOT, and VDRPT shall be undertaken for the following:

a. Evaluating events which may trigger new conformity determinations in addition to those triggering events established by 9 VAC 5-150-340, to be initiated by VDOT, in consultation with the MPOs and DEQ, and conducted in accordance with subdivisions C 1 and 3 of this section.

b. Consulting on emissions analysis for transportation activities which cross the borders of MPOs or nonattainment areas, to be initiated by VDOT in consultation with the MPOs, and conducted in accordance with subdivisions C 1 and 3 of this section.

3. Where the metropolitan planning area does not include the entire nonattainment or maintenance area, an interagency consultation process in accordance with subdivisions C 1 and 3 of this section involving the MPOs and VDOT shall be undertaken for cooperative planning and analysis for purposes of determining conformity of all projects outside the metropolitan area and within the nonattainment or maintenance area, to be initiate by VDOT, in consultation with the MPOs, and in accordance with subdivisions C 1 and 3 of this section.

4. To assure that plans for construction of regionally significant projects which are not FHWA or FTA projects (including projects for which alternative locations, design concept and scope, or the no-build option are still being considered), including all those by recipients of funds designated under Title 23 USC or the Federal Transit Act, are disclosed to the MPO on a regular basis, and to assure that any changes to those plans are immediately disclosed, an interagency consultation process shall be undertaken, to be initiated by the MPO, in consultation with VDOT, and conducted in accordance with subdivisions C 1 and 3 of this section involving the MPO, VDOT, VDRPT, and recipients of funds designated under Title 23 USC or the Federal Transit Act.

5. An interagency consultation process in accordance with subdivisions C 1 and 3 of this section involving the MPOs and other recipients of funds designated under Title 23 USC or the Federal Transit Act shall be undertaken for developing assumptions regarding the location and design concept and scope of projects which are disclosed to the MPO as required by subdivision D 4 of this section but whose sponsors have not yet decided these features in sufficient detail to perform the regional emissions analysis according to the requirements of 9 VAC 5-150-380, to be initiated by the MPO, in consultation with VDOT, and conducted in accordance with subdivisions C 1 and 3 of this section.

6. An interagency consultation process in accordance with subdivisions C 1 and 3 of this section shall be undertaken for the design, schedule, and funding of research and data collection efforts and model developments in regional transportation (such as household or travel transportation surveys) to be initiated by the MPO, in consultation with VDOT, and conducted in accordance with subdivisions C 1 and 3 of this section.

E. The provisions of this subsection shall be followed with regard to conflict resolution associated with interagency consultation.

1. Unresolved conflicts among state agencies, or between state agencies and the MPO(s), or among MPO member jurisdictions, shall be identified by a MPO or agency in writing to the other MPO, DEQ, VDOT, or VDRPT, with copies to FHWA, FTA and EPA. The MPO's or agency's written notice shall:

a. Explain the nature of the conflict;

b. Review options for resolving the conflict;

c. Describe the MPO's or agency's proposal to resolve the conflict;

d. Explain the consequences of not reaching a resolution; and

e. Request that comments on the matter be received within two weeks.

2. If the above action does not result in a resolution to the conflict, either of the following shall apply:

a. If the conflict is between the MPOs or between the MPO(s) and VDOT or VDRPT or both, then the parties shall follow the coordination procedures of 23 CFR 450.210.

b. If the conflict is between the MPO(s) or VDOT or VDRPT and the DEQ and the conflict can not be resolved by the affected agency heads, then the DEQ Director may elevate the conflict to the Governor in accordance with the procedures of subdivision 3 of this subsection. If the DEQ Director does not appeal to the Governor within 14 days as provided in subdivision 3 a of this subsection, the MPO or VDOT or VDRPT may proceed with its final conformity determination.

3. Appeals to the Governor by the DEQ Director under the provisions of subdivision 2 b of this subsection shall be in accordance with the following procedures:

a. The DEQ Director has 14 calendar days to appeal to the Governor after the MPO(s) or VDOT or VDRPT

has notified the DEQ Director of the agency's or MPO's resolution of DEQ's comments. The notification to the DEQ Director shall be in writing and shall be hand delivered. The 14 day clock shall commence when VDOT or VDRPT or the MPO has confirmed receipt by the DEQ Director of the agency's or MPO's resolution of the DEQ's comments.

b. The appeal to the Governor shall consist of the following: the conformity determination and any supporting documentation; DEQ's comments on the determination; the MPO(s) or VDOT or VDRPT resolution of DEQ's comments; and DEQ's appeal document.

c. The DEQ shall provide a complete appeal package to the MPO, VDOT and VDRPT within 24 hours of the time the appeal is filed with the Governor's Office.

d. If the Governor does not concur with the conformity determination, he may direct revision of the applicable implementation plan, revision of the planned program of projects, revision of the conformity analysis or any combination of the preceding.

e. If the Governor concurs with the conformity determination made by the MPO and VDOT, the MPO and VDOT may proceed with the final conformity determination.

f. The Governor may delegate his role in this process, but not to the agency head or staff of DEQ, VDOT or VDRPT or the Commonwealth Board of Transportation.

4. Nothing in this section shall prevent the state agencies and MPOs from making efforts upon their own initiative to obtain mutual conflict resolution through conference or other appropriate means.

F. The provisions of this subsection shall be followed with regard to public consultation.

1. The MPOs shall establish a proactive involvement process which provides reasonable opportunity for review and comment prior to taking formal action on a conformity determination for all transportation plans and TIPs, consistent with the requirements of 23 CFR Part 450.

2. The MPOs shall address in writing public comments regarding plans for a regionally significant project, not receiving FHWA or FTA funding or approval, and how the project is properly reflected in the emission analysis supporting a proposed conformity finding for a transportation plan or TIP.

3. The MPOs shall also provide an opportunity for public involvement in conformity determinations for projects where otherwise required by law.

9 VAC 5-150-140. Content of transportation plans.

A. Transportation plans adopted after January 1, 1995, in serious, severe, or extreme ozone nonattainment areas and in serious carbon monoxide nonattainment areas shall specifically describe the transportation system envisioned for certain future years which shall be called horizon years.

1. The agency or organization developing the transportation plan may choose any years to be horizon years, subject to the following restrictions:

a. Horizon years may be no more than 10 years apart.

b. The first horizon year may be no more than 10 years from the base year used to validate the transportation demand planning model.

c. If the attainment year is in the time span of the transportation plan, the attainment year shall be a horizon year.

d. The last horizon year shall be the last year of the transportation plan's forecast period.

2. For these horizon years:

a. The transportation plan shall quantify and document the demographic and employment factors influencing expected transportation demand, including land use forecasts, in accordance with implementation plan provisions and 9 VAC 5-150-130;

b. The highway and transit system shall be described in terms of the regionally significant additions or modifications to the existing transportation network which the transportation plan envisions to be operational in the horizon years. Additions and modifications to the highway network shall be sufficiently identified to indicate intersections with existing regionally significant facilities, and to determine their effect on route options between transportation analysis zones. Each added or modified highway segment shall also be sufficiently identified in terms of its design concept and design scope to allow modeling of travel times under various traffic volumes, consistent with the modeling methods for area-wide transportation analysis in use by the MPO. Transit facilities, equipment, and services envisioned for the future shall be identified in terms of design concept, design scope, and operating policies sufficiently to allow modeling of their transit ridership. The description of additions and modifications to the transportation network shall also be sufficiently specific to show that there is a reasonable relationship between expected land use and the envisioned transportation system; and

c. Other future transportation policies, requirements, services, and activities, including intermodal activities, shall be described.

B. Ozone or CO nonattainment areas which are reclassified from moderate to serious shall meet the requirements of subsection A of this section within two years from the date of reclassification.

C. Transportation plans for other areas shall meet the requirements of subsection A of this section at least to the extent it has been the previous practice of the MPO to prepare plans which meet those requirements. Otherwise, transportation plans shall describe the transportation system

envisioned for the future specifically enough to allow determination of conformity according to the criteria and procedures of 9 VAC 5-150-170 through 9 VAC 5-150-350.

D. The requirements of this section supplement other requirements of applicable law or regulation governing the format or content of transportation plans.

9 VAC 5-150-150. Relationship of transportation plan and TIP conformity with the NEPA process.

The degree of specificity required in the transportation plan and the specific travel network assumed for air quality modeling do not preclude the consideration of alternatives in the NEPA process or other project development studies. Should the NEPA process result in a project with design concept and scope significantly different from that in the transportation plan or TIP, the project shall meet the criteria in 9 VAC 5-150-170 through 9 VAC 5-150-350 for projects not from a TIP before NEPA process completion.

9 VAC 5-150-160. Fiscal constraints for transportation plans and TIPs.

Transportation plans and TIPs shall be fiscally constrained consistent with 23 CFR Part 450 in order to be found in conformity.

9 VAC 5-150-170. Criteria and procedures for determining conformity of transportation plans, programs, and projects: General.

A. In order to be found to conform, each transportation plan, program, and FHWA/FTA project shall satisfy the applicable criteria and procedures in 9 VAC 5-150-180 through 9 VAC 5-150-350 as listed in Table 1 in subsection B of this section, and shall comply with all applicable conformity requirements of implementation plans and of court orders for the area which pertain specifically to conformity determination requirements. The criteria for making conformity determinations differ based on the action under review (transportation plans, TIPs, and FHWA/FTA projects), the time period in which the conformity determination is made, and the relevant pollutant.

B. The following table indicates the criteria and procedures in 9 VAC 5-150-180 through 9 VAC 5-150-350 which apply for each action in each time period.

Table 1.
Conformity Criteria.

ALL PERIODS

Action	Criteria
Transportation Plan	9 VAC 5-150-180, 9 VAC 5-150-190, 9 VAC 5-150-200, 9 VAC 5-150-210 B
TIP	9 VAC 5-150-180, 9 VAC 5-150-190, 9 VAC 5-150-200, 9 VAC 5-150-210 C
Project (From a conforming plan and TIP)	9 VAC 5-150-180, 9 VAC 5-150-190, 9 VAC 5-150-200, 9 VAC 5-150-220, 9 VAC 5-150-230, 9 VAC 5-150-240, 9 VAC 5-150-250
Project (Not from a conforming plan and TIP)	9 VAC 5-150-180, 9 VAC 5-150-190, 9 VAC 5-150-200, 9 VAC 5-150-210 D, 9 VAC 5-150-220, 9 VAC 5-150-240, 9 VAC 5-150-250

PHASE II OF THE INTERIM PERIOD

Action	Criteria
Transportation Plan	9 VAC 5-150-300, 9 VAC 5-150-330
TIP	9 VAC 5-150-310, 9 VAC 5-150-340
Project (From a conforming plan and TIP)	9 VAC 5-150-290
Project (Not from a conforming plan and TIP)	9 VAC 5-150-290, 9 VAC 5-150-320, 9 VAC 5-150-350

TRANSITIONAL PERIOD

Action	Criteria
Transportation Plan	9 VAC 5-150-260, 9 VAC 5-150-300, 9 VAC 5-150-330
TIP	9 VAC 5-150-270, 9 VAC 5-150-310, 9 VAC 5-150-340
Project (From a conforming plan and TIP)	9 VAC 5-150-290
Project (Not from a conforming plan and TIP)	9 VAC 5-150-280, 9 VAC 5-150-290, 9 VAC 5-150-320, 9 VAC 5-150-350

CONTROL STRATEGY AND MAINTENANCE PERIODS

Action	Criteria
Transportation Plan	9 VAC 5-150-260
TIP	9 VAC 5-150-270
Project (From a conforming plan and TIP)	No additional criteria
Project (Not from a conforming plan and TIP)	9 VAC 5-150-280

9 VAC 5-150-180 The conformity determination shall be based on the latest planning assumptions.

9 VAC 5-150-190 The conformity determination shall be based on the latest emission estimation model available.

9 VAC 5-150-200 The MPO shall make the conformity determination according to the consultation procedures of this regulation.

9 VAC 5-150-210 The transportation plan, TIP, or FHWA/FTA project which is not from a conforming plan and TIP shall provide for the timely implementation of TCMs from the applicable implementation plan.

9 VAC 5-150-220 There shall be a currently conforming transportation plan and currently conforming TIP at the time of project approval.

9 VAC 5-150-230 The project shall come from a conforming transportation plan and program.

9 VAC 5-150-240 The FHWA/FTA project shall not cause or contribute to any new localized CO or PM_{10} violations or increase the frequency or severity of any existing CO or PM_{10} violations in CO and PM_{10} nonattainment and maintenance areas.

9 VAC 5-150-250 The FHWA/FTA project shall comply with PM_{10} control measures in the applicable implementation plan.

9 VAC 5-150-260 The transportation plan shall be consistent with the motor vehicle emissions budget(s) in the applicable implementation plan or implementation plan submission.

9 VAC 5-150-270 The TIP shall be consistent with the motor vehicle emissions budget(s) in the applicable implementation plan or implementation plan submission.

9 VAC 5-150-280 The project which is not from a conforming transportation plan and conforming TIP shall be consistent with the motor vehicle emissions budget(s) in the applicable implementation plan or implementation plan submission.

9 VAC 5-150-290 The FHWA/FTA project shall eliminate or reduce the severity and number of localized CO violations in the area substantially affected by the project (in CO nonattainment areas).

9 VAC 5-150-300 The transportation plan shall contribute to emissions reductions in ozone and CO nonattainment areas.

9 VAC 5-150-310 The TIP shall contribute to emissions reductions in ozone and CO nonattainment areas.

9 VAC 5-150-320 The project which is not from a conforming transportation plan and TIP shall contribute to emissions reductions in ozone and CO nonattainment areas.

9 VAC 5-150-330 The transportation plan shall contribute to emission reductions or shall not increase emissions in PM_{10} and NO_2 nonattainment areas.

9 VAC 5-150-340 The TIP shall contribute to emission reductions or shall not increase emissions in PM_{10} and NO_2 nonattainment areas.

9 VAC 5-150-350 The project which is not from a conforming transportation plan and TIP shall contribute to emission reductions or shall not increase emissions in PM_{10} and NO_2 nonattainment areas.

9 VAC 5-150-180. Criteria and procedures: latest planning assumptions.

A. The conformity determination, with respect to all other applicable criteria in 9 VAC 5-150-190 through 9 VAC 5-150-350, shall be based upon the most recent planning assumptions in force at the time of the conformity determination. This criterion applies during all periods. The conformity determination shall satisfy the requirements of subsections B through F of this section.

B. Assumptions shall be derived from the estimates of current and future population, employment, travel, and congestion most recently developed by the MPO or other agency authorized to make the estimates and approved by the MPO. The conformity determination shall also be based on the latest assumptions about current and future background concentrations.

C. The conformity determination for each transportation plan and TIP shall discuss how transit operating policies (including fares and service levels) and assumed transit ridership have changed since the previous conformity determination.

D. The conformity determination shall include reasonable assumptions about transit service and increases in transit fares and road and bridge tolls over time.

E. The conformity determination shall use the latest existing information regarding the effectiveness of the TCMs which have already been implemented.

F. Key assumptions shall be specified and included in the draft documents and supporting materials used for the interagency and public consultation required by 9 VAC 5-150-130.

9 VAC 5-150-190. Criteria and procedures: latest emissions model.

A. The conformity determination shall be based on the latest emission estimation model available. This criterion applies during all periods. It is satisfied if the most current version of the motor vehicle emissions model specified by EPA for use in the preparation or revision of implementation plans in that state or area is used for the conformity analysis. Where EMFAC is the motor vehicle emissions model used in preparing or revising the applicable implementation plan, new versions shall be approved by EPA before they are used in the conformity analysis.

B. EPA shall consult with USDOT to establish a grace period following the specification of any new model.

1. The grace period shall be no less than three months and no more than 24 months after notice of availability is published in the Federal Register.

2. The length of the grace period shall depend on the degree of change in the model and the scope of re-planning likely to be necessary by MPOs in order to assure conformity. If the grace period will be longer than three months, EPA shall announce the appropriate grace period in the Federal Register.

C. Conformity analyses for which the emissions analysis was begun during the grace period or before the Federal Register notice of availability of the latest emission model may continue to use the previous version of the model for transportation plans and TIPs. The previous model may also be used for projects if the analysis was begun during the grace period or before the Federal Register notice of availability, provided no more than three years have passed since the draft environmental document was issued.

9 VAC 5-150-200. Criteria and procedures: consultation.

The MPO shall make the conformity determination according to the consultation procedures in this regulation and according to the public participation involvement procedures established by the MPO in compliance with 23 CFR Part 450. This criterion applies during all periods. Until this regulation is approved by EPA, the conformity determination shall be made according to the procedures in 9 VAC 5-150-130 A 2 and E. Once this regulation has been approved by EPA, this criterion is satisfied if the conformity determination is made consistent with the implementation plan's consultation requirements.

9 VAC 5-150-210. Criteria and procedures: timely implementation of TCMs.

A. The transportation plan, TIP, or FHWA/FTA project which is not from a conforming plan and TIP shall provide for the timely implementation of TCMs from the applicable implementation plan. This criterion applies during all periods.

B. For transportation plans, this criterion is satisfied if the following two conditions are met:

1. The transportation plan, in describing the envisioned future transportation system, provides for the timely completion or implementation of all TCMs in the applicable implementation plan which are eligible for funding under Title 23 USC or the Federal Transit Act, consistent with schedules included in the applicable implementation plan.

2. Nothing in the transportation plan interferes with the implementation of any TCM in the applicable implementation plan.

C. For TIPs, this criterion is satisfied if the following conditions are met:

1. An examination of the specific steps and funding source(s) needed to fully implement each TCM indicates that TCMs which are eligible for funding under Title 23 USC or the Federal Transit Act are on or ahead of the schedule established in the applicable implementation plan, or, if the TCMs are behind the schedule established in the applicable implementation plan, the MPO and USDOT have determined that past obstacles to implementation of the TCMs have been identified and have been or are being overcome, and that all state and local agencies with influence over approvals or funding for TCMs are giving maximum priority to approval or funding of TCMs over other projects within their control, including projects in locations outside the nonattainment or maintenance area.

2. If TCMs in the applicable implementation plan have previously been programmed for federal funding but the funds have not been obligated and the TCMs are behind the schedule in the implementation plan, then the TIP cannot be found to conform if the funds intended for those TCMs are reallocated to projects in the TIP other than TCMs, or if there are no other TCMs in the TIP, if the funds are reallocated to projects in the TIP other than projects which are eligible for federal funding under ISTEA's Congestion Mitigation and Air Quality Improvement Program.

3. Nothing in the TIP may interfere with the implementation of any TCM in the applicable implementation plan.

D. For FHWA/FTA projects which are not from a conforming transportation plan and TIP, this criterion is satisfied if the project does not interfere with the implementation of any TCM in the applicable implementation plan.

9 VAC 5-150-220. Criteria and procedures: currently conforming transportation plan and TIP.

There shall be a currently conforming transportation plan and currently conforming TIP at the time of project approval. This criterion applies during all periods. It is satisfied if the current transportation plan and TIP have been found to conform to the applicable implementation plan by the MPO and USDOT according to the procedures of this regulation. Only one conforming transportation plan or TIP may exist in an area at any time; conformity determinations of a previous transportation plan or TIP expire once the current plan or TIP is found to conform by USDOT. The conformity determination on a transportation plan or TIP shall also lapse if conformity is not determined according to the frequency requirements of 9 VAC 5-150-120.

9 VAC 5-150-230. Criteria and procedures: Projects from a plan and TIP.

A. The project shall come from a conforming plan and program. This criterion applies during all periods. If this criterion is not satisfied, the project shall satisfy all criteria in Table 1 for a project not from a conforming transportation plan and TIP. A project is considered to be from a conforming transportation plan if it meets the requirements of subsection B of this section and from a conforming program if it meets the requirements of subsection C of this section.

B. A project is considered to be from a conforming transportation plan if one of the following conditions applies:

1. For projects which are required to be identified in the transportation plan in order to satisfy 9 VAC 5-150-140,

the project is specifically included in the conforming transportation plan and the project's design concept and scope have not changed significantly from those which were described in the transportation plan, or in a manner which would significantly impact use of the facility; or

2. For projects which are not required to be specifically identified in the transportation plan, the project is identified in the conforming transportation plan, or is consistent with the policies and purpose of the transportation plan and shall not interfere with other projects specifically included in the transportation plan.

C. A project is considered to be from a conforming program if the following conditions are met:

1. The project is included in the conforming TIP and the design concept and scope of the project were adequate at the time of the TIP conformity determination to determine its contribution to the TIP's regional emissions and have not changed significantly from those which were described in the TIP, or in a manner which would significantly impact use of the facility; and

2. If the TIP describes a project design concept and scope which includes project-level emissions mitigation or control measures, written commitments to implement the measures shall be obtained from the project sponsor, operator, or both as required by 9 VAC 5-150-410 A in order for the project to be considered from a conforming program. Any change in these mitigation or control measures that would significantly reduce their effectiveness constitutes a change in the design concept and scope of the project.

9 VAC 5-150-240. Criteria and procedures: localized CO and PM_{10} violations (hot spots).

A. The FHWA/FTA project shall not cause or contribute to any new localized CO or PM_{10} violations or increase the frequency or severity of any existing CO or PM_{10} violations in CO and PM_{10} nonattainment and maintenance areas. This criterion applies during all periods. This criterion is satisfied if it is demonstrated that no new local violations shall be created and the severity or number of existing violations shall not be increased as a result of the project.

B. The demonstration shall be performed according to the requirements of 9 VAC 5-150-130 C 1 a and 9 VAC 5-150-390.

C. For projects which are not of the type identified by 9 VAC 5-150-390 A or 9 VAC 5-150-390 D, this criterion may be satisfied if consideration of local factors clearly demonstrates that no local violations presently exist and no new local violations shall be created as a result of the project. Otherwise, in CO nonattainment and maintenance areas, a quantitative demonstration shall be performed according to the requirements of 9 VAC 5-150-390 B.

9 VAC 5-150-250. Criteria and procedures: compliance with PM_{10} control measures.

The FHWA/FTA project shall comply with PM_{10} control measures in the applicable implementation plan. This criterion applies during all periods. It is satisfied if control measures (for the purpose of limiting PM_{10} emissions from the construction activities, normal use, operation associated with the project, or any combination of the preceding) contained in the applicable implementation plan are included in the final plans, specifications, and estimates for the project.

9 VAC 5-150-260. Criteria and procedures: motor vehicle emissions budget (transportation plan).

A. The transportation plan shall be consistent with the motor vehicle emissions budget(s) in the applicable implementation plan (or implementation plan submission). This criterion applies during the transitional period and the control strategy and maintenance periods, except as provided in 9 VAC 5-150-440. This criterion may be satisfied if the requirements in subsections B and C of this section are met:

B. A regional emissions analysis shall be performed as follows:

1. The regional analysis shall estimate emissions of any of the following pollutants and pollutant precursors for which the area is in nonattainment or maintenance and for which the applicable implementation plan (or implementation plan submission) establishes an emissions budget:

a. VOC as an ozone precursor;

b. NO_X as an ozone precursor, unless the Administrator determines that additional reductions of NO_X would not contribute to attainment;

c. CO;

d. PM_{10} (and its precursors VOC, NO_X or both if the applicable implementation plan or implementation plan submission identifies transportation-related precursor emissions within the nonattainment area as a significant contributor to the PM_{10} nonattainment problem or establishes a budget for the emissions); or

e. NO_X (in NO_2 nonattainment or maintenance areas);

2. The regional emissions analysis shall estimate emissions from the entire transportation system, including all regionally significant projects contained in the transportation plan and all other regionally significant highway and transit projects expected in the nonattainment or maintenance area in the timeframe of the transportation plan;

3. The emissions analysis methodology shall meet the requirements of 9 VAC 5-150-380;

4. For areas with a transportation plan that meets the content requirements of 9 VAC 5-150-140 A, the emissions analysis shall be performed for each horizon year. Emissions in milestone years which are between the horizon years may be determined by interpolation; and

5. For areas with a transportation plan that does not meet the content requirements of 9 VAC 5-150-140 A, the emissions analysis shall be performed for any years in the time span of the transportation plan provided they

are not more than 10 years apart and provided the analysis is performed for the last year of the plan's forecast period. If the attainment year is in the time span of the transportation plan, the emissions analysis shall also be performed for the attainment year. Emissions in milestone years which are between these analysis years may be determined by interpolation.

C. The regional emissions analysis shall demonstrate that for each of the applicable pollutants or pollutant precursors in subdivision B 1 of this section the emissions are less than or equal to the motor vehicle emissions budget as established in the applicable implementation plan or implementation plan submission as follows:

1. If the applicable implementation plan or implementation plan submission establishes emissions budgets for milestone years, emissions in each milestone year are less than or equal to the motor vehicle emissions budget established for that year;

2. For nonattainment areas, emissions in the attainment year are less than or equal to the motor vehicle emissions budget established in the applicable implementation plan or implementation plan submission for that year;

3. For nonattainment areas, emissions in each analysis or horizon year after the attainment year are less than or equal to the motor vehicle emissions budget established by the applicable implementation plan or implementation plan submission for the attainment year. If emissions budgets are established for years after the attainment year, emissions in each analysis year or horizon year shall be less than or equal to the motor vehicle emissions budget for that year, if any, or the motor vehicle emissions budget for the most recent budget year prior to the analysis year or horizon year; and

4. For maintenance areas, emissions in each analysis or horizon year are less than or equal to the motor vehicle emissions budget established by the maintenance plan for that year, if any, or the emissions budget for the most recent budget year prior to the analysis or horizon year.

9 VAC 5-150-270. Criteria and procedures: motor vehicle emissions budget (TIP).

A. The TIP shall be consistent with the motor vehicle emissions budget(s) in the applicable implementation plan (or implementation plan submission). This criterion applies during the transitional period and the control strategy and maintenance periods, except as provided in 9 VAC 5-150-440. This criterion may be satisfied if the requirements in subsections B and C of this section are met:

B. For areas with a conforming transportation plan that fully meets the content requirements of 9 VAC 5-150-140 A, this criterion may be satisfied without additional regional analysis if:

1. Each program year of the TIP is consistent with the federal funding which may be reasonably expected for that year, and required state/local matching funds and funds for state/local funding-only projects are consistent with the revenue sources expected over the same period; and

2. The TIP is consistent with the conforming transportation plan such that the regional emissions analysis already performed for the plan applies to the TIP also. This requires a demonstration that:

a. The TIP contains all projects which shall be started in the TIP's timeframe in order to achieve the highway and transit system envisioned by the transportation plan in each of its horizon years;

b. All TIP projects which are regionally significant are part of the specific highway or transit system envisioned in the transportation plan's horizon years; and

c. The design concept and scope of each regionally significant project in the TIP is not significantly different from that described in the transportation plan.

3. If the requirements in subdivisions 1 and 2 of this subsection are not met, then:

a. The TIP may be modified to meet those requirements; or

b. The transportation plan shall be revised so that the requirements in subdivisions 1 and 2 of this subsection are met. Once the revised plan has been found to conform, this criterion is met for the TIP with no additional analysis except a demonstration that the TIP meets the requirements of subdivisions 1 and 2 of this subsection.

C. For areas with a transportation plan that does not meet the content requirements of 9 VAC 5-150-140 A, a regional emissions analysis shall meet all of the following requirements:

1. The regional emissions analysis shall estimate emissions from the entire transportation system, including all projects contained in the proposed TIP, the transportation plan, and all other regionally significant highway and transit projects expected in the nonattainment or maintenance area in the timeframe of the transportation plan;

2. The analysis methodology shall meet the requirements of 9 VAC 5-150-380 C; and

3. The regional analysis shall satisfy the requirements of 9 VAC 5-150-260 B 1, B 5, and C.

9 VAC 5-150-280. Criteria and procedures: motor vehicle emissions budget (project not from a plan and TIP).

A. The project which is not from a conforming transportation plan and a conforming TIP shall be consistent with the motor vehicle emissions budget(s) in the applicable implementation plan (or implementation plan submission). This criterion applies during the transitional period and the control strategy and maintenance periods, except as provided in 9 VAC 5-150-440. It is satisfied if emissions from the implementation of the project, when considered with the emissions from the projects in the conforming transportation

plan and TIP and all other regionally significant projects expected in the area, do not exceed the motor vehicle emissions budget(s) in the applicable implementation plan (or implementation plan submission).

B. For areas with a conforming transportation plan that meets the content requirements of 9 VAC 5-150-140 A:

1. This criterion may be satisfied without additional regional analysis if the project is included in the conforming transportation plan, even if it is not specifically included in the latest conforming TIP. This requires a demonstration that:

a. Allocating funds to the project shall not delay the implementation of projects in the transportation plan or TIP which are necessary to achieve the highway and transit system envisioned by the transportation plan in each of its horizon years;

b. The project is not regionally significant or is part of the specific highway or transit system envisioned in the transportation plan's horizon years; and

c. The design concept and scope of the project is not significantly different from that described in the transportation plan.

2. If the requirements in subdivision 1 of this subsection are not met, a regional emissions analysis shall be performed as follows:

a. The analysis methodology shall meet the requirements of 9 VAC 5-150-380;

b. The analysis shall estimate emissions from the transportation system, including the proposed project and all other regionally significant projects expected in the nonattainment or maintenance area in the timeframe of the transportation plan. The analysis shall include emissions from all previously approved projects which were not from a transportation plan and TIP; and

c. The emissions analysis shall meet the requirements of 9 VAC 5-150-260 B 1, B 4, and C.

C. For areas with a transportation plan that does not meet the content requirements of 9 VAC 5-150-140 A, a regional emissions analysis shall be performed for the project together with the conforming TIP and all other regionally significant projects expected in the nonattainment or maintenance area. This criterion may be satisfied if:

1. The analysis methodology meets the requirements of 9 VAC 5-150-380 C;

2. The analysis estimates emissions from the transportation system, including the proposed project, and all other regionally significant projects expected in the nonattainment or maintenance area in the timeframe of the transportation plan; and

3. The regional analysis satisfies the requirements of 9 VAC 5-150-260 B 1, B 5, and C.

9 VAC 5-150-290. Criteria and procedures: localized CO violations (hot spots) in the interim period.

A. Each FHWA/FTA project shall eliminate or reduce the severity and number of localized CO violations in the area substantially affected by the project (in CO nonattainment areas). This criterion applies during the interim and transitional periods only. This criterion is satisfied with respect to existing localized CO violations if it is demonstrated that existing localized CO violations may be eliminated or reduced in severity and number as a result of the project.

B. The demonstration shall be performed according to the requirements of 9 VAC 5-150-130 C 1 a and 9 VAC 5-150-390.

C. For projects which are not of the type identified by 9 VAC 5-150-390 A, this criterion may be satisfied if consideration of local factors clearly demonstrates that existing CO violations shall be eliminated or reduced in severity and number. Otherwise, a quantitative demonstration shall be performed according to the requirements of 9 VAC 5-150-390 B.

9 VAC 5-150-300. Criteria and procedures: interim period reductions in ozone and CO areas (transportation plan).

A. A transportation plan shall contribute to emissions reductions in ozone and CO nonattainment areas. This criterion applies during the interim and transitional periods only, except as otherwise provided in 9 VAC 5-150-440. It applies to the net effect on emissions of all projects contained in a new or revised transportation plan. This criterion may be satisfied if a regional emissions analysis is performed as described in subsections B through F of this section.

B. Determine the analysis years for which emissions are to be estimated. Analysis years shall be no more than 10 years apart. The first analysis year shall be no later than the first milestone year (1995 in CO nonattainment areas and 1996 in ozone nonattainment areas). The second analysis year shall be either the attainment year for the area, or if the attainment year is the same as the first analysis year or earlier, the second analysis year shall be at least five years beyond the first analysis year. The last year of the transportation plan's forecast period shall also be an analysis year.

C. Define the "baseline" scenario for each of the analysis years to be the future transportation system that would result from current programs, composed of the following (except that projects listed in 9 VAC 5-150-420 and 9 VAC 5-150-430 need not be explicitly considered):

1. All in-place regionally significant highway and transit facilities, services and activities;

2. All ongoing travel demand management or transportation system management activities; and

3. Completion of all regionally significant projects, regardless of funding source, which are currently under construction or are undergoing right-of-way acquisition (except for hardship acquisition and protective buying); come from the first three years of the previously conforming transportation plan, TIP or both; or have

completed the NEPA process. (For the first conformity determination on the transportation plan after November 24, 1993, a project may not be included in the "baseline" scenario if one of the following major steps has not occurred within the past three years: NEPA process completion; start of final design; acquisition of a significant portion of the right-of-way; or approval of the plans, specifications and estimates. Such a project shall be included in the "action" scenario, as described in subsection D of this section.)

D. Define the "action" scenario for each of the analysis years as the transportation system that will result in that year from the implementation of the proposed transportation plan, TIPs adopted under it, and other expected regionally significant projects in the nonattainment area. It shall include the following (except that projects listed in 9 VAC 5-150-420 and 9 VAC 5-150-430 need not be explicitly considered):

1. All facilities, services, and activities in the "baseline" scenario;

2. Completion of all TCMs and regionally significant projects (including facilities, services, and activities) specifically identified in the proposed transportation plan which will be operational or in effect in the analysis year, except that regulatory TCMs may not be assumed to begin at a future time unless the regulation is already adopted by the enforcing jurisdiction or the TCM is identified in the applicable implementation plan;

3. All travel demand management programs and transportation system management activities known to the MPO, but not included in the applicable implementation plan or utilizing any federal funding or approval, which have been fully adopted, funded by the enforcing jurisdiction or sponsoring agency, or both since the last conformity determination on the transportation plan;

4. The incremental effects of any travel demand management programs and transportation system management activities known to the MPO, but not included in the applicable implementation plan or utilizing any federal funding or approval, which were adopted, funded or both prior to the date of the last conformity determination on the transportation plan, but which have been modified since then to be more stringent or effective;

5. Completion of all expected regionally significant highway and transit projects which are not from a conforming transportation plan and TIP; and

6. Completion of all expected regionally significant non-FHWA/FTA highway and transit projects that have clear funding sources and commitments leading toward their implementation and completion by the analysis year.

E. Estimate the emissions predicted to result in each analysis year from travel on the transportation systems defined by the "baseline" and "action" scenarios and determine the difference in regional VOC and NO_X emissions (unless the administrator determines that additional reductions of NO_X would not contribute to attainment) between the two scenarios for ozone nonattainment areas and the difference in CO emissions between the two scenarios for CO nonattainment areas. The analysis shall be performed for each of the analysis years according to the requirements of 9 VAC 5-150-380. Emissions in milestone years which are between the analysis years may be determined by interpolation.

F. This criterion is met if the regional VOC and NO_X emissions (for ozone nonattainment areas) and CO emissions (for CO nonattainment areas) predicted in the "action" scenario are less than the emissions predicted from the "baseline" scenario in each analysis year, and if this can reasonably be expected to be true in the periods between the first milestone year and the analysis years. The regional analysis shall show that the "action" scenario contributes to a reduction in emissions from the 1990 emissions by any nonzero amount.

9 VAC 5-150-310. Criteria and procedures: interim period reductions in ozone and CO areas (TIP).

A. A TIP shall contribute to emissions reductions in ozone and CO nonattainment areas. This criterion applies during the interim and transitional periods only, except as otherwise provided in 9 VAC 5-150-440. It applies to the net effect on emissions of all projects contained in a new or revised TIP. This criterion may be satisfied if a regional emissions analysis is performed as described in subsections B through F of this section.

B. Determine the analysis years for which emissions are to be estimated. The first analysis year shall be no later than the first milestone year (1995 in CO nonattainment areas and 1996 in ozone nonattainment areas). The analysis years shall be no more than 10 years apart. The second analysis year shall be either the attainment year for the area, or if the attainment year is the same as the first analysis year or earlier, the second analysis year shall be at least five years beyond the first analysis year. The last year of the transportation plan's forecast period shall also be an analysis year.

C. Define the "baseline" scenario as the future transportation system that would result from current programs, composed of the following (except that projects listed in 9 VAC 5-150-420 and 9 VAC 5-150-430 need not be explicitly considered):

1. All in-place regionally significant highway and transit facilities, services and activities;

2. All ongoing travel demand management or transportation system management activities; and

3. Completion of all regionally significant projects, regardless of funding source, which are currently under construction or are undergoing right-of-way acquisition (except for hardship acquisition and protective buying); come from the first three years of the previously conforming TIP; or have completed the NEPA process. (For the first conformity determination on the TIP after November 24, 1993, a project may not be included in the "baseline" scenario if one of the following major steps has not occurred within the past three years: NEPA

process completion; start of final design; acquisition of a significant portion of the right-of-way; or approval of the plans, specifications and estimates. Such a project shall be included in the "action" scenario, as described in subsection D of this section.)

D. Define the "action" scenario as the future transportation system that will result from the implementation of the proposed TIP and other expected regionally significant projects in the nonattainment area in the timeframe of the transportation plan. It shall include the following (except that projects listed in 9 VAC 5-150-420 and 9 VAC 5-150-430 need not be explicitly considered):

1. All facilities, services, and activities in the "baseline" scenario;

2. Completion of all TCMs and regionally significant projects (including facilities, services, and activities) included in the proposed TIP, except that regulatory TCMs may not be assumed to begin at a future time unless the regulation is already adopted by the enforcing jurisdiction or the TCM is contained in the applicable implementation plan;

3. All travel demand management programs and transportation system management activities known to the MPO, but not included in the applicable implementation plan or utilizing any federal funding or approval, which have been fully adopted, funded or both by the enforcing jurisdiction or sponsoring agency since the last conformity determination on the TIP;

4. The incremental effects of any travel demand management programs and transportation system management activities known to the MPO, but not included in the applicable implementation plan or utilizing any federal funding or approval, which were adopted, funded or both prior to the date of the last conformity determination on the TIP, but which have been modified since then to be more stringent or effective;

5. Completion of all expected regionally significant highway and transit projects which are not from a conforming transportation plan and TIP; and

6. Completion of all expected regionally significant non-FHWA/FTA highway and transit projects that have clear funding sources and commitments leading toward their implementation and completion by the analysis year.

E. Estimate the emissions predicted to result in each analysis year from travel on the transportation systems defined by the "baseline" and "action" scenarios, and determine the difference in regional VOC and NO_X emissions (unless the administrator determines that additional reductions of NO_X would not contribute to attainment) between the two scenarios for ozone nonattainment areas and the difference in CO emissions between the two scenarios for CO nonattainment areas. The analysis shall be performed for each of the analysis years according to the requirements of 9 VAC 5-150-380. Emissions in milestone years which are between analysis years may be determined by interpolation.

F. This criterion is met if the regional VOC and NO_X emissions in ozone nonattainment areas and CO emissions in CO nonattainment areas predicted in the "action" scenario are less than the emissions predicted from the "baseline" scenario in each analysis year, and if this can reasonably be expected to be true in the period between the analysis years. The regional analysis shall show that the "action" scenario contributes to a reduction in emissions from the 1990 emissions by any nonzero amount.

9 VAC 5-150-320. Criteria and procedures: interim period reductions for ozone and CO areas (project not from a plan and TIP).

A transportation project which is not from a conforming transportation plan and TIP shall contribute to emissions reductions in ozone and CO nonattainment areas. This criterion applies during the interim and transitional periods only, except as otherwise provided in 9 VAC 5-150-440. This criterion is satisfied if a regional emissions analysis is performed which meets the requirements of 9 VAC 5-150-300 and which includes the transportation plan and project in the "action" scenario. If the project which is not from a conforming transportation plan and TIP is a modification of a project currently in the plan or TIP, the "baseline" scenario shall include the project with its original design concept and scope, and the "action" scenario shall include the project with its new design concept and scope.

9 VAC 5-150-330. Criteria and procedures: interim period reductions for PM_{10} and NO_2 areas (transportation plan).

A. A transportation plan shall contribute to emission reductions or shall not increase emissions in PM_{10} and NO_2 nonattainment areas. This criterion applies only during the interim and transitional periods. It applies to the net effect on emissions of all projects contained in a new or revised transportation plan. This criterion may be satisfied if the requirements of either subsection B or C of this section are met.

B. Demonstrate that implementation of the plan and all other regionally significant projects expected in the nonattainment area shall contribute to reductions in emissions of PM_{10} in a PM_{10} nonattainment area (and of each transportation-related precursor of PM_{10} in PM_{10} nonattainment areas if the EPA Regional Administrator or the DEQ Director has made a finding that the precursor emissions from within the nonattainment area are a significant contributor to the PM_{10} nonattainment problem and has so notified the MPO and USDOT) and of NO_X in an NO_2 nonattainment area, by performing a regional emissions analysis as follows:

1. Determine the analysis years for which emissions are to be estimated. Analysis years shall be no more than 10 years apart. The first analysis year shall be no later than 1996 (for NO_2 areas) or four years and six months following the date of designation (for PM_{10} areas). The second analysis year shall be either the attainment year for the area, or if the attainment year is the same as the first analysis year or earlier, the second analysis year shall be at least five years beyond the first analysis year.

The last year of the transportation plan's forecast period shall also be an analysis year.

2. Define for each of the analysis years the "baseline" scenario, as defined in 9 VAC 5-150-300 C, and the "action" scenario, as defined in 9 VAC 5-150-300 D.

3. Estimate the emissions predicted to result in each analysis year from travel on the transportation systems defined by the "baseline" and "action" scenarios and determine the difference between the two scenarios in regional PM_{10} emissions in a PM_{10} nonattainment area (and transportation-related precursors of PM_{10} in PM_{10} nonattainment areas if the EPA Regional Administrator or the DEQ Director has made a finding that the precursor emissions from within the nonattainment area are a significant contributor to the PM_{10} nonattainment problem and has so notified the MPO and USDOT) and in NO_X emissions in an NO_2 nonattainment area. The analysis shall be performed for each of the analysis years according to the requirements of 9 VAC 5-150-380. The analysis shall address the periods between the analysis years and the periods between 1990, the first milestone year (if any), and the first of the analysis years. Emissions in milestone years which are between the analysis years may be determined by interpolation.

4. Demonstrate that the regional PM_{10} emissions and PM_{10} precursor emissions, where applicable, (for PM_{10} nonattainment areas) and NO_X emissions (for NO_2 nonattainment areas) predicted in the "action" scenario are less than the emissions predicted from the "baseline" scenario in each analysis year, and that this can reasonably be expected to be true in the periods between the first milestone year (if any) and the analysis years.

C. Demonstrate that when the projects in the transportation plan and all other regionally significant projects expected in the nonattainment area are implemented, the transportation system's total highway and transit emissions of PM_{10} in a PM_{10} nonattainment area (and transportation-related precursors of PM_{10} in PM_{10} nonattainment areas if the EPA Regional Administrator or the DEQ Director has made a finding that the precursor emissions from within the nonattainment area are a significant contributor to the PM_{10} nonattainment problem and has so notified the MPO and USDOT) and of NO_X in an NO_2 nonattainment area shall not be greater than baseline levels, by performing a regional emissions analysis as follows:

1. Determine the baseline regional emissions of PM_{10} and PM_{10} precursors, where applicable (for PM_{10} nonattainment areas) and NO_X (for NO_2 nonattainment areas) from highway and transit sources. Baseline emissions are those estimated to have occurred during calendar year 1990, unless the implementation plan revision required by this regulation defines the baseline emissions for a PM_{10} area to be those occurring in a different calendar year for which a baseline emissions inventory was developed for the purpose of developing a control strategy implementation plan.

2. Estimate the emissions of the applicable pollutant(s) from the entire transportation system, including projects in the transportation plan and TIP and all other regionally significant projects in the nonattainment area, according to the requirements of 9 VAC 5-150-380. Emissions shall be estimated for analysis years which are no more than 10 years apart. The first analysis year shall be no later than 1996 (for NO_2 areas) or four years and six months following the date of designation (for PM_{10} areas). The second analysis year shall be either the attainment year for the area, or if the attainment year is the same as the first analysis year or earlier, the second analysis year shall be at least five years beyond the first analysis year. The last year of the transportation plan's forecast period shall also be an analysis year.

3. Demonstrate that for each analysis year the emissions estimated in subdivision 2 of this subsection are no greater than baseline emissions of PM_{10} and PM_{10} precursors, where applicable (for PM_{10} nonattainment areas) or NO_X (for NO_2 nonattainment areas) from highway and transit sources.

9 VAC 5-150-340. Criteria and procedures: interim period reductions for PM_{10} and NO_2 areas (TIP).

A. A TIP shall contribute to emission reductions or shall not increase emissions in PM_{10} and NO_2 nonattainment areas. This criterion applies only during the interim and transitional periods. It applies to the net effect on emissions of all projects contained in a new or revised TIP. This criterion may be satisfied if the requirements of either subsection B or C of this section are met.

B. Demonstrate that implementation of the plan and TIP and all other regionally significant projects expected in the nonattainment area shall contribute to reductions in emissions of PM_{10} in a PM_{10} nonattainment area (and transportation-related precursors of PM_{10} in PM_{10} nonattainment areas if the EPA Regional Administrator or the DEQ Director has made a finding that the precursor emissions from within the nonattainment area are a significant contributor to the PM_{10} nonattainment problem and has so notified the MPO and USDOT) and of NO_X in an NO_2 nonattainment area, by performing a regional emissions analysis as follows:

1. Determine the analysis years for which emissions are to be estimated, according to the requirements of 9 VAC 5-150-330 B 1.

2. Define for each of the analysis years the "baseline" scenario, as defined in 9 VAC 5-150-310 C, and the "action" scenario, as defined in 9 VAC 5-150-310 D.

3. Estimate the emissions predicted to result in each analysis year from travel on the transportation systems defined by the "baseline" and "action" scenarios as required by 9 VAC 5-150-330 B 3, and make the demonstration required by 9 VAC 5-150-330 B.

C. Demonstrate that when the projects in the transportation plan and TIP and all other regionally significant projects expected in the area are implemented, the transportation system's total highway and transit emissions of

PM_{10} in a PM_{10} nonattainment area (and transportation-related precursors of PM_{10} in PM_{10} nonattainment areas if the EPA Regional Administrator or the DEQ Director has made a finding that the precursor emissions from within the nonattainment area are a significant contributor to the PM_{10} nonattainment problem and has so notified the MPO and USDOT) and of NO_X in an NO_2 nonattainment area shall not be greater than baseline levels, by performing a regional emissions analysis as required by 9 VAC 5-150-330 C.

9 VAC 5-150-350. Criteria and procedures: Interim period reductions for PM_{10} and NO_2 areas (project not from a plan and TIP).

A transportation project which is not from a conforming transportation plan and TIP shall contribute to emission reductions or shall not increase emissions in PM_{10} and NO_2 nonattainment areas. This criterion applies during the interim and transitional periods only. This criterion is met if a regional emissions analysis is performed which meets the requirements of 9 VAC 5-150-330 and which includes the transportation plan and project in the "action" scenario. If the project which is not from a conforming transportation plan and TIP is a modification of a project currently in the transportation plan or TIP, and 9 VAC 5-150-330 B is used to demonstrate satisfaction of this criterion, the "baseline" scenario shall include the project with its original design concept and scope, and the "action" scenario shall include the project with its new design concept and scope.

9 VAC 5-150-360. Transition from the interim period to the control strategy period.

A. For areas which submit a control strategy implementation plan revision after November 24, 1993, the requirements of this subsection shall be met.

1. The transportation plan and TIP shall be demonstrated to conform according to transitional period criteria and procedures by one year from the date the federal Clean Air Act requires submission of the control strategy implementation plan revision. Otherwise, the conformity status of the transportation plan and TIP shall lapse, and no new project-level conformity determinations may be made.

a. The conformity of new transportation plans and TIPs may be demonstrated according to Phase II interim period criteria and procedures for 90 days following submission of the control strategy implementation plan revision, provided the conformity of the transportation plans and TIPs is redetermined according to transitional period criteria and procedures as required in subsection A 1 of this section.

b. Beginning 90 days after submission of the control strategy implementation plan revision, new transportation plans and TIPs shall demonstrate conformity according to transitional period criteria and procedures.

2. If EPA disapproves the submitted control strategy implementation plan revision and so notifies the DEQ, VDOT, VDRPT, MPOs, and FHWA, which initiates the sanction process under § 179 or 110(m) of the federal Clean Air Act, the conformity status of the transportation plan and TIP shall lapse 120 days after EPA's disapproval, and no new project-level conformity determinations may be made. No new transportation plan, TIP, or project may be found to conform until another control strategy implementation plan revision is submitted and conformity is demonstrated according to transitional period criteria and procedures.

3. Notwithstanding subdivision 2 of this subsection, if EPA disapproves the submitted control strategy implementation plan revision but determines that the control strategy contained in the revision would have been considered approvable with respect to requirements for emission reductions if all committed measures had been submitted in enforceable form as required by § 110(a)(2)(A) of the federal Clean Air Act, the provisions of subdivision 1 of this subsection shall apply for 12 months following the date of disapproval. The conformity status of the transportation plan and TIP shall lapse 12 months following the date of disapproval unless another control strategy implementation plan revision is submitted to EPA and found to be complete.

4. Until August 8, 1995, for areas otherwise subject to subdivision 3 of this subsection, the conformity lapse imposed by the final sentence of subdivision 3 of this subsection shall not apply. The conformity status of the transportation plan and TIP shall lapse on the date that highway sanctions as a result of the disapproval are imposed on the nonattainment area under § 179(b)(1) of the federal Clean Air Act, unless another control strategy implementation plan revision is submitted to EPA and found to be complete.

B. For areas which have not submitted a control strategy implementation plan revision, the requirements of this subsection shall be met.

1. For areas whose federal Clean Air Act deadline for submission of the control strategy implementation plan revision is after November 24, 1993, and EPA has notified DEQ, VDOT, VDRPT, MPOs, and FHWA of the state's failure to submit a control strategy implementation plan revision, which initiates the sanction process under § 179 or 110(m) of the federal Clean Air Act:

a. No new transportation plans or TIPs may be found to conform beginning 120 days after the federal Clean Air Act deadline; and

b. The conformity status of the transportation plan and TIP shall lapse one year after the federal Clean Air Act deadline, and no new project-level conformity determinations may be made.

2. Until August 8, 1995, for ozone nonattainment areas where EPA has notified the state, MPO, and USDOT of the state's failure to submit a control strategy implementation plan revision required by § 182(c)(2)(A) or § 182(c)(2)(B) of the federal Clean Air Act or both, failure to submit an attainment demonstration for an intrastate moderate ozone nonattainment area that chose to use the Urban Airshed Model for the demonstration, or failure to submit an attainment

demonstration for a multistate moderate ozone nonattainment area, the following shall apply in lieu of the provisions of subdivision 1 of this section:

a. The conformity status of the transportation plan and TIP shall lapse on the date that highway sanctions are imposed on the nonattainment area for the failure under § 179(b)(1) of the federal Clean Air Act, unless the failure has been remedied and acknowledged by a letter from the EPA Regional Administrator; and

b. The consequences described in subdivision 1 of this subsection shall be nullified if the provisions have been applied as a result of a failure described in subdivision 2 of this subsection and subdivision 2 of this subsection shall henceforth apply with respect to any such failure.

3. For areas whose federal Clean Air Act deadline for submission of the control strategy implementation plan was before November 24, 1993, and EPA has made a finding of failure to submit a control strategy implementation plan revision, which initiates the sanction process under § 179 or 110(m) of the federal Clean Air Act, the following apply unless the failure has been remedied and acknowledged by a letter from the EPA Regional Administrator:

a. No new transportation plans or TIPs may be found to conform beginning March 24, 1994; and

b. The conformity status of the transportation plan and TIP shall lapse November 25, 1994, and no new project-level conformity determinations may be made.

C. For areas which have not submitted a complete control strategy implementation plan revision, the requirements of subdivisions 1 through 3 of this subsection shall be met.

1. For areas where EPA notifies the DEQ, VDOT, VDRPT, MPOs, and USDOT after November 24, 1993, that the control strategy implementation plan revision submitted by the state is incomplete, which initiates the sanction process under § 179 or 110(m) of the federal Clean Air Act, the following apply unless the failure has been remedied and acknowledged by a letter from the EPA Regional Administrator:

a. No new transportation plans or TIPs may be found to conform beginning 120 days after EPA's incompleteness finding; and

b. The conformity status of the transportation plan and TIP shall lapse one year after the federal Clean Air Act deadline, and no new project-level conformity determinations may be made.

c. Notwithstanding subdivisions 1 a and b of this subsection, if EPA notes in its incompleteness finding that the submittal would have been considered complete with respect to requirements for emission reductions if all committed measures had been submitted in enforceable form as required by § 110(a)(2)(A) of the federal Clean Air Act, the provisions of subdivision A 1 of this section shall apply for a period of 12 months following the date of the incompleteness determination. The conformity status of the transportation plan and TIP shall lapse 12 months following the date of the incompleteness determination unless another control strategy implementation plan revision is submitted to EPA and found to be complete.

2. Until August 8, 1995, for ozone nonattainment areas described in subdivision 2 a of this subsection, the following shall apply in lieu of the provisions of subdivision 1 of this subsection:

a. The conformity status of the transportation plan and TIP shall lapse on the date that highway sanctions are imposed on the nonattainment area under § 179(b)(1) of the federal Clean Air Act for the failures described below, unless the failure has been remedied and acknowledged by a letter from the EPA Regional Administrator, in ozone nonattainment areas where EPA notifies the state, MPO, and USDOT that any of the following control strategy implementation plan revisions are incomplete:

(1) The implementation plan revision due November 15, 1994, as required by § 182(c)(2)(A) or § 182(c)(2)(B) of the federal Clean Air Act or both;

(2) The attainment demonstration required for moderate intrastate ozone nonattainment areas which chose to use the Urban Airshed Model for the demonstration and for multistate moderate ozone nonattainment areas; or

(3) The VOC reasonable further progress demonstration due November 15, 1993, as required by § 182(b)(1) of the federal Clean Air Act, if EPA notes in its incompleteness finding as described in subdivision 1 c of this subsection that the submittal would have been considered complete with respect to requirements for emission reductions if all committed measures had been submitted in enforceable form as required by § 110(a)(2)(A) of the federal Clean Air Act; and

b. The consequences described in subdivision 1 of this subsection shall be nullified if the provisions have been applied as a result of a failure described in subdivision 2 a of this subsection and subdivision 2 of this subsection shall henceforth apply with respect to any such failure.

3. For areas where EPA has determined before November 24, 1993, that the control strategy implementation plan revision is incomplete, which initiates the sanction process under § 179 or 110(m) of the federal Clean Air Act, the following apply unless the failure has been remedied and acknowledged by a letter from the EPA Regional Administrator:

a. No new transportation plans or TIPs may be found to conform beginning March 24, 1994; and

b. The conformity status of the transportation plan and TIP shall lapse November 25, 1994, and no new project-level conformity determinations may be made.

c. Notwithstanding subdivisions 3 a and b of this subsection, if EPA notes in its incompleteness finding that the submittal would have been considered complete with respect to requirements for emission reductions if all committed measures had been submitted in enforceable form as required by § 110(a)(2)(A) of the federal Clean Air Act, the provisions of subsection D 1 of this section shall apply for a period of 12 months following the date of the incompleteness determination. The conformity status of the transportation plan and TIP shall lapse 12 months following the date of the incompleteness determination unless another control strategy implementation plan revision is submitted to EPA and found to be complete.

D. For areas which submitted a control strategy implementation plan before November 24, 1993, the requirements of subdivisions 1 through 4 of this subsection shall be met.

1. The transportation plan and TIP shall be demonstrated to conform according to transitional period criteria and procedures by November 25, 1994. Otherwise, their conformity status shall lapse, and no new project-level conformity determinations may be made.

a. The conformity of new transportation plans and TIPs may be demonstrated according to Phase II interim period criteria and procedures until February 22, 1994, provided the conformity of the transportation plans and TIPs is redetermined according to transitional period criteria and procedures as required in subdivision 1 of this subsection.

b. Beginning February 22, 1994, new transportation plans and TIPs shall demonstrate conformity according to transitional period criteria and procedures.

2. If EPA has disapproved the most recent control strategy implementation plan submission, the conformity status of the transportation plan and TIP shall lapse March 24, 1994, and no new project-level conformity determinations may be made. No new transportation plans, TIPs, or projects may be found to conform until another control strategy implementation plan revision is submitted and conformity is demonstrated according to transitional period criteria and procedures.

3. Notwithstanding subdivision 2 of this subsection, if EPA has disapproved the submitted control strategy implementation plan revision but determines that the control strategy contained in the revision would have been considered approvable with respect to requirements for emission reductions if all committed measures had been submitted in enforceable form as required by § 110(a)(2)(A) of the federal Clean Air Act, the provisions of subdivision 1 of this subsection shall apply for 12 months following November 24, 1993. The conformity status of the transportation plan and TIP shall lapse 12 months following November 24, 1993, unless another control strategy implementation plan revision is submitted to EPA and found to be complete.

4. Until August 8, 1995, for areas otherwise subject to subdivision 3 of this subsection, the conformity lapse imposed by the final sentence of subdivision 3 of this subsection shall not apply. The conformity stratus of the transportation plan and TIP shall lapse on the date that highway sanctions as a result of the disapproval are imposed on the nonattainment area under § 179(b)(1) of the federal Clean Air Act, unless another control strategy implementation plan revision is submitted to EPA and found to be complete.

E. For FHWA/FTA projects, if the currently conforming transportation plan and TIP have not been demonstrated to conform according to transitional period criteria and procedures, the requirements of subdivisions 1 and 2 of this subsection shall be met.

1. Before a FHWA/FTA project which is regionally significant and increases single-occupant vehicle capacity (a new general purpose highway on a new location or adding general purpose lanes) may be found to conform, the DEQ shall be consulted on how the emissions which the existing transportation plan and TIP's conformity determination estimates for the "action" scenario (as required by 9 VAC 5-150-300 through 9 VAC 5-150-350) compare to the motor vehicle emissions budget in the implementation plan submission or the projected motor vehicle emissions budget in the implementation plan under development.

2. In the event of unresolved disputes on the project-level conformity determinations, the DEQ Director may escalate the issue to the Governor consistent with the procedure in 9 VAC 5-150-130 D, which applies for any DEQ comments on a conformity determination.

F. For the redetermination of conformity of the existing transportation plan and TIP according to the transitional period criteria and procedures, the requirements of subdivisions 1 and 2 of this subsection shall be met.

1. The redetermination of the conformity of the existing transportation plan and TIP according to transitional period criteria and procedures (as required by subdivision A 1 of this section and subsection D of this section) does not require new emissions analysis and does not have to satisfy the requirements of 9 VAC 5-150-180 and 9 VAC 5-150-190 if:

a. The control strategy implementation plan revision submitted to EPA uses the MPO's modeling of the existing transportation plan and TIP for its projections of motor vehicle emissions; and

b. The control strategy implementation plan does not include any transportation projects which are not included in the transportation plan and TIP.

2. A redetermination of conformity as described in subdivision 1 of this subsection is not considered a conformity determination for the purposes of 9 VAC 5-150-120 B 4 or C 4 regarding the maximum intervals between conformity determinations. Conformity shall be

determined according to all the applicable criteria and procedures of 9 VAC 5-150-170 within three years of the last determination which did not rely on subdivision 1 of this subsection.

G. For ozone nonattainment areas, the requirements of subdivisions 1 through 3 of this subsection shall be met.

1. The requirements of subdivision B 1 of this section apply if a serious or above ozone nonattainment area has not submitted the implementation plan revisions which §§ 182(c)(2)(A) and 182(c)(2)(B) of the federal Clean Air Act require to be submitted to EPA November 15, 1994, even if the area has submitted the implementation plan revision which § 182(b)(1) of the federal Clean Air Act requires to be submitted to EPA November 15, 1993.

2. The requirements of subdivision B 1 of this section apply if a moderate ozone nonattainment area which is using photochemical dispersion modeling to demonstrate the "specific annual reductions as necessary to attain" required by § 182(b)(1) of the federal Clean Air Act, and which has permission from EPA to delay submission of the demonstration until November 15, 1994, does not submit the demonstration by that date. The requirements of subdivision B 1 of this section apply in this case even if the area has submitted the 15% emission reduction demonstration required by § 182(b)(1) of the federal Clean Air Act.

3. The requirements of subsection A of this section apply when the implementation plan revisions required by §§ 182(c)(2)(A) and 182(c)(2)(B) of the federal Clean Air Act are submitted.

H. For nonattainment areas which are not required to demonstrate reasonable further progress and attainment, if an area listed in 9 VAC 5-150-440 submits a control strategy implementation plan revision, the requirements of subsections A and E of this section apply. Because the areas listed in 9 VAC 5-150-440 are not required to demonstrate reasonable further progress and attainment and therefore have no federal Clean Air Act deadline, the provisions of subsection B of this section do not apply to these areas at any time.

I. For maintenance plans, if a control strategy implementation plan revision is not submitted to EPA but a maintenance plan required by § 175A of the federal Clean Air Act is submitted to EPA, the requirements of subsection A or D of this section apply, with the maintenance plan submission treated as a "control strategy implementation plan revision" for the purposes of those requirements.

9 VAC 5-150-370. Requirements for adoption or approval of projects by recipients of funds designated under Title 23 USC or the Federal Transit Act.

No recipient of federal funds designated under Title 23 USC or the Federal Transit Act shall adopt or approve a regionally significant highway or transit project, regardless of funding source, unless there is a currently conforming transportation plan and TIP consistent with the requirements of 9 VAC 5-150-220 and the requirements of one of the following subdivisions are met:

1. The project comes from a conforming plan and program consistent with the requirements of 9 VAC 5-150-230;

2. The project is included in the regional emissions analysis supporting the currently conforming TIP's conformity determination, even if the project is not strictly "included" in the TIP for the purposes of MPO project selection or endorsement, and the project's design concept and scope have not changed significantly from those which were included in the regional emissions analysis, or in a manner which would significantly impact use of the facility;

3. During the control strategy or maintenance period, the project is consistent with the motor vehicle emissions budget(s) in the applicable implementation plan consistent with the requirements of 9 VAC 5-150-280;

4. During Phase II of the interim period, the project contributes to emissions reductions or does not increase emissions consistent with the requirements of 9 VAC 5-150-320 (in ozone and CO nonattainment areas) or 9 VAC 5-150-350 (in PM_{10} and NO_2 nonattainment areas); or

5. During the transitional period, the project satisfies the requirements of subsections C and D of this section.

9 VAC 5-150-380. Procedures for determining regional transportation-related emissions.

A. With regard to conducting regional analyses for transportation-related emissions, the requirements of this subsection shall be met.

1. The regional emissions analysis for the transportation plan, TIP, or project not from a conforming plan and TIP shall include all regionally significant projects expected in the nonattainment or maintenance area, including FHWA/FTA projects proposed in the transportation plan and TIP and all other regionally significant projects which are disclosed to the MPO as required by 9 VAC 5-150-130. Projects which are not regionally significant are not required to be explicitly modeled, but VMT from the projects shall be estimated in accordance with reasonable professional practice. The effects of TCMs and similar projects that are not regionally significant may also be estimated in accordance with reasonable professional practice.

2. The emissions analysis may not include for emissions reduction credit any TCMs which have been delayed beyond the scheduled date(s) until such time as implementation has been assured. If the TCM has been partially implemented and it can be demonstrated that it is providing quantifiable emission reduction benefits, the emissions analysis may include that emissions reduction credit.

3. Emissions reduction credit from projects, programs, or activities which require a regulation in order to be implemented may not be included in the emissions

analysis unless the regulation is already adopted by the enforcing jurisdiction. Adopted regulations are required for demand management strategies for reducing emissions which are not specifically identified in the applicable implementation plan, and for control programs which are external to the transportation system itself, such as tailpipe or evaporative emission standards, limits on gasoline volatility, inspection and maintenance programs, and oxygenated or reformulated gasoline or diesel fuel. A regulatory program may also be considered to be adopted if an opt-in to a federally enforced program has been approved by EPA, if EPA has promulgated the program (if the control program is a federal responsibility, such as tailpipe standards), or if the federal Clean Air Act requires the program without need for individual state action and without any discretionary authority for EPA to set its stringency, delay its effective date, or not implement the program.

4. Notwithstanding subdivision 3 of this subsection, during the transitional period, control measures or programs which are committed to in an implementation plan submission as described in 9 VAC 5-150-260 through 9 VAC 5-150-280, but which has not received final EPA action in the form of a finding of incompleteness, approval, or disapproval may be assumed for emission reduction credit for the purpose of demonstrating that the requirements of 9 VAC 5-150-260 through 9 VAC 5-150-280 are satisfied.

5. A regional emissions analysis for the purpose of satisfying the requirements of 9 VAC 5-150-300 through 9 VAC 5-150-320 may account for the programs in subdivision 4 of this subsection, but the same assumptions about these programs shall be used for both the "baseline" and "action" scenarios.

B. For serious, severe, and extreme ozone nonattainment areas and serious carbon monoxide areas after January 1, 1995, estimates of regional transportation-related emissions used to support conformity determinations shall be made according to procedures which meet the requirements in subsection B of this section.

1. A network-based transportation demand model or models relating travel demand and transportation system performance to land-use patterns, population demographics, employment, transportation infrastructure, and transportation policies shall be used to estimate travel within the metropolitan planning area of the nonattainment area. The model shall possess the following attributes:

a. The modeling methods and the functional relationships used in the model(s) shall in all respects be in accordance with acceptable professional practice, and reasonable for purposes of emission estimation;

b. The network-based model(s) shall be validated against ground counts for a base year that is not more than 10 years prior to the date of the conformity determination. Land use, population, and other inputs shall be based on the best available information and appropriate to the validation base year;

c. For peak-hour or peak-period traffic assignments, a capacity sensitive assignment methodology shall be used;

d. Zone-to-zone travel times used to distribute trips between origin and destination pairs shall be in reasonable agreement with the travel times which result from the process of assignment of trips to network links. Where use of transit currently is anticipated to be a significant factor in satisfying transportation demand, these times should also be used for modeling mode splits;

e. Free-flow speeds on network links shall be based on empirical observations;

f. Peak and off-peak travel demand and travel times shall be provided;

g. Trip distribution and mode choice shall be sensitive to pricing, where pricing is a significant factor, if the network model is capable of such determinations and the necessary information is available;

h. The model(s) shall utilize and document a logical correspondence between the assumed scenario of land development and use and the future transportation system for which emissions are being estimated. Reliance on a formal land-use model is not specifically required but is encouraged;

i. A dependence of trip generation on the accessibility of destinations via the transportation system (including pricing) is strongly encouraged but not specifically required, unless the network model is capable of such determinations and the necessary information is available;

j. A dependence of regional economic and population growth on the accessibility of destinations via the transportation system is strongly encouraged but not specifically required, unless the network model is capable of such determinations and the necessary information is available; and

k. Consideration of emissions increases from construction-related congestion is not specifically required.

2. Highway Performance Monitoring System (HPMS) estimates of vehicle miles traveled shall be considered the primary measure of vehicle miles traveled within the portion of the nonattainment or maintenance area and for the functional classes of roadways included in HPMS, for urban areas which are sampled on a separate urban area basis. A factor (or factors) shall be developed to reconcile and calibrate the network-based model estimates of vehicle miles traveled in the base year of its validation to the HPMS estimates for the same period, and these factors shall be applied to model estimates of future vehicle miles traveled. In this factoring process, consideration shall be given to differences in the facility coverage of the HPMS and the modeled network

description. Departure from these procedures is permitted with the concurrence of USDOT and EPA.

3. Reasonable methods shall be used to estimate nonattainment area vehicle travel on off-network roadways within the urban transportation planning area, and on roadways outside the urban transportation planning area.

4. Reasonable methods in accordance with good practice shall be used to estimate traffic speeds and delays in a manner that is sensitive to the estimated volume of travel on each roadway segment represented in the network model.

5. Ambient temperatures shall be consistent with those used to establish the emissions budget in the applicable implementation plan. Factors other than temperatures, for example the fraction of travel in a hot stabilized engine mode, may be modified after interagency consultation according to 9 VAC 5-150-130 if the newer estimates incorporate additional or more geographically specific information or represent a logically estimated trend in the factors beyond the period considered in the applicable implementation plan.

C. For areas which are not serious, severe, or extreme ozone nonattainment areas or serious carbon monoxide areas, or before January 1, 1995, the requirements of this subsection shall be met.

1. Procedures which satisfy some or all of the requirements of subsection A of this section shall be used in all areas not subject to subsection A of this section in which those procedures have been the previous practice of the MPO.

2. Regional emissions may be estimated by methods which do not explicitly or comprehensively account for the influence of land use and transportation infrastructure on vehicle miles traveled and traffic speeds and congestion. The methods shall account for VMT growth by extrapolating historical VMT or projecting future VMT by considering growth in population and historical growth trends for vehicle miles travelled per person. These methods shall also consider future economic activity, transit alternatives, and transportation system policies.

D. This subsection applies to any nonattainment or maintenance area or any portion thereof which does not have a metropolitan transportation plan or TIP and whose projects are not part of the emissions analysis of any MPO's metropolitan transportation plan or TIP (because the nonattainment or maintenance area or portion thereof does not contain a metropolitan planning area or portion of a metropolitan planning area and is not part of a Metropolitan Statistical Area or Consolidated Metropolitan Statistical Area which is or contains a nonattainment or maintenance area).

1. Conformity demonstrations for projects in these areas may satisfy the requirements of 9 VAC 5-150-280, 9 VAC 5-150-320, and 9 VAC 5-150-350 with one regional emissions analysis which includes all the regionally significant projects in the nonattainment or maintenance area (or portion thereof).

2. The requirements of 9 VAC 5-150-280 shall be satisfied according to the procedures in 9 VAC 5-150-280 C, with references to the "transportation plan" taken to mean the statewide transportation plan.

3. The requirements of 9 VAC 5-150-320 and 9 VAC 5-150-350 which reference "transportation plan" or "TIP" shall be taken to mean those projects in the statewide transportation plan or statewide TIP which are in the nonattainment or maintenance area (or portion thereof).

4. The requirement of 9 VAC 5-150-370 B shall be satisfied if:

a. The project is included in the regional emissions analysis which includes all regionally significant highway and transportation projects in the nonattainment or maintenance area (or portion thereof) and supports the most recent conformity determination made according to the requirements of 9 VAC 5-150-280, 9 VAC 5-150-320, or 9 VAC 5-150-350 (as modified by subdivisions 2 and 3 of this subsection), as appropriate for the time period and pollutant; and

b. The project's design concept and scope have not changed significantly from those which were included in the regional emissions analysis, or in a manner which would significantly impact use of the facility.

E. For PM_{10} from construction-related fugitive dust, the requirements of this subsection shall be met.

1. For areas in which the implementation plan does not identify construction-related fugitive PM_{10} as a contributor to the nonattainment problem, the fugitive PM_{10} emissions associated with highway and transit project construction are not required to be considered in the regional emissions analysis.

2. In PM_{10} nonattainment and maintenance areas with implementation plans which identify construction-related fugitive PM_{10} as a contributor to the nonattainment problem, the regional PM_{10} emissions analysis shall consider construction-related fugitive PM_{10} and shall account for the level of construction activity, the fugitive PM_{10} control measures in the applicable implementation plan, and the dust-producing capacity of the proposed activities.

9 VAC 5-150-390. Procedures for determining localized CO and PM_{10} concentrations (hot-spot analysis).

A. In the following cases, CO hot-spot analyses shall be based on the applicable air quality models, data bases, and other requirements specified in Appendix W of 40 CFR Part 51, unless, after the interagency consultation process described in 9 VAC 5-150-130 and with the approval of the EPA Regional Administrator, these models, data bases, and other requirements are determined to be inappropriate:

1. For projects in or affecting locations, areas, or categories of sites which are identified in the applicable

implementation plan as sites of current violation or possible current violation;

2. For those intersections at Level-of-Service D, E, or F, or those that will change to Level-of-Service D, E, or F because of increased traffic volumes related to a new project in the vicinity;

3. For any project involving or affecting any of the intersections which the applicable implementation plan identifies as the top three intersections in the nonattainment or maintenance area based on the highest traffic volumes;

4. For any project involving or affecting any of the intersections which the applicable implementation plan identifies as the top three intersections in the nonattainment or maintenance area based on the worst Level-of-Service; and

5. Where use of the "guideline" models is practicable and reasonable given the potential for violations.

B. In cases other than those described in subsection A of this section, other quantitative methods may be used if they represent reasonable and common professional practice.

C. CO hot-spot analyses shall include the entire project, and may be performed only after the major design features which shall significantly impact CO concentrations have been identified. The background concentration can be estimated using the ratio of future-to-current traffic multiplied by the ratio of future-to-current emission factors.

D. PM_{10} hot-spot analysis shall be performed for projects which are located at sites at which violations have been verified by monitoring, and at sites which have essentially identical vehicle and roadway emission and dispersion characteristics (including sites near one at which a violation has been monitored). The projects which require PM-10 hot-spot analysis shall be determined through the interagency consultation process required in 9 VAC 5-150-130. In PM-10 nonattainment and maintenance areas, new or expanded bus and rail terminals and transfer points which increase the number of diesel vehicles congregating at a single location require hot-spot analysis. USDOT may choose to make a categorical conformity determination on bus and rail terminals or transfer points based on appropriate modeling of various terminal sizes, configurations, and activity levels. The requirements of this subsection for quantitative hot-spot analysis shall not take effect until EPA releases modeling guidance on this subject and announces in the Federal Register that these requirements are in effect.

E. Hot-spot analysis assumptions shall be consistent with those in the regional emissions analysis for those inputs which are required for both analyses.

F. PM_{10} or CO mitigation or control measures shall be assumed in the hot-spot analysis only where there are written commitments from the project sponsor, operator or both, to the implementation of the measures, as required by 9 VAC 5-150-410 A.

G. CO and PM_{10} hot-spot analyses are not required to consider construction-related activities which cause temporary increases in emissions. Each site which is affected by construction-related activities shall be considered separately, using established "guideline" methods. Temporary increases are defined as those which occur only during the construction phase and last five years or less at any individual site.

9 VAC 5-150-400. Using the motor vehicle emissions budget in the applicable implementation plan (or implementation plan submission).

A. In interpreting an applicable implementation plan (or implementation plan submission) with respect to its motor vehicle emissions budget(s), the MPO and USDOT may not infer additions to the budget(s) that are not explicitly intended by the implementation plan (or submission). Unless the implementation plan explicitly quantifies the amount by which motor vehicle emissions could be higher while still allowing a demonstration of compliance with the milestone, attainment, or maintenance requirement and explicitly states an intent that some or all of this additional amount should be available to the MPO and USDOT in the emission budget for conformity purposes, the MPO may not interpret the budget to be higher than the implementation plan's estimate of future emissions. This applies in particular to applicable implementation plans (or submissions) which demonstrate that after implementation of control measures in the implementation plan:

1. Emissions from all sources shall be less than the total emissions that would be consistent with a required demonstration of an emissions reduction milestone;

2. Emissions from all sources shall result in achieving attainment prior to the attainment deadline or ambient concentrations in the attainment deadline year shall be lower than needed to demonstrate attainment, or both; or

3. Emissions shall be lower than needed to provide for continued maintenance.

B. If an applicable implementation plan submitted before November 24, 1993, demonstrates that emissions from all sources shall be less than the total emissions that would be consistent with attainment and quantifies that "safety margin," the state may submit a SIP revision which assigns some or all of this safety margin to highway and transit mobile sources for the purposes of conformity. The SIP revision, once it is endorsed by the Governor and has been subject to a public hearing, may be used for the purposes of transportation conformity before it is approved by EPA.

C. A conformity demonstration shall not trade emissions among budgets which the applicable implementation plan (or implementation plan submission) allocates for different pollutants or precursors, or among budgets allocated to motor vehicles and other sources, without a SIP revision or a SIP which establishes mechanisms for the trades.

D. If the applicable implementation plan (or implementation plan submission) estimates future emissions by geographic subarea of the nonattainment area, the MPO and USDOT are not required to consider this to establish subarea budgets, unless the applicable implementation plan (or implementation plan submission) explicitly indicates an

intent to create the subarea budgets for the purposes of conformity.

E. If a nonattainment area includes more than one MPO, the SIP may establish motor vehicle emissions budgets for each MPO, or else the MPOs shall collectively make a conformity determination for the entire nonattainment area.

9 VAC 5-150-410. Enforceability of design concept and scope and project-level mitigation and control measures.

A. Prior to determining that a transportation project is in conformity, the MPO, other recipient of funds designated under Title 23 USC or the Federal Transit Act, FHWA, or FTA shall obtain from the project sponsor, operator or both, written commitments to implement in the construction of the project and operation of the resulting facility or service any project-level mitigation or control measures which are identified as conditions for NEPA process completion with respect to local PM_{10} or CO impacts. Before making conformity determinations written commitments shall also be obtained for project-level mitigation or control measures which are conditions for making conformity determinations for a transportation plan or TIP and included in the project design concept and scope which is used in the regional emissions analysis required by 9 VAC 5-150-260 through 9 VAC 5-150-280 and 9 VAC 5-150-300 through 9 VAC 5-150-320 or used in the project-level hot-spot analysis required by 9 VAC 5-150-240 and 9 VAC 5-150-290.

B. Project sponsors voluntarily committing to mitigation measures to facilitate positive conformity determinations shall comply with the obligations of the commitments.

C. The implementation plan revision required in this regulation shall provide that written commitments to mitigation measures shall be obtained prior to a positive conformity determination, and that project sponsors shall comply with the commitments.

D. During the control strategy and maintenance periods, if the MPO or project sponsor believes the mitigation or control measure is no longer necessary for conformity, the project sponsor or operator may be relieved of its obligation to implement the mitigation or control measure if it can demonstrate that the requirements of 9 VAC 5-150-240, 9 VAC 5-150-260, and 9 VAC 5-150-270 are satisfied without the mitigation or control measure, and so notifies the agencies involved in the interagency consultation process required under 9 VAC 5-150-130. The MPO and USDOT shall confirm that the transportation plan and TIP still satisfy the requirements of 9 VAC 5-150-260 and 9 VAC 5-150-270 and that the project still satisfies the requirements of 9 VAC 5-150-240, and therefore that the conformity determinations for the transportation plan, TIP, and project are still valid.

9 VAC 5-150-420. Exempt projects.

Notwithstanding the other requirements of this regulation, highway and transit projects of the types listed in Table 2 are exempt from the requirement that a conformity determination be made. The projects may proceed toward implementation even in the absence of a conforming transportation plan and TIP. A particular action of the type listed in Table 2 is not exempt if the MPO in consultation with other agencies (see 9 VAC 5-150-130 C 1 c), the EPA, and the FHWA (in the case of a highway project) or the FTA (in the case of a transit project) concur that it has potentially adverse emissions impacts for any reason. States and MPOs shall ensure that exempt projects do not interfere with TCM implementation.

Table 2.
Exempt Projects.

SAFETY

Railroad/highway crossing
Hazard elimination program
Safer non-federal-aid system roads
Shoulder improvements
Increasing sight distance
Safety improvement program
Traffic control devices and operating assistance other than signalization projects
Railroad/highway crossing warning devices
Guardrails, median barriers, crash cushions
Pavement resurfacing, rehabilitation or both
Pavement marking demonstration
Emergency relief (23 USC 125)
Fencing
Skid treatments
Safety roadside rest areas
Adding medians
Truck climbing lanes outside the urbanized area
Lighting improvements
Widening narrow pavements or reconstructing bridges (no additional travel lanes)
Emergency truck pullovers

MASS TRANSIT

Operating assistance to transit agencies
Purchase of support vehicles
Rehabilitation of transit vehicles[1]
Purchase of office, shop, and operating equipment for existing facilities
Purchase of operating equipment for vehicles (e.g., radios, fareboxes, lifts, etc.)
Construction or renovation of power, signal, and communications systems
Construction of small passenger shelters and information kiosks
Reconstruction or renovation of transit buildings and structures (e.g., rail or bus buildings, storage and maintenance facilities, stations, terminals, and ancillary structures)
Rehabilitation or reconstruction of track structures, track, and trackbed in existing rights-of-way
Purchase of new buses and rail cars to replace existing vehicles or for minor expansions of the fleet[1]
Construction of new bus or rail storage/maintenance facilities categorically excluded in 23 CFR 771

AIR QUALITY

Continuation of ride-sharing and van-pooling promotion activities at current levels
Bicycle and pedestrian facilities

OTHER

Specific activities which do not involve or lead directly to construction, such as:

Planning and technical studies
Grants for training and research programs
Planning activities conducted pursuant to Titles 23 and 49 USC
Federal-aid systems revisions

Engineering to assess social, economic, and environmental effects of the proposed action or alternatives to that action
Noise attenuation
Advance land acquisitions (23 CFR 712 or 23 CFR 771)
Acquisition of scenic easements
Plantings, landscaping, etc.
Sign removal
Directional and informational signs
Transportation enhancement activities (except rehabilitation and operation of historic transportation buildings, structures, or facilities)
Repair of damage caused by natural disasters, civil unrest, or terrorist acts, except projects involving substantial functional, locational or capacity changes

[1] In PM_{10} nonattainment or maintenance areas, the projects are exempt only if they are in compliance with control measures in the applicable implementation plan.

9 VAC 5-150-430. Projects exempt from regional emissions analyses.

Notwithstanding the other requirements of this regulation, highway and transit projects of the types listed in Table 3 are exempt from regional emissions analysis requirements. The local effects of these projects with respect to CO or PM_{10} concentrations shall be considered to determine if a hot-spot analysis is required prior to making a project-level conformity determination. These projects may then proceed to the project development process even in the absence of a conforming transportation plan and TIP. A particular action of the type listed in Table 3 is not exempt from regional emissions analysis if the MPO in consultation with other agencies (see 9 VAC 5-150-130 C 1 c), the EPA, and the FHWA (in the case of a highway project) or the FTA (in the case of a transit project) concur that it has potential regional impacts for any reason.

Table 3.
Projects Exempt From Regional Emissions Analyses.

Intersection channelization projects
Intersection signalization projects at individual intersections
Interchange reconfiguration projects
Changes in vertical and horizontal alignment
Truck size and weight inspection stations
Bus terminals and transfer points

9 VAC 5-150-440. Special provisions for nonattainment areas which are not required to demonstrate reasonable further progress and attainment.

A. This section applies in the following areas:

1. Rural transport ozone nonattainment areas;

2. Marginal ozone areas;

3. Submarginal ozone areas;

4. Transitional ozone areas;

5. Incomplete data ozone areas;

6. Moderate CO areas with a design value of 12.7 ppm or less; and

7. Not classified CO areas.

B. The criteria and procedures in 9 VAC 5-150-300 through 9 VAC 5-150-320 shall remain in effect throughout the control strategy period for transportation plans, TIPs, and projects (not from a conforming plan and TIP) in lieu of the procedures in 9 VAC 5-150-260 through 9 VAC 5-150-280, except as otherwise provided in subsection C of this section.

C. The LPO may voluntarily develop an attainment demonstration and corresponding motor vehicle emissions budget like those required in areas with higher nonattainment classifications. In this case, the DEQ shall submit an implementation plan revision which contains that budget and attainment demonstration. Once EPA has approved this implementation plan revision, the procedures in 9 VAC 5-150-260 through 9 VAC 5-150-280 apply in lieu of the procedures in 9 VAC 5-150-300 through 9 VAC 5-150-320.

VA.R. Doc. No. R96-223; Filed February 14, 1996, 11:34 a.m.

* * * * * * * *

Title of Regulation: **9 VAC 5-160-10 et seq. Regulation for General Conformity.**

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

Public Hearing Dates: April 8, 1996 - 10 a.m. (Richmond)
April 9, 1996 - 10 a.m. (Alexandria)
Public comments may be submitted until May 3, 1996.
(See Calendar of Events section for additional information)

Basis: The legal basis for the proposed regulation amendments is § 10.1-1308 of the Virginia Air Pollution Control Law, 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 to provide criteria and procedures for federal agencies to determine that federal nontransportation related actions are in conformance with state plans for attaining and maintaining national ambient air quality standards in the Northern Virginia, Richmond, and Hampton Roads nonattainment areas.

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

1. Federal actions must conform to the purpose of the State Implementation Plan (SIP). No federal action may:

a. Cause or contribute to any new violation of any standard in any area;

b. Interfere with SIP provisions for maintenance of any standard;

c. Increase the frequency or severity of any existing violation of any standard in any area; or

d. Delay timely attainment of any standard or any required interim emissions reductions or other milestones in any area.

2. The rule covers direct and indirect emissions of criteria pollutants or their precursors that are caused by a federal action, reasonably foreseeable, and can practicably be controlled by the federal agency through its continuing program responsibility.

3. A federal agency making a conformity determination must provide notice of the proposed and final action, and the agency's draft and final conformity determination, to: appropriate EPA regional office(s), DEQ and local air quality agencies, any affected federal land managers, the lead planning agency, and the metropolitan planning organization.

4. The federal agency must make its draft conformity determination available on request, as well as publicize it in the area affected by the action, and provide 30 days for written public comment. The federal agency must document and make available its response to all the comments received. The final conformity determination must be made public within 30 days of the final conformity determination.

5. The conformity status of a federal action automatically lapses five years from the date a final conformity determination is reported, unless the action has been completed or a continuous program has been begun to implement the action within a reasonable time. If, after the conformity determination is made, the action is changed so that there is an increase in emissions above allowable levels, a new conformity determination is required.

6. Emissions from a federal action must be specifically identified and accounted for in the SIP. The federal agency must demonstrate that the total of emissions will not exceed the SIP's emissions budgets. An action must comply or be consistent with all relevant SIP requirements and milestones.

7. Emissions budgets are established by control strategy implementation plans: 15% and 9% emission reduction plans, attainment plans, and maintenance plans. They act as a ceiling for point, area and mobile sources. After the state submits a control strategy implementation plan, the budget in the plan becomes the ceiling for emissions until the state submits a plan with a revised emissions budget.

8. All required analyses must be based on the latest planning assumptions, the latest and most accurate emission estimation techniques available, and specific EPA guidance.

9. Any measures intended to mitigate air quality impacts must be identified, and the process for their implementation and enforcement must be described. The federal agency making the conformity determination must obtain written commitments from the persons or agencies to implement any mitigation measures which are identified as conditions for making conformity decisions. Mitigation measures may be modified if the new mitigation measures continue to support the conformity determination. Written comments to mitigation measures must be obtained prior to a positive conformity determination. After EPA approves this regulation, any mitigation measures will be both state and federally enforceable.

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 primary advantage to the public is assurance that federal projects will not interfere with the timely attainment of national air quality standards. Attainment of the standards in nonattainment areas is important to the public because redesignation of nonattainment areas to attainment reduces requirements on industry and citizens. Further, the prevention and reduction of air pollution--a source of significant damage to property and health--is a significant advantage. 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: The department will benefit from improved ability to manage the SIP. Advance notice of projects that may have a significant impact on air quality will also enable the department to better plan its overall pollution control strategies. Although it is not anticipated that any significant amount of department time and labor will be necessary in the development of conformity determinations, the potential for disagreements with the federal agency exists, and may require additional effort.

Localities Affected: The geographic coverage of the regulation consists of the boundaries of localities in the following areas:

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

2. The Richmond Ozone Nonattainment 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 Ozone Nonattainment 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.

4. Maintenance areas, i.e., the above areas when redesignated to attainment.

Impact: Entities affected by the regulation are federal governmental entities that engage in, support in any way or provide financial assistance for, license or permit, or approve, any activity in a nonattainment area. EPA estimates that approximately 15% of federal actions will require a conformity determination. The estimated cost of one conformity determination ranges from $1,700 for a straightforward determination, to $133,000 for a base closure conformity determination. These figures are preliminary, and EPA anticipates actual costs to be considerably less. It is not expected that the regulation will result in any cost to the Department of Environmental Quality beyond that currently in the budget. The regulation will not affect facilities that meet the definition of small business provided in § 9-199 of the Code of Virginia.

Department of Planning and Budget's Economic Impact Analysis:

The 1990 amendments to the Clean Air Act provide that federal agencies must conform to state air pollution rules in the states where they take actions that affect nonattainment or maintenance areas in the state. The states establish implementation plans (SIPs) to bring air quality in the state into compliance with the provisions of the Act. To this end, all states with implementation plans must establish procedures by which federal agencies operating within the boundaries of the state determine whether actions they plan to take will be consistent with the SIP in that state. The federal action must be consistent with the state's plan to meet federal air quality standards.

These regulations establish those procedures. They follow closely language used by the Environmental Protection Agency in the regulations published under the Clean Air Act. The rules apply only to a subset of federal actions in the nonattainment and maintenance areas. Very small sources are exempt and large sources are covered under Title V of the Clean Air Act instead of this provision. Transportation projects are covered under 9 VAC 5-150-10 et seq. Also covered are activities over which a federal agency has significant permitting authority and activities financed by federal agencies although undertaken by others. However, state regulations do not only cover emission by the agencies themselves.

Procedural costs

The issue of the costs of making conformity determinations is somewhat complicated because there are two stages of conformity determination (preliminary and full) and three possible sets of parties involved.

A federal agency must first make a determination of whether an action requires a conformity determination at all. EPA estimates that there will be anywhere from 10,000 to 50,000 of these per year nationally.[1] There is no data available on how many of these will affect Virginia nonattainment areas. It is estimated that about 15% of these actions will need full conformity analysis. For purposes of illustration, if 10% of the total affect Virginia, then from 150 to 750 determinations would have to be made each year in Virginia. Based on EPA estimates of national costs, the costs for determinations in Virginia would range from as low as $6.3 million to as high as $11.1 million. EPA suggests that these estimates may be too high since they are based on a survey made before EPA granted a number of *de minimis* exceptions and because some of the work needed for the determinations is already being done to satisfy other federal statutes. Given EPA's lower estimates of likely costs, a more reasonable range would be from $3 million to $8 million.[2]

Depending on the circumstances, these expenditures could mean either a gain or a loss for Virginia. This depends on who is paying for the determination. EPA states that "[m]ost of the cost of determining conformity falls to Federal agencies and/or private sponsors of projects needing Federal action."[3] Again, there is no publicly available information that would allow us to determine the proportion of the costs borne by federal agencies and that borne by private individuals. Of that portion paid for by federal agencies some fraction will be paid to Virginia workers and businesses which would probably be a net benefit to the state.

Some of these expenses, however, will be paid by businesses and individuals undertaking projects requiring a federal conformity analysis. Since these payments are additional costs of production, they will generate some loss of consumer and producer surplus in the Virginia economy.

The Department of Environmental Quality (DEQ) and EPA have indicated that most of these costs will fall on federal agencies. Given this, the net affect of the procedural requirements on the Virginia economy is probably close to zero because the impact of federal expenditures is of the same order of magnitude as the impact of the increased costs on state businesses.

These costs discussed above do not include the costs of participation in the determination by Virginia agencies. In its statement of the impact of this regulation, DEQ states that it does not anticipate any cost to the agency "beyond that currently in the budget." DEQ should make clear whether this is because they do not expect to have any staff working on conformity regulations or whether it will be reallocating staff time away from other activities in order to participate. In the latter case, it should explicitly state the commitment of resources to conformity determinations in FTEs and in dollars. If the FTEs are paid for with federal grant money, DEQ should state whether those funds are fungible or are specifically to support the conformity determination function. Any general fund revenues or fungible federal grant money

[1] EPA's estimates may be found in: U.S. Environmental Protection Agency. "Determining Conformity of General Federal Actions to State or Federal Implementation Plans. Part V: Economic Impact", 58 Fed. Reg 63246 (1993).

[2] It should be kept in mind that this is all based on the assumption that Virginia would have 10% of the total determinations. The value is certainly greater than 2% (a one fiftieth share) and is very probably less than the 10% used. The estimates would scale in a very direct way: a 5% share would mean half the spending of the 10% share.

[3] U.S. Environmental Protection Agency. "Determining Conformity of General Federal Actions to State or Federal Implementation Plans", 58 Fed. Reg 63214 (1993).

used for this purpose has an opportunity cost for DEQ and that is part of the cost of this regulation.

Compliance costs

In its statement of the costs of this regulation, DEQ concentrates entirely on the procedural costs. However, those are almost certainly a small part of the costs of compliance. The requirement that federal agencies conform to Virginia's SIP implies that projects that are subject to a conformity determination must be implemented in a way that is consistent with the terms of the SIP. Conforming projects must meet SIP standards and will almost certainly be more costly than if they did not have to meet those requirements.

For private projects that require federal permits, compliance costs (aside from the procedural costs already discussed) will probably not be greater under the conformity regulations. This is because these projects are already subject to state regulation under the SIP. For federal agencies, the regulations may mean higher costs for locating a project in a nonattainment or management area relative to areas not subject to the conformity regulation. This has two implications. First, federal agencies will be spending more on compliance activities than before and second, some federal activities may be relocated from regulated areas to nonregulated areas.

It would be impractical, if not impossible, to measure to what extent increased compliance costs reduce the level of federal services provided in Virginia. Since the level of federal agency activity is decided at the national level, Virginia's contribution to higher compliance costs, taken by itself, can only have a marginal impact on the level of federal services. However, federal facilities in Virginia will be spending money in Virginia to comply with this regulation. Insofar as this spending is not completely offset by reductions in other spending in Virginia there may be some benefit to the economy from increased levels of federal spending. Unfortunately, both the sign and magnitude of these spending changes are unknown. There is no good data from which we could determine the expected federal agency compliance expenditures to meet the requirements of the Virginia SIP.

Another largely unquantifiable effect of requiring federal agency conformity is that there will be incentive for federal agencies to locate their facilities in areas not subject to the conformity requirements. This would mean that we would expect to observe a shift of federal jobs and activities away from nonattainment and management areas relative to what it would have been without the regulation.

The total effect on the state is ambiguous. Some federal activities that do not locate in Northern Virginia, Richmond or Hampton Roads will move to other states, but there may also be relocation in the other direction. Given the concentration of federal facilities in Northern Virginia and the Hampton Roads area, however, it may be slightly more likely that Virginia will lose federal employment rather than gain.

Even though it is not possible to quantify the impact of the compliance costs discussed in this section, the discussion is important because it illustrates the importance of keeping compliance costs due to nonattainment as low as possible. For a given level of air quality chosen, Virginia should always choose the least expensive way of accomplishing that goal. There is little doubt that if Virginia can have the same quality of air at a lower price or better air at the same price as everyone else, then there will be positive net benefits to such a strategy.

Benefits

These regulations concern conformity of federal facilities with the Virginia SIP. The issue here is: what are the benefits of having this regulation over not having it. First, of course, the state is required to have these regulations in place. If these regulations are not promulgated, Virginia could stand to lose control over implementation of the Clean Air Act provisions within the state. There would also be a significant loss of federal aid dollars.

Another benefit of requiring conformity is to ensure that federal agencies are carrying their share of the burden of reducing emissions in nonattainment and management areas. If federal agencies were not required to conform to the state implementation plan, then the entire burden of reducing emissions to satisfy the requirements of the Clean Air Act would fall on businesses and individuals in the state regardless of the federal contribution to the emissions. This would constitute a significant subsidy to federal operations within the state. Conformity shifts this burden to the agencies responsible for the emissions. In its absence, federal agencies would have no incentive to limit their emissions and the burden on the private sector in the state would rise accordingly because the federal air quality standards would still have to be met.

The benefits of shifting these costs back to federal agencies are probably quite large relative to the other effects discussed in this analysis. The reason is that private individuals and businesses are on a steeply rising part of their marginal cost curve. This means that each extra unit of reduction in emissions is much more costly than those that preceded it. If federal agencies were not meeting the same standards than their marginal costs would be lower; and, hence, it would certainly be profitable to shift some of the responsibility for reducing emissions to them.

Conclusions

In the discussion about the actual values of the costs and benefits of this regulation, it has often been impossible to give any actual values for the effects discussed. There is simply no data to draw on for making explicit measurements. However, economic theory and past experience both point to the potential for great savings whenever one group has very different costs of meeting an emission standard than another group. Without conformity requirements, a gap would develop between the marginal costs of federal agencies and those in the private sector. Such a gap would almost certainly lead to inefficiently high costs for meeting air quality standards.

Taking account of all of the effects discussed in this analysis leads to the conclusion that this conformity regulation will most likely have a significant net benefit for the state as a whole. However, there is some reason to believe that the three nonattainment and management areas within the state could suffer some loss of potential federal agency activity as a result but the loss in federal activity would likely be more

than offset by a reduction in private costs of compliance. Thus, even in these areas the contribution of federal agencies to meeting the Clean Air Act requirements will probably exceed the value of any lost federal activity.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis:

1. Since the promulgation of the federal general conformity rule in November 1993, approximately 40 federal actions occurring within Virginia's three nonattainment areas have come through DEQ for National Environmental Protection Act (NEPA) review. These actions were also subject to the federal general conformity rule. About 80% of these actions were found exempt or met the de minimis requirements without having to do additional (expanded) air quality analysis outside of the NEPA evaluation. The remaining 20% were found to conform (meet the de minimis requirements) based on a full blown applicability test analysis. As of this writing, DEQ has not witnessed any federal actions that were not able to meet conformity or had problems mitigating the action to meet conformity.

2. Of the 40 or so federal actions mentioned above, none have been sponsored by private businesses or individuals requiring federal permits or financing.

3. "DEQ should make clear . . ." Conformity has been required since the Clean Air Act Amendments of 1977. DEQ, as well as other affected agencies, has been participating in conformity assessments ever since. The initial conformity requirements were very general; the Amendments of 1990 and the subsequent EPA regulation better define information required for review, clarify roles, and provide more detail into the process. In some respects, the 1990 amendments actually simplify the conformity process, because they clarify what is required of the department.

Note that DEQ does not make conformity determinations. It merely provides the agencies that do so with information that has already been generated for other purposes (such as emissions inventories). Therefore, the costs associated with the actual conformity process are minimal. DEQ will not need additional resources beyond those needed for the pre-1990 conformity review process.

DEQ has one FTE designated to review conformity analyses and determinations. The conformity review is a part of this person's larger NEPA review responsibility, for which 20% of the FTE's time and resources are allocated.

4. "If the FTEs are paid for with federal grant money . . ." Federal grant funds are generally directed more toward plan development rather than implementation. That is, one of the specific conditions of the grant is to develop a conformity regulation, however, no discreet amount of money is set aside for that particular purpose.

5. "Conforming projects must meet . . . " It does not necessarily follow that meeting SIP standards will always increase project cost. For example, if a project must be scaled down in order to meet the standards, then the scaled-down project will necessarily be *less* costly. (It costs less to build one parking lot than two.) There is no one-to-one correlation between meeting a SIP requirement and a cost.

6. The great majority of these federal actions occurred on existing federal facilities or federally managed area. The U.S. Armed Forces, the Army Corps of Engineers, and the Federal Aviation Administration are the three major project sponsors thus far in the three nonattainment areas. Almost if not all of their projects were to increase activities or expand operation. Based on our experience, we have not encountered any federal actions outside of the nonattainment areas where compliance to the general conformity requirement was the major contributory factor for the new construction, operation, or relocation.

"For federal agencies, the regulations *may* mean higher costs . . . federal agencies *will* be spending more on compliance activities . . . " (Emphasis ours.) It does not necessarily follow that meeting SIP standards will always increase project cost; see item 5 above.

7. ". . . some federal activities may be relocated from regulated areas to nonregulated areas." Attainment areas are not nonregulated.

8. "For a given level of air quality chosen. . . " The level of air quality is not "chosen," it is a national standard that must be met.

9. Benefits of the regulation include:

- a reduction in economic externality (pollution cleanup and abatement using tax dollars, and healthcare costs for the treatment of respiratory illness, for example); and
- the promotion and encouragement of early coordination and planning with the state and local government.

10. Throughout the document the term "management area" is used. The correct term is "maintenance area."

Summary:

The regulation establishes criteria and procedures for federal agencies to use when determining whether their general (nontransportation) actions are in conformance with air quality plans before they are adopted. It will apply in the Northern Virginia, Richmond, and Hampton Roads nonattainment areas. "Conformity" means that the activity will not (i) cause or contribute to any new violation of any standard in any area, (ii) will not increase the frequency or severity of any existing violation of any standard in any area, or (iii) will not delay timely attainment of any standard or any required interim emission reductions or other milestones in any area.

A federal activity must not adversely affect implementation of the state implementation plan or the timely attainment and maintenance of the National Ambient Air Quality Standards. This integration of federal activities and air quality planning is intended to ensure that emissions growth projections are not

exceeded, emissions reduction targets are met, and maintenance efforts are not undermined.

9 VAC 5-160-10 et seq. Regulation for General Conformity.

CHAPTER 160.
REGULATION FOR GENERAL CONFORMITY.

PART I.
GENERAL DEFINITIONS.

9 VAC 5-160-10. General.

A. For the purpose of this regulation and subsequent amendments or any orders issued by the board, the words or terms shall have the meanings given them in 9 VAC 5-160-20.

B. Unless specifically defined in the Virginia Air Pollution Control Law or in this regulation, terms used shall have the meaning given them by the federal Clean Air Act, other U.S. Environmental Protection Agency (EPA) regulations, or commonly ascribed to them by recognized authorities, in that order of priority.

9 VAC 5-160-20. Terms defined.

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

"Administrator" means the administrator of EPA or an authorized representative.

"Affected federal land manager" means the federal agency or the federal official charged with direct responsibility for management of an area designated as class I under the federal Clean Air Act, and located within 100 kilometers of the proposed federal action.

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

"Applicable implementation plan" means the portion or portions of the state implementation plan, or the most recent revision thereof, which has been approved under § 110 of the federal Clean Air Act, or promulgated under § 110(c) of the federal Clean Air Act, or promulgated or approved pursuant to regulations promulgated under § 301(d) of the federal Clean Air Act and which implements the relevant requirements of the federal Clean Air Act.

"Areawide air quality modeling analysis" means an assessment on a scale that includes the entire nonattainment area or maintenance area which uses an air quality dispersion model to determine the effects of emissions on air quality.

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

"Cause or contribute to a new violation" means a federal action that:

1. Causes a new violation of a national ambient air quality standard at a location in a nonattainment or maintenance area which would otherwise not be in violation of the standard during the future period in question if the federal action were not taken; or

2. Contributes, in conjunction with other reasonably foreseeable actions, to a new violation of a national ambient air quality standard at a location in a nonattainment or maintenance area in a manner that would increase the frequency or severity of the new violation.

"Caused by" means, as used in the terms "direct emissions" and "indirect emissions," emissions that would not otherwise occur in the absence of the federal action.

"Confidential information" means secret formulae, secret processes, secret methods, or other trade secrets which are proprietary information certified by the signature of the responsible person for the federal agency to meet the following criteria: (i) information for which the federal agency has been taking and will continue to take measures to protect confidentiality; (ii) information that has not been and is not presently reasonably obtainable without the federal agency's consent by private citizens or other firms through legitimate means other than discovery based on a showing of special need in a judicial or quasi-judicial proceeding; (iii) information which is not publicly available from sources other than the federal agency; and (iv) information the disclosure of which would cause substantial harm to the federal agency.

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

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

"Consultation" means that one party confers with another identified party, provides all information to that party needed for meaningful input, and, prior to taking any action, considers the views of that party and responds to those views in a timely, substantive, written manner prior to any final decision on the action. The views and written response shall be made part of the record of any decision or action.

"Control" means the ability to regulate the emissions from the action. The ability to regulate may be demonstrated directly, such as through the use of emission control equipment, or indirectly, such as through the implementation of regulations or conditions on the nature of the activity that may be established in permits or approvals or by the design of the action. An example of control includes the ability of a federal agency to control the level of vehicle emissions by controlling the size of a parking facility and setting requirements for employee trip reductions.

"Criteria pollutant" means any pollutant for which there is established a national ambient air quality standard in 40 CFR Part 50.

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

"Direct emissions" means those emissions of a criteria pollutant or its precursors that are caused or initiated by the

federal action and occur at the same time and place as the action.

"Director" means the director of the Virginia Department of Environmental Quality.

"Emergency" means, in the context of 9 VAC 5-160-30, a situation where extremely quick action on the part of federal agencies involved is needed and where the timing of the federal activities makes it impractical to meet the requirements of this regulation, such as natural disasters like hurricanes or earthquakes, civil disturbances such as terrorist acts, and military mobilizations.

"Emergency" means, in the context of 9 VAC 5-160-40 and 9 VAC 5-160-50, a situation that immediately and unreasonably affects, or has the potential to immediately and unreasonably affect, public health, safety or welfare; the health of animal or plant life; or property, whether used for recreational, commercial, industrial, agricultural or other reasonable use.

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

"Emissions budgets" are those portions of the total allowable emissions defined in the applicable implementation plan for a certain date for the purpose of meeting reasonable further progress milestones or attainment or maintenance demonstrations, for any criteria pollutant or its precursors, specifically allocated by the applicable implementation plan to mobile sources, to any stationary source or class of stationary sources, to any federal action or any class of action, to any class of area sources, or to any subcategory of the emissions inventory. The allocation system shall be specific enough to assure meeting the criteria of § 176(c)(1)(B) of the federal Clean Air Act. An emissions budget may be expressed in terms of an annual period, a daily period, or other period established in the applicable implementation plan.

"Emissions offsets" means, for the purposes of 9 VAC 5-160-160, emissions reductions which are quantifiable, consistent with the applicable implementation plan attainment and reasonable future progress demonstrations, surplus to reductions required by, and credited to, other applicable implementation plan provisions, enforceable under both state and federal law, and permanent within the timeframe specified by that program. Emissions reductions intended to be achieved as emissions offsets under this regulation shall be monitored and enforced in a manner equivalent to that under the new source review program.

"Emissions that a federal agency has a continuing program responsibility for" means emissions that are specifically caused by an agency carrying out its authorities, and does not include emissions that occur due to subsequent activities, unless the activities are required by the federal agency. Where an agency, in performing its normal program responsibilities, takes actions itself or imposes conditions that result in air pollutant emissions by a nonfederal entity taking subsequent actions, the emissions are covered by the meaning of a continuing program responsibility.

"EPA" means the United States Environmental Protection Agency.

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

"Federal action" means any activity engaged in by a federal agency, or any activity that a federal agency supports in any way, provides financial assistance for, licenses, permits, or approves, other than activities related to transportation plans, programs, and projects developed, funded, or approved under title 23 USC or the Federal Transit Act (49 USC 1601 et seq.). Where the federal action is a permit, license, or other approval for some aspect of a nonfederal undertaking, the relevant action is the part, portion, or phase that the nonfederal undertaking that requires the federal permit, license, or approval.

"Federal agency" means a department, agency, or instrumentality of the federal government.

"Federal Clean Air Act" means 42 USC 7401 et seq.

"Formal hearing" means board processes other than those informational or factual inquiries of an informal nature provided in §§ 9-6.14:7.1 and 9-6.14:11 of the Administrative Process Act and includes only:

1. Opportunity for private parties to submit factual proofs in formal proceedings as provided in § 9-6.14:8 of the Administrative Process Act in connection with the making of regulations, or

2. A similar right of private parties or requirement of public agencies as provided in § 9-6.14:12 of the Administrative Process Act in connection with case decisions.

"Increase the frequency or severity of any existing violation of any standard in any area" means to cause a nonattainment area to exceed a standard more often, or to cause a violation at a greater concentration than previously existed or would otherwise exist during the future period in question, if the project were not implemented.

"Indirect emissions" means those emissions of a criteria pollutant or its precursors that:

1. Are caused by the federal action, but may occur later in time, or may be farther removed in distance from the action itself but are still reasonably foreseeable; and

2. The federal agency can practicably control and will maintain control over due to a continuing program responsibility of the federal agency, including, but not limited to:

a. Traffic on or to, or stimulated or accommodated by, a proposed facility which is related to increases or

other changes in the scale or timing of operations of the facility;

b. Emissions related to the activities of employees of contractors or federal employees;

c. Emissions related to employee commutation and similar programs to increase average vehicle occupancy imposed on all employers of a certain size in the locality; and

d. Emissions related to the activities of contractors or leaseholders that may be addressed by provisions that are usual and customary for contracts or leases or within the scope of contractual protection of the interests of the United States.

"Lead Planning Organization" means the organization certified by the state as being responsible for the preparation of control strategy implementation plan revisions for nonattainment areas under § 174 of the federal Clean Air Act. The organization includes elected officials of local governments in the affected nonattainment area, and representatives of the department, the Virginia Department of Transportation, the metropolitan planning organizations for the affected area, and other agencies and organizations that have responsibilities for developing, submitting or implementing any of the plan revisions. It is the forum for cooperative air quality planning decision-making.

"Local air quality modeling analysis" means assessment of localized impacts on a scale smaller than the entire nonattainment or maintenance area, including, for example, congested roadway intersections and highways or transit terminals, which uses an air quality dispersion model to determine the effects of emissions on air quality.

"Maintenance area" means any geographic region of the United States previously designated as a nonattainment area and subsequently redesignated to attainment subject to the requirement to develop a maintenance plan.

"Maintenance plan" means a revision to the applicable implementation plan, meeting the requirements of § 175A of the federal Clean Air Act.

"Metropolitan planning organization" means the organization designated as being responsible, together with the Commonwealth of Virginia, for conducting the continuing, cooperative, and comprehensive planning process under 23 USC 134 and 49 USC 1607.

"Milestone" means as defined in §§ 182(g) and 189(c)(1) of the federal Clean Air Act. A milestone consists of an emissions level and the date on which it is required to be achieved.

"National ambient air quality standards" means those standards established pursuant to § 109 of the federal Clean Air Act.

"NEPA" means the National Environmental Policy Act of 1969 as amended (42 USC 4321 et seq.)

"New source review program" means a program for the preconstruction review and permitting of new stationary sources or expansions to existing ones in accordance with regulations promulgated to implement the requirements of §§ 110 (a)(2)(C), 165 (relating to permits in prevention of significant deterioration areas) and 173 (relating to permits in nonattainment areas) of the federal Clean Air Act.

"Nonattainment area" means any geographic region of the United States which has been designated as nonattainment under § 107 of the federal Clean Air Act for any pollutant for which a national ambient air quality standard exists.

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

"Party" means any person named in the record who actively participates in the administrative proceeding or offers comments through the public participation process. The term "party" also means the department.

"PM_{10}" means particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers as measured by the applicable reference method or an equivalent method.

"Person" means an individual, corporation, partnership, association, a governmental body, a municipal corporation, or any other legal entity.

"Precursors of a criteria pollutant" means:

1. For ozone,

a. Nitrogen oxides, unless an area is exempted from nitrogen oxides requirements under § 182(f) of the federal Clean Air Act, and

b. Volatile organic compounds; and

2. For PM_{10}, those pollutants described in the PM_{10} nonattainment area applicable implementation plan as significant contributors to the particulate matter levels.

"Public hearing" means, unless indicated otherwise, an informal proceeding, similar to that provided for in § 9-6.14:7.1 of the Administrative Process Act, held to afford persons an opportunity to submit views and data relative to a matter on which a decision of the board is pending.

"Reasonably foreseeable emissions" are projected future indirect emissions that are identified at the time the conformity determination is made; the location of the emissions is known to the extent adequate to determine the impact of the emissions; and the emissions are quantifiable, as described and documented by the federal agency based on its own information and after reviewing any information presented to the federal agency.

"Regional water or wastewater projects" means construction, operation, and maintenance of water or wastewater conveyances, water or wastewater treatment facilities, and water storage reservoirs which affect a large portion of a nonattainment or maintenance area.

"Regionally significant action" means a federal action for which the direct and indirect emissions of any pollutant

represent 10% or more of a nonattainment or maintenance area's emissions inventory for that pollutant.

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

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

1. Under the provisions of § 10.1-1309 of the Code of Virginia:

a. To federal agencies who are permitting or causing air pollution to cease and desist from the pollution;

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

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

d. To federal agencies who have contravened duly adopted and promulgated air quality standards and policies to cease and desist from the contravention and to comply with the air quality standards and policies; and

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

2. Under the provisions of § 10.1-1309.1 of the Code of Virginia requiring that a federal agency file with the board a plan to abate, control, prevent, remove, or contain any substantial and imminent threat to public health or the environment that is reasonably likely to occur if the source ceases operations.

"Total of direct and indirect emissions" means the sum of direct and indirect emissions increases and decreases caused by the federal action, that is, the "net" emissions considering all direct and indirect emissions. Any emissions decreases used to reduce the total shall have already occurred or shall be enforceable under state and federal law. The portion of emissions which are exempt or presumed to conform under 9 VAC 5-160-30 are not included in the "total of direct and indirect emissions," except as provided in 9 VAC 5-160-30 M. The "total of direct and indirect emissions" includes emissions of criteria pollutants and emissions of precursors of criteria pollutants. Segmentation of projects for conformity analyses when emissions are reasonably foreseeable is prohibited.

"Variance" means the temporary exemption of a federal agency from this regulation, or a temporary change in this regulation as it applies to a federal agency.

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

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

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

PART II.
GENERAL PROVISIONS.

9 VAC 5-160-30. Applicability.

A. The provisions of this regulation shall apply in all nonattainment and maintenance areas for criteria pollutants for which the area is designated nonattainment or has a maintenance plan. The applicable areas include the territorial area of all localities and public or private lands geographically located within the outermost boundaries of the jurisdictions listed below for the criteria pollutant indicated:

1. For ozone:

a. 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.

b. 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.

c. 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.

2. For carbon monoxide, Arlington County and the City of Alexandria.

B. The provisions of this regulation apply with respect to emissions of the following criteria pollutants: ozone, carbon monoxide, nitrogen dioxide, and particles with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM_{10}).

C. The provisions of this regulation apply with respect to emissions of the following precursor pollutants:

1. For ozone:

a. Nitrogen oxides, unless an area is exempted from nitrogen oxides requirements under § 182(f) of the federal Clean Air Act, and

b. Volatile organic compounds.

2. For PM_{10}, those pollutants described in the PM_{10} nonattainment area applicable implementation plan as significant contributors to the particulate matter levels.

D. Conformity determinations for federal actions related to transportation plans, programs, and projects developed, funded, or approved under Title 23 USC or the Federal Transit Act (49 USC 1601 et seq.) shall meet the procedures and criteria of the Regulation for Transportation Conformity (9 VAC 5-150-10 et seq.), in lieu of the procedures set forth in this regulation.

E. For federal actions not covered by subsection D of this section, a conformity determination is required for each pollutant where the total of direct and indirect emissions in a nonattainment or maintenance area caused by a federal action would equal or exceed any of the rates in subdivision 1 or 2 of this subsection.

1. For the purposes of subsection E of this section, the following rates apply in nonattainment areas:

	Tons per year
Ozone (VOCs or NO_x):	
Serious nonattainment areas	50
Severe nonattainment areas	25
Extreme nonattainment areas	10
Other ozone nonattainment areas outside an ozone transport region	100
Marginal and moderate nonattainment areas inside an ozone transport region:	
VOC	50
NO_x	100
Carbon monoxide, all nonattainment areas	100
Sulfur dioxide or nitrogen dioxide, all nonattainment areas	100
PM_{10}:	
Moderate nonattainment areas	100
Serious nonattainment areas	70
Lead, all nonattainment areas	25

2. For the purposes of subsection E of this section, the following rates apply in maintenance areas:

	Tons per year
Ozone (NO_x), sulfur dioxide, or nitrogen dioxide, all maintenance areas	100
Ozone (VOCs):	
Maintenance areas inside an ozone transport region	50
Maintenance areas outside an ozone transport region	100
Carbon monoxide, all maintenance areas	100
PM_{10}, all maintenance area	100
Lead, all maintenance areas	25

F. The requirements of this section shall not apply to:

1. Actions where the total of direct and indirect emissions are below the emissions levels specified in subsection E of this section.

2. The following actions which would result in no emissions increase or an increase in emissions that is clearly de minimis:

a. Judicial and legislative proceedings.

b. Continuing and recurring activities such as permit renewals where activities conducted shall be similar in scope and operation to activities currently being conducted.

c. Rulemaking and policy development and issuance.

d. Routine maintenance and repair activities, including repair and maintenance of administrative sites, roads, trails, and facilities.

e. Civil and criminal enforcement activities, such as investigations, audits, inspections, examinations, prosecutions, and the training of law-enforcement personnel.

f. Administrative actions such as personnel actions, organizational changes, debt management, internal agency audits, program budget proposals, and matters relating to administration and collection of taxes, duties, and fees.

g. The routine, recurring transportation of materiel and personnel.

h. Routine movement of mobile assets, such as ships and aircraft, in home port reassignments and stations (when no new support facilities or personnel are required) to perform as operational groups and for repair or overhaul or both.

i. Maintenance dredging and debris disposal where no new depths are required, applicable permits are secured, and disposal shall be at an approved disposal site.

j. With respect to existing structures, properties, facilities, and lands where future activities conducted shall be similar in scope and operation to activities currently being conducted at the existing structures, properties, facilities, and lands, actions such as relocation of personnel, disposition of federally-owned existing structures, properties, facilities, and lands, rent subsidies, operation and maintenance cost subsidies, the exercise of receivership or conservatorship authority, assistance in purchasing structures, and the production of coins and currency.

k. The granting of leases, licenses such as for exports and trade, permits, and easements where activities conducted shall be similar in scope and operation to activities currently being conducted.

l. Planning, studies, and provision of technical assistance.

m. Routine operation of facilities, mobile assets, and equipment.

n. Transfers of ownership, interests, and titles in land, facilities, and real and personal properties, regardless of the form or method of the transfer.

o. The designation of empowerment zones, enterprise communities, or viticultural areas.

p. Actions by any of the federal banking agencies or the federal reserve banks, including actions regarding charters, applications, notices, licenses, the supervision or examination of depository institutions or depository institution holding companies, access to the discount window, or the provision of financial services to banking organizations or to any state, agency, or instrumentality of the United States.

q. Actions by the Board of Governors of the federal reserve system or any federal reserve bank to effect monetary or exchange rate policy.

r. Actions that implement a foreign affairs function of the United States.

s. Actions or portions thereof associated with transfers of land, facilities, title, and real properties through an enforceable contract or lease agreement where the delivery of the deed is required to occur promptly after a specific, reasonable condition is met, such as promptly after the land is certified as meeting the requirements of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 USC 9601 et seq., and where the federal agency does not retain continuing authority to control emissions associated with the lands, facilities, title, or real properties.

t. Transfers of real property, including land, facilities, and related personal property from a federal entity to another federal entity, and assignments of real property, including land, facilities, and related personal property from a federal entity to another federal entity, for subsequent deeding to eligible applicants.

u. Actions by the Department of the Treasury to effect fiscal policy and to exercise the borrowing authority of the United States.

3. Actions where the emissions are not reasonably foreseeable, such as the following:

a. Initial outer continental shelf lease sales which are made on a broad scale and are followed by exploration and development plans on a project level.

b. Electric power marketing activities that involve the acquisition, sale, and transmission of electric energy.

4. Individual actions which implement a decision to conduct or carry out a program that has been found to conform to the applicable implementation plan, such as prescribed burning actions which are consistent with a conforming land management plan, that has been found to conform to the applicable implementation plan. The land management plan shall have been found to conform within the past five years.

G. Notwithstanding the other requirements of this section, a conformity determination is not required for the following federal actions or portions thereof:

1. The portion of an action that includes major new or modified stationary sources that require a permit under the new source review program.

2. Actions in response to emergencies or natural disasters such as hurricanes, earthquakes, etc., which are commenced on the order of hours or days after the emergency or disaster and, if applicable, which meet the requirements of subsection H of this section.

3. Research, investigations, studies, demonstrations, or training (other than those exempted under subdivision F 2 of this section), where no environmental detriment is incurred, or the particular action furthers air quality research, as determined by the department.

4. Alteration and additions of existing structures as specifically required by new or existing applicable environmental legislation or environmental regulations (for example, hush houses for aircraft engines and scrubbers for air emissions).

5. Direct emissions from remedial and removal actions carried out under CERCLA and associated regulations to the extent the emissions either comply with the substantive requirements of the new source review program, or are exempted from other environmental regulation under the provisions of CERCLA and applicable regulations issued under CERCLA.

H. Federal actions which are part of a continuing response to an emergency or disaster under subdivision G 2 of this section and which are to be taken more than six months after the commencement of the response to the emergency or disaster under subdivision G 2 of this section are exempt from the requirements of this subsection only if:

1. The federal agency taking the actions makes a written determination that, for a specified period not to exceed an additional six months, it is impractical to prepare the conformity analyses which would otherwise be required and the actions cannot be delayed due to overriding concerns for public health and welfare, national security interests, and foreign policy commitments; or

2. For actions which are to be taken after those sections covered by subdivision H 1 of this section, the federal agency makes a new determination as provided in subdivision H 1 of this section.

I. Notwithstanding other requirements of this regulation, actions specified by individual federal agencies that have met the criteria set forth in either subdivision J 1 or J 2 of this section and the procedures set forth in subsection K of this section are presumed to conform, except as provided in subsection M of this section.

J. The federal agency shall meet the criteria for establishing activities that are presumed to conform by fulfilling the requirements set forth in either subdivision 1 or 2 of this subsection.

1. The federal agency shall clearly demonstrate, using methods consistent with this regulation, that the total of direct and indirect emissions from the type of activities which would be presumed to conform would not:

a. Cause or contribute to any new violation of any standard in any area;

b. Interfere with the provisions in the applicable implementation plan for maintenance of any standard;

c. Increase the frequency or severity of any existing violation of any standard in any area;

d. Delay timely attainment of any standard or any required interim emissions reductions or other milestones in any area including, where applicable, emission levels specified in the applicable implementation plan for purposes of:

(1) A demonstration of reasonable further progress;

(2) A demonstration of attainment; or

(3) A maintenance plan.

2. The federal agency shall provide documentation that the total of direct and indirect emissions from the future actions would be below the emission rates for a conformity determination that are established in subsection B of this section, based, for example, on similar actions taken over recent years.

K. In addition to meeting the criteria for establishing exemptions set forth in subdivision J 1 or J 2 of this section, the following procedures shall also be complied with to presume that activities shall conform:

1. The federal agency shall identify through publication in the Federal Register its list of proposed activities that are presumed to conform, and the analysis, assumptions, emissions factors, and criteria used as the basis for the presumptions;

2. The federal agency shall notify the appropriate EPA regional office(s), department, and local air quality agencies and, where applicable, the lead planning organization, and the metropolitan planning organization and provide at least 30 days for the public to comment on the list of proposed activities presumed to conform;

3. The federal agency shall document its response to all the comments received and make the comments, response, and final list of activities available to the public upon request; and

4. The federal agency shall publish the final list of the activities in the Federal Register.

L. Notwithstanding the other requirements of this section, when the total of direct and indirect emissions of any pollutant from a federal action does not equal or exceed the rates specified in subsection E of this section, but represents 10% or more of a nonattainment or maintenance area's total emissions of that pollutant, the action is defined as a regionally significant action and the requirements of 9 VAC 5-160-120 through 9 VAC 5-160-170 shall apply for the federal action.

M. Where an action presumed to be de minimis under subdivision C 1 or C 2 of this section or otherwise presumed to conform under subsection F of this section is a regionally significant action or where an action otherwise presumed to conform under subsection F of this section does not in fact meet one of the criteria in subdivision G 1 of this section, that action shall not be considered de minimis or presumed to conform and the requirements of 9 VAC 5-160-120 through 9 VAC 5-160-170 shall apply for the federal action.

N. Any measures used to affect or determine applicability of this regulation, as determined under this section, shall result in projects that are in fact de minimis, shall result in the de minimis levels prior to the time the applicability determination is made, and shall be state or federally enforceable. Any measures that are intended to reduce air quality impacts for this purpose shall be identified (including the identification and quantification of all emission reductions claimed) and the process for implementation (including any necessary funding of the measures and tracking of the emission reductions) and enforcement of the measures shall be described, including an implementation schedule containing explicit timelines for implementation. Prior to a determination of applicability, the federal agency making the determination shall obtain written commitments from the appropriate persons or agencies to implement any measures which are identified as conditions for making the determinations. The written commitment shall describe the mitigation measures and the nature of the commitment, in a manner consistent with the previous sentence. After this regulation is approved by EPA, enforceability through the applicable implementation plan of any measures necessary for a determination of applicability shall apply to all persons who agree to reduce direct and indirect emissions associated with a federal action for a conformity applicability determination.

9 VAC 5-160-40. Authority of board and department.

A. No provision of this regulation shall limit the power of the board to take such appropriate action as necessary to control and abate air pollution in emergency situations.

B. In accordance with the Virginia Air Pollution Control Law and the Administrative Process Act and by the adoption of this regulation, the board confers upon the department the administrative, enforcement and decision making authority enumerated in this regulation.

C. The board reserves the right to exercise its authority in any of the powers delegated in this regulation should it choose to do so.

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

9 VAC 5-160-50. Establishment of regulations and orders.

A. This regulation is established to implement the provisions of the Virginia Air Pollution Control Law and the federal Clean Air Act.

B. This regulation shall be adopted, amended, or repealed in accordance with the provisions of § 10.1-1308 of the

Virginia Air Pollution Control Law, Articles 1 and 2 of the Administrative Process Act and the Public Participation Procedures in Appendix E of Chapter 10 (9 VAC 5-10-10 et seq.).

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

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

E. The Administrative Process Act and Virginia Register Act provide that state regulations may incorporate documents by reference. Throughout this regulation, documents of the types specified below have been incorporated by reference, and in some cases, they have been cross-referenced.

1. United States Code.

2. Code of Virginia.

3. Code of Federal Regulations.

4. Federal Register.

5. Technical and scientific reference documents.

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

9 VAC 5-160-60. Enforcement of regulations and orders.

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

1. The department may negotiate to obtain compliance through administrative means. The means may be a variance, control program, consent agreement or any other mechanism that requires compliance by a specific date. The means and the associated date shall be determined on a case-by-case basis and shall not allow an unreasonable delay in compliance. In cases where the use of an administrative means is expected to result in compliance within 90 days or less, preferential consideration shall be given to the use of a consent agreement.

2. The department may obtain compliance through legal means pursuant to § 10.1-1316 or § 10.1-1320 of the Virginia Air Pollution Control Law.

B. Nothing in this section shall prevent the department from making efforts to obtain voluntary compliance through conference, warning, or other appropriate means.

C. Orders, consent orders, special orders, and emergency special orders are considered administrative means and the board reserves the right to use these means in lieu of or to provide a legal basis for the enforcement of any administrative means negotiated or approved by the department under subsection A of this section.

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

E. Case decisions regarding the enforcement of regulations and orders shall be made by the department or board. Case decisions of the department that are made pursuant to a formal hearing (i) may be regarded as a final decision of the board and appealed pursuant to 9 VAC 5-160-90 C; or (ii) may be directly considered by the board as provided in subsection F of this section, with the review being on the record and not de novo with opportunity for oral argument. Case decisions of the department that are made pursuant to an informal proceeding (i) may be appealed to the board pursuant to 9 VAC 5-160-90 A, or (ii) may be directly considered by the board according to subsection F of this section.

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

G. The submittal of the request under subsection F of this section by itself shall not constitute a stay of decision. A stay of decision shall be sought through appropriate legal channels.

9 VAC 5-160-70. Hearings and proceedings.

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

1. The public hearing and informational proceeding required before considering regulations, in accordance with § 10.1-1308 of the Virginia Air Pollution Control Law. The procedure for a public hearing and informational proceeding shall conform to § 9-6.14:7.1 of the Administrative Process Act, except as modified by §§ 10.1-1307 F and 10.1-1308 of the Virginia Air Pollution Control Law, and to the Public Participation Procedures in Appendix E of Chapter 10 (9 VAC 5-10-10 et seq.).

2. The public hearing required before considering variances and amendments to and revocation of variances, in accordance with § 10.1-1307 C of the Virginia Air Pollution Control Law. The procedure for a public hearing shall conform to § 10.1-1307 C of the Virginia Air Pollution Control Law and to the provisions of 9 VAC 5-160-80.

3. The informal proceeding used to make case decisions. The procedure for an informal proceeding

shall conform to § 9-6.14:11 of the Administrative Process Act.

4. The formal hearing for the enforcement or review of orders and for the enforcement of regulations, in accordance with §§ 10.1-1307 D and 10.1-1322 A of the Virginia Air Pollution Control Law. The procedure for a formal hearing shall conform to § 9-6.14:12 of the Administrative Process Act, except as modified by § 10.1-1307 D and F of the Virginia Air Pollution Control Law.

5. The special order hearing or emergency special order hearing for the enforcement or review of orders and for the enforcement of regulations, in accordance with § 10.1-1309 of the Virginia Pollution Control Law. The procedures for the special order hearing or emergency special order hearing shall conform to § 9-6.14:12 of the Administrative Process Act, except as modified by §§ 10.1-1307 F and 10.1-1309 of the Virginia Air Pollution Control Law.

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

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

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

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

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

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

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

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

3. Any person desiring a copy of the transcript of a special order, emergency special order or formal hearing recorded by a court reporter may purchase the copy directly from the court reporter; if not transcribed, the additional cost of preparation will be paid by the person making the request.

9 VAC 5-160-80. Relationship of state regulations to federal regulations.

A. In order for the Commonwealth of Virginia to fulfill its obligations under the federal Clean Air Act, some provisions of this regulation are required to be approved by EPA and when approved those provisions become federally enforceable.

B. In cases where this regulation specifies that procedures or methods shall be approved by, acceptable to, or determined by the board or department or other similar phrasing or specifically provide for decisions to be made by the board or department, it may be necessary to have the actions (approvals determinations, exemptions, exclusions, or decisions) reviewed and confirmed as acceptable or approved by EPA in order to make them federally enforceable. Determination of which state actions require federal confirmation or approval and the administrative mechanism for making associated confirmation or approval decisions shall be made on a case-by-case basis in accordance with EPA regulations and policy.

9 VAC 5-160-90. Appeals.

A. Any federal agency or other party significantly affected by any action of the board taken without a formal hearing, or by inaction of the board, may request a formal hearing in accordance with § 9-6.14:12 of the Administrative Process Act, provided a petition requesting the hearing is filed with the board. In cases involving actions of the board, the petition shall be filed within 30 days after notice of the action is mailed or delivered to the federal agency or party requesting notification of the action.

B. Prior to any formal hearing, an informal fact finding shall be held pursuant to § 9-6.14.11 of the Administrative Process Act, unless waived by the board.

C. Any decision of the board resultant from a formal hearing shall constitute the final decision of the board.

D. Judicial review of a final decision of the board shall be afforded in accordance with § 10.1-1318 of the Virginia Air Pollution Control Law and § 9-6.14:16 of the Administrative Process Act.

E. Nothing in this section shall prevent disposition of any case by consent.

F. Any petition for a formal hearing or any notice or petition for an appeal by itself shall not constitute a stay of decision or action.

9 VAC 5-160-100. Availability of information.

A. Emission data in the possession of the board or department shall be available to the public without exception.

B. Any other records, reports or information in the possession of the board or department shall be available to the public with the following exception.

The board or department shall consider the records, reports or information, or particular part thereof, confidential in accordance with §§ 10.1-1314 and 10.1-1314.1 of the Virginia Air Pollution Control Law upon a showing satisfactory

to the board or department by any federal agency that the records, reports or information, or particular part thereof, meet the criteria in subsection C of this section and the federal agency provides a certification to that effect signed by a responsible party for the federal agency. The records, reports or information, or particular part thereof, may be disclosed, however, to other officers, employees or authorized representatives of the Commonwealth of Virginia and EPA concerned with carrying out the provisions of the Virginia Air Pollution Control Law and the federal Clean Air Act.

C. In order to be exempt from disclosure to the public under subsection B of this section, the record, report or information must satisfy the following criteria:

1. Information for which the federal agency has been taking and will continue to take measures to protect confidentiality;

2. Information that has not been and is not presently reasonably obtainable without the federal agency's consent by private citizens or other firms through legitimate means other than discovery based on a showing of special need in a judicial or quasi-judicial proceeding;

3. Information which is not publicly available from sources other than the federal agency; and

4. Information the disclosure of which would cause substantial harm to the federal agency.

D. The board or department shall have the right to substitute information which is not confidential for information claimed as confidential and to inquire as to the basis of the confidentiality claim. Upon approval of the board or department, a federal agency may substitute information which is not confidential for information claimed as confidential. Information substituted shall be limited to that which would have the same substantive effect in analyses conducted by the board or department as the information for which the inquiry is made.

E. Any responsible party for a federal agency who files information as confidential which does not meet the criteria in subsection C of this section shall be in violation of the Virginia Air Pollution Control Law.

PART III.
CRITERIA AND PROCEDURES FOR MAKING CONFORMITY DETERMINATIONS.

9 VAC 5-160-110. General.

A. No federal agency shall engage in, support in any way, or provide financial assistance for, license, or permit, or approve any activity which does not conform to an applicable implementation plan.

B. A federal agency must make a determination that a federal action conforms to the applicable implementation plan in accordance with the requirements of this regulation before the action is taken.

C. Subsection B of this section does not include federal actions where either:

1. A NEPA analysis was completed as evidenced by a final environmental assessment, environmental impact statement, or finding of no significant impact that was prepared prior to January 31, 1994, or

2. a. Prior to January 31, 1994, an environmental assessment was commenced or a contract was awarded to develop the specific environmental analysis,

b. Sufficient environmental analysis is completed by March 15, 1994, so that the federal agency may determine that the federal action is in conformity with the specific requirements and the purposes of the applicable implementation plan pursuant to the agency's affirmative obligation under § 176(c) of the federal Clean Air Act, and

c. A written determination of conformity under § 176(c) of the federal Clean Air Act has been made by the federal agency responsible for the federal action by March 15, 1994.

D. Notwithstanding any provision of this regulation, a determination that an action is in conformity with the applicable implementation plan does not exempt the action from any other requirements of the applicable implementation plan, NEPA, or the federal Clean Air Act.

9 VAC 50-160-120. Conformity analysis.

Any federal agency taking an action subject to this regulation shall make its own conformity determination consistent with the requirements of this part. In making its conformity determination, a federal agency shall consider comments from any interested parties. Where multiple federal agencies have jurisdiction for various aspects of a project, a federal agency may choose to adopt the analysis of another federal agency (to the extent the proposed action and impacts analyzed are the same as the project for which a conformity determination is required) or develop its own analysis in order to make its conformity determination.

9 VAC 50-160-130. Reporting requirements.

A. A federal agency making a conformity determination under 9 VAC 50-160-160 shall provide to the appropriate EPA regional office(s), department and local air quality agencies, and, where applicable, affected federal land managers, the lead planning organization, and the metropolitan planning organization, a 30-day notice which describes the proposed action and the federal agency's draft conformity determination on the action.

B. A federal agency shall notify the appropriate EPA regional office(s), department and local air quality agencies, and, where applicable, affected federal land managers, the lead planning organization, and the metropolitan planning organization within 30 days after making a final conformity determination under 9 VAC 50-160-160.

9 VAC 50-160-140. Public participation.

A. Upon request by any person regarding a specific federal action, a federal agency shall make available for review its draft conformity determination under 9 VAC 50-160-160 with supporting materials which describe the

analytical methods and conclusions relied upon in making the applicability analysis and draft conformity determination.

B. A federal agency shall make public its draft conformity determination under 9 VAC 50-160-160 by placing a notice by prominent advertisement in a daily newspaper of general circulation in the area affected by the action and by providing 30 days for written public comment prior to taking any formal action on the draft determination. This comment period may be concurrent with any other public involvement such as occurs in the NEPA process.

C. A federal agency shall document its response to all the comments received on its draft conformity determination under 9 VAC 50-160-160 and make the comments and responses available, upon request by any person regarding a specific federal action, within 30 days of the final conformity determination.

D. A federal agency shall make public its final conformity determination under 9 VAC 50-160-160 for a federal action by placing a notice by prominent advertisement in a daily newspaper of general circulation in the area affected by the action within 30 days of the final conformity determination.

9 VAC 50-160-150. Frequency of conformity determinations.

A. The conformity status of a federal action automatically lapses five years from the date a final conformity determination is reported under 9 VAC 50-160-130, unless the federal action has been completed or a continuous program has been commenced to implement that federal action within a reasonable time.

B. Ongoing federal activities at a given site showing continuous progress are not new actions and do not require periodic redeterminations so long as the activities are within the scope of the final conformity determination reported under 9 VAC 50-160-130.

C. If, after the conformity determination is made, the federal action is changed so that there is an increase in the total of direct and indirect emissions above the levels in 9 VAC 50-160-30 E, a new conformity determination is required.

9 VAC 50-160-160. Criteria for determining conformity.

A. Any action required under 9 VAC 50-160-30 to have a conformity determination for a specific pollutant, shall be determined to conform to the applicable implementation plan if, for each pollutant that exceeds the rates in 9 VAC 50-160-30 E, or otherwise requires a conformity determination due to the total of direct and indirect emissions from the action, the action meets the requirements of subsection C of this section, and meets any of the following requirements:

1. For any criteria pollutant, the total of direct and indirect emissions from the action are specifically identified and accounted for in the applicable implementation plan's attainment or maintenance demonstration;

2. For ozone or nitrogen dioxide, the total of direct and indirect emissions from the action are fully offset within the same nonattainment or maintenance area through a revision to the applicable implementation plan or a similarly enforceable measure that effects emission reductions so that there is no net increase in emissions of that pollutant;

3. For any criteria pollutant, except ozone and nitrogen dioxide, the total of direct and indirect emissions from the action meet the requirements:

a. Specified in subsection B of this section, based on areawide air quality modeling analysis and local air quality modeling analysis; or

b. Meet the requirements of subdivision 5 of this subsection, and, for local air quality modeling analysis, the requirement of subsection B of this section;

4. For carbon monoxide or PM_{10}:

a. Where the department determines (in accordance with 9 VAC 50-160-120 and 9 VAC 50-160-130 and consistent with the applicable implementation plan) that an areawide air quality modeling analysis is not needed, the total of direct and indirect emissions from the action meet the requirements specified in subsection B of this section, based on local air quality modeling analysis; or

b. Where the department determines (in accordance with 9 VAC 50-160-120 and 9 VAC 50-160-130 and consistent with the applicable implementation plan) that an areawide air quality modeling analysis is appropriate and that a local air quality modeling analysis is not needed, the total of direct and indirect emissions from the action meet the requirements specified in subsection B of this section, based on areawide modeling, or meet the requirements of subdivision 5 of this subsection; or

5. For ozone or nitrogen dioxide, and for the purposes of subdivisions 3 b and 4 b of this subsection, each portion of the action or the action as a whole meets any of the following requirements:

a. Where EPA has approved a revision to an area's attainment or maintenance demonstration after 1990 and the department makes a determination that as provided in subdivision 5 a (1) of this subsection or where the Commonwealth of Virginia makes a commitment as provided in subdivision 5 a (2) of this subsection:

(1) The total of direct and indirect emissions from the action or portion thereof is determined and documented by the department to result in a level of emissions which, together with all other emissions in the nonattainment or maintenance area, would not exceed the emissions budgets specified in the applicable implementation plan.

(2) The total of direct and indirect emissions from the action or portion thereof is determined and documented by the department to result in a level of emissions which, together with all other emissions in the nonattainment or maintenance area, would exceed an emissions budgets specified in the applicable implementation plan and the Governor or

the Governor's designee for state implementation plan actions makes a written commitment to EPA which includes the following:

(a) A specific schedule for adoption and submittal of a revision to the applicable implementation plan which would achieve the needed emissions reductions prior to the time emissions from the federal action would occur;

(b) Identification of specific measures for incorporation into the applicable implementation plan which would result in a level of emissions which, together with all other emissions in the nonattainment or maintenance area, would not exceed any emissions budget specified in the applicable implementation plan.

(c) A demonstration that all existing applicable implementation plan requirements are being implemented in the area for the pollutants affected by the federal action, and that local authority to implement additional requirements has been fully pursued;

(d) A determination that the responsible federal agencies have required all reasonable mitigation measures associated with their action; and

(e) Written documentation including all air quality analyses supporting the conformity determination;

(3) Where a federal agency made a conformity determination based on a commitment from the Commonwealth of Virginia under subdivision 5 a (2) of this subsection, the commitment is automatically deemed a call for a revision to the applicable implementation plan by EPA under § 110(k)(5) of the federal Clean Air Act, effective on the date of the federal conformity determination and requiring response within 18 months or any shorter time within which the Commonwealth of Virginia commits to revise the applicable implementation plan;

b. The action or portion thereof, as determined by the metropolitan planning organization, is specifically included in a current transportation plan and transportation improvement program which have been found to conform to the applicable implementation plan under 40 CFR Part 51, Subpart T, or 40 CFR Part 93, Subpart A;

c. The action or portion thereof fully offsets its emissions within the same attainment or maintenance area through a revision to the applicable implementation plan or an equally enforceable measure that effects emissions reductions equal to or greater than the total of direct and indirect emissions from the action so that there is no net increase in emissions of that pollutant;

d. Where EPA has not approved a revision to the relevant implementation plan attainment or maintenance demonstration since 1990, the total of direct and indirect emissions from the action for the future years (described in 9 VAC 5-160-170) do not increase emissions with respect to the baseline emissions;

(1) The baseline emissions reflect the historical activity levels that occurred in the geographic area affected by the proposed federal action during:

(a) Calendar year 1990;

(b) The calendar year that is the basis for the classification (or, where the classification is based on multiple years, the year that is most representative in terms of the level of activity), if a classification is promulgated in 40 CFR Part 81; or

(c) The year of the baseline inventory in the PM_{10}-applicable implementation plan;

(2) The baseline emissions are the total of direct and indirect emissions calculated for future years (described in 9 VAC 5-160-170 D) using the historic activity levels (described in subdivision 5 d (1) of this subsection) and appropriate emission factors for the future years; or

e. Where the action involves regional water or wastewater projects or both, the projects are sized to meet only the needs of population projections that are in the applicable implementation plan, based on assumptions regarding per capita use that are developed or approved in accordance with 9 VAC 5-160-170 A.

B. The areawide or local air quality modeling analyses or both shall:

1. Meet the requirements of 9 VAC 5-160-170; and

2. Show that the action does not:

a. Cause or contribute to any new violation of any standard in any area; or

b. Increase the frequency or severity of any existing violation of any standard in any area.

C. Notwithstanding any other requirements of this section, an action subject to this section may not be determined to conform to the applicable implementation plan unless the total of direct and indirect emissions from the action is in compliance or consistent with all relevant requirements and milestones contained in the applicable implementation plan, such as elements identified as part of the reasonable further progress schedules, assumptions specified in the attainment or maintenance demonstration, prohibitions, numerical emission limits, and work practice requirements, and the action is otherwise in accordance with all relevant requirements of the applicable implementation plan.

D. Any analyses required under this section shall be completed, and any mitigation requirements necessary for a finding of conformity shall be identified in accordance with 9 VAC 5-160-180 before the determination of conformity is made.

9 VAC 5-160-170. Procedures for conformity determinations.

A. The analyses required under this section shall be based on the latest planning assumptions.

1. All planning assumptions (including, but not limited to, per capita water and sewer use, vehicle miles traveled per capita or per household, trip generation per household, vehicle occupancy, household size, vehicle fleet mix, vehicle ownership, wood stoves per household, and the geographic distribution of population growth) shall be derived from the estimates of current and future population, employment, travel, and congestion most recently approved by the metropolitan planning organization or other agency authorized to make the estimates, where available. The conformity determination shall also be based on the latest assumptions about current and future background concentrations and other federal actions.

2. Any revisions to these estimates used as part of the conformity determination, including projected shifts in geographic location or level of population, employment, travel, and congestion shall be approved by the metropolitan planning organization or other agency authorized to make the estimates for the urban area.

B. The analyses required under this subsection shall be based on the latest and most accurate emission estimation techniques available as described below, unless the techniques are inappropriate. If the techniques are inappropriate and written approval of the EPA Regional Administrator is obtained for any modification or substitution, they may be modified or another technique substituted on a case-by-case basis or, where appropriate, on a generic basis for a specific federal agency program.

1. For motor vehicle emissions, the most current version of the motor vehicle emissions model specified by EPA for use in the preparation or revision of the applicable implementation plan shall be used for the conformity analysis as specified in subdivisions 1 a and 1 b of this subsection.

a. The EPA shall publish in the Federal Register a notice of availability of any new motor vehicle emissions model.

b. A grace period of three months shall apply during which the motor vehicle emissions model previously specified by EPA as the most current version may be used. Conformity analyses for which the analysis was begun during the grace period or no more than three years before the Federal Register notice of availability of the latest emission model may continue to use the previous version of the model specified by EPA, if a final conformity determination is made within three years of the analysis.

2. For nonmotor vehicle sources, including stationary and area source emissions, the latest emission factors specified by EPA in the "Compilation of Air Pollutant Emission Factors (AP-42)" shall be used for the conformity analysis unless more accurate emission data are available, such as actual stack test data from stationary sources which are part of the conformity analysis.

C. The air quality modeling analyses required under this subpart shall be based on the applicable air quality models, databases, and other requirements specified in Appendix W of 40 CFR Part 51, unless:

1. The guideline techniques are inappropriate, in which case the model may be modified or another model substituted on a case-by-case basis, or, where appropriate, on a generic basis for a specific federal agency program; and

2. Written approval of the EPA Regional Administrator is obtained for any modification or substitution.

D. The analyses required under this subsection, except 9 VAC 5-160-160, shall be based on the total of direct and indirect emissions from the action and shall reflect emission scenarios that are expected to occur under each of the following cases:

1. The federal Clean Air Act-mandated attainment year or, if applicable, the farthest year for which emissions are projected in the maintenance plan;

2. The year during which the total of direct and indirect emissions from the action is expected to be the greatest on an annual basis; and

3. Any year for which the applicable implementation plan specifies an emissions budget.

9 VAC 5-160-180. Mitigation of air quality impacts.

A. Any measures that are intended to mitigate air quality impacts shall be identified (including the identification and quantification of all emission reductions claimed) and the process for implementation (including any necessary funding of the measures and tracking of the emission reductions) and enforcement of the measures shall be described, including an implementation schedule containing explicit timelines for implementation.

B. Prior to determining that a federal action is in conformity, the federal agency making the conformity determination shall obtain written commitments from the appropriate persons or agencies to implement any mitigation measures which are identified as conditions for making conformity decisions. The written commitment shall describe the mitigation measures and the nature of the commitment, in a manner consistent with subsection A of this section.

C. Persons or agencies voluntarily committing to mitigation measures to facilitate positive conformity determinations shall comply with the obligations of the commitments.

D. In instances where the federal agency is licensing, permitting, or otherwise approving the action of another governmental or private entity, approval by the federal agency shall be conditioned on the other entity meeting the mitigation measures set forth in the conformity determination as provided in subsection A of this section.

E. When necessary because of changed circumstances, mitigation measures may be modified so long as the new

mitigation measures continue to support the conformity determination in accordance with 9 VAC 5-160-150 and 9 VAC 5-160-160 and this section. Any proposed change in the mitigation measures is subject to the reporting requirements of 9 VAC 5-160-140 and the public participation requirements of 9 VAC 5-160-150.

F. Written comments to mitigation measures shall be obtained prior to a positive conformity determination, and the commitments shall be fulfilled.

G. After EPA approves this regulation, any agreements, including mitigation measures, necessary for a conformity determination shall be both state and federally enforceable. Enforceability through the applicable implementation plan shall apply to all persons who agree to mitigate direct and indirect emissions associated with a federal action for a conformity determination.

9 VAC 5-160-190. Savings provision.

The federal conformity rules under 40 CFR Part 51 subpart W, in addition to any existing applicable Commonwealth of Virginia requirements, shall establish the conformity criteria and procedures necessary to meet the requirements of § 176(c) of the federal Clean Air Act until such time as this regulation is approved by EPA. Following EPA approval of this regulation, the approved or approved portion of this regulation shall govern conformity determinations and the federal conformity regulations contained in 40 CFR Part 93 shall apply only for the portion, if any, of this regulation that is not approved by EPA. In addition, any previously applicable implementation plan requirements relating to conformity shall remain enforceable until the Commonwealth of Virginia revises its applicable implementation plan to specifically remove them and that revision is approved by EPA.

Documents Incorporated by Reference

Compilation of Air Pollutant Emission Factors (AP-42), September 1985, with Supplement B, September 1988; Supplement C, September 1990; and Supplement D, September 1991.

VA.R. Doc. No. R96-225; Filed February 14, 1996, 11:38 a.m.

DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT (BOARD OF)

Title of Regulation: **13 VAC 5-110-10 et seq. Virginia Enterprise Zone Program Regulations (REPEALING).**

Title of Regulation: **13 VAC 5-111-10 et seq. Virginia Enterprise Zone Program Regulations.**

Statutory Authority: § 59.1-278 of the Code of Virginia.

Public Hearing Date: April 15, 1996 - 10 a.m.
Public comments may be submitted until May 3, 1996.
(See Calendar of Events section for additional information)

Basis: Section 59.1-278 of the Code of Virginia provides authority for the Board of Housing and Community Development to adopt and promulgate the Virginia Enterprise Zone Program Regulations.

Purpose: The purpose of the proposed regulations is to amend the Enterprise Zone Program Regulations to implement new incentives and provisions provided in 1995 legislative action. Such incentives are intended to stimulate new job creation and private investment in designated distressed enterprise zones. Amendments will also implement greater flexibility for businesses in qualifying for the use of these incentives. Amendments reflect an increased number of zones statewide and greater flexibility for localities to have multiple zones.

The proposed regulations are needed for the efficient and economical performance of the Enterprise Zone Program. Three of the four incentives provided in the program are structured as tax credits. In order to provide program clients with clear guidance on how to use these credits in a manner that is compatible with the Tax Code, regulations are needed. There are also caps placed on the amounts of credits that can be authorized. The regulations provide the mechanism for ensuring that these Code mandated caps are met.

Substance: The substance of the revised Virginia Enterprise Zone Program deals with changes made to the regulations based on 1995 legislative action. As a result, the unemployment and retail sales tax credits were replaced by three new state incentives and one, the general tax credit, was modified. The new incentives include:

1) General Tax Credit: A general tax credit for 10 consecutive years in an amount equaling up to 80% of the tax due the first tax year, and up to 60% of the tax due for the second through tenth tax years (§ 59.1-208 of the Code of Virginia). This differs from the original general tax credit in that it does not require that 50% of the qualifying firm's gross receipts earned during the taxable year be attributed to trade or business conducted within the zone. Instead, existing firms must increase permanent full-time employment by 10% and of this 10%, 40% must be low income or zone residents. New businesses must demonstrate that 40% of its permanent full-time employment is either low income or a zone resident.

2) Real Property Improvement Tax Credit: For any qualified zone resident, the amount of credit earned equals up to 30% of the qualified zone improvements with no credit exceeding $125,000 in any five year period (§ 59.1-208.1 A, B, C, D, E, F, G, H, I of the Code of Virginia).

3) Zone Investment Tax Credits: For qualified zone investments that exceed $100 million and which also result in the creation of at least 200 permanent full-time positions, then the qualified zone resident is eligible for a credit in an amount of up to 5% of the qualified zone investments (§ 59.1-208.1 J, K, L, M of the Code of Virginia).

4) Zone Incentive Grants: Eligible business firms receive a grant with the amount of any grant earned equal to $1,000 multiplied by the number of eligible permanent full-time positions filled by zone residents and $500 multiplied by the number of eligible permanent full-time positions filled by non-zone residents (§ 59.1-282.1 of the Code of Virginia).

Also, the 1995 legislative session placed annual fiscal limits on all state tax credits and grants received under the Virginia Enterprise Zone Program. Both the general tax credit and the real property improvement tax credit are subject to a combined annual fiscal limitation of $5 million based on the Commonwealth's fiscal year which ends June 30th. The investment tax credit is subject to an annual fiscal limitation of $3 million. Grant funds are subject to annual appropriations to the Enterprise Zone Grant Fund by the General Assembly. For fiscal year 1995/96, $1 million is available.

Other changes made to the Enterprise Zone Regulations include:

1) The prohibition of firms from demonstrating any type of net loss in employment.

2) Localities with a population density of 150 or fewer per square mile may have one noncontiguous zone.

3) Localities may have up to 3 zones except for localities with a population density of 150 or fewer per square mile which are able to have only 2 zones.

4) Businesses, whose tax year begins on or after January 1 and ends on or before December 31, must submit general tax credit, real property improvement tax credit, and investment tax credit applications to the Department of Housing and Community Development by May 1 of the subsequent calendar year. For businesses requesting job grants, an application must be submitted to the local zone administrator by March 31 of the year following the grant year.

5) Each zone must perform a five year evaluation of its program, objectives, and incentives.

6) Localities may delete areas to an existing zone as long as the business and property owners located in those areas to be deleted are properly notified and the impact on these businesses and property owners is minimal.

7) If a zone can not demonstrate any business activity or use by local businesses of any of the state incentives over a five year period, the zone will be eliminated.

8) The Department of Housing and Community Development must submit an annual report to the General Assembly through the Senate Finance Committee, the Senate Committee on Commerce and Labor, the House Finance Committee, and the House Committee on Commerce and Labor.

Issues: The advantages of this regulatory action to the public will be to (i) stimulate new job creation and private investment in economically distressed areas of the Commonwealth, (ii) implement greater flexibility for businesses in qualifying for the use of state incentives, and (iii) provide businesses and CPAs concrete guidance on the use of these tax credits.

The one disadvantage of these regulations concerns the annual fiscal limitations placed on each of the tax credits and the job grants. With the annual fiscal limitations, qualified enterprise zone firms may not receiving the entire amount they have requested for general income and real property improvements tax credits but instead receive prorated amounts. Also since the General Assembly is responsible for annual appropriations to the Enterprise Zone Grant Fund, the amount of money available for job grants will fluctuate and in some instances qualified businesses may not receive their requested amounts in the year that these grants are requested. If, for some reason, the Enterprise Zone Grant Fund is not appropriated funds, the job grants incentive is ineffective.

The advantages for the agency include clear guidance on how to implement and use these credits in a manner that is compatible with the Tax Code and a mechanism for ensuring that the Code of Virginia mandated fiscal limitations are met.

The anticipated disadvantage for the agency is the extra resources and time needed to monitor and track requested tax credits and job grants and how they compare with the annual fiscal limitations.

Estimated Impact: Approximately 440,000 residents and 160,000 households which are located within designated enterprise zones will be impacted by these proposed changes. The estimated cost for the first fiscal year that the regulations are effective will be no more than $9 million based on fiscal limits placed on each enterprise zone incentive. There is a $5 million annual fiscal limit for the general tax credit and real property improvement tax credit combined, $3 million for the investment tax credit, and a $1 million annual appropriation by the General Assembly (for fiscal year 95/96) for the job grants.

Localities effected by these regulations are any economically depressed area of a locality that has been designated by the Governor as a state enterprise zone. Currently, there are 45 zone in 43 localities. These localities include: Alexandria, Accomack County, Brunswick County, Carroll County, Chesapeake, Chesterfield County, Danville, Front Royal, Galax, Greensville County, Halifax County, Hampton, Henry County, Hopewell, James City County, Lawrenceville, LaCrosse, Lynchburg, Martinsville, Mecklenburg, Narrows, Newport News, Norfolk, Northampton County, Orange Town, Petersburg, Portsmouth, Prince George County, Pulaski County, Pulaski Town, Richmond, Roanoke City, Rocky Mount, Saltville, Scott County, South Boston, South Hill, Staunton, Suffolk, Tazewell County, Warren County, Waynesboro, and Wythe County.

Department of Planning and Budget's Economic Impact Anaiysis:

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

Summary of the Proposed Regulation

The primary purpose of the Virginia Enterprise Zone Program is to provide financial incentives that encourage new economic activity in areas of the state where it might not otherwise occur. The proposed regulation revises the regulation governing the Virginia Enterprise Zone Program in accordance with amendments to the Code of Virginia mandated by Chapter 792 of the 1995 Acts of Assembly. Those revisions that are likely to have a significant economic effect can be roughly grouped into four general categories.

1) Modification of the incentive structure

• Unemployment tax credit: Businesses qualifying on or after July 1, 1995, would no longer be allowed a credit on unemployment tax.

• Sales tax credit: Businesses qualifying on or after July 1, 1995, would no longer be allowed an exemption from state sales tax for items purchased for use within the enterprise zone.

• Real property improvement tax credit: Zone residents qualifying on or after July 1, 1995, would be eligible for a tax credit in the amount of not more than 30% of qualified zone improvements. A qualified zone improvement is defined as: 1) investment in the rehabilitation existing real property that equals or exceeds $50,000 and the assessed value of the original facility immediately prior to rehabilitation, or 2) an investment of at least $250,000 in the construction new nonresidential real property. The cumulative credit for qualified zone improvements is not to exceed $125,000 in any five year period.

• Investment tax credit: Zone residents qualifying on or after July 1, 1995, would be eligible for a tax credit in the amount of not more than five percent of qualified zone investments that exceed $100 million and result in the creation of at least 200 full-time employment positions.

• Zone incentive grants: Businesses qualifying on or after July 1, 1995, would be eligible for an incentive grant equal to $1,000 for each eligible full-time employment positions filled by zone residents and $500 for each eligible full-time employment positions filled by non-zone residents. Eligible positions are defined as the number of full-time positions in excess of 110% of applicable base year employment in the first three year grant period, and the number of full-time positions in excess of 120% of applicable base year employment in any subsequent three year grant period.

2) Increase in the number of enterprise zones

• The proposed regulation would expand the state-wide number of allowable enterprise zones from 25 to 50.

3) Modification of the eligibility requirements

• Eligibility requirements for businesses qualifying for Virginia Enterprise Zone Program incentives on or after July 1, 1995, would be modified to restrict "churning" --- qualifying for incentives based on employment positions that are simply transferred from elsewhere within the Commonwealth or from other enterprise zone sites.

• Businesses qualifying on or after July 1, 1995, would be relieved of the requirement that 50% of their gross receipts be attributable to activities within the enterprise zone.

• Businesses qualifying on or after July 1, 1995, would be permitted to use employment levels in either of the two preceding years as a base for determination of eligibility, rather than the employment level in the preceding year only.

4) Capping the total amount of tax credits and incentive grants allowable under the program

• The total amount of general tax credits and real property improvement credits allowable under the program would be capped at $5 million.

• The total amount of investment credits allowable under the program would be capped at $3 million.

• The total amount of incentive grants allowable under the program would be capped at that amount allocated to the Enterprise Zone Grant Fund. For fiscal year 1995/96 that amount is $1 million.

Estimated Economic Impact

To the extent that the revisions cited above affect economic activity in ways that would not have occurred absent the proposed regulation, they will have an economic impact. The magnitude of that impact is determined by the present value of the stream of future benefits and costs that can be attributed to the change in economic activity, and the scope of the program.

1) Benefits

Increased economic activity and job formation brought about by the Virginia Enterprise Zone Program is expected to generate several economic benefits for the Commonwealth. One of these is the state revenue produced by taxes levied on the increased economic activity. The Department of Taxation (Tax) has done some analysis of this issue. Using firm-level case-study data provided by DHCD and economic impact figures provided by the Virginia Employment Commission, Tax determined that each new job created as a result of the Virginia Enterprise Zone Program is responsible for generating roughly $1,947 per year in additional state personal income tax and state general funds sales tax revenues. The discounted present value of a 10 year stream of such revenues (the same period over which the program's general tax credit is allowed) is $17,398.[1] Another state

[1] Discounted present value is used to facilitate comparison of unequal benefits and costs arising at different points in time. The figure of $17,398 is derived by computing the value in today's dollars of a stream of 10 annual future payments of $1,947 each.

A 2.5% discount rate was used to perform this calculation. This discount rate is an approximation of the real rate of return on the Commonwealth's general account (the nominal rate of return less inflation).

revenue associated with increases in economic activity are the proceeds from state corporate income taxes. Although a figure for the post credit state corporate income tax revenues generated by new enterprise zone business is not available, such revenues are likely to be significant, particularly in future years as individual businesses exhaust their allowable enterprise zone tax credits. In addition, new business investment within enterprise zones will also enhance local tax revenues through increased property tax assessments.

Other economic benefits that would be difficult to quantify, but nonetheless bear consideration, are the likely reductions in state public safety expenditures and state public assistance costs that would follow increased employment in economically depressed areas. In addition, under certain circumstances new economic activity fostered by the Virginia Enterprise Zone Program could "spark plug" further economic growth by creating an environment within the zone that is more favorable to business formation. Finally, just as important, but even more difficult to quantify, are the social benefits, such as enhanced family formation and personal self-esteem, generally associated with providing gainful employment to individuals who might otherwise face limited economic opportunities.

It is important to note that the proposed regulation contains two revisions to the Virginia Enterprise Zone Program that should significantly enhance the economic benefits generated by the program. The first of these are the new eligibility requirements aimed at restricting the practice of "churning" --- qualifying for enterprise zone incentives based on employment positions that are simply transferred from elsewhere within the Commonwealth or from other enterprise zone sites. Churning has been cited as a major source of failure in the enterprise zone programs of other states (see Bruce Nissen, "Enterprise Zones as an Economic Development Tool: The Indiana Experience," Regional Science Perspectives, vol. 19, 1989). The reason for this is that from a state perspective new economic activity induced by enterprise zone programs only generates economic benefits if it is in fact new. Simply transferring a job into an enterprise zone from another area of the state does not impact the tax revenue generated by that job or any of the other economic benefits associated with it. Moreover, the job would have existed even in the absence of the enterprise zone program. As a result, tightening eligibility requirements to prevent churning should increase the economic benefits derived from the Virginia Enterprise Zone Program.

A second revision contained in the proposed regulation that should enhance the economic benefits generated from the Virginia Enterprise Zone Program is the new investment tax credit. Another common criticism of enterprise zone programs is that they induce businesses to open that are only economically viable as long as they are subsidized by the program. One way to mitigate this problem is to design the financial incentives offered to enterprise zone businesses in a way that encourages capital investment. Businesses that risk their own funds by placing them in relatively non-liquid capital investments are in essence posting a form of surety bond. By "planting their money in the ground" these businesses are sending a clear signal to employees, customers, and investors that they fully intend to be around for awhile. Financial incentives that are geared toward attracting this type of business are more likely to generate a secure stream of future economic benefits, and therefore more likely to provide a greater return on the Commonwealth's investment in the Virginia Enterprise Zone Program.

2) Costs

The primary economic cost associated with the proposed regulation is the foregone tax revenue attributable to the new combination of financial incentives it contains. Because these incentives are so radically different from those previously used in the Virginia Enterprise Zone Program however, it is difficult to predict the effect they will have on the behavior and investment decisions of prospective enterprise zone businesses. As a result, it is difficult to know the exact magnitude of the foregone tax revenue that these new incentives will entail. Although, it is known that due to the caps contained in the proposed regulation, the maximum possible forgone tax revenue associated with the new incentives can be no greater than $9 million per year (i.e., $5 million in general tax credits and real property improvement credits, $3 million in investment credits, and $1 million in incentive grants)

One way to acquire some understanding of the likely cost impact is to look backward instead of forward and determine what the foregone tax revenue would have been in some previous year had the proposed new combination of financial incentives been in place then. This procedure should provide a reasonable lower bound for the probable cost impact.

According to information provided in the Virginia Enterprise Zone Program's 1994 Annual Report, the foregone tax revenue in 1992-93 attributable to the old financial incentives was $1,155,042 (i.e., general tax credit $13,642, plus unemployment tax credit $24,601, plus sales tax refund $1,116,800). Dividing this total by the 924 jobs created under the program in 1992-93 indicates that the cost per job that year was roughly $1,250. It is important to note two things about this figure however. First, because tax credits are paid out over a period of years, the true cost of creating a job in any given year is the present value of the stream of future tax credits associated with producing that job. In the absence of data that would allow such a detailed calculation however, dividing the total credits paid out in any one year by the number of jobs created in that year provides a rough approximation of cost per job. Second, however rough this approximation of cost per job may be, it represents the present value of the stream of future tax credits associated with producing a job and is therefore comparable to the $17,398 revenue benefit per job previously presented.

By making certain assumptions, and using an estimate provided by DHCD of the real property improvement tax credit that would have been allowed on zone investments made in 1992-93, it is possible to derive an estimate of the foregone tax revenue that would have been generated at that time had the new financial incentives been in place. This analysis indicates that foregone revenue under the new incentives, had they been in place, would have been approximately $2,251,436 (i.e., general tax credit $13,642,[2]

[2] This figure is simply the general tax credit allowed in 1992-93.

plus real property improvement tax credit $2,189,044,[3] plus incentive grants $48,750[4]). Dividing this total by the 924 jobs created under the program in 1992-93 indicates that cost per job that year under the new financial incentives would have been roughly $2,437. Although still well below the likely associated benefit, this figure represents a significant increase in per job costs when compared to the old figure of $1,250.

3) Scope

The final way in which revisions to the Virginia Enterprise Zone Program contained in the proposed regulation are likely to affect economic impact have to do with the scope of the program. In this regard, two of the revisions are particularly important. The first is the increase in the number of allowable enterprise zones. All else equal, doubling the state-wide number of allowable enterprise zones from 25 to 50 should significantly expand the economic benefits and costs associated with the program. The second important revision are the caps placed on the total amount of tax credits and incentive grants allowed under the program. These caps place binding restraints on the potential economic costs and economic benefits associated with the program.

Businesses and Entities Particularly Affected

The proposed regulation applies to all existing and potential businesses considering start-up or expansion in designated enterprise zones. No businesses are particularly affected. The proposed regulation does particularly affect the approximately 440,000 residents and 160,000 households located in currently designated enterprise zones.

Localities Particularly Affected

The proposed regulation particularly affects those localities containing designated enterprise zones. Currently, these localities include the cities and towns Alexandria, Chesapeake, Danville, Front Royal, Galax, Hampton, Hopewell, Lawrenceville, LaCrosse, Lynchburg, Martinsville Mecklenburg, Narrows, Newport News, Norfolk, Orange, Petersburg, Portsmouth, Pulaski, Richmond, Roanoke, Rocky Mount, Saltville, South Boston, South Hill, Staunton, Suffolk, and Waynesboro; and the counties Accomack, Brunswick, Carroll, Chesterfield, Greensville, Halifax, Henry, James City, Northampton, Prince George, Pulaski, Scott, Tazewell, Warren, and Wythe.

Projected Impact on Employment

Although it is almost certain that the proposed regulation will have a positive impact on employment, due to the significant changes made by the proposed regulation to the financial incentives provided for job creation, it is not possible at this time to determine the exact magnitude of the impact on employment. However, this impact will likely occur in those areas of the Commonwealth where unemployment is highest.

Affects on the Use and Value of Private Property

The proposed regulation may have an impact on the value of private property if it encourages economic development in enterprise zones and this development positively affects general property values.

Summary

The proposed regulation will significantly expand the scope of the Virginia Enterprise Zone Program. Preliminary estimates of the economic benefits and costs associated with job creation under this program indicate that likely benefits far exceed likely costs. In addition, two revisions to the program contained in the proposed regulation --- measures aimed at preventing job churning and financial incentives targeted toward capital investment --- can be expected to significantly enhance the economic benefits derived from the program. With respect to economic costs, the analysis indicates that new financial incentives contained in the proposed regulation, particularly the real property improvement tax credit, may significantly increase the foregone tax revenue associated with job creation. The proposed regulation caps the total foregone tax revenue that can be generated by the program at $9 million per year however.

Agency's Response to Department of Planning and Budget's Economic Impact Analysis:

The Department of Housing and Community Development believes it is impossible to determine with a reasonable amount of accuracy the cost per job associated with the creation of the three new state tax incentives until after the program has been in effect for at least a year. We believe that it is impossible to assume that behaviors and conditions that occurred in 1992/93 under the old enterprise zone regulations would remain unchanged. Because of this, we believe that the cost per job number given is a very rough estimate and might be much lower if job growth could be determined and if investment and job creation from the investment tax credit were taken into account.

With regard to the remaining parts of the Department of Planning and Budget's economic impact analysis, the Department of Housing and Community Development concurs.

Summary:

The proposed regulations address changes made during the 1995 General Assembly session to the Virginia Enterprise Zone Program. These regulations will replace the current emergency regulations which expire June 30, 1996. As a result of 1995 legislative action, four new incentives were created to replace state incentives effective under the former Virginia Enterprise Zone Program. These incentives, which included general income tax credit, real property improvement tax credit, zone investment tax credit, and job grants, will stimulate new job creation and private investment in areas designated as state enterprise zones. In addition, these

[3] This is figure derived by taking DHCD's $4,378,088 estimate of the maximum real property improvement credit that could have been allowed in 1992-93 and deducting 50%. This deduction is made to take into account businesses that would not have been able to take advantage of the credit either because of insufficient profits or having exceeded their $125,000 five year maximum limit and mirrors assumptions made by Tax in their fiscal impact assessment of the Major Business Facility Job Tax Credit.

[4] This figure is derived by taking the total number of new jobs created in 1992-93 by existing enterprise zone businesses (65) and multiplying by $750 (assumes that one-half of the new jobs would have been filled by zone residents and qualified for a $1,000 grant, and one-half of the new jobs would have been filled by non-zone residents and qualified for a $500 grant).

regulations will also provide greater flexibility for enterprise zone businesses qualifying for state incentives.

13 VAC 5-111-10 et seq. Virginia Enterprise Zone Program Regulations.

CHAPTER 111.
ENTERPRISE ZONE PROGRAM REGULATION.

PART I.
DEFINITIONS AND PURPOSE.

13 VAC 5-111-10. Definitions.

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

"Average number of permanent full-time employees" means the number of permanent full-time employees during each payroll period of a business firm's taxable year divided by the number of payroll periods:

1. In calculating the average number of permanent full-time employees, a business firm may count only those permanent full-time employees who worked at least half of their normal work days during the payroll period. Paid leave time may be counted as work time.

2. For a business firm which uses different payroll periods for different classes of employees, the average number of permanent full-time employees of the firm shall be defined as the sum of the average number of permanent full-time employees for each class of employee.

"Base taxable year" (for purposes of qualifying for the general tax credit) means the taxable year preceding the first taxable year for which a firm qualifies for state tax incentives under this program. This definition only applies to business firms qualified prior to July 1, 1995, and only for the purpose of qualifying for enterprise zone incentives offered prior to July 1, 1995. The following definition applies to businesses applying for enterprise zone incentives on or after July 1, 1995: "Base taxable year" (for purposes of qualifying for the general tax credit) means the lower of two taxable years immediately preceding the first year of qualification, at the choice of the business firm.

"Base year" (for purposes of qualifying for enterprise zone incentive grants) as provided in Part VI (13 VAC 5-111-210 et seq.) means either of the two calendar years immediately preceding a business firm's first year of grant eligibility, at the choice of the business firm.

"Business firm" means any business entity, incorporated or unincorporated, which is authorized to do business in the Commonwealth of Virginia and which is subject to state individual income tax, state corporate income tax, state franchise or license tax on gross receipts, or state bank franchise tax on net taxable capital.

1. The term "business firm" includes partnerships and small business corporations electing to be taxed under Subchapter S of the federal Internal Revenue Code, and which are not subject to state income tax as partnerships or corporations, but the taxable income of which is passed through to and taxed as income of individual partners and shareholders.

2. The term "business firm" does not include organizations which are exempt from state income tax on all income except unrelated business taxable income as defined in the federal Internal Revenue Code, § 512, nor does it include homeowners associations as defined in the federal Internal Revenue Code, § 528.

"Common control" means those firms as defined by Internal Revenue Code § 52(b).

"Department" means the Department of Housing and Community Development.

"Develop" means to make improvements to land through the construction, conservation, repair, restoration, rehabilitation, conversion, alteration, enlargement or remodeling of a structure or structures to accommodate the principal use to which the land is or will be put. This definition only applies to business firms qualified prior to July 1, 1995, and only for the purpose of qualifying for enterprise zone incentives offered prior to July 1, 1995. Businesses applying for enterprise zone tax credits on or after July 1, 1995, shall use the term qualified zone improvements for purposes of qualification for credits under § 59.1-280 of the Code of Virginia.

"Employee of a zone establishment" means a person employed by a business firm who is on the payroll of the firm's establishment or establishments within the zone. In the case of an employee who is on the payroll of two or more establishments of the firm, both inside and outside the zone, the term "employee of a zone establishment" refers only to such an employee assigned to the firm's zone establishment or establishments for at least one-half of his normally scheduled work days.

"Establishment" means a single physical location where business is conducted where services or industrial operations are performed.

1. A central administrative office is an establishment primarily engaged in management and general administrative functions performed centrally for other establishments of the same firm.

2. An auxiliary unit is an establishment primarily engaged in performing supporting services to other establishments of the same firm.

"Enterprise zone incentive grant" or "grant" means a grant provided for creating permanent full-time positions pursuant to § 59.1-282.1 of the Code of Virginia.

"Existing business firm" means one that was actively engaged in the conduct of trade or business in an area prior to such an area being designated as an enterprise zone or that was engaged in the conduct of trade or business in the Commonwealth and relocates to begin operation of a trade or business within an enterprise zone.

"Family" means (i) one or more persons living in a single residence who are related by blood, marriage or adoption. A stepchild or stepparent shall be considered to be related by

marriage; (ii) one or more persons not living in the same residence but who were claimed as a dependent on another person's federal income tax return for the previous year shall be presumed, unless otherwise demonstrated, part of the other person's family; or (iii) an individual 18 or older who receives less than 50% of his support from the family, and who is not the principal earner nor the spouse of the principal earner, shall not be considered a member of the family. Such an individual shall be considered a family of one.

"Family income" means all income actually received by all family members over 16 from the following sources:

1. Gross wages and salary (before deductions);

2. Net self-employment income (gross receipts minus operating expenses);

3. Interest and dividend earnings; and

4. Other money income received from net rents, Old Age and Survivors Insurance (OASI), social security benefits, pensions, alimony, child support, and periodic income from insurance policy annuities and other sources.

The following types of income are excluded from family income:

1. Noncash benefits such as food stamps and housing assistance;

2. Public assistance payments;

3. Disability payments;

4. Unemployment and employment training benefits;

5. Capital gains and losses; and

6. One-time unearned income.

When computing family income, income of a spouse or other family members or both shall be counted for the portion of the income determination period that the person was actually a part of the family.

"Family size" means the largest number of family members during the income determination period.

"First year of grant eligibility" means the first calendar year for which a business firm was both eligible and applied for an enterprise zone incentive grant.

"Full-time employee" means a person employed by a business firm who is normally scheduled to work at least 35 hours per week during the firm's payroll period or two or more individuals who together share the same job position and together work the normal number of hours a week as required by the business firm for that one position. The term "full-time employee" does not include unpaid volunteer workers, leased employees or contract labor. This definition only applies to business firms qualified prior to July 1, 1995, and only for the purpose of qualifying for enterprise zone incentives offered prior to July 1, 1995. Businesses applying for enterprise zone tax credits on or after July 1, 1995, shall use the term permanent full-time position for purposes of qualification pursuant to 13 VAC 5-111-90.

"Grant year" means the calendar year for which a business firm applies for an enterprise zone incentive grant pursuant to § 59.1-282.1 of the Code of Virginia.

"Gross receipts attributable to the active conduct of trade or business within an Enterprise Zone" means all receipts of the business firm arising from the firm's activities or from the investment and use of the firm's capital in its establishment or establishments within the zone. The proportion of gross receipts arising from the firm's activities or from its investment and use of capital within the zone shall be calculated by dividing the total expenses of the firm's establishment or establishments within the zone by the firm's total expenses both inside and outside the zone.

1. This calculation must be used to allocate and apportion taxable gross receipts against which state franchise or license tax credits may be claimed (see 13 VAC 5-111-50 C).

2. This calculation may not be used to allocate and apportion Virginia Taxable Income against which state corporate and individual income tax credits may be claimed or taxable net capital against which state franchise tax credits may be claimed.

"Income determination period" means the 12 months immediately preceding the month in which the person was hired.

"Independent certified public accountant" means a public accountant certified and licensed by the Commonwealth of Virginia who is not an employee of the business firm seeking to qualify for state tax incentives under this program.

"Jurisdiction" means the county, city or town which made the application to have an enterprise zone. In the case of a joint application, it means all parties making the application.

"Local zone administrator" means the chief executive of the county, city, or town in which an enterprise zone is located, or their designee.

"Low-income person" means a person who is a full-time employee of a business firm seeking qualification and whose family had an income which was less than 80% of median family income during the income determination period. This definition only applies to business firms qualified prior to July 1, 1995, and only for the purpose of qualifying for enterprise zone incentives offered prior to July 1, 1995. The following definition applies to businesses applying for enterprise zone incentives on or after July 1, 1995: "Low-income person" means a person who is employed in a permanent full-time position with a business firm in an enterprise zone that is seeking qualification for enterprise zone incentives and whose family income was less than or equal to 80% of area median family income during the income determination period.

"Median family income" means the dollar amount, adjusted for family size, as determined annually by the department for the city or county in which the zone is located.

"Metropolitan central city" means a city so designated by the U.S. Office of Management and Budget.

"Net loss" means (i) that the gross permanent full-time employment of a business firm located in the Commonwealth was greater than the gross permanent full-time employment of the business firm after relocating within an enterprise zone or zones; or (ii) after the business firm expands a trade or business into an enterprise zone the gross permanent full-time employment of a business firm's locations outside of an enterprise zone or zones in the Commonwealth has been reduced.

"New business" means a business not previously conducted in the Commonwealth by such taxpayer and that begins operation in an enterprise zone after the zone was designated. A new business is also one created by the establishment of a new facility and new permanent full-time employment by an existing business firm in an enterprise zone and does not result in a net loss of permanent full-time employment outside the zone.

"Number of eligible permanent full-time positions" means the amount by which the number of permanent full-time positions at a business firm in a grant year exceeds the threshold number.

"Payroll period" means the period of time for which a business firm normally pays its employees.

"Permanent full-time position" means a job of indefinite duration at a business firm located in an enterprise zone, and requiring either (i) a minimum of 35 hours of an employee's time a week for the entire normal year of the business firm's operations, which normal year must consist of at least 48 weeks, or (ii) a minimum of 35 hours of an employee's time a week for a portion of the taxable year in which the employee was initially hired for, or transferred to the business firm. Seasonal, temporary, leased or contract labor positions, or a position created when a job function is shifted from an existing location in this Commonwealth to a business firm located within an enterprise zone shall not qualify as permanent full-time positions.

"Placed in service" means: (i) the final certificate of occupancy has been issued by the local jurisdiction for real property improvements; or (ii) the first moment that machinery becomes operational and is used in the manufacturing of a product for consumption; or (iii) in the case of tools and equipment it means the first moment they are used in the performance of duty or service.

"Qualified business firm" means a business firm meeting the business firm requirements in 13 VAC 5-111-50 or 13 VAC 5-111-90 and designated a qualified business firm by the department.

"Qualified zone improvements" means the amount of property chargeable to a capital account for improvements to rehabilitate or expand depreciable real property placed in service during the taxable year within an enterprise zone, provided that the total amount of such improvements equals or exceeds (i) $50,000 and (ii) the assessed value of the original facility immediately prior to the rehabilitation or expansion. Qualified zone improvements include expenditures associated with any exterior, structural, mechanical, or electrical improvements necessary to expand or rehabilitate a building for commercial or industrial use.

1. Qualified zone improvements include, but are not limited to, the costs associated with excavation, grading, paving, driveways, roads, sidewalks, landscaping or other land improvements, demolition, carpentry, sheetrock, plaster, painting, ceilings, fixtures, doors, windows, fire suppression systems, roofing and flashing, exterior repair, cleaning and clean-up.

2. Qualified zone improvements do not include (i) the cost of furnishings; (ii) any expenditure associated with appraisal, architectural, engineering and interior design fees, (iii) loan fees; points or capitalized interest; (iv) legal, accounting, realtor, sales and marketing or other professional fees; (v) closing costs, permits, user fees, zoning fees, impact fees, inspection fees; (vi) bids insurance, signage, utilities, bonding, copying, rent loss, or temporary facilities incurred during construction; utility hook-up or access fees; outbuildings or the cost of any well, septic, or sewer system; or (vi) cost of acquiring land or an existing building.

"Qualified zone investment" means the sum of qualified zone improvements and the cost of machinery, tools and equipment used in manufacturing tangible personal property and placed in service on or after July 1, 1995. Machinery, equipment, and real property leased through a capital lease and that is being depreciated by the leasee may be included as qualified zone investment. Such leased machinery, equipment, and real property shall be valued using the depreciable basis for federal income tax purposes. Machinery, tools and equipment shall not include the basis of any property: (i) for which a credit was previously granted under § 59.1-280.1 of the Code of Virginia; (ii) which was previously placed in service in Virginia by the taxpayer, a related party, or a trade or business under common control; or (iii) which was previously in service in Virginia and has a basis in the hands of the person acquiring it, determined in whole or in part by reference to the basis of such property in the hands of the person whom acquired, or Internal Revenue Code § 1014 (a).

"Qualified zone resident" means an owner or tenant of real property located in an enterprise zone who expands or rehabilitates such real property to facilitate the conduct of a trade or business by such owner or tenant within the enterprise zone. In the case of a partnership, limited liability company or S corporation, the term "qualified zone resident" means the partnership, limited liability company or S corporation.

"Redetermined base year" means the base year for calculation of the number of eligible permanent full-time positions in a second or subsequent three-year grant period. If a second or subsequent three-year grant period is requested within two years after the previous three-year period, the redetermined base year will be the last grant year. If a business firm applies for subsequent three-year periods beyond the two years immediately following the completion of a three-year grant period, the firm shall use one of the two preceding calendar years as the base year, at the choice of the business firm.

"Real property improvements tax credit" means a credit provided to a qualified zone resident pursuant to § 59.1-280.1 B of the Code of Virginia.

"Related party" means those as defined by Internal Revenue Code § 267(b).

"Seasonal employment" means any employee who normally works on a full-time basis and whose customary annual employment is less than nine months. For example, individuals hired by a CPA firm during the tax return season in order to process returns and who work full-time over a three-month period are seasonal employees.

"Surplus public land" means land within a zone which is owned by the Commonwealth or a unit of local government and which meets the following standards.

1. In the case of land owned by a unit of local government (i) the land is not being used for a public purpose nor designated targeted for a specific public use in an adopted land use plan, facilities plan, capital improvements plan or other official public document; (ii) no tangible harm would be incurred by the unit of local government if the land were eliminated from its holdings; and (iii) sale of the land would not violate any restriction stated in the deed.

2. In the case of land owned by agencies of the Commonwealth, except land acquired by the Virginia Department of Transportation for the construction of highways, the land has been determined to be surplus to the Commonwealth in accordance with criteria and procedures established pursuant to §§ 2.1-504 through 2.1-512, of the Code of Virginia.

3. In the case of land acquired by the Virginia Department of Transportation for the construction of highways, the land has been determined to be surplus to the needs of the State Highway Commission and the Commonwealth in accordance with criteria and procedures established pursuant to §§ 33.1-93, 33.1-149 and 33.1-154 of the Code of Virginia. The Commonwealth Transportation Commissioner, prior to determining that land surplus to its needs is also surplus to the Commonwealth, may make such land available to other state agencies in accordance with procedures established pursuant to §§ 2.1-504 through 2.1-512 of the Code of Virginia.

"Tax due" means the amount of tax liability as determined by the Department of Taxation or the State Corporation Commission.

"Tax year" means the year in which the assessment is made.

"Taxable year" means the year in which the tax due on state taxable income, state taxable gross receipts or state taxable net capital is accrued.

"Threshold number" means 110% of the number of permanent full-time positions in the base year for the first three-year period in which a business firm is eligible for an enterprise zone incentive grant. For a second and any subsequent three-year period of eligibility, the threshold means 120% of the number of permanent full-time positions in the applicable base year as redetermined for the subsequent three-year period. If such number would include a fraction, the threshold number shall be the next highest integer. Where there are no permanent full-time positions in the base year, the threshold will be zero.

"Transferred employee" means an employee of a firm in the Commonwealth that is relocated to an enterprise zone facility owned or operated by that firm.

"Unit of local government" means any county, city or town. Special purpose political subdivisions, such as redevelopment and housing authorities and industrial development authorities, are not units of local government.

"Zone" means an enterprise zone declared by the Governor to be eligible for the benefits of this program.

"Zone investment tax credit" means a credit provided to a qualified zone resident pursuant to § 59.1-280.1 J of the Code of Virginia.

"Zone resident" means a person whose principal place of residency is within the boundaries of a given locality's enterprise zone or zones. Zone residency must be verified annually.

13 VAC 5-111-20. Purpose of program.

The purpose of the Virginia Enterprise Zone Program is to stimulate business and industrial growth which would result in neighborhood, commercial and economic revitalization by means of regulatory flexibility and tax incentives. This program is to be directed to areas of the Commonwealth that need special governmental attention to attract private sector investment.

PART II.
BUSINESS FIRM REQUIREMENTS FOR BUSINESSES QUALIFYING PRIOR TO JULY 1, 1995.

13 VAC 5-111-30. Requirements for becoming a qualified business firm.

A. In order to become qualified for the purpose of receiving state tax incentives, a business firm must meet the requirements of subsections B and C of this section.

B. Requirements for new firms. A business firm which begins the operation of a trade or business within a zone after the date of zone designation must meet the following requirements: (i) at least 50% of its gross receipts earned during the taxable year for which state tax incentives are requested must be attributable to trade or business conducted within the zone; and (ii) at least 40% of the average number of full-time employees of its zone establishment or establishments must be low-income persons.

C. Requirements for existing firms. A business firm which is engaged in the conduct of a trade or business in a zone at the time of zone designation must meet the following requirements: (i) at least 50% of its gross receipts earned during the taxable year for which state tax incentives are requested must be attributable to trade or business conducted within the zone; (ii) the average number of

full-time employees of its zone establishment or establishments must be at least 10% greater than the average for the base taxable year; and (iii) at least 40% of such increase must be low-income persons.

PART III.
BUSINESS FIRM PROCEDURES FOR BUSINESSES QUALIFYING PRIOR TO JULY 1, 1995.

13 VAC 5-111-40. Procedures for becoming a qualified business firm.

A. In order to become qualified for the purpose of receiving state tax incentives under this program, a new business firm must submit to the department Form EZ-4N stating that it meets the requirements of 13 VAC 5-111-30 B. An existing business firm must submit Form EZ-4E stating that it meets the requirements of 13 VAC 5-111-30 C. These forms must be prepared by an independent certified public accountant (CPA) licensed by the Commonwealth.

B. Proof of qualification. Form EZ-4N or Form EZ-4E, when completed and signed by an independent CPA, shall be prima facie evidence that a business firm is qualified to receive state tax incentives.

C. Determination of employee low-income status. In determining whether a business firm meets the requirements of 13 VAC 5-111-30 B or C, an independent CPA may accept a signed statement from an employee affirming that he meets the definition of a low-income person.

D. Annual submission of form. A business firm must submit either Form EZ-4N or Form EZ-4E for each year in which state tax incentives are requested. Form EZ-4N or Form EZ-4E must be submitted to the department no later than 30 calendar days prior to the firm's normal or extended deadline for filing a return for state corporate income tax, state individual income tax, state franchise or license tax on gross receipts, or state franchise tax on net capital.

E. Certification by the department. Within 14 calendar days of receipt of Form EZ-4N or Form EZ-4E, the department will:

1. Review the form;

2. Certify to the Commissioner of the Virginia Department of Taxation, or in the case of public service companies to the Director of Public Service Taxation for the State Corporation Commission, the applicability of the tax credits requested by the firm; and

3. Forward three copies of the certification to the firm (one copy for the firm's records and two copies to be filed with the applicable state tax returns) or notify the firm that it fails to qualify for state tax incentives under 13 VAC 5-111-30.

F. Submission of state tax returns. A business firm, upon receipt from the department of copies of the certificate of its qualification to receive state tax incentives, may file the applicable state tax returns. In order for the Virginia Department of Taxation or the State Corporation Commission to grant the incentive or incentives requested, the appropriate copy of the certificate of qualification must be attached to the firm's tax return.

When a partnership or small business corporation electing to be taxed under Subchapter S of the federal Internal Revenue Code requests a credit or credits against state individual income tax on behalf of its partners or shareholders, each partner or shareholder must attach to its state individual income tax return a photocopy of the appropriate certificate of qualification received by the firm.

G. Time limits for receiving Virginia state tax incentives. Businesses that began operations before July 1, 1992, are eligible to receive five years of tax incentives beginning with the first taxable year in which the firm qualifies. Businesses that began operations after July 1, 1992, are eligible to receive tax incentives for 10 years beginning with the first taxable year in which they qualify. If a firm fails to become qualified for any taxable year during its qualification period, it forfeits the right to request state tax incentives for that year. However, the firm is eligible to become qualified for any remaining years of its five- or 10-year cycle.

H. Prohibition on requalification due to reorganization of a firm. A business firm may not qualify for state tax incentives for more than its qualification period by reorganizing or changing its form in a manner that does not alter the basis of the firm's assets or result in a taxable event.

13 VAC 5-111-50. Procedures for requesting state tax incentives.

A. A business firm shall submit annually to the department, along with Form EZ-4N or Form EZ-4E, a statement requesting one or more of the state tax incentives provided for in this section. In the case of a partnership or a small business corporation electing to be taxed under Subchapter S of the federal Internal Revenue Code, the statement requesting state tax incentives shall include the name, address and social security number of each partner or shareholder requesting a credit or credits against state individual income tax as provided for in subsection C of this section.

B. State corporate income tax credits. A qualified business firm subject to the corporate income tax under Article 10 (§ 58.1-400 et seq.) of Chapter 3 of Title 58.1 of the Code of Virginia may request credits against any such tax due. Corporate income tax credits shall not extend for more than five consecutive tax years for firms that began operations before July 1, 1992, or 10 consecutive tax years for firms that began operations after July 1, 1992.

The sum of the corporate income tax credits claimed under this section shall not exceed the business firm's state corporate income tax liability. Corporate income tax credits shall apply only to taxable income attributable to the conduct of business within a zone. A business firm having taxable income from business activity both inside and outside a zone shall allocate and apportion its taxable income attributable to the conduct of business in accordance with the procedures contained in §§ 58.1-406 through 58.1-420 of the Code of Virginia.

1. General credit. A credit may be claimed against corporate income tax liability for each of five or 10 consecutive years in an amount equaling: firms beginning operations before July 1, 1992; 80% of the tax

due for the first tax year; 60% of the tax due for the second tax year; 40% of the tax due for the third tax year; 20% of the tax due for the fourth and fifth tax years. Firms beginning operations after July 1, 1992; 80% of the tax due for the first tax year; 60% of the tax due for the second through tenth tax years. An unused tax credit may not be applied to future years.

2. Unemployment tax credit. A credit may be claimed against corporate income tax liability for each of five or 10 consecutive tax years in an amount equaling: firms beginning operations before July 1, 1992; 80% of the state unemployment tax due on employees of zone establishments for the first tax year; 60% of such tax due for the second tax year; 40% of such tax due for the third tax year; 20% of such tax due for the fourth and fifth tax years. Firms beginning operations after July 1, 1992; 80% of the tax due for the first tax year; 60% of the tax due for the second through tenth tax years.

An unemployment tax credit may only be claimed against the amount of taxable corporate income remaining after the subtraction of any general credit claimed under subdivision 1 of this subsection. An unused unemployment tax credit may be applied to future tax years within the five- to 10-year period established by subdivision C 2 of this section.

C. State individual income tax credits. A qualified business firm which is subject to state individual income tax under Article 2 (§ 58.1-320 et seq.) of Chapter 3 of Title 58.1 of the Code of Virginia may request credits against any such tax due. Individual income tax credits shall not extend more than five consecutive tax years for firms beginning operations before July 1, 1992, or 10 consecutive tax years for firms beginning operations after July 1, 1992. The sum of the individual income tax credits claimed under § 59.1-280 of the Code of Virginia shall not exceed the business firm's state individual income tax liability. When a partnership or a small business corporation electing to be taxed under Subchapter S of the federal Internal Revenue Code is eligible for this tax credit, each partner or shareholder may request the credit on his individual income tax in proportion to the amount of income received by that partner from the partnership, or shareholder from his corporation, respectively.

Individual income tax credits shall apply only to taxable income attributable to the conduct of business within a zone. A business firm having taxable income from business activity both inside and outside the zone shall allocate and apportion its taxable income attributable to conduct of business in accordance with the same procedures set forth for corporations subject to corporate income tax, as contained in §§ 58.1-406 through 58.1-420 of Title 58.1 of the Code of Virginia.

1. General credit. A credit may be claimed against individual income tax liability for each of the five or 10 consecutive tax years in an amount equaling: Firms beginning operations before July 1, 1992; 80% of the tax due for the first tax year; 60% of the tax due for the second tax year; 40% of the tax due for the third tax year; 20% of the tax due for the fourth and fifth tax years. Firms beginning operations after July 1, 1992; 80% of the tax due for the first tax year; 60% of the tax due for the second through tenth tax years. An unused tax credit may not be applied to future tax years.

2. Unemployment tax credit. A credit may be claimed against individual income tax liability for each of the five or 10 consecutive tax years in an amount equaling: firms beginning operations before July 1, 1992; 80% of the state unemployment tax due on employees of zone establishments for the first tax year; 60% of the tax due for the second tax year; 40% of the tax due for the third tax year; 20% of the tax due for the fourth and fifth tax years. Firms beginning operations after July 1, 1992; 80% of the tax due for the first tax year; 60% of the tax due for the second through tenth tax years.

An unemployment tax credit may only be claimed against the amount of taxable individual income remaining after the subtraction of any general credit claimed under subdivision 1 of this subsection. An unused employment tax credit may be applied to future tax years within the five- or 10-year period established by subdivision 2 of this subsection.

D. Credits against state franchise or license tax on gross receipts. A qualified business firm which is subject to state franchise tax on gross receipts or state license tax on gross premium receipts may request a credit against any such tax due. Credits against state franchise of license tax on gross receipts shall not extend for more than five consecutive tax years for firms beginning operations before July 1, 1992, or 10 consecutive tax years for firms beginning operations after July 1, 1992. The sum of the credits against state franchise or license tax on gross receipts claimed under this section shall not exceed the business firm's state franchise or license tax liability. Credits against state franchise or license tax on gross receipts shall apply only to taxable gross receipts attributable to the active conduct of trade or business within a zone. A business firm having taxable gross receipts from business activity both inside and outside the zone shall allocate and apportion its taxable gross receipts attributable to conduct of business in accordance with the procedures outlined in the definition for "gross receipts attributable to the active conduct of a trade or business within an "enterprise zone."

1. General credit. A credit may be claimed against tax liability on gross receipts for each of the five or 10 consecutive tax years in an amount equaling: firms beginning operations before July 1, 1992; 80% of the tax due for the first tax year; 60% of the tax due for the second tax year; 40% of the tax due for the third tax year; 20% of the tax due for the fourth and fifth tax years. Firms beginning operations after July 1, 1992; 80% of the tax due for the first tax year; 60% of the tax due for the second through tenth tax years. An unused tax credit may not be applied to future tax years.

2. Unemployment tax credit. A credit may be claimed against tax liability on gross receipts for each of the five or 10 consecutive tax years in an amount equaling: firms beginning operations before July 1, 1992; 80% of the state unemployment tax due on employees of zone establishments for the first tax year; 60% of such tax due

for the second tax year; 40% of such tax due for the third tax year; 20% of such tax due for the fourth and fifth tax years. Firms beginning operations after July 1, 1992; 80% of the tax due for the first tax year; 60% of the tax due for the second through tenth tax years. An unemployment tax credit may only be claimed against the amount of taxable individual income remaining after the subtraction of any general credit claimed under subdivision E 1 of this section. An unused unemployment tax credit may be applied to future tax years within the five- or 10-year period established by this part.

E. Credits against state franchise tax on net capital. A qualified business which is subject to state franchise tax on net capital may request credits against any such tax due. Credits against state franchise tax on net capital shall not extend for more than five consecutive tax years for firms beginning operations before July 1, 1992, or 10 consecutive tax years for firms beginning operations after July 1, 1992.

1. General credit. A credit may be claimed against tax liability on net capital for each of the five or 10 consecutive tax years in an amount equaling: firms beginning operations before July 1, 1992; 80% of the tax due for the first tax year; 60% of the tax due for the second tax year; 40% of the tax due for the third tax year; 20% of the tax due for the fourth and fifth tax years. Firms beginning operations after July 1, 1992; 80% of the tax due for the first tax year; 60% of the tax due for the second through tenth tax years. An unused tax credit may not be applied to future tax years.

2. Unemployment tax credit. A credit may be claimed against tax liability on net capital for each of the five or 10 consecutive tax years in an amount equaling: firms beginning operations before July 1, 1992; 80% of the state unemployment tax due on employees of zone establishments for the first tax year; 60% of such tax due for the second tax year; 40% of such tax due for the third tax year; 20% of such tax due for the fourth and fifth tax years.

Firms beginning operations after July 1, 1992; 80% of the tax due for the first tax year; 60% of the tax due for the second through tenth tax years. An unemployment tax credit may only be claimed against the amount of taxable net capital remaining after the subtraction of any general credit claimed under subdivision 1 of this subsection. Any unused unemployment tax credit may be applied to future tax years within the qualification period established by subdivision 2 of this subsection.

3. State sales and use tax exemption. A qualified business firm may request an exemption from state taxes on all items purchased or leased for the conduct of trade or business within a zone as required under § 58.1-600 et seq. of the Code of Virginia. This exemption applies only to the state portion of the sales and use tax and not to any portion of the tax levied under local option. A business firm in its statement to the department requesting an exemption shall specify the amount of state sales and use tax actually paid during the year for which the exemption is claimed. The Virginia Department of Taxation shall review the amount requested and make an appropriate refund to the firm. State sales and use tax exemptions shall not extend for more than five consecutive tax years.

G. Notification to localities of requests for state tax incentives. The department shall forward to the local governing body of the jurisdiction in which the zone is located: (i) a copy of the business firm's statement requesting state tax incentives; and (ii) the department's determination that the firm is qualified or not qualified to receive such incentives in accordance with the requirements of 13 VAC 5-111-30.

13 VAC 5-111-60. Allowance for business firms qualified prior to July 1, 1995, to use other enterprise zone incentives.

Business firms already qualified prior to July 1, 1995, may apply for both the real property tax credits provided by Part V (13 VAC 5-111-140 et seq.) and enterprise zone incentive grants provided in Part VI (13 VAC 5-111-210 et seq.), provided the appropriate provisions are met. However, businesses qualified prior to July 1, 1995, are not eligible for additional general tax credit periods other than those previously qualified for.

PART IV.
BUSINESS FIRM PROCEDURES FOR BUSINESSES QUALIFYING FOR GENERAL TAX CREDIT ON OR AFTER JULY 1, 1995.

13 VAC 5-111-70. Effective dates.

Beginning on and after July 1, 1995, but before January 1, 2005, a qualified business firm shall be allowed a credit against taxes imposed by Articles 2 (Individuals; § 58.1-320 et seq.) and 10 (Corporations; § 58.1-400 et seq.) of Chapter 3; Chapter 12 (Bank Franchise; § 58.1-1200 et. seq.) Article 1 (Insurance Companies; § 58.1-2500 et seq.) of Chapter 25, or Article 2 (Telegraph, Telephone, Water, Heat, Light, Power and Pipeline Companies; (§ 58.1-2620 et seq.) of Chapter 26 of Title 58.1 of the Code of Virginia as provided in this regulation for 10 consecutive years in an amount equaling up to 80% of the tax due the first tax year, and up to 60% of the tax due for the second through tenth tax years.

13 VAC 5-111-80. Calculation of credit.

A. The amount of credit allowed shall not exceed the tax imposed for such taxable year. An unused tax credit may not be applied to future years. Any credit not useable for the taxable year the credit was allowed shall not be carried back to a preceding taxable year. The credit is not refundable.

B. If a qualified business firms makes qualified zone investments in excess of $25 million dollars, and such qualified zone investments result in the creation of at least 100 full-time positions, the percentage amounts of the income tax credits available to such qualified business firms under 13 VAC 5-111-70 shall be determined by agreement between the department and the qualified business firm. The negotiated percentage amount shall not exceed the percentages specified in 13 VAC 5-111-70 A.

C. Any business firm having taxable income from business activity both within and without the enterprise zone, shall

allocate and apportion its taxable income attributable to the conduct of business in accordance with the procedures contained in §§ 58.1-406 through 58.1-420 of the Code of Virginia.

D. The credit provided for in 13 VAC 5-111-70 and 13 VAC 5-111-150 are subject to annual fiscal limitations based on the Commonwealth's fiscal year ending June 30th as provided for in § 59.1-280 A of the Code of Virginia. In the event that taxpayer requests exceed the Commonwealth's annual fiscal limitation each taxpayer shall be granted a pro rata amount as determined by the department. The amount of such prorated grant shall be determined by applying a fraction, the numerator of which shall be the gross credits requested by the taxpayer for such year, and the denominator of which shall be the total gross credits requested by all taxpayers for such year, to the Commonwealth's annual financial limitation. The credit which may be requested each year shall be subject to the limitations provided by 13 VAC 5-111-70 A and 13 VAC 5-111-170 A.

E. In the event that a taxpayer who is subject to the annual fiscal limitation imposed pursuant to subsection D of this section and is also allowed another credit pursuant to another section of the Code of Virginia, such taxpayer shall be considered to have first utilized any credit allowed which does not have a carry forward provision, and then any credit which is carried forward from a proceeding taxable year, prior to utilization of any credit granted pursuant to this section.

13 VAC 5-111-90. Qualified business.

Qualification for the credit can occur by satisfying the criteria in subdivisions 1 through 3 of this section. Any business firm may be designated a qualified business for the purpose of this credit if it meets the following criteria:

1. A business firm establishes within an enterprise zone a trade or business not previously conducted in the Commonwealth of Virginia by such taxpayer, and at least 40% or more of the permanent full-time employees employed at the business firm's establishment or establishments located within the enterprise zone must either have incomes below 80% of the median income for the jurisdiction prior to employment or are zone residents. Zone residency will be subject to annual verification, while low-income status verification is only required upon initial employment. A new business is also one created by the establishment of a new facility and new permanent full-time employment by an existing business firm in an enterprise zone and does not result in a net loss of permanent full-time employment outside the zone.

2. A business firm is actively engaged in the conduct of a trade or business in the Commonwealth of Virginia, and increases the average number of permanent full-time employees employed at the business firm's establishment or establishments located within the enterprise zone by at least 10% over the lower of the two preceding taxable years' employment with no less than 40% of such increase being employees who have incomes below 80% of the median income for the jurisdiction prior to employment or are zone residents. In the event that a company has activities both inside and outside the enterprise zone, the business firm may not aggregate activity from outside the zone for calculation of employment increase. Other employment positions that shall not be used in the calculation of the 10% employment increase are referred to in subdivision 3 of this section and 13 VAC 5-111-120.

3. A business firm is actively engaged in the conduct of a trade or business in the Commonwealth and relocates to begin operation of a trade or business within an enterprise zone and increases the average number of permanent full-time employees by at least 10% over the lower of two preceding taxable years' employment with no less than 40% of such increase being employees who have incomes below 80% of the median income for the jurisdiction prior to employment or are zone residents. Current employees of the business firm that are transferred directly to the enterprise zone facility from another site within the state resulting in a net loss of employment at that site shall not be included in calculating the increase in the average number of permanent full-time employees by the business firm within the enterprise zone.

4. A business firm located within a locality's enterprise zone or zones that moves to another location within that locality's enterprise zone or zones must meet the requirements for qualification described in subdivisions 1, 2, and 3 of this section, 13 VAC 5-111-100, and 13 VAC 5-111-120.

5. A business firm moving from one locality's enterprise zone to another locality's enterprise zone prior to being qualified shall be subject to the requirements described in subdivision 3 of this section and 13 VAC 5-111-120.

6. A business firm that has already qualified for enterprise zone incentives and moves from one locality's enterprise zone into another locality's enterprise zone shall no longer be qualified unless the firm increases its permanent full-time employment by an additional 10% over the last year of qualification.

7. The business firm must certify annually to the Department of Housing and Community Development on prescribed form or forms, and other documentation as required by the department, that the firm has met the criteria for qualification prescribed in subdivisions 1 through 6 of this section. The form or forms referred to in this subdivision must be prepared by an independent certified public accountant licensed by the Commonwealth and shall serve as prima facie evidence that the business firm met the definition of a qualified business.

13 VAC 5-111-100. Application submittal and processing.

A. Any business firm who qualifies for general tax credits on or after July 1, 1995, and whose taxable year ends on or before December 31, 1995, shall submit an application requesting a general tax credit to the department by no later than May 1, 1996.

B. For taxable years ending after December 31, 1995, and on or before January 1, 1997, applications requesting a general tax credit shall be submitted to the department by no later than May 1, 1997.

C. For taxable years thereafter, for any tax year that ends on or after January 1 and on or before December 31, applications requesting a general tax credit shall be submitted to the department by no later than May 1 of the subsequent calendar year.

D. The department shall review all applications for completeness and notify business firms of any errors no later than June 1. Business firms must respond to any unresolved issues by no later than June 15.

E. The department shall notify all applicants by June 30 as to the amount of applicable general credit it may claim for the taxable year the request was made.

F. Applications must be made on forms prescribed by the department, and sent by certified mail with a return receipt requested and post marked no later than the date specified in this section.

G. Applicants may only apply for credits which they are otherwise eligible to claim for such taxable year, subject to the limitations provided by 13 VAC 5-111-80 A and 13 VAC 5-111-170 A.

13 VAC 5-111-110. Certification to Tax Commissioner in accordance with § 59.1-280 A of the Code of Virginia.

A. The department shall certify to the Commissioner of the Virginia Department of Taxation, or in the case of public service companies to the Director of Public Service Taxation for the State Corporation Commission, the applicability of the tax credits requested by the firm; and forward two copies of the certification to the firm, one copy for the firm's records and one copy to be filed with the applicable state tax return or returns, or notify the firm that it fails to qualify for state tax incentives under this part.

B. Submission of state tax returns. A business firm, upon receipt from the department of copies of the certificate of its qualification to receive state tax incentives, may file the applicable state tax returns. In order for the Virginia Department of Taxation or the State Corporation Commission to grant the incentive or incentives requested, the appropriate copy of the certificate of qualification must be attached to the firm's tax return.

When a partnership or small business corporation electing to be taxed under Subchapter S of the federal Internal Revenue Code requests a credit or credits against state individual income tax on behalf of its partners or shareholders, each partner or shareholder must attach to its state individual income tax return a photocopy of the appropriate certificate of qualification received by the firm.

13 VAC 5-111-120. Anti-churning.

A. A permanent full-time position shall not include any employee:

1. For which a credit under this regulation was previously earned by a related party, or a trade or business under common control;

2. Who was previously employed in the same job function in Virginia by a related party, or a trade or business under common control;

3. Whose job function was previously performed at a different location in Virginia by an employee of the taxpayer, a related party, or a trade or business under common control;

4. Whose previous job function previously qualified for a credit in connection with a different enterprise zone location on behalf of the taxpayer, a related party, or a trade or business under common control;

5. Whose job function counted for purposes of determining a 10% increase by an existing business firm and credited in an earlier taxable year on behalf of the taxpayer, a related party, or a trade or business under common control;

B. A new full-time position which otherwise qualifies for the credit will not be disqualified for purposes of the credit where the employer chooses to use more than one individual to fill the position. This exception is limited to those situations where no more than two employees are used to fill a position, such employees are eligible for essentially the same benefits as full-time employees, and each employee works at least 20 hours per week for at least 48 weeks per year.

13 VAC 5-111-130. Pass through entities.

The amount of any credit attributable to a partnership, S corporation, or limited liability company shall be allocated to the individual partners, shareholders, or members, respectively. The credit will be allocated in the manner in which profits are allocated for federal income tax purposes.

PART V.
PROCEDURES FOR QUALIFYING FOR REAL PROPERTY IMPROVEMENT TAX CREDIT AND ZONE INVESTMENT TAX CREDIT.

13 VAC 5-111-140. Effective dates.

For taxable years beginning on and after July 1, 1995, but before January 1, 2005, a taxpayer shall be allowed a credit against taxes imposed by Articles 2 (Individuals; § 58.1-320 et seq.) and 10 (Corporations; § 58.1-400 et seq.) of Chapter 3; Chapter 12 (Bank Franchise; § 58.1-1200 et. seq.); Article 1 (Insurance Companies; § 58.1-2500 et seq.) of Chapter 25, or Article 2 (Telegraph, Telephone, Water, Heat, Light, Power and Pipeline Companies; § 58.1-2620 et seq.) of Chapter 26 of Title 58.1 of the Code of Virginia, as provided in this regulation.

13 VAC 5-111-150. Computation of credit.

A. For any qualified zone resident, the amount of credit earned shall be equal to 30% of the qualified zone improvements. In no event shall the cumulative credit allowed to a qualified zone resident exceed $125,000 dollars in any five-year period. An unused tax credit may not be applied to future years. Any credit not useable for the taxable

year the credit was allowed shall not be carried back to a preceding taxable year. Any credit determined in accordance with this subsection that exceeds the tax liability for the taxable year it is requested shall be refunded to the taxpayer subject to the limitations contained in subsection C of this section.

B. Qualified zone improvements shall not include the basis of any property: (i) for which a credit under this section was previously granted; (ii) which was previously placed in service in Virginia by the taxpayer, a related party, or a trade or business under common control; or (iii) which was previously in service in Virginia and has a basis in the hands of the person acquiring it, determined in whole or in part by reference to the basis of such property in the hands of the person from whom acquired, or Internal Revenue Code § 1014 (a).

C. The credit provided for in this section is subject to annual fiscal limitations based on the Commonwealth's fiscal year ending June 30th as provided for in §§ 59.1-280 A and 59.1-280.1 J of the Code of Virginia. In the event that taxpayer requests exceed the Commonwealth's annual fiscal limitation the taxpayer shall be granted a pro rata amount by the department, determined in accordance with 13 VAC 5-111-80 D.

13 VAC 5-111-160. Eligibility.

A. A business firm is eligible to receive a credit for real property improvements provided:

1. The total amount of the rehabilitation or expansion of depreciable real property placed in service during the taxable year within the enterprise zone equals or exceeds $50,000 and the assessed value of the original facility immediately prior to rehabilitation or expansion.

2. The cost of any newly constructed depreciable nonresidential real property (as opposed to rehabilitation or expansion) is at least $250,000 with respect to a single facility. For purposes of this subdivision, land, land improvements, paving, grading, driveway and interest shall not be deemed to be qualified zone improvements.

B. The business firm must certify to the Department of Housing and Community Development on the prescribed form or forms, and other documents as prescribed by the department, that the firm has met the criteria for qualification prescribed in this section. The form or forms referred to in this subsection must be prepared by an independent certified public accountant licensed by the Commonwealth and shall serve as prima facie evidence that the business firm met the qualifications.

13 VAC 5-111-170. Zone investment tax credits.

A. In the event that a qualified zone resident makes a qualified zone investment in excess of $100 million and such qualified zone investments result in the creation of at least 200 permanent full-time positions, then the qualified zone resident shall be eligible for a credit in an amount of up to 5.0% of the qualified zone investments in lieu of the credit provided for in 13 VAC 5-111-150 A. The zone investment tax credit provided by this subsection shall not exceed the tax imposed for such taxable year, but any tax credit not usable for the taxable year generated may be carried over until the full amount of such credit has been utilized.

B. The percentage amount of the zone investment tax credit granted to a qualified zone resident shall be determined by agreement between the department and the qualified zone resident, provided such percentage amount does not exceed 5.0%.

C. The percentage amounts of the business income tax credit provided in 13 VAC 5-111-80 A which may be granted to a qualified business firm is also subject to agreement between the department in the event that a qualified zone resident is also a qualified business firm, provided such percentage amounts shall not exceed the percentage amounts otherwise provided in 13 VAC 5-111-80 A.

D. The credit provided for in § 59.1-280.1 J of the Code of Virginia (and any credit that is available to a qualified zone resident that is also a qualified business firm pursuant to § 59.1-280) is subject to annual fiscal limitations based on the Commonwealth's fiscal year ending June 30th as provided for in § 59.1-280.1 J of the Code of Virginia. In the event that taxpayer requests exceed the Commonwealth's annual fiscal limitation, each taxpayer shall be granted a pro rata credit as determined by the department. The amount of such prorated grant shall be determined by applying a fraction, the numerator of which shall be the gross credit requested by the taxpayer for such year, and the denominator of which shall be the total gross credits requested by all taxpayers for such year to the Commonwealth's annual fiscal limitation. The credit which may be requested each year shall be subject to the limitation provided by subsection A of this section.

E. In the event that a taxpayer who is subject to the annual fiscal limitation imposed pursuant to subsection D of this section and is also allowed another credit pursuant to another section of the Code of Virginia, such taxpayer shall be considered to have first utilized any credit allowed which does not have a carry forward provision, and then any credit which is carried forward from a preceding taxable year, prior to utilization of any credit granted pursuant to this section.

13 VAC 5-111-180. Pass through entities.

The amount of any credit attributable to a partnership, S corporation, or limited liability company shall be allocated to the individual partners, shareholders, or members, respectively. The credit will be allocated in the manner in which profits are allocated for federal income tax purposes.

13 VAC 5-111-190. Application submittal and processing.

A. Any business firm whose taxable year begins on or after July 1, 1995, and ends on or before December 31, 1995, shall submit an application for real property improvements tax credit (13 VAC 5-111-150) and zone investment tax credits (13 VAC 5-111-170) to the department by no later than May 1, 1996.

B. For taxable years ending after December 31, 1995, and before January 1, 1997, applications requesting a real property improvements tax credit and zone investment tax credits shall be submitted to the department by no later than May 1, 1997.

C. For taxable years thereafter, for any tax year that ends on or after January 1 and on or before December 31, applications requesting a real property improvements tax credit and zone investment tax credits shall be submitted to the department by no later than May 1 of the subsequent calendar year.

D. The department shall review all applications for completeness and notify business firms of any errors by no later than June 1. Business firms must respond to any unresolved issues by no latter than June 15.

E. The department shall notify all applicants by June 30 as to the amount of applicable credit or refund it is eligible for in the taxable year the request was made.

F. Applications must be made on forms prescribed by the department, and sent by certified mail with a return receipt requested and post marked no later than the date specified in this section.

G. Applicants may only apply for credits which they are otherwise eligible to claim for such taxable year, subject to the limitations provided by 13 VAC 5-111-80 A and 13 VAC 5-111-170 A.

13 VAC 5-111-200. Certification to Tax Commissioner in accordance with § 59.1-280.1 G of the Code of Virginia.

A. The department shall certify to the Commissioner of the Virginia Department of Taxation, or in the case of public service companies to the Director of Public Service Taxation for the State Corporation Commission, the applicability of the tax credits requested by the firm; and forward two copies of the certification to the firm; one copy for the firm's records and one copy to be filed with the applicable state tax return or returns or notify the firm that it fails to qualify for state tax incentives under Part IV (13 VAC 5-111-70 et seq.).

B. Submission of state tax returns. A business firm, upon receipt from the department of copies of the certificate of its qualification to receive state tax incentives, may file the applicable state tax returns. In order for the Virginia Department of Taxation or the State Corporation Commission to grant the incentive or incentives requested, the appropriate copy of the certificate of qualification must be attached to the firm's tax return.

When a partnership or small business corporation electing to be taxed under Subchapter S of the federal Internal Revenue Code requests a credit or credits against state individual income tax on behalf of its partners or shareholders, each partner or shareholder must attach to its state individual income tax return a photocopy of the appropriate certificate of qualification received by the firm.

PART VI.
PROCEDURES FOR QUALIFYING FOR ZONE INCENTIVE GRANTS.

13 VAC 5-111-210. Effective dates.

Beginning on and after July 1, 1995, but before January 1, 2005, a business firm shall be eligible to receive enterprise zone incentive grants for the creation of new permanent full-time positions.

13 VAC 5-111-220. Grant funding.

There is a special fund established in the state treasury known as the Enterprise Zone Grant Fund, which shall be administered by the department. The fund includes moneys as may be appropriated by the General Assembly from time to time. The fund shall be used solely for the payment of enterprise zone incentive grants to business firms pursuant to § 59.1-282.1 of the Code of Virginia.

13 VAC 5-111-230. Computation of grant amount.

A. For any eligible business firm, the amount of any grant earned shall be equal to (i) $1,000 multiplied by the number of eligible permanent full-time positions filled by zone residents, and (ii) $500 multiplied by the number of eligible permanent full-time positions filled by employees whose permanent place of residence is outside the enterprise zone.

1. The number of eligible permanent full-time positions filled by zone residents shall be determined for any grant year by multiplying the number of eligible permanent full-time positions by a fraction, the numerator of which shall be the number of employees hired for permanent full-time positions from January 1 of the applicable grant year through December 31 of the grant year who are zone residents, and the denominator of which shall be the total number of employees hired for permanent full-time positions by the business firm during the same period. Zone residency is subject to annual verification and if an employee moves outside the zone he cannot be considered a zone resident for the remaining grant period.

2. The number of eligible permanent full-time positions filled by employees whose permanent place of residence is outside the enterprise zone shall be determined for any grant year by subtracting the number of eligible positions filled by employees whose permanent place of residence is within the enterprise zone, as determined in subdivision 1 of this subsection, from the number of eligible positions.

B. The amount of the grant for which a business firm is eligible with respect to any employee who is employed in an eligible position for less than 12 full months during the grant year will be determined by multiplying the grant amount by a fraction, the numerator of which is the number of full months that the employee worked for the business firm during the grant year, and the denominator of which is 12.

C. The maximum grant that may be earned by a business firm in one grant year, is limited to $100,000. Each member of an affiliated group of corporations shall be eligible to receive up to a maximum grant of $100,000 in a single grant year.

13 VAC 5-111-240. Eligibility.

A. A business firm shall be eligible to receive job grants for three consecutive calendar years commencing with the first year of grant eligibility. Business firms applying for the first three-year period shall demonstrate that they have increased the business firm's enterprise zone permanent full-time positions by 10% over the base year. Permanent full-time positions created during the second or third year of the grant

period are eligible for additional grant funding over the previous year level at the option of the business firm, but only during the three year grant period.

B. For the second and any subsequent three-year period of grant eligibility, the business firm must demonstrate that they have increased employment by 20% over a redetermined base year.

1. If a business firm applies for a subsequent three-year period within two years immediately following the completion of the first three-year period, the firm must base the increase on the number of permanent full-time positions receiving grants in the final year of the previous grant period.

2. If a business firm applies for subsequent three-year periods later than two years following the completion of the first three-year period, the firm must base the increase of permanent full-time positions over one of the two preceding calendar years.

C. The amount of the grant for which a business firm is eligible in any year shall not include amounts for the number of eligible positions in any year other than the preceding calendar year, except as provided in 13 VAC 5-111-260 A, regarding carryforward of unsatisfied grant amounts.

D. In order to claim the grant an application must be submitted to the local zone administrator by March 31 of the year following the grant year. Applications for grants shall be made on form or forms as prescribed by the department and may include other documentation as requested by the local zone administrator or department. The form or forms referred to in subsection E of this section must be prepared by an independent certified public accountant licensed by the Commonwealth and shall serve as prima facie evidence that the business firm met the eligibility requirements.

E. The local zone administrator shall review applications and determine the completeness of each application and the requested documentation, and forward applications for grants to the department by no later than April 30 of the year following the grant year.

F. The department shall review all applications for completeness and notify business firms of any errors no later than June 1 of the year following the grant year. Business firms must respond to any unresolved issues by no latter than June 15 of the year following the grant year.

G. The department shall notify all businesses by June 30 as to the amount of applicable zone incentive grant it is eligible for the calendar year the request was made.

H. Any business firm receiving an enterprise zone incentive grant under § 59.1-282.1 of the Code of Virginia shall not be eligible for a major business facility job tax credit pursuant to § 58.1-439 of the Code of Virginia with respect to any enterprise zone location which is receiving an enterprise zone incentive grant.

13 VAC 5-111-250. Anti-churning.

No grant shall be allowed for any permanent full-time position:

1. For which a grant under this regulation was previously earned by a related party, or a trade or business under common control;

2. Who was previously employed in the same job function in Virginia by a related party, or a trade or business under common control;

3. Whose job function was previously performed at a different location in Virginia by an employee of the taxpayer, a related party, or a trade or business under common control;

4. Whose previous job function previously qualified for a grant in connection with a different enterprise zone location on behalf of the taxpayer, a related party, or a trade or business under common control.

13 VAC 5-111-260. Grant allocations.

A. Upon receiving applications for grants from the local zone administrators, the department shall determine the amount of the grant to be allocated to each eligible business firm by June 30 of the year following the grant year. The department shall allocate moneys in the following order of priority:

1. First, to unpaid grant amounts carried forward from prior years because business firms did not receive the full amount of any grant to which they were eligible for in a prior year.

2. Second, to other eligible applicants.

B. In the event that moneys in the fund are less than the amount of grants to which applicants in any class of priority are eligible, the moneys in the fund shall be apportioned among eligible applicants in such class pro rata, based upon the amount of the grant to which an applicant is eligible and the amount of money in the fund available for allocation to such class.

C. In the event that a business firm is allocated less than the full grant amount to which it is eligible in any year, the firm shall not be eligible for the deficiency in that year, but the unpaid portion of the grant to which the firm was eligible shall be carried forward by the department to the following year and shall be in the class of priority as provided in subsection A of this section.

13 VAC 5-111-270. Assignment of enterprise zone incentive grants.

A. A business firm may assign all or any portion of any enterprise zone incentive grant to which it is eligible to the owner of any real property within an enterprise zone occupied by the business firm as tenant or to a financial institution regularly engaged in business of lending money which has made a loan to the business firm for the purpose of expanding, constructing or rehabilitating a nonresidential building or facility for the conduct of a trade or business by the business firm within the enterprise zone, or both, as they may agree.

B. A business firm that has assigned its interest in an enterprise zone incentive grant shall notify the department within 30 days. Following the receipt of such notification, the

department may request the Comptroller to issue warrants in the name of the firm's assignee for grant payments that the business firm would have received.

PART VII.
ENTERPRISE ZONE ELIGIBILITY CRITERIA.

13 VAC 5-111-280. Eligible applicants for zone designation.

A. Eligible applicants include the governing body of any county, city or town.

B. The governing body of a county may apply for designation of an enterprise zone on behalf of a town located within the county.

C. Two or more adjacent jurisdictions may file a joint application for an enterprise zone lying in the jurisdictions submitting the application.

D. Jurisdictions may apply for more than one enterprise zone enterprise zone designation. This includes the submission of a joint application with other jurisdictions. Each county, city and town is limited to a total of three enterprise zones, however, a county with a population of 150 or fewer persons per square mile at the most recent decennial census shall be limited to a total of two zones.

13 VAC 5-111-290. Zone eligibility requirements.

A. To be eligible for consideration, an application for an enterprise zone must meet the requirements set out in this section.

B. For counties, cities and towns the proposed zone must consist of an area made up of contiguous United States Census tracts or block groups or any part thereof. However, counties with a population density of 150 or fewer persons per square mile at the most recent decennial census may have one zone which contains no more than two noncontiguous areas of at least one square mile each.

C. The proposed zone must meet at least one of the following distress criteria as enumerated in the most current U. S. Census or current data from the Center for Public Service or local planning district commission: (i) 25% or more of the households must have had incomes below 80% of the median household income of the county or city; (ii) the unemployment rate must have been at least 1.5 times the state average; or (iii) demonstrate a floor area vacancy rate of industrial and/or commercial properties of 20% or more.

D. All proposed zones shall conform to the following size guidelines:

1. Metropolitan Central Cities - Minimum: ½ square mile (320 acres); Maximum: one square mile (640 acres) or 7.0% of the jurisdiction's land area or population, whichever is largest.

2. Towns and cities other than Metropolitan Central Cities - Minimum: ¼ square mile (160 acres); Maximum: ½ square mile (320 acres) or 7.0% of the jurisdiction's land area or population, whichever is largest.

3. Unincorporated areas of counties - Minimum: ½ square mile (320 acres); Maximum: six square miles (3,840 acres).

4. Counties with a population density of 150 or fewer persons per square mile at the most recent decennial census may have one zone which contains no more than two noncontiguous areas and each area must be at least one square mile (640 acres). The maximum combined land area cannot exceed six square miles (3,840 acres).

5. Consolidated cities. Zones in cities the boundaries of which were created through the consolidation of a city and county or the consolidation of two cities, shall conform substantially to the minimum and maximum size guidelines for unincorporated areas of counties as set forth in subdivision 3 of this subsection.

6. In no instance shall a zone consist only of a site for a single business firm.

PART VIII.
PROCEDURES AND REQUIREMENTS FOR ZONE DESIGNATIONS.

13 VAC 5-111-300. Procedures for zone application and designation.

A. Up to 50 enterprise zones may be designated by the Governor in accordance with the procedures and requirements set out in this section.

B. Applications for zone designation will be solicited by the department in accordance with the following procedures and requirements:

1. An application for zone designation must be submitted on Form EZ-I to the Director, Virginia Department of Housing and Community Development, The Jackson Center, 501 North Second Street, Richmond, Virginia 23219, on or before the submission date established by the department.

2. The local governing body must hold at least one public hearing on the application for zone designation prior to its submission to the department. Notification of the public hearing is to be in accordance with § 15.1-431 of the Code of Virginia relating to advertising of public hearings. An actual copy of the advertisement must be included in the application as Attachment A.

3. In order to be considered in the competitive zone designation process an application from a jurisdiction must include all the requested information, be accompanied by a resolution of the local governing body and be signed by the chief administrator or the clerk to the town council or county board of supervisors where there is no chief administrator. The chief administrator or clerk, in signing the application, must certify that the local governing body held the public hearing required in subdivision 2 of this subsection.

4. As part of its application a locality may propose local incentives including but not limited to: (i) reduction of permit fees; (ii) reduction of user fees; (iii) special subclassifications and rates for business professional and occupational license tax; (iv) partial exemption from taxation of substantially rehabilitated real estate pursuant to § 58.1-3221 of the Code of Virginia; (vi) infrastructure improvements; (vii) crime reduction measures; and (viii)

partial rebate of machinery and tools tax. When making an application jurisdictions may also make proposals for regulatory flexibility, including, but not limited to: (i) special zoning districts; (ii) permit process reform; (iii) exemptions from local ordinances; (iv) removal of regulatory barriers to affordable housing; and (vi) other public incentives proposed. A jurisdiction may also create a local enterprise zone association to assist in the planning process and future management of the enterprise zone to assure that major decisions affecting the zone's future take into account the needs of both the public and private sector, including citizens of the involved zone communities.

5. The likely impact of proposed local incentives in offsetting identified barriers to private investment in the proposed zone, together with the projected impact of state tax incentives, will be factors in evaluating applications.

6. A locality may establish eligibility criteria for local incentives for business firms that are the less than, the same as, or more stringent than, the criteria for eligibility of grants or other benefits that the state provides.

7. Proposed local incentives may be provided by the local governing body itself or by an assigned agent such as a local redevelopment and housing authority, an industrial development authority, a private nonprofit entity or a private for-profit entity. In the case of a county which submits an application on behalf of an incorporated town, the county may designate the governing body of the town to serve as its assigned agent. In the case of a county which submits an application for a zone encompassing unincorporated county areas as well as portions of one or more towns, the county may designate the governing body of the town to serve as its assigned agent.

C. Within 60 days following the application submission date, the department shall review and the director shall recommend to the Governor those applications that meet a minimum threshold standard as set by the department and are competitively determined to have the greatest potential for accomplishing the purposes of the program.

D. The department, in consultation with the Virginia Department of Economic Development, may allow up to five enterprise zone designations to be utilized in an open submission process for significant economic development opportunities in areas that are otherwise qualified under provisions of these regulations and meet minimum threshold standards. The selection of these zones by the Governor shall be made upon recommendation and certification of consistency with the program regulations by the department.

E. The Governor shall designate, upon recommendation of the director, enterprise zones for a period of 20 years. The Governor's designation shall be final.

F. A local governing body whose application for zone designation is denied shall be notified and provided with the reasons for denial.

13 VAC 5-111-310. Procedures and requirements for joint applications.

A. Two or more adjacent jurisdictions submitting a joint application as provided for in 13 VAC 5-111-300 C must meet the requirements set out in this section.

B. The applicants must designate one jurisdiction to act as program administrator. The jurisdiction so designated shall be responsible for filing a survey of zone business conditions and annual reports as provided for in 13 VAC 5-111-380 and 13 VAC 5-111-390.

C. In order to submit a joint application, Form EZ-I must be completed and filed by the jurisdiction acting as program administrator in accordance with the procedures set forth in subdivisions B 1 through 4 of 13 VAC 5-111-300. In addition, a copy of Form EZ-I-JA must be completed by each of the other participating jurisdictions to certify that they are in agreement in filing the joint application. A copy of Form EZ-I-JA must be submitted to the department with Form EZ-I.

D. The applicants must meet all other requirements of these regulations pertaining to applicants. In the case of joint applications, all references to "applicant" and "local governing body" contained in the text of these regulations shall mean the governing body of each participating jurisdiction.

PART IX.
PROCEDURES FOR ZONE AMENDMENT.

13 VAC 5-111-320. Relationship to federal enterprise zone program.

If any portion of an area designated as an enterprise zone by the Governor is included in an area designated as an enterprise zone by an agency of the federal government, the area designated by the Governor shall be enlarged to include the area designated by the federal agency.

If an area that has not been designated as an enterprise zone is designated by an agency of the federal government as a federal enterprise zone, that area shall then receive designation as a state zone effective January 1 of the year following its designation as a federal enterprise zone.

13 VAC 5-111-330. Amendment of approved applications.

A. A local governing body will be permitted to request amendments to approved applications for zone designation in accordance with the procedures and requirements set out in this section.

B. The local governing body must hold at least one public hearing on the requested amendment prior to its submission to the department. In the case of a boundary amendment that involves the elimination of an area or areas, the local governing body must separately notify each property owner and business located within the affected area of the proposed amendment prior to holding the public hearing.

C. A request for an amendment must be submitted to the department on Form EZ-2. This form must be accompanied by a resolution of the local governing body and must certify that the local governing body held the public hearing required in subsection B of this section. In the case of a joint

application, a request for an amendment must be completed by the jurisdiction serving as program administrator and must be accompanied by Form EZ-2-JA. This form certifies that the other participating jurisdictions are in agreement in filing the request for amendment.

D. Beginning on and after July 1, 1995, enterprise zone jurisdictions will be required to thoroughly examine their previously approved applications every five years. The jurisdiction shall review all aspects of the application boundaries, goals, objectives, strategies, actions and incentives, as well as barriers to development, and include as part of their annual report an explanation of why the application or sections of the application need or do not need to be amended to improve enterprise zone performance. Application amendments relating to these requirements will be required every five years if:

1. The jurisdiction has not yet developed goals, objectives, strategies and actions to overcome barriers to development within the zone.

2. The jurisdiction has incentives that have not been utilized during the five year period.

E. An enterprise zone application may be amended annually by the jurisdiction. Amendments may be to the entire application or individual sections such as the boundary, goals, objectives, strategies and actions, or incentives.

F. A proposed boundary amendment must meet the following requirements:

1. The area proposed for expansion must be contiguous to the existing zone, except for a county with a population density of 150 or fewer persons per square mile (see 13 VAC 5-111-290 D 4).

2. The enlarged zone must meet at least one of the distress criteria outlined in 13 VAC 5-111-290 C.

3. Boundary amendments that involve the elimination of area or areas from a zone shall be reviewed on a case-by-case basis with the potential impact on affected businesses and property owners being given primary consideration. Such boundary changes cannot impact the zone's ability to meet the required distress criteria and cannot involve more than 15% of the total zone acreage.

G. The enlarged zone shall not exceed the maximum size guidelines outlined in 13 VAC 5-111-290 D. A zone boundary amendment may not consist of a site for a single business firm or be less than 10 acres.

H. The department will approve an amendment to local incentives only if the proposed local incentives are equal or superior to those in the application prior to the proposed amendment or if the proposed cumulative local incentive package is equal to or greater than those in the application prior to the proposed amendment. The department will approve an amendment to expand zone boundaries or the goals, objectives, strategies and actions only if the proposed amendment is deemed to be consistent with the purposes of the program as determined by the department.

I. A local governing body that is denied either a boundary, goals, objectives, strategies and actions, or local incentive amendment shall be provided with the reasons for denial.

PART X.
PROCEDURES FOR ZONE TERMINATION.

13 VAC 5-111-340. Failure to provide local program incentives.

A. If a local governing body or its assigned agent or agents is unable or unwilling to provide any of the approved local program incentives, the following procedures will apply. In the case of joint applications, these procedures will apply if either local governing body or its assigned agent or agents is unable or unwilling to provide approved local incentives.

B. A local governing body must notify the department in writing within 30 days of any inability or unwillingness to provide an approved local program incentive.

C. A local governing body will have 60 days after submission of the notice required in subsection B of this section to request an amendment to its application. Such a request shall be filed in accordance with the procedures set forth in 13 VAC 5-111-330 D.

D. The department will review requests for amendments in accordance with the criterion set forth in 13 VAC 5-111-330 G. Approval of an amendment will allow a zone to continue in operation. If a local governing body fails to provide notice as set forth in subsection B of this section, or has its request for an amendment denied, then the department may recommend to the Governor that the zone be terminated.

E. Upon review of the department's recommendation, the Governor may terminate the zone.

13 VAC 5-111-350. Failure to qualify for state incentives.

A. If no business firms have qualified for state incentives within a five-year period beginning on July 1, 1995, the department shall terminate the enterprise zone designation.

B. The department shall annually provide enterprise zone localities with a current listing of all business firms that have applied and qualified for state incentives.

13 VAC 5-111-360. Zone termination and business qualification.

A. A zone shall be terminated in accordance with the procedures set forth in 13 VAC 5-111-340 and 13 VAC 5-111-350 upon written notice to a local governing body. The date of such notice is considered to be the date of zone termination.

B. Qualified business firms located in a terminated zone may continue to request state tax incentives provided under §§ 59.1-280 and 59.1-282 of the Code of Virginia for any remaining taxable years in the qualification period for which they are eligible.

C. After the date of zone termination, no additional business firms may become qualified to receive state tax incentives provided under this program.

PART XI.
ADMINISTRATIVE REQUIREMENTS.

13 VAC 5-111-370. Sale of surplus public land.

A. The Commonwealth and any unit of local government that owns land within the zone shall: (i) upon designation of a zone, identify any surplus land and within six months make such land available for sale; and (ii) update annually its list of surplus land and make available for sale within six months any newly identified surplus parcels. The department may waive this requirement only if the owner can demonstrate to the department's satisfaction that the land cannot be developed due to its size, configuration, topography, location or other relevant factors.

B. The Commonwealth or any unit of local government that sells surplus land within a zone shall require the buyer to develop the land within a period not to exceed five years. This requirement of the buyer must be enforceable by the seller. The Commonwealth or any unit of local government that sells surplus land within a zone may set any additional conditions on the sale which it considers to be necessary to assure that the land is developed in a manner consistent with the purpose of the program and the local development objectives outlined in the application for zone designation. If the land is not sold within five years, such conditions shall be revised as necessary to make the land marketable.

C. In order to monitor compliance with the requirements of this section, the department will request annually from local governing bodies and state agencies with responsibility for overseeing the disposition of surplus state land, information concerning the identification and sale of surplus land. A local governing body shall document compliance with this section in its annual report to the department (see 13 VAC 5-111-390). The department shall request annually from the Division of Engineering and Buildings of the Virginia Department of General Services and from the Virginia Department of Transportation, lists of surplus state land within zones and actions taken to sell such land.

13 VAC 5-111-380. Survey of zone business conditions.

Within 90 days following the date of zone designation, a local governing body shall conduct a survey of existing business conditions to serve as a basis for program evaluation. Survey data shall be submitted to the department on Form EZ-3-S. The survey shall include information on business and employment conditions in the zone as requested on Form EZ-3-S.

13 VAC 5-111-390. Annual reporting.

A. A local governing body shall submit annual reports to the department for the purpose of program monitoring and evaluation. Annual reports shall be submitted to the department on Form EZ-3-AR, within 90 days of the anniversary date of zone designation. Annual reports shall include information documenting the local governing body's compliance with 13 VAC 5-111-370 and data for the purpose of program evaluation as requested on Form EZ-3-AR. Annual reports shall also include an evaluation of the program's success in achieving identified local development objectives.

B. The department shall annually review the effectiveness of state and local incentives in increasing investment and employment in each of the enterprise zones and provide an annual report of its findings to the Senate Finance Committee, Senate Committee on Commerce and Labor, the House Finance Committee, and the House Committee on Labor and Finance.

When the potential exists that the annual fiscal limitations on the general tax credit, the real property improvements tax credit, the zone investment tax credits, or zone incentive grants will be fully utilized, thus triggering their pro rata distribution, the department shall include this information in the annual report.

VIRGINIA ENTERPRISE ZONE PROGRAM
Tax Credit Qualification Form
EXISTING FIRMS

Form EZ-5E

REGISTRAR OF REGULATIONS
95 FEB 14 AM 9:36

PART I. BACKGROUND INFORMATION

1. _____ (Name of Zone and Locality) _____ (Date your business began operation in the zone location)

2. BUSINESS FIRM IDENTIFICATION (BOTH NUMBERS ARE REQUIRED) _____ (Federal Employee I.D. No. (FEIN)) _____ (Virginia Employment Commission I.D. No. (VEC))

3. NAME OF BUSINESS FIRM

_____ (Legal Name) _____ (Trading Name if Different From Legal Name)

4. ADDRESS (Indicate the actual address of the zone establishment and four digit principle business activity number)

_____ (Street) _____ (City or Town) _____ (Activity Number (see instruction manual))

5. PRINCIPAL MAILING ADDRESS (where determination of qualification will be sent)

_____ (Route, Street or P.O. Box) _____ (City or Town) _____ (State) _____ (Zip Code)

6. BUSINESS FIRM CONTACT: _____ (Name of Person) _____ ((Area Code) Business Telephone Number)

7. Check the appropriate line to indicate type of business organization. IF "OTHER" SPECIFY TYPE:
____ Sole Proprietor ____ S Corporation ____ Partnership ____ Corporation Other: _____

8. Check the appropriate line to indicate which type of state tax applies to your firm:
____ Corporate Income Tax ____ Franchise Tax on Net Capital
____ Franchise Tax or License Tax on Gross Receipts ____ Individual Income Tax

9. STATE CORPORATE INCOME TAX: Complete this item only if the firm is a **subsidiary**. Provide the following information about the parent corporation.

Legal Name _____ Federal Employer I.D.# _____

10. STATE INDIVIDUAL INCOME TAX: Complete this only if the firm is a **partnership** or a **Subchapter S Corporation**. List the name and address of each partner or shareholder. List in the same order as on the appropriate federal and Virginia returns: for partnerships: Schedule K-1 or Schedule K of Form 1065 and Form 501, for S Corporations: Schedule K of Form 1120S and Form 500S. **Please attach a separate sheet and provide information on each partner/shareholder including their name, address and social security number.**

PART II: QUALIFICATION INFORMATION

1. Qualification is requested for taxable year beginning _____, 19____ and ending _____, 19____

2. Base taxable year for business firm beginning _____, 19____ and ending _____, 19____

3. EMPLOYMENT TEST
(a) Average number of permanent full-time employees who were employed by the firm in Virginia, both inside and outside the zone during the base taxable year. _____
(b) Average number of permanent full-time employees who were employed at the firm's zone establishment(s) during the base taxable year. _____
(c) Average number of permanent full-time employees who were employed by the firm in Virginia, both inside and outside the zone during the qualification year. _____
(d) Average number of new permanent full-time employees who were employed at the firm's zone establishment(s) during the qualification year. _____
(e) Average number of new permanent full-time employees that were hired at the zone location after the base taxable year. Subtract line (b) from line (d). _____
(f) Percent increase in the average number of new permanent full-time employees. Divide line (e) by line (b) and multiply by 100, please round to the nearest whole percent. _____
(g) Average number of new permanent full-time zone employees that meet the definition of low-income. _____
(h) Average number of new permanent full-time zone employees who are zone residents. _____
(i) Total number of new permanent full-time employees that are low-income or zone residents. Add lines g and h. _____
(j) Percentage of the increase in the average number of new permanent full-time employees that are low-income or zone residents. Divide line (i) by line (d) and multiply by 100, please round to the nearest whole percent. _____

4. ACTUAL taxable income attributable to the conduct of trade or business within the enterprise zone. $_____

PART III: DECLARATION

1. BUSINESS FIRM REPRESENTATIVE:
I, the undersigned representative of the business firm for which this request is made, declare that this request has been examined by me and is, to the best of my knowledge, an accurate statement. (The signer must be authorized to sign on behalf of the business firm.)

_____ (Signature) _____ (Typed or Printed Name) _____ (Title) _____ (Date)

2. CERTIFIED PUBLIC ACCOUNTANT:
I, the undersigned, declare that this form has been prepared by me and is, to the best of my knowledge, an accurate statement; I further affirm that this business firm meets the requirements for becoming a qualified firm as set forth in the Rules and Regulations of the Virginia Enterprise Zone Program and that the establishment listed in Part I, Item 4 is located within the boundaries of the enterprise zone. I further affirm that I am licensed by the Commonwealth of Virginia and I am not an employee of the business firm which is seeking to qualify for State tax incentives under this Program.

_____ (Signature of CPA) _____ (Typed or Printed Name) _____ (Date)

_____ (Accounting Firm) _____ (Area Code/Business Telephone Number)

_____ (Route, Street or P.O. Box) _____ (City or Town) _____ (State) _____ (Zip Code)

Office Use Only: Received _____ Processed _____ Certificate No. _____

PLEASE DETACH LAST COPY AND KEEP FOR YOUR RECORDS. SEND BY CERTIFIED MAIL OR HAND DELIVER REMAINING COPIES TO THE DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT, 501 NORTH SECOND STREET, RICHMOND, VIRGINIA 23219

VIRGINIA ENTERPRISE ZONE PROGRAM
JOB GRANT
Qualification Form

Form EZ-5J

REGISTRAR OF REGULATIONS
95 FEB 14 AM 9:26

PART I. BACKGROUND INFORMATION

1. _____ (Name of Zone and Locality) _____ (Date your business began operation in the zone location)

2. BUSINESS FIRM IDENTIFICATION (BOTH NUMBERS ARE REQUIRED)
_____ (Federal Employee I.D. No. (FEIN)) _____ (Virginia Employment Commission I.D. No. (VEC))

3. NAME OF BUSINESS FIRM
_____ (Legal Name) _____ ("Trading Name if Different From Legal Name)

4. ADDRESS (Indicate the actual address of the zone establishment and four digit principle business activity number)
_____ (Street) _____ (City or Town) _____ (Activity Number (see instruction manual))

5. PRINCIPAL MAILING ADDRESS (where determination of qualification will be sent)
_____ (Route, Street or P.O. Box) _____ (City or Town) _____ (State) _____ (Zip Code)

6. BUSINESS FIRM CONTACT: _____ (Name of Person) _____ (Area Code/Business Telephone Number)

7. Check the appropriate line to indicate type of business organization. IF "OTHER" SPECIFY TYPE:
____ Sole Proprietor ____ S Corporation ____ Partnership ____ Corporation Other: _____

8. Check the appropriate line to indicate the type of job creation activity in the enterprise zone.
_____ Expansion of existing firm _____ New firm (start-up) _____ Relocation of a firm from outside Virginia

PART II: QUALIFICATION INFORMATION

1. Qualification is requested for calendar year _____, 19____

2. Base calendar year used by the business firm _____, 19____

3. EMPLOYMENT TEST

(a) Actual number of permanent full-time employees employed by the firm during the base calendar year. _____

(b) Actual number of permanent full-time employees employed by the firm during the qualifying calendar year. _____

(c) Actual increase in the number of new permanent full-time employees over the base year. Subtract line (a) from line (b). _____

(d) Percent increase in the number of permanent full-time employees. Divide line (c) by line (a). _____

(e) Minimum number of permanent full-time employees needed to meet the threshold requirement. Multiply line (a) by 10 or 20 percent (see instructions). Round to the nearest whole number. _____

(f) Actual number of eligible permanent full-time employees that are above the minimum required threshold. Subtract line (e) from line (c). _____

(g) Eligible number of new permanent full-time employees from line (c) that are zone residents. _____

(h) Eligible number of new permanent full-time employees from line (c) that are non-zone residents. _____

4. Attach a certified list of each employee that qualifies for job grants, see the application instructions for appropriate format.

PART III: DECLARATION

1. BUSINESS FIRM REPRESENTATIVE:
I, the undersigned representative of the business firm for which this request is made, declare that this request has been examined by me and is, to the best of my knowledge, an accurate statement. (The signer must be authorized to sign on behalf of the business firm.)

_____ (Signature) _____ (Typed or Printed Name) _____ (Title) _____ (Date)

2. CERTIFIED PUBLIC ACCOUNTANT:
I, the undersigned, declare that this form has been prepared by me and is, to the best of my knowledge, an accurate statement; I further affirm that this business firm met the requirements for zone incentive grants as set forth in the Regulations of the Virginia Enterprise Zone Program and that the establishment listed in Part I, Item 4 is located within the boundaries of the enterprise zone. I further affirm that I am licensed by the Commonwealth of Virginia and I am not an employee of the business firm which is seeking to qualify for State tax incentives under this Program.

_____ (Signature of CPA) _____ (Typed or Printed Name) _____ (Date)

_____ (Accounting Firm) _____ (Area Code/Business Telephone Number)

_____ (Route, Street or P.O. Box) _____ (City or Town) _____ (State) _____ (Zip Code)

Office Use Only Received _____ Processed _____ Certificate No. _____

Comments: _____

PLEASE DETACH LAST COPY AND KEEP FOR YOUR RECORDS. SEND FORMS BY CERTIFIED MAIL OR DELIVER REMAINING COPIES TO THE DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT, 501 NORTH SECOND STREET, RICHMOND, VIRGINIA 23219.

VIRGINIA ENTERPRISE ZONE PROGRAM
REAL PROPERTY TAX CREDIT
Qualification Form

Form EZ-5R

PART I. BACKGROUND INFORMATION

1. _____ Name of Locality and Zone
_____ Date Real Property was Placed in Service

REGISTRAR OF REGULATIONS
96 FEB 14 AM 9:36

2. Check the appropriate line to indicate the type of applicant.
_____ Lease Holder _____ Owner Occupant

3. Check the appropriate line to indicate the type of real property improvements made in the enterprise zone.
_____ Rehabilitation of an existing facility _____ Expansion of an existing facility _____ New Construction

4. BUSINESS FIRM IDENTIFICATION _____
Federal Employee I.D. No. (FEIN)

5. NAME OF BUSINESS FIRM
_____ (Legal Name)
_____ (Trading Name If Different From Legal Name)

6. ADDRESS (Indicate the actual address of the zone establishment and four digit principle business activity number)
_____ Street _____ City or Town _____ Activity Number (see instruction manual)

7. PRINCIPAL MAILING ADDRESS (where determination of qualification will be sent)
_____ Route, Street or P.O. Box _____ City or Town _____ State _____ Zip Code

8. BUSINESS FIRM CONTACT: _____
Name of Person Area Code/Business Telephone Number

9. Check the appropriate line to indicate type of business organization. IF "OTHER" SPECIFY TYPE:
_____ Sole Proprietor _____ S Corporation _____ Partnership _____ Corporation Other: _____

10. Check the appropriate line to indicate which type of state tax applies to your firm:
_____ Corporate Income Tax _____ Franchise Tax on Net Capital
_____ Franchise Tax or License Tax on Gross Receipts _____ Individual Income Tax

11. STATE CORPORATE INCOME TAX: Complete this item only if the firm is a subsidiary. Provide the following information about the parent corporation.
Legal Name _____ Federal Employer I.D.# _____

12. STATE INDIVIDUAL INCOME TAX: Complete this only if the firm is a partnership or a Subchapter S Corporation. List the name and address of each partner or shareholder. List in the same order as on the appropriate federal and Virginia returns: for partnerships: Schedule K-1 or Schedule K of Form 1065 and Form 501, for S Corporations: Schedule K of Form 1120S and Form 500S. Please attach a separate sheet and provide information on each partner/shareholder including their name, address and social security number.

PART II: QUALIFICATION INFORMATION

1. Qualification is requested for taxable year beginning _____ 19____ and ending _____ 19____

2. ELIGIBILITY TEST

(a) Assessed value of real property prior to rehabilitation or expansion. $ _____
_____ Multi-tenant proration (Attach proration and square footage documentation).

(b) Actual dollar amount of qualified zone improvements made by the business firm. $ _____
Attach a list certified by the CPA that outlines the qualified zone improvements made to the enterprise zone property (see instructions).

(c) Multiply line (b) by 30%, this is the amount of credit the firm is requesting. $ _____

3. Has this business received a state real property improvement credit within the last five years?
If yes, indicate the amount of credit that was granted. If no, place N/A on this line. $ _____

PART III: DECLARATION

1. BUSINESS FIRM REPRESENTATIVE:

I, the undersigned representative of the business firm for which this request is made, declare that this request has been examined by me and is, to the best of my knowledge, an accurate statement. (The signer must be authorized to sign on behalf of the business firm.)

_____ Signature _____ Typed or Printed Name _____ Title _____ Date

2. CERTIFIED PUBLIC ACCOUNTANT:

I, the undersigned, declare that this form has been prepared by me and is, to the best of my knowledge, an accurate statement; I further affirm that this business firm has made and paid for the qualified zone improvements as set forth in the Regulations of the Virginia Enterprise Zone Program and that the establishment(s) listed in Part I, Item 4 is located within the boundaries of the enterprise zone. I further affirm that I am licensed by the Commonwealth of Virginia and I am not an employee of the business firm which is seeking to qualify for State tax incentives under this Program.

_____ Signature of CPA _____ Typed or Printed Name _____ Date

_____ Accounting Firm _____ Area Code/Business Telephone Number

_____ Route, Street or P.O. Box _____ City or Town _____ State _____ Zip Code

Office Use Only Received _____ Processed _____ Certificate No _____

Comments: _____

PLEASE DETACH LAST COPY AND KEEP FOR YOUR RECORDS. SEND FORMS BY CERTIFIED MAIL OR HAND DELIVER REMAINING COPIES TO THE DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT, 501 NORTH SECOND STREET, RICHMOND, VIRGINIA 23219.

VIRGINIA ENTERPRISE ZONE PROGRAM
Tax Credit Qualification Form
NEW FIRMS

Form EZ-SN

REGISTRAR OF REGULATIONS
96 FEB 27 AM 9:36

PART I. BACKGROUND INFORMATION

1. _____ _____
Name of Zone and Locality — Date your business began operation in the zone location

2. BUSINESS FIRM IDENTIFICATION (BOTH NUMBERS ARE REQUIRED)
_____ _____
Federal Employee I.D. No. (FEIN) — Virginia Employment Commission I.D. No. (VEC)

3. NAME OF BUSINESS FIRM
_____ _____
(Legal Name) — ("Trading Name If Different From Legal Name)

4. ADDRESS (Indicate the actual address of the zone establishment and four digit principle business activity number)
_____ _____
Street, City or Town — Activity Number (see instruction manual)

5. PRINCIPAL MAILING ADDRESS (where determination of qualification will be sent)
_____
Route, Street or P.O. Box, City or Town, State, Zip Code

6. BUSINESS FIRM CONTACT: _____
Name of Person — Area Code/Business Telephone Number

7. Check the appropriate line to indicate the type of new business locating in the enterprise zone.
____ Start-up firm ____ Relocation of a firm from outside Virginia ____ New facility established by a existing firm

8. Check the appropriate line to indicate type of business organization. IF "OTHER" SPECIFY TYPE:
____ Sole Proprietor ____ S Corporation ____ Partnership ____ Corporation Other: _____

9. Check the appropriate line to indicate which type of state tax applies to your firm:
____ Corporate Income Tax ____ Franchise Tax on Net Capital
____ Franchise Tax or License Tax on Gross Receipts ____ Individual Income Tax

10. STATE CORPORATE INCOME TAX: Complete this item only if the firm is a subsidiary. Provide the following information about the parent corporation.
Legal Name _____ Federal Employer I.D.# _____

11. STATE INDIVIDUAL INCOME TAX: Complete this only if the firm is a partnership or a Subchapter S Corporation. List the name and address of each partner or shareholder. List in the same order as on the appropriate federal and Virginia returns: for partnerships: Schedule K-1 or Schedule K of Form 1065 and Form 501, for S Corporations: Schedule K of Form 1120S and Form 500S. **Please attach a separate sheet and provide information on each partner/shareholder including their name, address and social security number.**

PART II: QUALIFICATION INFORMATION

1. Qualification is requested for taxable year beginning _____, 19____ and ending _____, 19____

2. EMPLOYMENT TEST
(a) Average number of permanent full-time employees who were employed by the firm in Virginia, prior to the initial qualification year. _____
(b) Average number of permanent full-time employees who were employed by the firm in Virginia, both inside and outside the zone during the qualification year. _____
(c) Average number of permanent full-time employees who were employed at the firm's zone establishment(s) during the qualification year. _____
(d) Average number of new permanent full-time zone employees that meet the definition of low-income. _____
(e) Average number of new permanent full-time zone employees who are zone residents. _____
(f) Total number of new permanent full-time zone employees that are low-income or zone residents. Add lines (d) and (e). _____
(g) Percentage of the average number of new permanent full-time employees that are low-income or zone resident. Divide line (f) by line (c) and multiply by 100, please round to the nearest whole percent. _____

3. ACTUAL taxable income attributable to the conduct of trade or business within the enterprise zone. $ _____

PART III: DECLARATION

1. BUSINESS FIRM REPRESENTATIVE:
I, the undersigned representative of the business firm for which this request is made, declare that this request has been examined by me and is, to the best of my knowledge, an accurate statement. (The signer must be authorized to sign on behalf of the business firm.)

_____
Signature — Typed or Printed Name — Title — Date

2. CERTIFIED PUBLIC ACCOUNTANT:
I, the undersigned, declare that this form has been prepared by me and is, to the best of my knowledge, an accurate statement. I further affirm that this business firm meets the requirements for becoming a qualified firm as set forth in the Rules and Regulations of the Virginia Enterprise Zone Program and that the establishment listed in Part I, Item 4 is located within the boundaries of the enterprise zone. I further affirm that I am licensed by the Commonwealth of Virginia and I am not an employee of the business firm which is seeking to qualify for State tax incentives under this Program.

_____
Signature of CPA — Typed or Printed Name — Date

_____
Accounting Firm — Area Code/Business Telephone Number

_____
Route, Street or P.O. Box, City or Town, State, Zip Code

Office Use Only: Received _____ Processed _____ Certificate No. _____

Comments: _____

PLEASE DETACH LAST COPY AND KEEP FOR YOUR RECORDS. SEND BY CERTIFIED MAIL OR HAND DELIVER REMAINING COPIES TO THE DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT, 501 NORTH SECOND STREET, RICHMOND, VIRGINIA 23219.

VIRGINIA ENTERPRISE ZONE PROGRAM
INVESTMENT TAX CREDIT
Qualification Form

Form EZ-5I

REGISTRAR OF REGULATIONS
95 FEB 14 AM 9:25

PART I. BACKGROUND INFORMATION

1. _____ (Name of Locality and Zone) _____ (Date Real Property was Placed in Service)

2. BUSINESS FIRM IDENTIFICATION (BOTH NUMBERS ARE REQUIRED) _____ (Federal Employee I.D. No. (FEIN)) _____ (Virginia Employment Commission I.D. No. (VEC))

3. NAME OF BUSINESS FIRM

_____ (Legal Name) _____ ("Trading Name If Different From Legal Name)

4. ADDRESS (Indicate the actual address of the zone establishment and four digit principle business activity number)

_____ (Street) _____ (City or Town) _____ (Activity Number (see instruction manual))

5. PRINCIPAL MAILING ADDRESS (where determination of qualification will be sent)

_____ (Route, Street or P.O. Box) _____ (City or Town) _____ (State) _____ (Zip Code)

6. BUSINESS FIRM CONTACT: _____ (Name of Person) _____ (Area Code/Business Telephone Number)

7. Check the appropriate line to indicate type of business organization, IF "OTHER" SPECIFY TYPE:
____ Sole Proprietor ____ S Corporation ____ Partnership ____ Corporation Other: _____

8. Check the appropriate line to indicate which type of state tax applies to your firm:
____ Corporate Income Tax ____ Franchise Tax on Net Capital
____ Franchise Tax or License Tax on Gross Receipts ____ Individual Income Tax

9. STATE CORPORATE INCOME TAX: Complete this item only if the firm is a **subsidiary**. Provide the following information about the **parent corporation**.

Legal Name _____ Federal Employer I.D.# _____

10. STATE INDIVIDUAL INCOME TAX: Complete this only if the firm is a **partnership** or a **Subchapter S Corporation**. List the name and address of each partner or shareholder. List in the same order as on the appropriate federal and Virginia returns: for partnerships: Schedule K-1 or Schedule K of Form 1065 and Form 501, for S Corporations: Schedule K of Form 1120S and Form 500S. **Please attach a separate sheet and provide information on each partner/shareholder including their name, address and social security number.**

11. Check the appropriate line to indicate whether or not the firm is requesting a general tax credit as well as the investment tax credit.
____ Yes the firm is also requesting a general tax credit ____ No general tax credit is being requested in conjunction with the investment tax credit

PART II: QUALIFICATION INFORMATION

1. Qualification is requested for taxable year beginning _____, 19____ and ending _____, 19____

2. EMPLOYMENT AND INVESTMENT TEST

(a) Total number of permanent full-time positions created during the initial qualification year. _____

(b) Total number of permanent full-time positions as of the qualification year. _____

(c) Actual dollar amount of qualified zone investments made by the business firm. $_____
(If this is the initial application, attach a list that outlines the qualified zone investments made within the enterprise zone).

3. Actual amount of credit negotiated by the business firm. $_____

4. Actual income tax liability that the firm is requesting as an investment tax credit for the taxable year. $_____

PART III: DECLARATION

1. BUSINESS FIRM REPRESENTATIVE:

I, the undersigned representative of the business firm for which this request is made, declare that this request has been examined by me and is, to the best of my knowledge, an accurate statement. (The signer must be authorized to sign on behalf of the business firm.)

_____ (Signature) _____ (Typed or Printed Name) _____ (Title) _____ (Date)

2. CERTIFIED PUBLIC ACCOUNTANT:

I, the undersigned, declare that this form has been prepared by me and is, to the best of my knowledge, an accurate statement; I further affirm that this business firm has created the necessary new permanent full-time positions and made the necessary qualified zone investments as set forth in the Regulations of the Virginia Enterprise Zone Program and that the establishment listed in Part I, item 4 is located within the boundaries of the enterprise zone. I further affirm that I am licensed by the Commonwealth of Virginia and I am not an employee of the business firm which is seeking to qualify for State tax incentives under this Program.

_____ (Signature of CPA) _____ (Typed or Printed Name) _____ (Date)

_____ (Accounting Firm) _____ (Area Code/Business Telephone Number)

_____ (Route, Street or P.O. Box) _____ (City or Town) _____ (State) _____ (Zip Code)

Office Use Only Received _____ Processed _____ Certificate No._____

Comments: _____

PLEASE DETACH LAST COPY AND KEEP FOR YOUR RECORDS. SEND FORMS BY CERTIFIED MAIL OR DELIVER REMAINING COPIES TO THE DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT, 501 NORTH SECOND STREET, RICHMOND, VIRGINIA 23219.

VA.R. Doc. Nos. R96-232 and R96-222; Filed February 14, 1996, 9:36 a.m.

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Title of Regulations: **12 VAC 30-50-100. Inpatient Hospital Services.**
12 VAC 30-50-140. Physician's Services.
12 VAC 30-70-50. Hospital Reimbursement System.

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

Public Hearing Date: N/A -- Public comments may be submitted until May 4, 1996.
(See Calendar of Events section for additional information)

Basis and Authority: Section 32.1-325 of the Code of Virginia grants to the Board of Medical Assistance Services (BMAS) the authority to administer and amend the Plan for Medical Assistance. Section 32.1-324 of the Code of Virginia 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. Sections 9-6.14:7.1 and 9-6.14:9.1 of the Administrative Process Act (APA) provide for this agency's promulgation of proposed regulations subject to the Governor's review.

Subsequent to two separate emergency adoption actions, the agency is initiating the public notice and comment process as contained in Article 2 of the APA. One emergency regulation became effective on September 6, 1995. The second became effective on October 16, 1995. These related regulations will be promulgated as one regulatory change through the Article 2 process. Section 9-6.14:4.1 C of the Code of Virginia requires the agency to publish the Notice of Intended Regulatory Action within 60 days of the effective date of the emergency regulation if it intends to promulgate a permanent replacement regulation. The Notice of Intended Regulatory Action for this regulatory change was published in the Virginia Register on October 30, 1995.

The Governor's 1995 amendments to the 1994-96 Appropriations Act included cost savings for Fiscal Year 1996 that must be achieved from a reduction in the average length of stay for inpatient hospital services and a shorter stay for obstetrical services for patients with uncomplicated vaginal deliveries. These budget amendments are identified as Number 710 and 712 respectively in the Department of Planning and Budget's budget system.

Purpose: The purpose of this proposal is to make permanent policies to reduce the lengths of inpatient hospital and obstetric stays when medically appropriate in compliance with amendments to the budget. By reducing the average Medicaid length of stay in inpatient hospitals to levels similar to that of patients with private insurance, DMAS estimated that the Commonwealth could generate significant cost savings in Medicaid expenditures. These changes enhance the economical performance of Virginia's Medicaid Program by preventing reimbursement for services that are not medically necessary.

Summary and Analysis: The sections of the State Plan affected by this action are Supplement 1 to Attachments 3.1 A&B: Amount, Duration and Scope of Services (12 VAC 30-50-100: Inpatient Hospital Services and 12 VAC 30-50-140: Physician's Services) and Attachment 4.19 A: Methods and Standards for Establishing Payment Rates (12 VAC 30-70-50: Hospital Reimbursement System).

DMAS completed an analysis of inpatient hospital claims which showed that the length of stay for inpatient services among Medicaid patients in Virginia, by admission diagnosis and procedure performed, is higher than the lengths of stay among patients covered by private insurance. Based on this analysis, the Governor included in his 1995 amendments to the 1994-96 Appropriations Act two amendments reducing the Medicaid budget by decreasing the average length of stay for inpatient hospital services from six days to five days and by decreasing the length of stay for obstetric services to one day.

DMAS has adopted a four-part approach to adjust Medicaid policies to more accurately reflect current medical practice. The four parts address the documentation of medical necessity for hospital admissions exceeding three days, for preoperative stays, for weekend admissions based on the redefinition of a weekend, and for obstetrical services. All of these changes affect the State Plan for Medical Assistance and are required to achieve the cost savings in FY 1996 as required by the Governor's budget amendments.

Currently under the State Plan, DMAS requires hospitals to submit documentation of medical necessity for claims for inpatient hospital services on all admissions that exceed seven days. The purpose of this requirement is to ensure that the Virginia Medicaid Program is only reimbursing for services that are truly medically necessary. In order to decrease Medicaid's average length of stay, DMAS is reducing the current standard for submission of documentation of medical necessity from "admissions that exceed seven days" to "admissions that exceed three days." Claims requiring this additional justification will continue to be reviewed by DMAS utilization review analysts to determine the medical necessity of the length of stay. Days that are determined medically unnecessary by the utilization review analyst are denied payment. The change in the medical necessity documentation standard will require that hospital providers of inpatient services submit medical justification for all inpatient hospital admissions that exceed three days. This change is consistent with insurance practices under indemnity and managed care plans.

A second change to the State Plan needed to achieve the reduction in the average length of stay addresses medical justification for preoperative stays. DMAS currently allows payment for a one day stay prior to surgery without submission of documentation of medical necessity. Only stays beyond one day prior to surgery require medical justification to be considered for payment. Since this policy was promulgated in the early 1980's, medical practice has changed so that preoperative stays are almost non-existent. The majority of preoperative procedures are now conducted on an outpatient basis. Therefore, DMAS is revising its policy so that any admission in which preoperative days are necessary be medically justified. Utilization review analysts will review all preoperative days for medical necessity.

The third change to the State Plan needed to achieve the reduction in the average length of stay is to redefine a weekend admission to be more consistent with current medical practices. DMAS currently prohibits reimbursement for weekend admissions, unless medically justified. A weekend admission is defined as an admission on Friday or Saturday. By redefining a weekend admission to be an admission on Saturday or Sunday, DMAS anticipates that medically unnecessary admissions on Sunday will be reduced or avoided, thereby reducing the overall average Medicaid length of stay. Sunday admission must be for medically justified emergencies. Not only will this change prevent the payment of claims for medically unnecessary admissions on Sunday, but it will also prevent hospitals from having to provide documentation of medical necessity for Friday admissions. At the time a weekend admission was originally defined, Friday was not a routine surgery day and, therefore, any admission on a Friday had to be a medically justified emergency. Medical practice has since changed, so that Friday is now a routine day for surgery. Therefore, by eliminating Friday from and adding Sunday to the definition of a weekend admission, DMAS' State Plan will be brought up-to-date with current medical practices, which in turn will contribute to the reduction in the average length of stay. Saturday admissions will continue to require documentation of medical necessity.

The fourth change involves obstetrical services for patients with uncomplicated deliveries. The Governor's second amendment mentioned above was also included to shorten the stay for these services. The department addressed this mandate in two ways. First, DMAS addressed the requirements for documentation of medical necessity for obstetrical admissions for uncomplicated vaginal deliveries. The standard for submission of documentation is changed to "admissions that exceed one day." This change is consistent with insurance practices under indemnity and managed care plans. Secondly, DMAS will offer hospitals the option of participating in the Home Tomorrow Program. No documentation of medical justification will be required for deliveries billed under the Home Tomorrow Program.

The Home Tomorrow Program is the result of a pilot program implemented successfully in several hospitals in the Commonwealth in cooperation with the Virginia Hospital Association (VHA). Beginning in 1992, the pilot program consisted of a trial period of special obstetric services. These pilots basically provided for one day of inpatient hospital care (24 hours to 36 hours) to be followed by a home health visit for those women and their newborns who met certain health standards. The referenced home health visit was provided either directly by the hospital's affiliated home health agency or was contracted out by the hospital to a non-affiliated home health agency. The women selected for the trial Home Tomorrow programs were those who were expected to have normal vaginal deliveries, at term, without significant medical, obstetric or peri-or post-natal complications, nor prolonged labor or difficult instrument delivery and who delivered a healthy term infant, and also who had good social support systems. The services which were required to be covered were the short inpatient stay followed by a home visit by registered nurses trained in mother and infant assessments. The nurses' home visit assessments contained required minimum components for both the new mother and newborn. Also, these participating hospitals were reimbursed one fee for these bundled services: inpatient hospital care for a normal, uncomplicated vaginal delivery, home visit post-delivery and any educational efforts provided at that time.

Issues: This program is expected to provide benefits to both the providers and the Commonwealth. Medicaid recipients who are hospitalized will not be adversely affected by these changes since they reflect current medical practice and are based on medical necessity. Recipients who are appropriate candidates for Home Tomorrow services will be able to return to their homes from the hospital sooner and also receive a comprehensive home health visit which would otherwise be unavailable. The advantage of these changes to the Commonwealth is that they enhance the economical performance of Virginia's Medicaid Program by preventing reimbursement for services that are not medically necessary.

The disadvantage of this action is the increase in justification of medical necessity. In addition to the increase in providing medical justification, hospital providers will have to ensure that medical staff, utilization review committee staff, and reimbursement staff are aware of these changes. Medical and nursing staff will have to ensure that medical justification is documented in the chart.

The agency projects no negative issues involved in implementing this proposed change.

Fiscal/Budget Impact: The 1995 Appropriation Act reduced DMAS' FY 1996 appropriation by $10 million ($5.0 million GF; $5.0 million NGF) and authorized DMAS to reduce the average length of stay for inpatient hospital services from six to five days. Also, DMAS' FY 1996 appropriation was reduced by $6 million ($3.0 million GF; $3.0 million NGF) and DMAS was authorized to implement shorter hospital stays for obstetrical services for uncomplicated vaginal deliveries. DMAS intends to accomplish these savings by updating Medicaid policies for claims paid on a fee-for-service basis to reflect current medical practice. Specific changes address the documentation of medical necessity for lengths of stay exceeding three days, for preoperative stays, for weekend admissions, and for uncomplicated vaginal deliveries. The implementation of Medicaid managed care and the corresponding reduction of Medicaid services reimbursed on a fee-for-service basis may reduce the savings set out in the Appropriation Act.

Those affected by these changes include Medicaid providers of inpatient hospital and home health services, Medicaid recipients who are hospitalized, and DMAS utilization review staff.

The impact of lowering the threshold for providing medical justification and requiring medical justification for all preoperative days and Saturday/Sunday admissions is that hospital providers will have to submit medical justification for approximately 10,000 claims that previously did not require justification. This estimate accounts for the fact that elimination of medical justification for Friday admissions will result in a decrease of approximately 2,000 claims. Also, instituting the more rigorous requirements for medical justification will result in hospitals avoiding unnecessary preoperative days and weekend admissions. Reducing the

threshold for medical justification for obstetrical admissions for uncomplicated vaginal deliveries will increase the number of claims requiring justification by approximately 1,400.

In addition to the increase in providing medical justification, hospital providers will have to ensure that medical staff, utilization review committee staff, and reimbursement staff are aware of these changes. Medical and nursing staff will have to ensure that medical justification is documented in the chart. If claims are submitted without the appropriate medical justification, hospitals may experience an aging of their accounts receivable until the claim is resubmitted with the proper justification.

The estimated 102,000 Medicaid recipients who are hospitalized annually will not be adversely affected by these changes since they reflect current medical practice and are based on medical necessity. This number includes approximately 12,500 recipients who experienced uncomplicated vaginal deliveries.

DMAS will reallocate one staff member to assist the Utilization Review staff with the increased number of claims to review. Therefore, no additional costs will be incurred by DMAS for these changes.

Providers' participation in the Home Tomorrow Program is voluntary. Therefore, it is not expected to negatively affect any providers. However, reimbursement for such services is mandatory for DMAS. This program is expected to provide benefits to both the providers and the Commonwealth. Recipients who are appropriate candidates for Home Tomorrow services will be able to return to their homes from the hospital sooner and also receive a comprehensive home health visit which would otherwise be unavailable. This action, in combination with the initiative to reduce lengths of stay of maternity services, is expected to save the $3 million GF and $3 million NGF.

There are no localities which are uniquely affected by these regulations as they apply statewide.

Department of Planning and Budget's Economic Impact Analysis:

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

Summary of the Proposed Regulation

The proposed regulation replaces emergency regulations which became effective in the fall of 1995. Those emergency regulations revised certain sections of the State Plan for Medical Assistance (12 VAC 30-50-100, Inpatient Hospital Services; 12 VAC 30-50-140, Physicians Services; and 12 VAC 30-70-50, Hospital Reimbursement System) so as to institute various new policies. These policies are designed to reduce the length of inpatient and obstetrical hospital stays for Virginia Medicaid patients by applying hospital utilization review standards commonly used in the private sector and which more closely adhere to current medical practice. The specific policy changes involved are as follows:

- require hospitals to document the medical necessity of claims for inpatient hospital stays that exceed three days, as opposed to the current standard of seven days;
- require hospitals to document the medical necessity of all claims for preoperative stays, as opposed to the current standard of preoperative stays that exceed one day;
- redefine prohibited reimbursement for weekend admissions to include Saturday and Sunday admissions, as opposed to the current definition of Friday and Saturday admissions;
- introduce the Home Tomorrow Program which reimburses participating hospitals for obstetrical admissions involving uncomplicated vaginal deliveries at a fixed per case rate;
- require hospitals not participating in the Home Tomorrow Program to document the medical necessity of claims for obstetrical stays involving uncomplicated vaginal deliveries that exceed one day.

Estimated Economic Impact

The preceding policy changes are likely to have several consequences. The economic impact of these consequences can be grouped into three general categories: fiscal impact, impact on the medical services sector, and impact on Virginia's economy generally.

Fiscal Impact

The primary fiscal impact of the proposed regulation is an anticipated reduction in Medicaid expenditures. Analysis done by DMAS indicates that there are several reasons to believe that more stringent hospital utilization review should encourage hospitals to alter their procedures in ways that will reduce the average length of stay for Virginia Medicaid patients without negatively impacting patient care.

One of these reasons is that average length of stay for Virginia Medicaid patients is currently much higher than the average length of stay for patients generally. Using data taken from Length of Stay by Diagnosis and Operation, Southern Region, 1994, DMAS determined that whereas the typical length of stay for all Virginia Medicaid patients is 5.38 days, the typical length of stay reported regionally for patients with similar admission diagnoses is only 3.95 days --- a difference of 1.43 days. To put this difference in perspective, if the average length of stay for Virginia Medicaid patients were somehow reduced to the regional norm, the resulting savings could be as high as $62 million.

Another reason to believe that more stringent hospital utilization review will reduce the average length of stay for Virginia Medicaid patients is that, even though hospital

utilization review cases are the most frequently appealed decisions made by healthcare insurers, Virginia Medicaid has not had such a decision appealed in 12 years. This pronounced lack of contested decisions implies that the current level of review is quite low and perhaps insufficiently stringent to properly police hospital utilization.

DMAS estimates that the combined effect of the policy changes listed in the previous section will be to reduce the average length of stay for Virginia Medicaid patients by approximately 0.23 days and that this reduction will result in a savings of $16 million in Medicaid expenditures in FY 1996 ($8 million in General Fund state expenditures and $8 million in Non-General Fund matching federal expenditures).

It is important to note however, that although the new policies aimed at reducing the length of stay for obstetrics admissions are expected to account for $6 million of these savings, DMAS estimates that the actual savings from these policies in November of 1995 were $327,224, far short of the required $500,000. DMAS attributes this shortfall to lags in hospital billing and a temporary backlog in hospital utilization reviews. In addition, DMAS has indicated that because additional home health visits are included as a feature of the Home Tomorrow Program, one effect of the proposed regulation will be to increase revenues in the home health industry. To the extent that similar home health visits are occasioned by those reduced lengths of stay generated by other policies within the proposed regulation however, these additional visits represent a Medicaid cost that is unaccounted for in the current analysis and will likely reduce the savings anticipated from the proposed regulation.

Another fiscal impact of the proposed regulation is the additional costs incurred by DMAS as a result of increased hospital utilization review and a likely increase in contested decisions. DMAS estimates that in current dollars these costs will be $46,654 in FY 1996 ($23,327 General Fund and $23,327 Non-General Fund), $76,760 in FY 1997 ($38,380 General Fund and $38,380 Non-General Fund), and $76,784 in FY 1998 ($38,392 General Fund and $38,392 Non-General Fund).

Impact on the Medical Services Sector

The proposed regulation is likely to affect the medical services sector in two ways: 1) hospital revenues, and 2) hospital regulatory compliance costs.

Hospital Revenues

DMAS asserts that, because most hospitals indicate they lose money on Medicaid patients, the anticipated reduction in Medicaid patient days attributable to the proposed regulation should benefit hospitals financially. This assertion is critically dependent on the assumption that Medicaid patient days will be replaced by non-Medicaid patient days however. If Virginia hospitals were functioning at 100% or more of capacity, that assumption might be valid. But given that recent statistics indicate Virginia hospitals are functioning at only around 61% of capacity,[1] the assumption is unlikely to be valid. Put simply, if non-Medicaid patient days were available to replace lost Medicaid patient days, hospitals would be using them now to fill their empty beds.

This means that, in the short-run at least, the proposed regulation will induce a reduction in hospital revenues that approaches the $16 million in anticipated Medicaid savings. To the extent that revenues from Medicaid patient services cover, not only the variable costs associated with those services (e.g., medical disposables, drugs, and various other supplies), but also fixed costs (e.g., overhead costs such as physical plant), this loss of Medicaid revenues will negatively effect hospital profits and could place upward pressure on hospital rates for non-Medicaid patients.

Hospital Compliance Costs

In addition, because the proposed regulation will require hospitals to provide documentation of medical necessity for many more Medicaid reimbursement claims than has been the case in the past, it will almost certainly increase the costs hospitals incur in processing those claims.

Impact on Virginia's Economy Generally

In considering the impact of the proposed regulation on Virginia's economy generally, it is important to keep in mind two points. First, the only way the proposed regulation can have a significant fiscal impact is if the inpatient hospital and obstetrical stays of some Medicaid patients are currently longer than is medically necessary. Otherwise, the operative feature of the proposed regulation --- more stringent hospital utilization review --- will have no effect on reducing average lengths of stay and no effect on reducing Medicaid payments. Put another way, this means that the proposed regulation can only have a significant fiscal impact if some of the resources currently allocated to Virginia's medical sector, in the form of Medicaid payments, are being used inefficiently. The second important point to keep in mind is that moneys not paid out by the Commonwealth in the form of Medicaid payments must either 1) be spent on alternative government programs, or 2) remanded to the taxpayer in the form of reduced taxes or the elimination of anticipated future tax increases. Taken together these two points imply that, when viewed from the perspective of Virginia's economy as a whole, the primary effect of the proposed regulation will be to move economic resources away from inefficient usage in the medical services sector and toward better usage in other government programs, or alternatively, return them to taxpayers, causing an increase in consumer spending, saving, and investment.

Businesses and Entities Particularly Affected

The proposed regulation will particularly affect the approximately 114 Virginia hospitals currently providing services to Medicaid patients, as well as the approximately 106,000 Medicaid patients receiving those services.

Localities Particularly Affected

No localities are particularly affected by the proposed regulation.

Projected Impact on Employment

If the proposed regulation is effective in reducing the length of inpatient hospital and obstetrical stays for Virginia Medicaid patients, it may have a negative impact on

[1] In 1994 the median number of patient days divided by staffed bed days for all hospitals in Virginia was 60.64 percent.

employment in the medical services sector of Virginia's economy. From a state perspective, this employment loss should be mitigated as the alternative usage of these funds induces increased employment in other sectors of Virginia's economy.

Effects on the Use and Value of Private Property

The proposed regulation is not anticipated to affect the use and value of private property.

Summary

The proposed regulation is expected to reduce Medicaid expenditures by $16 million in FY 1996 through increased stringency in hospital utilization review. The net effect of this reduction in Medicaid expenditures will be to free these funds for better usage in other government programs, or alternatively, return them to taxpayers, causing an increase in consumer spending, saving, and investment.

Agency Response to Department of Planning and Budget's Economic Impact Analysis:

The Department of Medical Assistance Services concurs with the economic impact analysis of the proposed regulation concerning Reductions in Covered Inpatient Hospital and Physician Services; Home Tomorrow Program, as developed by the Department of Planning and Budget.

Summary:

The purpose of this proposal is to make permanent policies to reduce the lengths of inpatient hospital and obstetric stays when medically appropriate in compliance with amendments to the budget.

DMAS completed an analysis of inpatient hospital claims which showed that the length of stay for inpatient services among Medicaid patients in Virginia, by admission diagnosis and procedure performed, is higher than the lengths of stay among patients covered by private insurance. By reducing the average Medicaid length of stay in inpatient hospitals to levels similar to that of patients with private insurance, DMAS estimated that the Commonwealth could generate significant cost savings in Medicaid expenditures. Based on this analysis, the Governor included in his 1995 amendments to the 1994-96 Appropriations Act two amendments reducing the Medicaid budget by decreasing the average length of stay for inpatient hospital services from six days to five days and by decreasing the length of stay for obstetric services to one day.

12 VAC 30-50-100. Inpatient hospital services other than those provided in an institution for mental diseases.

A. Medicaid inpatient hospital admissions (lengths-of-stay) are limited to the 75th percentile of PAS (Professional Activity Study of the Commission on Professional and Hospital Activities) diagnostic/procedure limits. For admissions under 8 *four* days that exceed the 75th percentile, the hospital must attach medical justification records to the billing invoice to be considered for additional coverage when medically justified. For all admissions that exceed ~~7~~ *three* days up to a maximum of 21 days, the hospital must attach medical justification records to the billing invoice. (See the exception to subsection F of this section.)

B. Medicaid does not pay the Medicare (Title XVIII) coinsurance for hospital care after 21 days regardless of the length-of-stay covered by the other insurance. (See exception to subsection F of this section.)

C. Reimbursement for induced abortions is provided in only those cases in which there would be a substantial endangerment to health or life of the mother if the fetus were carried to term.

D. ~~Reimbursement for covered hospital days is limited to one day prior to surgery, unless medically justified.~~ Hospital claims with an admission date ~~more than one day~~ prior to the first surgical date ~~will pend for review by medical staff to determine appropriate medical justification.~~, *regardless of the number of days prior to surgery, must be medically justified.* The hospital must write on or attach the justification to the billing invoice for consideration of reimbursement for ~~additional~~ *all* preoperative days. Medically justified situations are those where appropriate medical care cannot be obtained except in an acute hospital setting thereby warranting hospital admission. Medically unjustified days in such admissions will be denied.

E. Reimbursement will not be provided for weekend (~~Friday~~/Saturday/*Sunday*) admissions, unless medically justified. Hospital claims with admission dates on ~~Friday or~~ Saturday *or Sunday* will be pended for review by medical staff to determine appropriate medical justification for these days. The hospital must write on or attach the justification to the billing invoice for consideration of reimbursement coverage for these days. Medically justified situations are those where appropriate medical care cannot be obtained except in an acute hospital setting thereby warranting hospital admission. Medically unjustified days in such admissions will be denied.

F. Coverage of inpatient hospitalization will be limited to a total of 21 days for all admissions within a fixed period, which would begin with the first day inpatient hospital services are furnished to an eligible recipient and end 60 days from the day of the first admission. There may be multiple admissions during this 60-day period; however, when total days exceed 21, all subsequent claims will be reviewed. Claims which exceed 21 days within 60 days with a different diagnosis and medical justification will be paid. Any claim which has the same or similar diagnosis will be denied. EXCEPTION: SPECIAL PROVISIONS FOR ELIGIBLE INDIVIDUALS UNDER 21 YEARS OF AGE: Consistent with 42 CFR 441.57, payment of medical assistance services shall be made on behalf of individuals under 21 years of age, who are Medicaid eligible, for medically necessary stays in acute care facilities in excess of 21 days per admission when such services are rendered for the purpose of diagnosis and treatment of health conditions identified through a physical examination. Medical documentation justifying admission and the continued length of stay must be attached to or written on the invoice for review by medical staff to determine medical necessity. Medically unjustified days in such admissions will be denied.

G. ~~Repealed.~~ *Coverage shall be limited to one day of inpatient hospital care for obstetrical services for uncomplicated vaginal deliveries unless additional days are*

medically justified. The hospital must attach medical justification to the billing invoice for consideration of reimbursement coverage for these days. Medically unjustified days in such admission shall be denied.

H. Reimbursement will not be provided for inpatient hospitalization for those surgical and diagnostic procedures listed on the mandatory outpatient surgery list unless the inpatient stay is medically justified or meets one of the exceptions. The requirements for mandatory outpatient surgery do not apply to recipients in the retroactive eligibility period.

I. For the purposes of organ transplantation, all similarly situated individuals will be treated alike. Transplant services for kidneys and corneas shall be covered for all eligible persons. Transplant services for liver, heart, and bone marrow transplantation and any other medically necessary transplantation procedures that are determined to not be experimental or investigational shall be limited to children (under 21 years of age). Kidney, liver, heart, and bone marrow transplants and any other medically necessary transplantation procedures that are determined to not be experimental or investigational require preauthorization. Cornea transplants do not require preauthorization. The patient must be considered acceptable for coverage and treatment. The treating facility and transplant staff must be recognized as being capable of providing high quality care in the performance of the requested transplant. Reimbursement for covered liver, heart, and bone marrow transplant services and any other medically necessary transplantation procedures that are determined to not be experimental or investigational shall be a fee based upon the greater of a prospectively determined, procedure-specific flat fee determined by the agency or a prospectively determined, procedure-specific percentage of usual and customary charges. The flat fee reimbursement will cover procurement costs; all hospital costs from admission to discharge for the transplant procedure; and total physician costs for all physicians providing services during the transplant hospital stay, including radiologists, pathologists, oncologists, surgeons, etc. The flat fee reimbursement does not include pre- and post-hospitalization for the transplant procedure or pretransplant evaluation. Reimbursement for approved transplant procedures that are performed out of state will be made in the same manner as reimbursement for transplant procedures performed in the Commonwealth. Reimbursement for covered kidney and cornea transplants is at the allowed Medicaid rate. Standards for coverage of organ transplant services are in 12 VAC 30-50-530.

J. The department may exempt portions or all of the utilization review documentation requirements of subsections A, D, E, F as it pertains to recipients under age 21, G, or H in writing for specific hospitals from time to time as part of their ongoing hospital utilization review performance evaluation. These exemptions are based on utilization review performance and review edit criteria which determine an individual hospital's review status as specified in the hospital provider manual. In compliance with federal regulations at 42 CFR 441.200, Subparts E and F, claims for hospitalization in which sterilization, hysterectomy or abortion procedures were performed, shall be subject to medical documentation requirements.

K. Hospitals qualifying for an exemption of all documentation requirements except as described in subsection J above shall be granted "delegated review status" and shall, while the exemption remains in effect, not be required to submit medical documentation to support pended claims on a prepayment hospital utilization review basis to the extent allowed by federal or state law or regulation. The following audit conditions apply to delegated review status for hospitals:

1. The department shall conduct periodic on-site post-payment audits of qualifying hospitals using a statistically valid sampling of paid claims for the purpose of reviewing the medical necessity of inpatient stays.

2. The hospital shall make all medical records of which medical reviews will be necessary available upon request, and shall provide an appropriate place for the department's auditors to conduct such review.

3. The qualifying hospital will immediately refund to the department in accordance with § 32.1-325.1 A and B of the Code of Virginia the full amount of any initial overpayment identified during such audit.

4. The hospital may appeal adverse medical necessity and overpayment decisions pursuant to the current administrative process for appeals of post-payment review decisions.

5. The department may, at its option, depending on the utilization review performance determined by an audit based on criteria set forth in the hospital provider manual, remove a hospital from delegated review status and reapply certain or all prepayment utilization review documentation requirements.

12 VAC 30-50-140. Physician's services whether furnished in the office, the patient's home, a hospital, a skilled nursing facility or elsewhere.

A. Elective surgery as defined by the Program is surgery that is not medically necessary to restore or materially improve a body function.

B. Cosmetic surgical procedures are not covered unless performed for physiological reasons and require Program prior approval.

C. Routine physicals and immunizations are not covered except when the services are provided under the Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) Program and when a well-child examination is performed in a private physician's office for a foster child of the local social services department on specific referral from those departments.

D. Psychiatric services.

1. Psychiatric services are limited to an initial availability of 26 sessions, with one possible extension (subject to the approval of the Psychiatric Review Board) of 26 sessions during the first year of treatment. The availability is further restricted to no more than 26 sessions each succeeding year when approved by the Psychiatric Review Board. Psychiatric services are

further restricted to no more than three sessions in any given seven-day period.

2. Psychiatric services can be provided by psychiatrists, clinical psychologists licensed by the State Board of Medicine; psychologists clinical licensed by the Board of Psychology, or by a licensed clinical social worker under the direct supervision of a psychiatrist, licensed clinical psychologist or a licensed psychologist clinical.

3. Psychological and psychiatric services shall be medically prescribed treatment which is directly and specifically related to an active written plan designed and signature-dated by either a psychiatrist or a clinical psychologist licensed by the Board of Medicine, a psychologist clinical licensed by the Board of Psychology, or a licensed clinical social worker under the direct supervision of a licensed clinical psychologist, a licensed psychologist clinical, or a psychiatrist.

4. Psychological or psychiatric services shall be considered appropriate when an individual meets the following criteria:

a. Requires treatment in order to sustain behavioral or emotional gains or to restore cognitive functional levels which have been impaired;

b. Exhibits deficits in peer relations, dealing with authority; is hyperactive; has poor impulse control; is clinically depressed or demonstrates other dysfunctional clinical symptoms having an adverse impact on attention and concentration, ability to learn, or ability to participate in employment, educational, or social activities;

c. Is at risk for developing or requires treatment for maladaptive coping strategies; and

d. Presents a reduction in individual adaptive and coping mechanisms or demonstrates extreme increase in personal distress.

5. Psychological or psychiatric services may be provided in an office or a mental health clinic.

E. Any procedure considered experimental is not covered.

F. Reimbursement for induced abortions is provided in only those cases in which there would be a substantial endangerment of health or life to the mother if the fetus were carried to term.

G. Physician visits to inpatient hospital patients are limited to a maximum of 21 days per admission within 60 days for the same or similar diagnoses and is further restricted to medically necessary inpatient hospital days as determined by the Program. EXCEPTION: SPECIAL PROVISIONS FOR ELIGIBLE INDIVIDUALS UNDER 21 YEARS OF AGE: Consistent with 42 CFR 441.57, payment of medical assistance services shall be made on behalf of individuals under 21 years of age, who are Medicaid eligible, for medically necessary stays in acute care facilities in excess of 21 days per admission when such services are rendered for the purpose of diagnosis and treatment of health conditions identified through a physical examination. Payments for physician visits for inpatient days determined to be medically unjustified will be adjusted.

H. Repealed.

I. ~~Repealed.~~ *Reimbursement shall not be provided for physician services provided to recipients in the inpatient setting whenever the facility is denied reimbursement.*

J. Reimbursement will not be provided for physician services performed in the inpatient setting for those surgical or diagnostic procedures listed on the mandatory outpatient surgery list unless the service is medically justified or meets one of the exceptions. The requirements of mandatory outpatient surgery do not apply to recipients in a retroactive eligibility period.

K. For the purposes of organ transplantation, all similarly situated individuals will be treated alike. Transplant services for kidneys and corneas shall be covered for all eligible persons. Transplant services for liver, heart, and bone marrow and any other medically necessary transplantation procedures that are determined to not be experimental or investigational shall be limited to children (under 21 years of age). Kidney, liver, heart, and bone marrow transplants and any other medically necessary transplantation procedures that are determined to not be experimental or investigational require preauthorization. Cornea transplants do not require preauthorization. The patient must be considered acceptable for coverage and treatment. The treating facility and transplant staff must be recognized as being capable of providing high quality care in the performance of the requested transplant. Reimbursement for covered liver, heart, and bone marrow transplant services and any other medically necessary transplantation procedures that are determined to not be experimental or investigational shall be a fee based upon the greater of a prospectively determined, procedure-specific flat fee determined by the agency or a prospectively determined, procedure-specific percentage of usual and customary charges. The flat fee reimbursement will cover procurement costs; all hospital costs from admission to discharge for the transplant procedure; and total physician costs for all physicians providing services during the transplant hospital stay, including radiologists, pathologists, oncologists, surgeons, etc. The flat fee reimbursement does not include pre- and post-hospitalization for the transplant procedure or pretransplant evaluation. Reimbursement for approved transplant procedures that are performed out of state will be made in the same manner as reimbursement for transplant procedures performed in the Commonwealth. Reimbursement for covered kidney and cornea transplants is at the allowed Medicaid rate. Standards for coverage of organ transplant services are in 12 VAC 30-50-540.

12 VAC 30-70-50. Hospital reimbursement system.

The reimbursement system for hospitals includes the following components:

A. Hospitals were grouped by classes according to number of beds and urban versus rural. (Three groupings for rural - 0 to 100 beds, 101 to 170 beds, and over 170 beds; four groupings for urban - 0 to 100, 101 to 400, 401 to 600, and over 600 beds.) Groupings are similar to those used by

the Health Care Financing Administration (HCFA) in determining routine cost limitations.

B. Prospective reimbursement ceilings on allowable operating costs were established as of July 1, 1982, for each grouping. Hospitals with a fiscal year end after June 30, 1982, were subject to the new reimbursement ceilings.

The calculation of the initial group ceilings as of July 1, 1982, was based on available, allowable cost data for hospitals in calendar year 1981. Individual hospital operating costs were advanced by a reimbursement escalator from the hospital's year end to July 1, 1982. After this advancement, the operating costs were standardized using SMSA wage indices, and a median was determined for each group. These medians were readjusted by the wage index to set an actual cost ceiling for each SMSA. Therefore, each hospital grouping has a series of ceilings representing one of each SMSA area. The wage index is based on those used by HCFA in computing its Market Basket Index for routine cost limitations.

Effective July 1, 1986, and until June 30, 1988, providers subject to the prospective payment system of reimbursement had their prospective operating cost rate and prospective operating cost ceiling computed using a new methodology. This method uses an allowance for inflation based on the percent of change in the quarterly average of the Medical Care Index of the Chase Econometrics - Standard Forecast determined in the quarter in which the provider's new fiscal year began.

The prospective operating cost rate is based on the provider's allowable cost from the most recent filed cost report, plus the inflation percentage add-on.

The prospective operating cost ceiling is determined by using the base that was in effect for the provider's fiscal year that began between July 1, 1985, and June 1, 1986. The allowance for inflation percent of change for the quarter in which the provider's new fiscal year began is added to this base to determine the new operating cost ceiling. This new ceiling was effective for all providers on July 1, 1986. For subsequent cost reporting periods beginning on or after July 1, 1986, the last prospective operating rate ceiling determined under this new methodology will become the base for computing the next prospective year ceiling.

Effective on and after July 1, 1988, and until June 30, 1989, for providers subject to the prospective payment system, the allowance for inflation shall be based on the percent of change in the moving average of the Data Resources, Incorporated Health Care Cost HCFA-Type Hospital Market Basket determined in the quarter in which the provider's new fiscal year begins. Such providers shall have their prospective operating cost rate and prospective operating cost ceiling established in accordance with the methodology which became effective July 1, 1986. Rates and ceilings in effect July 1, 1988, for all such hospitals shall be adjusted to reflect this change.

Effective on or after July 1, 1989, for providers subject to the prospective payment system, the allowance for inflation shall be based on the percent of change in the moving average of the Health Care Cost HCFA-Type Hospital Market Basket, adjusted for Virginia ~~(DRI-V)~~, as developed by Data Resources, Incorporated, determined in the quarter in which the provider's new fiscal year begins. Such providers shall have their prospective operating cost rate and prospective operating cost ceiling established in accordance with the methodology which became effective July 1, 1986. Rates and ceilings in effect July 1, 1989, for all such hospitals shall be adjusted to reflect this change.

Effective on and after July 1, 1992, for providers subject to the prospective payment system, the allowance for inflation, as described above, which became effective on July 1, 1989, shall be converted to an escalation factor by adding two percentage points, (200 basis points) ~~(DRI-V+2)~~ to the then current allowance for inflation. The escalation factor shall be applied in accordance with the ~~current~~ inpatient hospital reimbursement methodology in effect on June 30, 1992. On July 1, 1992, the conversion to the new escalation factor shall be accomplished by a transition methodology which, for non-June 30 year end hospitals, applies the escalation factor to escalate their payment rates for the months between July 1, 1992, and their next fiscal year ending on or before May 31, 1993.

The new method will still require comparison of the prospective operating cost rate to the prospective operating ceiling. The provider is allowed the lower of the two amounts subject to the lower of cost or charges principles.

C. Subsequent to June 30, 1992, the group ceilings shall not be recalculated on allowable costs, but shall be updated by the escalator *factor*.

D. Prospective rates for each hospital shall be based upon the hospital's allowable costs plus the escalator *factor*, or the appropriate ceilings, or charges; whichever is lower. Except to eliminate costs that are found to be unallowable, no retrospective adjustment shall be made to prospective rates.

Depreciation, capital interest, and education costs approved pursuant to PRM-15 (§ 400), shall be considered as pass throughs and not part of the calculation.

E. An incentive plan should be established whereby a hospital will be paid on a sliding scale, percentage for percentage, up to 25% of the difference between allowable operating costs and the appropriate per diem group ceiling when the operating costs are below the ceilings. The incentive should be calculated based on the annual cost report.

The table below presents three examples under the new plan:

Group Ceiling	Hospital's Allowable Cost Per Day	$	Difference % of Ceiling	$	Sliding Scale Incentive % of Difference
$230.00	$230.00	-0-	-0-	-0-	-0-
230.00	207.00	23.00	10%	2.30	10%
230.00	172.00	57.50	25%	14.38	25%
230.00	143.00	76.00	33%	19.00	25%

F. There will be special consideration for exception to the median operating cost limits in those instances where extensive neonatal care is provided.

G. Disproportionate share hospitals defined.

The following criteria shall be met before a hospital is determined to be eligible for a disproportionate share payment adjustment.

1. Criteria.

a. A Medicaid inpatient utilization rate in excess of 8% for hospitals receiving Medicaid payments in the Commonwealth, or a low-income patient utilization rate exceeding 25% (as defined in the Omnibus Budget Reconciliation Act of 1987 and as amended by the Medicare Catastrophic Coverage Act of 1988); and

b. At least two obstetricians with staff privileges at the hospital who have agreed to provide obstetric services to individuals entitled to such services under a State Medicaid plan. In the case of a hospital located in a rural area (that is, an area outside of a Metropolitan Statistical Area, as defined by the Executive Office of Management and Budget), the term "obstetrician" includes any physician with staff privileges at the hospital to perform nonemergency obstetric procedures.

c. ~~Subsection A.2~~ *Subdivision 1 b of this subsection* does not apply to a hospital:

(1) At which the inpatients are predominantly individuals under 18 years of age; or

(2) Which does not offer nonemergency obstetric services as of December 21, 1987.

2. Payment adjustment.

a. Hospitals which have a disproportionately higher level of Medicaid patients shall be allowed a disproportionate share payment adjustment based on the type of hospital and on the individual hospital's Medicaid utilization. There shall be two types of hospitals: (i) Type One, consisting of state-owned teaching hospitals, and (ii) Type Two, consisting of all other hospitals. The Medicaid utilization shall be determined by dividing the number of utilization Medicaid inpatient days by the total number of inpatient days. Each hospital with a Medicaid utilization of over 8.0% shall receive a disproportionate share payment adjustment.

b. For Type One hospitals, the disproportionate share payment adjustment shall be equal to the product of (i) the hospital's Medicaid utilization in excess of 8.0%, times 11, times (ii) the lower of the prospective operating cost rate or ceiling. For Type Two hospitals, the disproportionate share payment adjustment shall be equal to the product of (i) the hospital's Medicaid utilization in excess of 8.0%, times (ii) the lower of the prospective operating cost rate or ceiling.

c. No payments made under subdivision 1 or 2 of this subsection shall exceed any applicable limitations upon such payments established by federal law or regulations.

H. Outlier adjustments.

1. DMAS shall pay to all enrolled hospitals an outlier adjustment in payment amounts for medically necessary inpatient hospital services provided on or after July 1, 1991, involving exceptionally high costs for individuals under one year of age.

2. DMAS shall pay to disproportionate share hospitals (as defined in paragraph G above) an outlier adjustment in payment amounts for medically necessary inpatient hospital services provided on or after July 1, 1991, involving exceptionally high costs for individuals under six years of age.

3. The outlier adjustment calculation.

a. Each eligible hospital which desires to be considered for the adjustment shall submit a log which contains the information necessary to compute the mean of its Medicaid per diem operating cost of treating individuals identified in subdivision H 1 or 2 above. This log shall contain all Medicaid claims for such individuals, including, but not limited to: (i) the patient's name and Medicaid identification number; (ii) dates of service; (iii) the remittance date paid; (iv) the number of covered days; and (v) total charges for the length of stay. Each hospital shall then calculate the per diem operating cost (which excludes capital and education) of treating such patients by multiplying the charge for each patient by the Medicaid operating cost-to-charge ratio determined from its annual cost report.

b. Each eligible hospital shall calculate the mean of its Medicaid per diem operating cost of treating individuals identified in subdivision H 1 or 2 above. Any hospital which qualifies for the extensive neonatal care provision (as governed by paragraph F, above) shall calculate a separate mean for the cost of providing extensive neonatal care to individuals identified in subdivision H 1 or 2 above.

c. Each eligible hospital shall calculate its threshold for payment of the adjustment, at a level equal to two and one-half standard deviations above the mean or means calculated in subdivision H 3 (ii) above.

d. DMAS shall pay as an outlier adjustment to each eligible hospital all per diem operating costs which exceed the applicable threshold or thresholds for that hospital.

4. Pursuant to 12 VAC 30-50-100, there is no limit on length of time for medically necessary stays for individuals under six years of age. This section provides that consistent with ~~the EPSDT program referred to in~~ 42 CFR 441.57, payment of medical assistance services shall be made on behalf of individuals under 21 years of age, who are Medicaid eligible, for medically necessary stays in acute care facilities in excess of 21 days per admission when such services are rendered for the purpose of diagnosis and treatment of health conditions identified through a physical examination. Medical documentation justifying admission and the continued length of stay must be attached to or written on the invoice for review by medical staff to determine medical necessity. Medically unjustified days in such admissions will be denied.

I. All-inclusive rate for one-day maternity and newborn services.

1. Hospitals may voluntarily participate in a program (the Home Tomorrow program) wherein women who have uncomplicated vaginal deliveries may be discharged from the hospital within 24 hours of such deliveries. If providers choose to participate and the patients are determined to be medically appropriate to participate, coverage is provided for routine inpatient services plus a comprehensive home health visit, including a maternal assessment, a newborn assessment, and a home assessment. Reimbursement for the total package of inpatient and outpatient services will be a fixed per case rate. The Home Tomorrow package of services includes one day of inpatient services and one comprehensive home visit provided within 48 hours of discharge. Cases with longer lengths of stay or where a home visit does not occur within 48 hours of discharge shall not be reimbursed under the Home Tomorrow program. These cases will be reimbursed at the normal per diem reimbursement rate.

2. The Home Tomorrow total fixed per case rates in effect from October 1, 1995, through June 30, 1996, shall be:

Northern Virginia	*$1,200*
Rest of State	*$1,100*
State Teaching Hospitals	*$1,700*

These amounts shall be considered to constitute reimbursement both for operating and fixed costs. Disproportionate share hospital payments associated with those services, if applicable, will be reimbursed upon year-end cost settlement.

3. These per case rates will be updated at the beginning of each state fiscal year using the same inflation factor used for hospitals with fiscal years ending at that time. (Refer to subsection B of this section.)

VA.R. Doc. No. R96-226; Filed February 14, 1996, 3:03 p.m.

STATE WATER CONTROL BOARD

Title of Regulation: **9 VAC 25-110-10 et seq. Virginia Pollutant Discharge Elimination System (VPDES) General Permit Regulation for Domestic Sewage Discharges of Less Than or Equal to 1,000 Gallons Per Day.**

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

Public Hearing Date:
April 11, 1996 - 2 p.m. (Roanoke County)
April 11, 1996 - 2 p.m. (Harrisonburg)
April 15, 1996 - 2 p.m. (Richmond)

Public comments may be submitted until May 6, 1996.
(See Calendar of Events section for additional information)

Subject: The State Water Control Board proposes to adopt a regulation for the issuance of a General Virginia Pollutant Discharge Elimination System (VPDES) Permit for domestic sewage discharges less than or equal to 1,000 gallons per day. This regulation will replace a general permit that was adopted by the board on March 20, 1992, which became effective on July 1, 1992, and which expires August 1, 1996. This proposed regulatory action will set forth guidelines for the permitting of discharges of treated wastewaters from individual home treatment works and other small volume sources of domestic sewage.

Basis: The basis for this regulation is § 62.1-44.2 et seq. of the Code of Virginia. Specifically, § 62.1-44.15(5) authorizes the State Water Control Board to issue permits for the discharge of treated sewage, industrial wastes or other waste into or adjacent to state waters. Section 62.1-44.15(7) authorizes the board to adopt rules governing the procedures of the board with respect to the issuance of permits. Further, § 62.1-44.15(10) authorizes the board to adopt such regulations as it deems necessary to enforce the general water quality management program; § 62.1-44.15(14) authorizes the board to establish requirements for the treatment of sewage, industrial wastes and other wastes; § 62.1-44.20 provides that agents of the board may have the right of entry to public or private property for the purpose of obtaining information or conducting necessary surveys or investigations; and, § 62.1-44.21 authorizes the board to require owners to furnish information necessary to determine the effect of the wastes from a discharge on the quality of state waters.

Section 402 of the Clean Water Act (33 USC 1251 et seq.) authorizes states to administer the National Pollutant Discharge Elimination System (NPDES) permit program under state law. The Commonwealth of Virginia received such authorization in 1975 under the terms of a Memorandum of Understanding with the U.S. Environmental Protection Agency (EPA) to administer a Virginia Pollutant Discharge Elimination System (VPDES) permit program. This Memorandum of Understanding was modified on May 20, 1991, to authorize the Commonwealth to administer a VPDES General Permit Program.

Purpose: This proposed action is necessary to provide for a more efficient and economical permitting process for both the regulated community and the department. It will provide for the protection of the health, safety and welfare of the citizens of the Commonwealth by allowing the department to devote more resources to permitting of facilities with discharges of greater potential for adverse water quality impacts. The purpose of this proposed regulatory action is to adopt a general VPDES permit for discharges of treated sewage from individual home treatment works and other small volume sources of domestic sewage. The general permit under which these facilities are currently covered will expire August 1, 1996. This proposed regulation will succeed the expiring general permit and continue to provide an alternative to individual VPDES permits for discharges in this category. Discharges currently operating under individual VPDES permits may also qualify for coverage under the general permit.

Substance: A VPDES general permit is issued by the state for a category of discharges instead of to an individual discharge. Anyone who fits into the category covered by the general permit and who agrees to abide by its conditions may apply for coverage under it instead of applying for an

individual VPDES permit. The discharge category for this general permit is sewage treatment plants which are designed to treat 1,000 gallons or less of waste per day. These plants are typically installed at individual homes when central sewer is not available and the soil conditions prohibit the use of onsite disposal methods such as septic tanks and drainfields. They may also be installed to treat domestic sewage from duplexes, churches, gas stations, etc. where sewage flow is low and other treatment alternatives are not available.

The proposed general permit consists of limitations and monitoring requirements on discharges to surface waters for the following parameters: flow, ≤1,000 gpd; pH, 6.0 min, 9.0 max; biochemical oxygen demand, 30 mg/l max; total suspended solids, 30 mg/l max; total residual chlorine, 1.0 mg/l min, 2.0 mg/l or non-detectable max; fecal coliform bacteria, 200/100 ml max; and dissolved oxygen, 5.0 mg/l max. Effluent limitations and monitoring requirements are established for two subcategories depending upon the amount of dilution provided by the waters into which the treated effluent is discharged. The regulation also sets forth the minimum information requirements for all requests for coverage under the general permit.

No discharge may be covered by the General Permit unless the Department of Health certifies that there are no onsite sewage disposal options available to the lot owner.

Impact on Family Formation, Stability and Autonomy: In the formulation of this regulation, the department has considered its impact on family formation, stability and autonomy. It is anticipated that the regulation will have a direct, positive effect on families in that it may enable them to live on property that otherwise could not be developed due to restrictions associated with the disposal of sewage.

Affected Locality: The regulation will be applicable statewide and will not affect any one locality disproportionately.

Issues: According to the Permit Fee Regulation (9 VAC 25-20-10 et seq.), there is no permit application fee associated with coverage under this general permit. This is an obvious advantage to having the general permit. In addition, those seeking coverage under individual permits must pay for the public notice in local newspapers, which costs an average of $325. The advantage of the general permit is that the newspaper public notice of the general permit is paid once by DEQ when the regulation is adopted.

An advantage of a general VPDES permit is that it reduces the application costs and paperwork burden for the dischargers. It also reduces the administrative time and burden for the department in processing individual permits. Thus, it improves the administrative efficiency of the department's permitting program and allows staff resources to be concentrated on individual VPDES permits which have more potential for impacting water quality. No disadvantages have been identified.

Since the general permit has been in effect, there have been some suggestions that treatment works that do not serve single family homes, but which qualify for coverage are not held to the same standards of operation and maintenance as are those that do serve single family homes. This inequity is based in the wording of the Code of Virginia, which limits the Health Department's jurisdiction in this area to the single family home treatment works. In 1990, the General Assembly amended §§ 32.1-163 and 32.1-164 of the Code of Virginia to address the responsibilities of the State Board of Health as they relate to sewage disposal and inspections of alternative discharging sewage treatment systems. The Code of Virginia mandates regular inspection of such systems and it empowers the Board of Health to establish requirements for maintenance contracts for these facilities. This statute is the basis for the Virginia Department of Health's Alternative Discharging Sewage Treatment System Regulations for Individual Single Family Dwellings (12 VAC 5-640-10 et seq.).

Department of Planning and Budget's Economic Impact Analysis:

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

Summary of the proposed regulation

Section 402 of the Clean Water Act grants individual states the authority to administer the National Pollution Discharge Elimination System (NPDES) permit program. Under this authorization, the Commonwealth of Virginia has implemented the Virginia Pollution Discharge Elimination System (VPDES) and § 62.1-44.2 et seq. of the Code of Virginia charges the State Water Control Board with the responsibility of issuing permits for the discharge of treated sewage, industrial wastes or other wastes into or adjacent to state waters.

In carrying out this mandate, the board has the option, under certain circumstances, of adopting a "general" VPDES permit covering a category of discharging facilities, rather than requiring each discharger to undergo the process of attaining an "individual" VPDES permit. Since July 1, 1992, a general VPDES permit has been used to cover the discharging activities of domestic sewage treatment plants treating no more than 1,000 gallons of wastewater per day. The permit expires August 1, 1996. Through the proposed regulation, 9 VAC 25-110-10 et seq., the board seeks to continue coverage of this category of dischargers through the reissuance of the general VPDES permit. The regulation, establishes the required effluent limitations and the registration process required of individuals seeking coverage under the general permit.

If 9 VAC 25-110-10 et seq. is not adopted by August 1, 1996, permitting will revert back to the use of individual permits to regulate the discharging activities of facilities covered under the current general permit.

Estimated Economic Impact

An assessment of the net economic impact of this regulation requires consideration of two issues:

1. The comparative costs of implementing the general versus the individual VPDES systems, and

2. The link established in the Code of Virginia between the type of VPDES permit used by State Water Control Board (SWCB) and the ability of the State Board of Health (BOH) to enforce its own set of permits regulating the installation, operation and monitoring of sewage treatment systems serving individual single family residences.

Implementation Costs Under General and Individual VPDES Permitting Systems

The effluent limits imposed on dischargers under both the general and individual VPDES permits are identical and drawn from federal technology standards (40 CFR Part 133). The costs associated with each permitting process, however, vary greatly. Registering for coverage under a general permit is far less costly than is the process of acquiring an individual permit.

The registration process detailed in 9 VAC 25-110-10 et seq. requires individuals seeking coverage under the general permit to file a registration statement including information about the sewage treatment system they are operating, the facility it serves and any waterways affected by their discharging activities. Additionally, first time applicants must provide a topographic map showing the discharge point, property boundaries, wells and any downstream houses, as well as a schematic diagram of the sewage treatment system for which they are seeking coverage.

If applying for an individual permit, the same dischargers would be required to fill out an application form far more involved than the general permit registration form. In addition to providing the same topographic map and schematic drawing as are required in the general permit registration process, applicants must also produce a chemical analysis of the effluents contained in the processed wastewater at a cost of approximately $200. Additionally, individuals applying for an individual permit must shoulder the costs of providing public notification of their application through the local newspapers at an average cost of $325. Finally, because the administrative costs are so much higher for DEQ, individual permit applicants pay a $1,400 application fee that is not required of general permit applicants.

The Department of Environmental Quality reports that as of February 2, 1996, 1,286 dischargers are covered under the current general permit. If 9 VAC 25-110-10 et seq. is not adopted and all 1,286 dischargers are forced to acquire individual permits, they each face additional application costs in the amount of $1,925, representing the additional costs associated with acquiring a chemical analysis of the wastewater discharged ($200), with providing public notification of their permit application ($325) and with paying the required application fee ($1,400). Multiplied over all 1,286 dischargers, this means a total additional cost of approximately $2,475,550. Thus the adoption of 9 VAC 25-110-10 et seq. would lead to a net savings of approximately $2,475,550 in terms of the costs to permit applicants over the five-year period covered by a VPDES permit.

The total cost of processing each individual VPDES permit application is approximately $1,439, which is almost entirely covered by the $1,400 fee paid by permit applicants. The total costs of processing general permits will average $200 to $500 each. This cost is borne entirely by DEQ and hence Virginia's taxpayers. Thus, while the actual value of the resources spent on administrative activities falls under the general permitting program by an amount within the range of $939 to $1,239, the remaining costs will be paid by Virginia's taxpayers.

In terms of the costs associated with the actual permitting process, the use of a general VPDES permit is a less expensive means of enforcing the same effluent limitations than is the use of individual VPDES permits.

The Virginia Department of Health Permitting System

The extent of the economic impact of the type VPDES permit uses by SWCB, however, is not limited to the costs of the permitting process. A subset of the facilities regulated under the VPDES permit program are currently serving single family residences. In addition to SWCB's permitting requirements, this subset of sewage treatment systems is also subject to a permitting system used by the State Board of Health (BOH) to ensure that systems are properly installed, operated and monitored, as is described in 12 VAC 5-640-10 et seq. Title 32.1 of the Code of Virginia provides the State Board of Health the necessary authority to implement a permitting system. However, the language used in the Code of Virginia limits BOH's regulatory activities to include only those facilities covered under a general VPDES permit. Thus, failure to adopt the proposed regulation, 9 VAC 25-110-10 et seq., would not only force SWCB to return to the use of individual VPDES permits, but also would prevent the continuation of BOH's regulation of the installation, operation and monitoring of sewage systems serving individual single family residences.

This means that an assessment of the economic impact of adopting 9 VAC 25-110-10 et seq. must account for the costs and benefits associated with BOH's permitting system. The costs include both the expenses applicants face in meeting BOH's permitting requirements and BOH's expenditure of resources in administering and enforcing the permits. The benefits take the form of improved public health protection from the detrimental affects of poorly installed or inadequately maintained sewage treatment facilities.

It is beyond scope of this study to perform an economic impact analysis of BOH's permitting program. It is, however, necessary to make some determination as to the net effect of BOH's regulatory efforts. To do so requires an understanding of the origins of BOH's permitting program.

In October, 1990, a Task Force on Septic Regulations was appointed by the Secretary of Health and Human Resources, the Secretary of Natural Resources and the Secretary of Economic Development to review the state's sewage handling and disposal regulations as they pertained to surface and groundwater quality. In the Task Force charge, members were specifically directed to give consideration to the economic impacts of any recommended regulatory

changes. Included in the findings of this panel was the recommendation that, "Virginia should require the maintenance and oversight of all on-site systems to ensure that they continue to function well over time," and that "The permitting process should require these systems to be routinely maintained through the use of maintenance agreements, management districts or other approaches."

The opinion of this panel of experts and the subsequent actions of the Board of Health in adopting the recommended regulatory actions, is some evidence of a positive net effect of BOH's permitting process although DPB has made no independent evaluation of that regulatory action.

Conclusions

Given the assumption of net benefits resulting from the Board of Health's permitting program, the reissuance of a general VPDES permit by the State Water Control Board would, in all likelihood, yield net economic gains to Virginia's citizens. The general VPDES permit described in 9 VAC 25-110-10 et seq. would provide a lower cost alternative to the use of individual VPDES permit in terms of the expenses associated with the application process. Additionally, the renewal of a general VPDES permitting system would enable BOH to continue its monitoring to ensure the proper construction, installation and maintenance of sewage treatment systems utilized by single family homes. This regulation will likely have a positive net economic impact for the Commonwealth.

Businesses and Entities Affected

With the adoption of 9 VAC 25-110-10 et seq., permit applicants would continue to benefit from the lower applications costs associated with the use of a general rather than individual VPDES permitting system. Virginia taxpayers would be affected by the costs associated with the Board of Health's permitting system which can be enforced as a consequence of the continued use of a general VPDES permit. All citizens of the Commonwealth would benefit from the protection of public health provided through the Board of Health's regulatory efforts.

Localities Particularly Affected

The terms of 9 VAC 25-110-10 et seq. are applicable state-wide, no individual locality will be disproportionately affected by its adoption.

Projected Impact on Employment

This regulation will have no impact on employment in the Commonwealth.

Effects on the Use and Value of Private Property

The sewage treatment systems covered by this particular VPDES permit are used on sites where the soil quality is inadequate to support septic fields and off-site sewage treatment facilities are not available. By providing a cheaper permitting alternative for individuals wishing to utilize this type of sewage treatment facilities, 9 VAC 25-110-10 et seq. facilitates the installation of such systems on lands previously incapable of supporting sewage disposal services. The availability of such services on a property can significantly increase its development value.

Additionally, because the use of a general VPDES permit will enable the State Board of Health to enforce its permitting activities, property values could increase as a consequence of the improved protection of potable water sources.

Summary of Analysis

In 9 VAC 25-110-10 et seq., the State Water Control Board seeks to re-issue a general VPDES permit to cover the discharges of low volume sewage treatment facilities processing no more than 1,000 gallons of wastewater per day. Re-issuance of a general permit would result in lower application and administrative costs than would be faced under an individual VPDES permitting program. Additionally, the use of a general permit would enable the State Board of Health to continue its regulation of the construction, operation and maintenance of sewage treatment facilities serving individual single family residences. The adoption of 9 VAC 25-110-10 et seq. would, in all likelihood, have a positive net economic impact on the citizens of the Commonwealth.

Agency's Response to Department of Planning and Budget's Economic Impact Analysis:

Department staff have reviewed and agree with the economic impact analysis prepared by the Department of Planning and Budget.

Summary:

The purpose of this proposed regulatory action is to adopt a General Virginia Pollutant Discharge Elimination System (VPDES) permit for domestic sewage discharges less than or equal to 1,000 gallons per day. This regulation will replace a general permit that was adopted by the State Water Control Board on March 20, 1992, which became effective on July 1, 1992, and which expires August 1, 1996. This proposed regulatory action will set forth guidelines for the permitting of discharges of treated wastewaters from individual home treatment works and other small volume sources of domestic sewage. This proposed action is necessary to provide for a more efficient and economical permitting process for both the regulated community and the board. It will provide for the protection of the health, safety and welfare of the citizens of the Commonwealth by allowing the Department of Environmental Quality to devote more resources to the permitting of facilities with discharges of greater potential for adverse water quality impacts.

9 VAC 25-110-10 et seq. Virginia Pollutant Discharge Elimination System (VPDES) General Permit Regulation for Domestic Sewage Discharges of Less Than or Equal to 1,000 Gallons Per Day.

CHAPTER 110.
VIRGINIA POLLUTANT DISCHARGE ELIMINATION SYSTEM.

9 VAC 25-110-10. Definitions.

The words and terms used in this chapter shall have the meanings defined in the State Water Control Law and 9 VAC 25-30-10 et seq. (Permit Regulation) unless the context clearly indicates otherwise, except that for the purposes of this chapter:

"Department" means the Department of Environmental Quality.

"Domestic sewage" means the water-carried human wastes from residences, buildings, industrial establishments or other places.

9 VAC 25-110-20. Purpose.

This general permit regulation governs domestic sewage discharges to surface waters from treatment works ~~that discharge~~ *with a design discharge flow of* less than or equal to 1,000 gallons per day on a ~~yearly~~ *monthly* average.

9 VAC 25-110-30. ~~Authority for regulation.~~ *[Repealed.]*

~~The authority for this regulation is pursuant to the State Water Control Law §§ 62.1-44.15 (7), (8), (9), (10), (14); 62.1-44.18 through 62.1-44.21 of the Code of Virginia and 33 USC 1251 et seq. and 9 VAC 25-30-320 of the Permit Regulation (9 VAC 25-30-10 et seq.).~~

9 VAC 25-110-40. Delegation of authority.

The ~~executive director~~ *Director of the Department of Environmental Quality*, or his designee, may perform any act of the board provided under this chapter, except as limited by § 62.1-44.14 of the Code of Virginia.

9 VAC 25-110-50. Effective date of the permit.

This VPDES general permit regulation supersedes ~~and modifies the emergency regulation~~ 9 VAC 25-110-10 et seq., which was effective ~~July 12, 1991~~ *July 1, 1992, and which expired on August 1, 1996.* ~~Those permits issued under the emergency regulation 9 VAC 25-110-10 et seq. are hereby recognized as modifed, valid and covered by this regulation.~~ This general permit will become effective on ~~July 1, 1992~~ *August 1, 1996*, and it expires on August 1, ~~1996~~ *2001*. This general permit is effective as to any covered owner upon compliance with all the provisions of 9 VAC 25-110-60 and the receipt of this VPDES general permit.

9 VAC 25-110-60. Authorization to discharge.

Any owner of a treatment works governed by this general permit is hereby authorized to discharge treated domestic sewage to surface waters of the Commonwealth of Virginia provided that the owner files the registration statement of 9 VAC 25-110-70, complies with the effluent limitations and other requirements of 9 VAC 25-110-80, and provided that the owner has complied with all the following conditions:

A. Individual permit. The owner shall not have been required to obtain an individual VPDES permit as may be required in ~~the Permit Regulation,~~ 9 VAC 25-30-320 B.

B. Prohibited discharge locations. The owner shall not be authorized by this general permit to discharge to surface waters ~~where~~ *specifically named in* other board regulations or policies *which* prohibit such discharges.

C. Central sewage facilities. The owner shall not be authorized by this general permit to discharge to surface waters where there are central sewage facilities reasonably available, as determined by the ~~board~~ *Department of Environmental Quality.*

~~D. Local government notification. The owner of any proposed treatment works or any treatment works which has not previously been issued a valid VPDES permit shall obtain notification from the governing body of the county, city or town in which the discharge is to take place that the location and operation of the discharging facility is consistent with all ordinances adopted pursuant to Chapter 11 (§ 15.1-427 et seq.) of Title 15.1 of the Code of Virginia.~~

~~E.~~ *D.* Onsite sewage disposal system. The owner of any proposed treatment works or any treatment works which has not previously been issued a valid VPDES permit shall have applied to the Department of Health for an onsite sewage disposal system permit and the Department of Health must have determined that there is no technology available to serve that parcel of land with an onsite system.

Receipt of this VPDES general permit does not relieve any owner of the responsibility to comply with any other statute or regulation, including applicable regulations of the Department of Health adopted pursuant to §§ 32.1-163 and 32.1-164 of the Code of Virginia.

9 VAC 25-110-70. Registration statement.

The owner shall file a complete VPDES General Permit Registration Statement for domestic sewage discharges of less than or equal to 1,000 gallons per day. Any owner proposing a new discharge shall file the registration statement at least 60 days prior to the date planned for commencing construction or operation of the treatment works. Any owner of an existing treatment works covered by an individual VPDES permit who is proposing to be covered by this general permit shall file the registration statement at least 180 days prior to the expiration date of the individual VPDES permit. The required registration statement shall ~~be in the following form~~ *contain the following information*:

VIRGINIA POLLUTANT DISCHARGE ELIMINATION SYSTEM GENERAL PERMIT REGISTRATION STATEMENT FOR DOMESTIC SEWAGE DISCHARGES LESS THAN OR EQUAL TO 1,000 GALLONS PER DAY

1. Name of Facility/Residence

~~2. Location of Facility (City or County)~~

2. *Address of Facility*

Street..... City..... State..... Zip.....

3. Facility Owner(s)

Last Name..... First Name..... M.I. .....

Last Name..... First Name..... M.I. .....

4. Address of Owner

Street..... City..... State..... Zip.....

5. Phone

Home..... Work.....

6. ~~Location of Discharge (stream into which discharge occurs)~~ *Name of stream into which discharge occurs*

~~Attach a topographic or other map which indicates discharge point, property boundaries, wells, downstream houses, etc., for ½ mile downstream.~~

Is the discharge point on a stream that usually flows during dry weather? Yes ... No ... If no, approximate distance from the discharge to the point where a stream flows during dry weather. ..... ft.

7. Amount of Discharge (gallons per day)

8. Are any pollutants other than domestic sewage to be discharged?

Yes ... No ... If yes, please indicate what:

~~9. Attach a diagram of the existing or proposed sewage treatment system, including the location of the facility/residence and the individual sewage treatment units.~~

~~10. The owner of any proposed treatment works or any treatment works which has not previously been issued a valid VPDES permit must attach to this registration statement notification from the governing body of the county, city or town in which the discharge is to take place that the location and operation of the discharging facility is consistent with all ordinances adopted pursuant to Chapter 11 (§ 15.1-427 et seq.) of Title 15.1 of the Code of Virginia.~~

~~11. The owner of any proposed treatment works or any treatment works which has not previously been issued a valid VPDES permit must attach a notification from the Department of Health that an onsite sewage disposal system permit has been applied for and that the Department of Health has determined that there is no technology available to serve that parcel of land with an onsite system.~~

~~12.~~ *9.* Are central sewage facilities available to this facility?

Yes ... No ... If yes, please explain:

~~13.~~ *10.* Does this facility currently have a VPDES permit?

Yes ... No ... If yes, please provide Permit Number:

11. The owner of any proposed treatment works or any treatment works which has not previously been issued a valid VPDES permit must submit the following attachments with this registration statement:

a. A topographic or other map which indicates discharge point, property boundaries, wells, downstream houses, etc. for ½ mile downstream;

b. A diagram of the existing or proposed sewage treatment system, including the location of the facility/residence and the individual sewage treatment units; and

c. A notification from the Department of Health that an onsite sewage disposal system permit has been applied for and that the Department of Health has determined that there is no technology available to serve that parcel of land with an onsite system.

..... Check here if these items have been submitted previously and are still accurate/applicable.

Certification:

I hereby grant to duly authorized agents of the ~~State Water Control Board~~ *Department of Environmental Quality*, upon presentation of credentials, permission to enter the property for the purpose of determining the suitability of the general permit. I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system or those persons directly responsible for gathering the information, the information submitted is to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false information including the possibility of fine and imprisonment for knowing violations.

Signature(s): ..... Date: .....

For ~~Water Control Board~~ *Department of Environmental Quality* use only:

Accepted/Not Accepted by: ..... Date: .....

Basin Stream Class Section

Special Standards

9 VAC 25-110-80. General Permit.

Any owner whose registration statement is accepted by the ~~executive director or his designee~~ *board* will receive the following permit and shall comply with the requirements therein and be subject to all requirements of ~~the Permit Regulation,~~ 9 VAC 25-30-320.

General Permit No.: ~~VAG000001~~ *VAG40*

Effective Date: .....

~~Modification Date: .....~~

Expiration Date: .....

GENERAL PERMIT FOR DOMESTIC SEWAGE DISCHARGES LESS THAN OR EQUAL TO 1,000 GALLONS PER DAY

AUTHORIZATION TO DISCHARGE UNDER THE VIRGINIA POLLUTANT DISCHARGE ELIMINATION SYSTEM AND THE VIRGINIA STATE WATER CONTROL LAW

In compliance with the provisions of the Clean Water Act, as amended and pursuant to the State Water Control Law and regulations adopted pursuant thereto, owners of domestic sewage discharges *with a design flow of* less than or equal to 1,000 gallons per day *on a monthly average* are authorized to discharge to surface waters within the boundaries of the Commonwealth of Virginia, except those ~~where~~ *specifically named in* board regulations or policies *which* prohibit such discharges.

The authorized discharge shall be in accordance with this cover page, Part I - Effluent Limitations and Monitoring

Requirements, Part II - Monitoring and Reporting Requirements, and Part III - Management Requirements, as set forth herein.

Part I.

EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS.

A. Effluent limitations and monitoring requirements.

1. During the period beginning with the permit's effective date and lasting until the permit's expiration date, the permittee is authorized to discharge from outfall serial number 001 *to receiving waters where either: a) the 7Q10 flow is zero and the discharge travels less than 500 feet before it reaches receiving waters with 7Q10 flow greater than zero; or b) the 7Q10 flow is greater than zero and less than 0.2 MGD.*

Such discharge shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	DISCHARGE LIMITATIONS		MONITORING REQUIREMENTS	
	Instantaneous Minimum	Instantaneous Maximum	Frequency	Sample Type
Flow (MGD)*	NA	NL	1/year	Estimate
BOD_5	NA	30 mg/l	1/year	Grab
Total Suspended Solids	NA	30 mg/l	1/year	Grab
~~Fecal Coliform Bacteria**~~	~~NA~~	~~200/100 ml~~	~~1/year~~	~~Grab~~
~~Total Residual Chlorine~~	~~NA~~	~~Nondetectable~~	~~1/year~~	~~Grab~~
*Total Residual Chlorine***				
After contact tank	*1.0 mg/l*	*NA*	*1/year*	*Grab*
Final Effluent	*NA*	*Nondetectable*	*1/year*	*Grab*
*Fecal Coliform Bacteria****	*NA*	*200/100 ml*	*1/year*	*Grab*
pH (standard units)	6.0	9.0	1/year	Grab
Dissolved Oxygen	5 mg/l	NA	1/year	Grab

NL = No Limitation, monitoring required

NA = Not Applicable

* The design flow of this treatment facility is less than or equal to 1,000 gallons per day.

~~** Continuous disinfection capability shall be provided in order to maintain this effluent limit.~~

*** Applies only when chlorine is used for disinfection.*

**** Applies only when methods other than chlorine are used for disinfection. Continuous disinfection capability shall be provided in order to maintain this effluent limit.*

~~B. There shall be no discharge of floating solids or visible foam in other than trace amounts.~~

A. Effluent limitations and monitoring requirements.

2. During the period beginning with the permit's effective date and lasting until the permit's expiration date, the permittee is authorized to discharge from outfall serial number 001 to receiving waters where either: a) the 7Q10 flow is zero and the discharge must travel at least 500 feet to reach receiving waters with 7Q10 flow greater than zero; or b) the 7Q10 flow is equal to or greater than 0.2 MGD.

Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	*DISCHARGE LIMITATIONS*		*MONITORING REQUIREMENTS*	
	Instantaneous Minimum	*Instantaneous Maximum*	*Frequency*	*Sample Type*
*Flow (MGD)**	*NA*	*NL*	*1/year*	*Estimate*
BOD_5	*NA*	*30 mg/l*	*1/year*	*Grab*
Total Suspended Solids	*NA*	*30 mg/l*	*1/year*	*Grab*
*Total Residual Chlorine***				
Final Effluent	*1.0 mg/l*	*2.0 mg/l*	*1/year*	*Grab*
*Fecal Coliform Bacteria****	*NA*	*200/100 ml*	*1/year*	*Grab*
pH (standard units)	*6.0*	*9.0*	*1/year*	*Grab*

NL = No Limitation, monitoring required

NA = Not Applicable

** The design flow of this treatment facility is less than or equal to 1,000 gallons per day.*

*** Applies only when chlorine is used for disinfection.*

**** Applies only when methods other than chlorine are used for disinfection. Continuous disinfection capability shall be provided in order to maintain this effluent limit.*

B. Special conditions.

1. There shall be no discharge of floating solids or visible foam in other than trace amounts.

2. Schedule of compliance. This compliance schedule shall be allowed only for treatment works that were existing on the effective date of this general permit. Treatment works constructed after the permit effective date are expected to comply with the limitations and conditions of the general permit from the date of coverage. The permittee shall install equipment or unit processes or make other physical modifications to the treatment works that are necessary to achieve compliance with the limitations and conditions of this permit within 180 days of the date of coverage under the permit. The modifications shall not be initiated until written authorization is first provided by the Department of Health or the Department of Environmental Quality. The permittee shall submit to the Department of

Environmental Quality Regional Office a written notice certifying completion of any necessary modifications on or before the 180-day compliance deadline. If the permittee is unable to meet the deadline, a written notice shall be submitted which shall include the cause of the delay, any remedial actions taken, and the projected date for compliance.

Part II.

MONITORING AND REPORTING.

A. Sampling and analysis methods.

1. Samples and measurements taken as required by this permit shall be representative of the volume and nature of the monitored activity.

2. Unless otherwise specified in the permit all sample preservation methods, maximum holding times and analysis methods for pollutants shall comply with requirements set forth in Guidelines Establishing Test Procedures for the Analysis of Pollutants Under the Clean Water Act as published in the Federal Register (40 CFR 136).

3. The sampling and analysis program to demonstrate compliance with the permit shall at a minimum, conform to Part I of this permit.

4. The permittee shall periodically calibrate and perform maintenance procedures on all monitoring and analytical instrumentation at intervals that will insure accuracy of measurements.

B. Recording of results. For each measurement or sample taken pursuant to the requirements of this permit, the permittee shall record the following information:

1. The date, exact place and time of sampling or measurements;

2. The persons who performed the sampling or measurements;

3. The dates analyses were performed;

4. The persons who performed each analysis;

5. The analytical techniques or methods used; and

6. The results of such analyses and measurements.

C. Monitoring records. All records and information resulting from the monitoring activities required by this permit, including all records of analyses performed and calibration and maintenance of instrumentation and recording from continuous monitoring instrumentation, shall be retained for five years from the date of the sample, measurement, report or application. Such records shall be made available to the ~~board~~ *department* upon request.

D. Reporting requirements. The permittee shall report any unpermitted, unusual or extraordinary discharge which enters or could be expected to enter state waters. The permittee shall provide the following information regarding each such discharge immediately, that is as quickly as possible upon discovery, however, in no case later than 24 hours:

1. A description and cause of noncompliance;

2. The period of noncompliance, including exact dates and times or the anticipated time when the noncompliance will cease, or both, and

3. Actions taken or to be taken to reduce, eliminate, and prevent recurrence of the noncompliance.

A written submission covering these points shall be provided within five days of the time the permittee becomes aware of the circumstances covered by this paragraph.

E. Signatory requirements. Any registration statement, report, or certification required by this permit shall be signed as follows:

1. Registration statement.

a. For a corporation: by a responsible corporate official. For purposes of this section, a responsible corporate official means (i) a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation, or (ii) the manager of one or more manufacturing, production, or operating facilities employing more than 250 persons or having gross annual sales or expenditures exceeding $25,000,000 (in second-quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.

b. For a municipality, state, federal or other public agency by either a principal executive officer or ranking elected official. (A principal executive officer of a federal, municipal, or state agency includes the chief executive officer of the agency or head executive officer having responsibility for the overall operation of a principal geographic unit of the agency.)

c. For a partnership or sole proprietorship, by a general partner or proprietor respectively.

2. Reports. All reports required by permits and other information requested by the board shall be signed by:

a. One of the persons described in subparagraph 1, a, b, or c of this section; or

b. A duly authorized representative of that person. A person is a duly authorized representative only if:

(1) The authorization is made in writing by a person described in subparagraph 1 a, b, or c of this section; and

(2) The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity, such as the position of plant manager, operator of a well or a well field, superintendent, or position of equivalent responsibility. (A duly authorized representative may thus be either a named individual or any individual occupying a named position.)

(3) If an authorization is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new

authorization must be submitted to the board prior to or together with any separate information, or registration statement to be signed by an authorized representative.

3. Certification. Any person signing a document under paragraph 1 or 2 of this section shall make the following certification:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system or those persons directly responsible for gathering the information, the information submitted is to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false information including the possibility of fine and imprisonment for knowing violations.

Part III.

MANAGEMENT REQUIREMENTS.

A. Change in discharge ~~or management of pollutants~~.

1. Any permittee proposing a new discharge ~~or the management of additional pollutants~~ shall submit a new registration statement at least 60 days prior to commencing erection, construction, or expansion or employment of new ~~pollutant management activities or~~ processes at any facility. There shall be no commencement of treatment ~~or management of pollutants activities~~ until a permit is received.

2. All discharges ~~or pollutant management activities~~ authorized by this permit shall be made in accordance with the terms and conditions of the permit. The permittee shall submit a new registration statement 60 days prior to all expansions, production increases, or process modifications, that will result in new or increased pollutants. The discharge ~~or management~~ of any pollutant more frequently than, or at a level greater than that identified and authorized by this permit, shall constitute a violation of the terms and conditions of this permit.

B. Treatment works operation and quality control.

1. Design and operation of facilities or treatment works and disposal of all wastes shall be in accordance with the registration statement. If facility deficiencies, design or operational, or both, are identified in the future which could affect the facility performance or reliability, it is the responsibility of the permittee to correct such deficiencies.

2. All waste collection, control, treatment, ~~management of pollutant activities~~ and disposal facilities shall be operated in a manner consistent with the following:

a. At all times, all facilities ~~and pollutant management activities~~ shall be operated in a prudent and workmanlike manner so as to minimize upsets and discharges of excessive pollutants to state waters.

b. Maintenance of treatment ~~facilities or pollutant management activities~~ *works* shall be carried out in such a manner that the monitoring or limitation requirements, or both, are not violated.

c. Collected sludges shall be stored in such a manner as to prevent entry of those wastes (or run-off from the wastes) into state waters.

C. Adverse impact. The permittee shall take all feasible steps to minimize any adverse impact to state waters resulting from noncompliance with any limitations or conditions, or both, specified in this permit, and shall perform and report such accelerated or additional monitoring as is necessary to determine the nature and impact of the noncomplying limitations or conditions, or both.

D. Duty to halt, reduce activity or to mitigate.

1. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

2. The permittee shall take all reasonable steps to minimize, correct or prevent any discharge in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment.

E. Structural stability. The structural stability of any of the units or parts of the ~~facilities~~ *treatment works* herein permitted is the sole responsibility of the permittee and the failure of such structural units or parts shall not relieve the permittee of the responsibility of complying with all terms and conditions of this permit.

F. Bypassing. Any bypass ("Bypass" means intentional diversion of waste streams from any portion of a treatment works) of the treatment works here permitted is prohibited.

G. Compliance with state and federal law. Compliance with this permit during its term constitutes compliance with the State Water Control Law and the Clean Water Act. Nothing in this permit shall be construed to preclude the institution of any legal action under, or relieve the permittee from any responsibilities, liabilities, or penalties established pursuant to any other state law or regulation or under authority preserved by § 510 of the Clean Water Act.

H. Property rights. The issuance of this permit does not convey any property rights in either real or personal property, or any exclusive privileges, nor does it authorize any injury to private property or any invasion of personal rights, nor any infringement of federal, state, or local laws or regulations.

I. Severability. The provisions of this permit are severable.

J. Duty to reregister. If the permittee wishes to be eligible to discharge under a general permit after the expiration date of this permit, the permittee must submit a new registration statement at least 60 days prior to the expiration date of this permit.

K. Right of entry. The permittee shall allow authorized state and federal representatives, upon the presentation of credentials:

1. To enter upon the permittee's premises on which the establishment, treatment works, ~~pollutant management activities,~~ or discharge(s) is located or in which any records are required to be kept under the terms and conditions of this permit;

2. To have access to inspect and copy at reasonable times any records required to be kept under the terms and conditions of this permit;

3. To inspect at reasonable times any monitoring equipment or monitoring method required in this permit;

4. To sample at reasonable times any waste stream, discharge, process stream, raw material or by-product; and

5. To inspect at reasonable times any collection, treatment, ~~pollutant management activities~~ or discharge facilities required under this permit.

For purposes of this section, the time for inspection shall be deemed reasonable during regular business hours, and whenever the facility is discharging ~~or involved in managing pollutants~~. Nothing contained here shall make an inspection time unreasonable during an emergency.

L. Transferability of permits. This permit may be transferred to another person by a permittee if:

1. The current owner notifies the ~~board~~ *Department of Environmental Quality Regional Office* 30 days in advance of the proposed transfer of the title to the ~~facility~~ *treatment works* or property;

2. The notice includes a written agreement between the existing and proposed new owner containing a specific date of transfer of permit responsibility, coverage and liability between them; and

3. The ~~board~~ *department* does not within the 30-day time period notify the existing owner and the proposed owner of ~~its~~ *the State Water Control Board's* intent to modify or revoke and reissue the permit.

Such a transferred permit shall, as of the date of the transfer, be as fully effective as if it had been issued directly to the new permittee.

M. Continuation of expired general permits. An expired general permit continues in force and effect until a new general permit is issued. Only those ~~facilities~~ *treatment works* authorized to discharge under the expiring general permit are covered by the continued permit.

N. Public access to information. All information pertaining to permit processing or in reference to any source of discharge of any pollutant, shall be available to the public.

O. Permit modification. The permit may be modified when any of the following developments occur:

1. When a change is made in the promulgated standards or regulations on which the permit was based;

2. When an effluent standard or prohibition for a toxic pollutant must be incorporated in the permit in accordance with provisions of § 307(a) of the Clean Water Act; or

3. When the level of discharge of ~~or management of~~ a pollutant not limited in the permit exceeds applicable Water Quality Standards or Water Quality Criteria, or the level which can be achieved by technology-based treatment requirements appropriate to the permittee.

P. Permit termination. After public notice and opportunity for a hearing, the general permit may be terminated for cause.

Q. When an individual permit may be required. The ~~board~~ *department* may require any owner authorized to discharge under this permit to apply for and obtain an individual permit. Cases where an individual permit may be required include, but are not limited to, the following:

1. The discharger(s) is a significant contributor of pollution.

2. Conditions at the operating facility change altering the constituents or characteristics, or both, of the discharge such that the discharge no longer qualifies for a general permit.

3. The discharge violates the terms or conditions of this permit.

4. A change has occurred in the availability of demonstrated technology or practices for the control or abatement of pollutants applicable to the point source.

5. Effluent limitation guidelines are promulgated for the point sources covered by this permit.

6. A water quality management plan containing requirements applicable to such point sources is approved after the issuance of this permit.

This permit may be terminated as to an individual owner for any of the reasons set forth above after appropriate notice and an opportunity for a hearing.

R. When an individual permit may be requested. Any owner operating under this permit may request to be excluded from the coverage of this permit by applying for an individual permit. When an individual permit is issued to an owner the applicability of this general permit to the individual owner is automatically terminated on the effective date of the individual permit. When a general permit is issued which applies to an owner already covered by an individual permit, such owner may request exclusion from the provisions of the general permit and subsequent coverage under an individual permit.

S. Civil and criminal liability. Nothing in this permit shall be construed to relieve the permittee from civil and criminal penalties for noncompliance.

T. Oil and hazardous substance liability. Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be

subject under § 311 of the Clean Water Act or §§ 62.1-44.34:14 through 62.1-44.34:23 of the Code of Virginia.

U. Unauthorized discharge of pollutants. Except in compliance with this permit, it shall be unlawful for any permittee to:

1. Discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances; or

2. Otherwise alter the physical, chemical or biological properties of such state waters and make them detrimental to the public health, or to animal or aquatic life, or to the uses of such waters for domestic or industrial consumption, or for recreation, or for other uses.

~~FORMS~~

~~Virginia Pollutant Discharge Elimination System General Permit Registration Statement for Domestic Sewage Discharges Less Than or Equal to 1000 Gallons per Day.~~

~~DEQ Water Division Permit Application Fee.~~

~~Local Government Ordinance Form (Revised 8/93).~~

VA.R. Doc. No. R96-224; Filed February 14, 1996, 11:39 a.m.

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.

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

REGISTRAR'S NOTICE: The amendments to the following regulation are exempt from the Administrative Process Act in accordance with § 9-6.14:4.1 C 4 (c) of the Code of Virginia, which excludes regulations that are necessary to meet the requirements of federal law or regulations, provided such regulations do not differ materially from those required by federal law or regulation, and 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. The Department of Medical Assistance Services will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: **State Plan for Medical Assistance Relating to Utilization Review of Case Management for Recipients of Auxiliary Grants.**

12 VAC 30-50-470. Case Management Services for Recipients of Auxiliary Grants.

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

Effective Date: April 4, 1996.

Summary:

The purpose of this action is to amend the plan for medical assistance to make a technical change required by HCFA to the definition of recipients of auxiliary grants. DMAS initially promulgated regulations in 1994 to coincide with the Department of Social Services regulations for adult care residences. Upon review by HCFA, a technical change is required to obtain federal approval for this regulation. The technical change was not made until the Department of Social Services regulations were finalized in case any additional changes were necessary. Because the passage of the Department of Social Services final regulations was delayed until November 16, 1995, DMAS in only now able to determine that only the technical correction initially identified is necessary.

Agency Contact: Copies of the regulation may be obtained from Victoria P. Simmons or Roberta J. Jonas, Regulatory Coordinators, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, Virginia 23219, telephone (804) 371-8850.

~~§ 7.~~ *12 VAC 30-50-470.* Case management for recipients of auxiliary grants.

A. Target group. Recipients of optional state supplements (auxiliary grants) *as defined in 12 VAC 30-40-350 (Attachment 2.6 B)*, who reside in licensed adult care residences.

B. Areas of state in which services will be provided:

☒ Entire state

☐ Only in the following geographic areas (authority of § 1915(g)(1) of the Act is invoked to provide services less than statewide.

C. Comparability of services.

☐ Services are provided in accordance with § 1902(a)(10)(B) of the Act.

☒ Services are not comparable in amount, duration, and scope. Authority of § 1915(g)(1) of the Act is invoked to provide services without regard to the requirements of § 1902(a)(10)(B) of the Act.

D. Definition of services. The case management services will provide assessment, service location, coordination and monitoring for aged, blind and disabled individuals who are applying for or receiving an optional state supplement (auxiliary grant) to pay the cost of residential or assisted living care in a licensed adult care residence in order to facilitate access to and receipt of the most appropriate placement. In addition, the case management services will provide for periodic reassessment to determine whether the placement continues to meet the needs of the recipient of optional state supplement (auxiliary grant) and to arrange for transfer to a more appropriate placement or arrange for supplemental services as the needs of the individual change.

E. Qualifications of providers. A qualified case manager for recipients of auxiliary grants must be a qualified employee of a human service agency as required in § 63.1-25.1 of the Code of Virginia. To qualify as a provider of case management for ~~the elderly~~ *auxiliary grant recipients*, the human service agency:

1. Must employ or contract for case managers who have experience or have been trained in establishing, and in periodically reviewing and revising, individual community care plans and in the provision of case management services to elderly persons and to disabled adults;

2. Must have signed an agreement with the Department of Medical Assistance Services to deliver case management services to aged, blind and disabled recipients of optional state supplements (auxiliary grants);

3. Shall have written procedures for assuring the quality of case management services; *and*

4. Must ensure that claims are submitted for payment only when the services were performed by case managers meeting these qualifications. The case manager must possess a combination of work experience in human services or health care and relevant education which indicates that the individual possesses the following knowledge, skills, and abilities

at entry level. These must be documented on the job application form or supporting documentation.

a. Knowledge of:

(1) Aging;
(2) The impact of disabilities and illnesses on elderly and nonelderly persons;
(3) Conducting client assessments (including psychosocial, health and functional factors) and their uses in care planning;
(4) Interviewing techniques;
(5) Consumers' rights;
(6) Local human and health service delivery systems, including support services and public benefits eligibility requirements;
(7) The principles of human behavior and interpersonal relationships;
(8) Effective oral, written, and interpersonal communication principles and techniques;
(9) General principles of record documentation;
(10) Service planning process and the major components of a service plan.

b. Skills in:

(1) Negotiating with consumers and service providers;

(2) Observing, recording and reporting behaviors;

(3) Identifying and documenting a consumer's needs for resources, services and other assistance;

(4) Identifying services within the established services system to meet the consumer's needs;

(5) Coordinating the provision of services by diverse public and private providers;

(6) Analyzing and planning for the service needs of elderly or disabled persons;

c. Abilities to:

(1) Demonstrate a positive regard for consumers and their families;

(2) Be persistent and remain objective;

(3) Work as a team member, maintaining effective inter- and intra-agency working relationships;

(4) Work independently, performing position duties under general supervision;

(5) Communicate effectively, verbally and in writing;

(6) Develop a rapport and communicate with different types of persons from diverse cultural backgrounds;

(7) Interview.

d. Individuals meeting all the above qualifications shall be considered a qualified case manager; however, it is preferred that the case manager possess a minimum of an undergraduate degree in a human services field, or be a licensed nurse. In addition, it is preferable that the case manager have two years of experience in the human services field working with the aged or disabled.

e. To obtain DMAS payment, the case management provider must maintain in a resident's record a copy of the resident's assessment, plan of care, all reassessments, and documentation of all contacts, including but not limited to face-to-face contacts with the resident, made in regard to the resident.

F. The state assures that the provision of case management services will not restrict an individual's free choice of providers in violation of § 1902(a)(23) of the Act.

G. Payment for case management services under the plan does not duplicate payments made to public agencies or private entities under other program authorities for this same purpose.

H. Payment for case management services is limited to no more than one visit during each calendar quarter. In order to bill for case management services during a calendar quarter, the case manager must comply with the documentation requirements of subdivision E 4 e of this section and have documented contact with the resident during that quarter.

VIRGINIA UNIFORM ASSESSMENT INSTRUMENT

Dates: Screen: ___ ___ ___
Assessment: ___ ___ ___
Reassessment: ___ ___ ___

1b. IDENTIFICATION/BACKGROUND

Name & Vital Information

Client Name: _____ Client SSN: ___ - ___ - ____
(Last) (First) (Middle Initial)

Address: _____
(Street) (City) (State) (Zip Code)

Phone: ( ) _____ City/County Code: ___ ___ ___

Directions to House:

Pets?

Demographics

Birthdate: ___/___/___ Age: _____ Sex: ___ Male 1 ___ Female 2
(Month) (Day) (Year)

Marital Status: ___ Married 0 ___ Widowed 1 ___ Separated 2 ___ Divorced 3 ___ Single 4 ___ Unknown 9

Race:
___ White 0
___ Black/African American 1
___ American Indian 2
___ Oriental/Asian 3
___ Alaskan Native 4
___ Unknown 9 _____

Ethnic Origin: _____

Education:
___ Less than High School 0
___ Some High School 1
___ High School Graduate 2
___ Some College 3
___ College Graduate 4
___ Unknown 9

Communication of Needs:
___ Verbally English 0
___ Verbally, Other Language 1
Specify _____
___ Sign Language/Gestures/Device 2
___ Does Not Communicate 3
Hearing Impaired? ___

Specify: _____

Primary Caregiver/Emergency Contact/Primary Physician

Name: _____ Relationship: _____

Address: _____ Phone: H ___ W ___

Name: _____ Relationship: _____

Address: _____ Phone: H ___ W ___

Name of Primary Physician: _____ Phone: ___ - ___ - ____

Address: _____

Initial Contact

Who called: _____
(Self) (Relative/Friend) (Other)

Presenting Problem/Diagnosis:

CLIENT NAME: _____ Client SSN: ___ - ___ - ____

Current Formal Services

Do you currently use any of the following types of services?

No 0	Yes 1	Check All Services That Apply	Provider/Frequency:
___	___	Adult Day Care	
___	___	Adult Protective	
___	___	Case Management	
___	___	Chore, Companion/ Homemaker	
___	___	Congregate Meals/Senior Center	
___	___	Financial Management/Counseling	
___	___	Friendly Visitor/Telephone Reassurance	
___	___	Habilitation/Supported Employment	
___	___	Home Delivered Meals	
___	___	Home Health/Rehabilitation	
___	___	Home Repairs/Weatherization	
___	___	Housing	
___	___	Legal	
___	___	Mental Health (Inpatient/Outpatient)	
___	___	Mental Retardation	
___	___	Personal Care	
___	___	Respite	
___	___	Substance Abuse	
___	___	Transportation	
___	___	Vocational Rehab/Job Counseling	
___	___	Other: _____	

Financial Resources

Where are you on this scale for annual (monthly) family income before taxes?

___ $20,000 or More ($1,667 or More) 0
___ $15,000 - $19,999 ($1,250 - $1,666) 1
___ $11,000 - $14,999 ($ 917 - $1,249) 2
___ $ 9,500 - $10,999 ($ 792 - $ 916) 3
___ $ 7,000 - $ 9,499 ($ 583 - $ 791) 4
___ $ 5,500 - $ 6,999 ($ 458 - $ 582) 5
___ $ 5,499 or Less ($ 457 or Less) 6
___ Unknown 9

Number in Family Unit: _____

Optional: Total monthly family income: _____

Do you currently receive income from . . . ?

No 0	Yes 1		Optional Amount
___	___	Black Lung	
___	___	Pension	
___	___	Social Security	
___	___	SSI/SSDI	
___	___	VA Benefits	
___	___	Wages/Salary	
___	___	Other	

Does anyone cash your check, pay your bills or manage your business?

No 0	Yes 1		Names
___	___	Legal Guardian	
___	___	Power of Attorney	
___	___	Representative Payee	
___	___	Other	

Do you receive any benefits or entitlements?

No 0	Yes 1	
___	___	Auxiliary Grant
___	___	Food Stamps
___	___	Fuel Assistance
___	___	Garnered Relief
___	___	State and Local Hospitalization
___	___	Subsidized Housing
___	___	Tax Relief

What types of health insurance do you have?

No 0	Yes 1	
___	___	Medicare, #
___	___	Medicaid, #
		Other ___ No 0 ___ Yes 1
		Other ___ No 0 ___ Yes 1

CLIENT NAME: Client SSN: - -

Physical Environment

Where do you usually live? Does anyone live with you?

	Alone 1	Spouse 2	Other 1	Names of Persons in Household
___ House: Own 0				
___ House: Rent 1				
___ House: Other 2				
___ Apartment 3				
___ Rented Room 4				

	Name of Provider (If Any)	Admission Date	Provider Number (If Applicable)
___ Adult Care Residence 50			
___ Adult Foster 60			
___ Nursing Facility 70			
___ Mental Health/ Retardation Facility 80			
___ Other 90			

Where you usually live, are there any problems?

No 0	Yes 1	Check All Problems That Apply:
___	___	Barriers to Access
___	___	Electrical Hazards
___	___	Fire Hazards No Smoke Alarm
___	___	Insufficient Heat Air Conditioning
___	___	Insufficient Hot Water Water
___	___	Lack of Poor Toilet Facilities Inside Outside
___	___	Lack of Defective Stove Refrigerator Freezer
___	___	Lack of Defective Water Drain
___	___	Lack of Poor Bathing Facilities
___	___	Structural Problems
___	___	Help Is Not Accessible
___	___	Unsafe Neighborhood
___	___	Unsafe Poor Lighting
___	___	Unsanitary Overall
___	___	Other

Describe Problems:

CLIENT NAME: Client SSN: - -

2 FUNCTIONAL STATUS (Check only one block for each level of functioning)

	Needs Help?	MH Only 10 Mechanical Help	HH Only 2 Human Help	MH & HH 3	Performed by Others 40	Is Not Performed 50
	No 0 Yes 1		Supervision 1 / Physical Assistance 2	Supervision 1 / Physical Assistance 2		
Bathing						
Dressing						
Toileting						
Transferring						
					Spoon / Syringe / Fed by Fed Tube Fed / IV	
Eating/Feeding						

	Needs Help?	Incontinent Less than weekly 1	External Device/ (Indwelling/ Ostomy Self-care 2	Incontinent Weekly or more 3	External Device Not self-care 4	Indwelling Catheter Not self-care 5	Ostomy Not self-care 6
	No 0 Yes 1						
Bowel							
Bladder							

Comments:

	Needs Help?	MH Only 10 Mechanical Help	HH Only 2 Human Help	MH & HH 3	Performed by Others 40	Is Not Performed 50
	No 0 Yes 1		Supervision 1 / Physical Assistance 2	Supervision 1 / Physical Assistance 2		
Walking						
Wheeling						
Stair Climbing						
					Continued Does Not Refuse	Continued Does Not Refuse Above
Mobility						

	Needs Help?
	No 0 Yes 1
Meal Preparation	
Housekeeping	
Laundry	
Money Management	
Transportation	
Shopping	
Using Phone	

Comments:

Outcome: Is this a short assessment?

___ No, Continue with Section 4 0 ___ Yes, Service Referrals 1 ___ Yes, Not Service Referrals 2

CLIENT NAME: Client SSN: - -

❸ PHYSICAL HEALTH ASSESSMENT

Professional Visits/Medical Admissions

Doctor's Name(s) (List All)	Phone	Date of Last Visit	Reason for Last Visit

Admissions: In the past 12 months, have you been admitted to a . . . for medical or rehabilitation reasons?

No 0	Yes 1		Name of Place	Admit Date	Length of Stay/Reason
		Hospital			
		Nursing Facility			
		Adult Care Residence			

Do you have any advanced directives such as . . . (Who has it . . . Where is it . . .)?

No 0	Yes 1		Location
___	___	Living Will,	
___	___	Durable Power of Attorney for Health Care,	
___	___	Other,	

Diagnoses & Medication Profile

Do you have any current medical problems, or a known or suspected diagnosis of mental retardation or related conditions, such as . . . (Refer to the list of diagnoses)?

Current Diagnoses — Date of Onset

Enter Codes for 3 Major, Active Diagnoses: ___ None (0) ___ DX1 ___ DX2 ___ DX3

	Current Medications (Include Over-the-Counter)	Dose, Frequency, Route	Reason(s) Prescribed
1.			
2.			
3.			
4.			
5.			
6.			
7.			
8.			
9.			
10			

Total No. of Medications: ___ (Refer to Sensory Functions) Total No. of Tranquilizer/Psychotropic Drugs: ___

Do you have any problems with medicine(s) . . . ?

No 0	Yes 1	
___	___	Adverse reactions/allergies
___	___	Cost of medication
___	___	Getting to the pharmacy
___	___	Taking them as instructed - Prescribed
___	___	Understanding directions - Juvenile

How do you take your medicine(s)?

- ___ Without assistance 0
- ___ Administered/monitored by 1 lay person 1
- ___ Administered/monitored by professional nursing staff 2

Describe help: _____

Name of Helper: _____

Diagnoses:
Alcoholism/Substance Abuse (02)
Blood-Related Problems (03)
Cancer (04)
Cardiovascular Problems
Circulation (04)
Heart Trouble (05)
High Blood Pressure (06)
Other Cardiovascular Problems (07)
Dementia
Alzheimer's (08)
Non-Alzheimer's (09)
Developmental Disabilities
Mental Retardation (10)
Related Conditions
Autism (11)
Cerebral Palsy (12)
Epilepsy (13)
Friedreich's Ataxia (14)
Multiple Sclerosis (15)
Muscular Dystrophy (16)
Spina Bifida (17)
Digestive/Liver/Gall Bladder (19)
Endocrine (Gland) Problems
Diabetes (20)
Other Endocrine Problems (21)
Eye Disorders (22)
Immune System Disorders (23)
Muscular/Skeletal
Arthritis or Rheumatoid Arthritis (24)
Osteoporosis (25)
Other Muscular/Skeletal Problems (26)
Neurological Problems
Head Trauma (Brain Injury) (27)
Spinal Cord Injury (28)
Stroke (29)
Other Neurological Problems (30)
Psychiatric Problems
Anxiety Disorders (31)
Autism (32)
Major Depression (33)
Personality Disorder (34)
Schizophrenia (35)
Other Psychiatric Problems (36)
Respiratory Problems
Asthma (37)
COPD (38)
Tuberculosis (39)
Other Respiratory Problems (40)
Urinary/Reproductive Problems
Renal Failure (41)
Other Urinary/Reproductive Problems (42)
(Urinary Incontinence (43))

CLIENT NAME: Client SSN: - -

Sensory Functions

How is your vision, hearing, and speech?

	No Impairment 0	Impairment Record Date of Onset/Type of Impairment		Complete Loss 3	Date of Last Exam
		Compensation 1	No Compensation 2		
Vision					
Hearing					
Speech					

Physical Status

Joint Motion: How is your ability to move your arms, fingers and legs?

- ___ Within normal limits or instability corrected 0
- ___ Limited motion 1
- ___ Instability uncorrected or immobile 2

Have you ever broken or dislocated any bones . . . Ever had an amputation or lost any limbs . . . Lost voluntary movement of any part of your body?

Fractures/Dislocations	Missing Limbs	Paralysis/Paresis
___ None 000	___ None 000	___ None 000
___ Hip Fracture 1	___ Finger(s)/Toe(s) 1	___ Partial 1
___ Other Broken Bone(s) 2	___ Arm(s) 2	___ Total 2
___ Dislocation(s) 3	___ Leg(s) 3	Describe: _____
___ Combination 4	___ Combination 4	_____
Previous Rehab Program?	**Previous Rehab Program?**	**Previous Rehab Program?**
___ No/Not Completed 1	___ No/Not Completed 1	___ No/Not Completed 1
___ Yes 2	___ Yes 2	___ Yes 2
Date of Fracture/Dislocation?	**Date of Amputation?**	**Onset of Paralysis?**
___ 1 Year or Less 1	___ 1 Year or Less 1	___ 1 Year or Less 1
___ More than 1 Year 2	___ More than 1 Year 2	___ More than 1 Year 2

Nutritional

Height: _____ (inches) Weight: _____ (lbs) Recent Weight Gain/Loss: ___ No 0 ___ Yes 1

Describe: _____

Are you on any special diet(s) for medical reasons?

- ___ None 0
- ___ Low Fat/Cholesterol 1
- ___ No/Low Salt 2
- ___ No/Low Sugar 3
- ___ Combination/Other 4

Do you take dietary supplements?

- ___ None 0
- ___ Occasionally 1
- ___ Daily, Not Primary Source 2
- ___ Daily, Primary Source 3
- ___ Daily, Sole Source 4

Do you have any problems that make it hard to eat?

No 0	Yes 1	
___	___	Food Allergies
___	___	Inadequate Food/Fluid Intake
___	___	Nausea/Vomiting/Diarrhea
___	___	Problems Eating Certain Foods
___	___	Problems Following Special Diets
___	___	Problems Swallowing
___	___	Taste Problems
___	___	Tooth or Mouth Problems
___	___	Other: _____

CLIENT NAME: Client SSN: - -

Current Medical Services

Rehabilitation Therapies: Do you get any therapy prescribed by a doctor, such as . . . ?

No 0 Yes 1 *Frequency*

___ ___ Occupational ___
___ ___ Physical ___
___ ___ Reality/Remotivation ___
___ ___ Respiratory ___
___ ___ Speech ___
___ ___ Other ___

Do you have any pressure ulcers?

___ None 0 *Location/Size*
___ Stage I 1 ___
___ Stage II 2 ___
___ Stage III 3 ___
___ Stage IV 4 ___

Special Medical Procedures: Do you receive any special nursing care, such as . . . ?

No 0 Yes 1 *Site, Type, Frequency*

___ ___ Bowel/Bladder Training ___
___ ___ Dialysis ___
___ ___ Dressing, Wound Care ___
___ ___ Eyecare ___
___ ___ Glucose Blood Sugar ___
___ ___ Injections/IV Therapy ___
___ ___ Oxygen ___
___ ___ Radiation/Chemotherapy ___
___ ___ Restraints (Physical/Chemical) ___
___ ___ ROM Exercise ___
___ ___ Trach Care/Suctioning ___
___ ___ Ventilator ___
___ ___ Other ___

Medical/Nursing Needs

Based on client's overall condition, assessor should evaluate medical and/or nursing needs.

Are there ongoing medical/nursing needs? ___ No 0 ___ Yes 1

If yes, describe ongoing medical/nursing needs:

1. Evidence of medical instability
2. Need for observation/assessment to prevent destabilization
3. Complexity created by multiple medical conditions
4. Why client's condition requires a physician, RN, or trained nurse's aide to oversee care on a daily basis.

Comments:

Optional - Physician's Signature _____ Date _____

Other Date

CLIENT NAME: Client SSN: - -

4 PSYCHO-SOCIAL ASSESSMENT

Cognitive Functions

Orientation *(Note: Information in italics is optional and can be used to give a MMSE Score in the box to the right.)*

Person: Please tell me your full name (so that I can make sure our record is correct).

Place: **Where are we now** *(state, county, town, street/route number, street name/box number)?* *Give the client 1 point for each correct response.*

Time: **Would you tell me the date today** *(year, season, date, day, month)?*

___ Oriented 0
___ Disoriented - Some spheres, some of the time 1
___ Disoriented - Some spheres, all the time 2
___ Disoriented - All spheres, some of the time 3
___ Disoriented - All spheres, all of the time 4
___ Comatose 5

Spheres affected: ___

Optional: **MMSE Score**

(5) ___
(5) ___
(3) ___
(5) ___

Total: ___

Note: Score of 14 or below implies cognitive impairment

Recall/Memory/Judgement

Recall: **I am going to say three words, and I want you to repeat them after I am done (House, Bus, Dog).** ✪ Ask the client to repeat them. *Give the client 1 point for each correct response on the first trial.* ✪ Repeat up to 6 trials until client can name all 3 words. Tell the client to hold them in his mind because you will ask him again in a minute or so what they are.

Attention/ Concentration: *Spell the word "WORLD". Then ask the client to spell it backwards. Give 1 point for each correctly placed letter (DLROW).*

Short-Term: ✪ Ask the client to recall the 3 words he was to remember.

Long-Term: **When were you born** (What is your date of birth)?

Judgement: **If you needed help at night, what would you do?**

No 0 Yes 1

___ ___ Short-Term Memory Loss?
___ ___ Long-Term Memory Loss?
___ ___ Judgement Problem?

Behavior Patterns

Does the client ever wander without purpose (trespass, get lost, go into traffic, etc.) **or become agitated and abusive?**

___ Appropriate 0
___ Wandering/Passive - Less than weekly 1
___ Wandering/Passive - Weekly or more 2
___ Abusive/Aggressive/Disruptive - Less than weekly 3
___ Abusive/Aggressive/Disruptive - Weekly or more 4
___ Comatose 5

Type of inappropriate behavior: ___ Source of information: ___

Life Stressors

Are there any stressful events that currently affect your life, such as . . . ?

No 0 Yes 1

___ ___ Change in work/employment
___ ___ Death of someone close
___ ___ Financial problems
___ ___ Major illness - family/friend
___ ___ Victim of a crime
___ ___ Failing health

CLIENT NAME: Client SSN: - -

Emotional Status

In the past month, how often did you . . . ?	Rarely/ Never 0	Some of the Time 1	Often 2	Most of the Time 3	Unable to Assess 9
Feel anxious or worry constantly about things?					
Feel irritable, have crying spells or get upset over little things?					
Feel alone and that you didn't have anyone to talk to?					
Feel like you didn't want to be around other people?					
Feel afraid that something bad was going to happen to you and/or feel that others were trying to take things from you or trying to harm you?					
Feel sad or hopeless?					
Feel that life is not worth living . . . or think of taking your life?					
See or hear things that other people did not see or hear?					
Believe that you have special powers that others do not have?					
Have problems falling or staying asleep?					
Have problems with your appetite . . . that is, eat too much or too little?					

Comments:

Social Status

Are there some things that you do that you especially enjoy?

No 0 Yes 1 *Describe*

___ ___ Solitary Activities. _____

___ ___ With Friends/Family. _____

___ ___ With Groups/Clubs. _____

___ ___ Religious Activities. _____

How often do you talk with your children, family or friends, either during a visit or over the phone?

Children	Other Family	Friends/Neighbors
___ No Children 1	___ No Other Family 0	___ No Friends/Neighbors 0
___ Daily 1	___ Daily 1	___ Daily 1
___ Weekly 2	___ Weekly 2	___ Weekly 2
___ Monthly 3	___ Monthly 3	___ Monthly 3
___ Less than Monthly 4	___ Less than Monthly 4	___ Less than Monthly 4
___ Never 5	___ Never 5	___ Never 5

Are you satisfied with how often you see or hear from your children, other family and/or friends?

CLIENT NAME: Client SSN: - -

Hospitalization/Alcohol-Drug Use

Have you been hospitalized or received inpatient/outpatient treatment in the last 2 years for nerves, emotional/mental health, alcohol or substance abuse problems?

___ No 0 ___ Yes 1

Name of Place	Admit Date	Length of Stay/Reason

Do (did) you ever drink alcoholic beverages?

___ Never 0
___ At one time, but no longer 1
___ Currently 2
How much: _____
How often: _____

Do (did) you ever use non-prescription, mood altering substances?

___ Never 0
___ At one time, but no longer 1
___ Currently 2
How much: _____
How often: _____

If the client has never used alcohol or other non-perscription, mood altering substances, skip to the tobacco question.

Have you, or someone close to you, ever been concerned about your use of alcohol/other mood altering substances?

___ No 0 ___ Yes 1

Describe concerns: _____

Do (did) you ever use alcohol/other mood-altering substances with...

No 0 Yes 1

___ ___ Prescription drugs?
___ ___ OTC medicine?
___ ___ Other substances?

Describe what and how often:

Do (did) you ever use alcohol/other mood-altering substances to help you...

No 0 Yes 1

___ ___ Sleep?
___ ___ Relax?
___ ___ Get more energy?
___ ___ Relieve worries?
___ ___ Relieve physical pain?

Describe what and how often:

Do (did) you ever smoke or use tobacco products?

___ Never 0
___ At one time, but no longer 1
___ Currently 2
How much: _____
How often: _____

Is there anything we have not talked about that you would like to discuss?

CLIENT NAME: Client SSN: - -

5 ASSESSMENT SUMMARY

Indicators of Adult Abuse and Neglect: While completing the assessment, if you suspect abuse, neglect or exploitation, you are required by Virginia law, Section 63.1 - 55.3 to report this to the local Department of Social Services, Adult Protective Services.

Caregiver Assessment

Does the client have an informal caregiver?

___ No 0 (Skip to Section on Preferences) ___ Yes 1

Where does the caregiver live?

___ With client 0
___ Separate residence, close proximity 1
___ Separate residence, over 1 hour away 2

Is the caregiver's help . . .

___ Adequate to meet the client's needs? 0
___ Not adequate to meet the client's needs? 1

Has providing care to the client become a burden for the caregiver?

___ Not at all 0
___ Somewhat 1
___ Very much 2

Describe any problems with continued caregiving:

Preferences

Client's preferences for receiving needed care: _____

_____

_____

Family-Representative's preferences for client's care: _____

_____

_____

Physician's comments (if applicable): _____

_____

CLIENT NAME: Client SSN: - -

Client Case Summary

Primary Needs

No 0	Yes 1	(Check All That Apply)	No 0	Yes 1	(Check All That Apply)
___	___	Finances	___	___	Assistive Devices/Medical Equipment
___	___	Home/Physical Environment	___	___	Medical Care/Health
___	___	ADLS	___	___	Nutrition
___	___	IADLS	___	___	Cognitive/Emotional
			___	___	Caregiver Support

Assessment Completed By:

Assessor's Name	Signature	Agency/Provider Name	Provider#	Section(s) Completed

COMMONWEALTH of VIRGINIA

VIRGINIA CODE COMMISSION
General Assembly Building

910 CAPITOL STREET
RICHMOND, VIRGINIA 23219
(804) 786-3591

February 21, 1996

Robert C. Metcalf, Director
Department of Medical Assistance Services
600 East Broad Street, Suite 1300
Richmond, VA 23219

Dear Mr. Metcalf:

This letter acknowledges receipt of 12 VAC 30-50-470 (VR 460-03-3.1102), Case Management for Recipients of Auxiliary Grants, from the Department of Medical Assistance Services.

As required by § 9-6.14:4.1 C 4(c) of the Code of Virginia, I have determined that these regulations are exempt from the operation of Article 2 of the Administrative Process Act since they do not differ materially from those required by federal law.

Sincerely,

E. M. Miller, Jr. /jc

E. M. Miller, Jr.
Acting Registrar of Regulations

VA.R. Doc. No. R96-221; Filed February 13, 1996, 2:29 p.m.

BOARD OF VETERINARY MEDICINE

Title of Regulation: ~~VR 645-01-1.~~ ***18 VAC 150-20-10 et seq.*** **Regulations Governing the Practice of Veterinary Medicine.**

Statutory Authority: §§ 54.1-2400 and 54.1-3800 et seq. of the Code of Virginia.

Effective Dates: February 6, 1996, through February 5, 1997.

Statement That Emergency Regulation is Necessary:

Emergency regulations are essential because Chapter 99 of the 1995 Acts of the Assembly (clause 2) provides "That the Board of Veterinary Medicine shall adopt regulations providing for the continuing education of veterinarians and veterinary technicians and for the approval of continuing education courses and organizations within 280 days of the effective date of this act [July 1, 1995]."

Proposed regulations are not exempt from the Administrative Process Act under the provisions of subdivision C 4 of § 9-6.14:4.1 because there is agency discretion involved in the establishment of criteria for the approval of continuing education.

In an effort to meet the 280-day requirement of the Code and thus avoid the necessity for Emergency Regulations, the Board submitted a Pre-NOIRA package to the Department of Planning and Budget and the Secretary of Health and Human Resources on April 11, 1995. Permission to publish a Notice of Intended Regulatory Action was received on November 1, 1995 and will appear in the Register on November 27, 1995. Therefore, it is now not feasible for the Board to complete the requirements of the Administrative Process Act and Executive Order Thirteen within the mandated 280 days.

The Board adopted the Emergency Regulation on October 10, 1995 and has determined that it should become effective on January 1, 1996 in order to give licensees one full year to comply with the statute's effective date of January 1, 1997.

Because licensees must certify to having completed courses for renewal in February 1997 for the year preceding renewal of licensure, it is important that criteria for continuing education be promulgated now. This will allow for orderly and less burdensome regulation on licensees.

18 VAC 150-20-10 et seq. Regulations Governing the Practice of Veterinary Medicine.

PART I.
GENERAL PROVISIONS.

~~§ 1.1.~~ *18 VAC 150-20-10.* Definitions.

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

"Animal facility" or *"veterinary facility"* means any fixed or mobile establishment, veterinary hospital, animal hospital or premises wherein or whereon or out of which veterinary medicine is practiced.

"Automatic emergency lighting" is lighting which is powered by battery, generator, or alternate power source other than electrical power, is activated automatically by electrical power failure, and provides sufficient light to complete surgery or to stabilize the animal until surgery can be continued or the animal moved to another facility.

"Board" means the Virginia Board of Veterinary Medicine.

"Controlled substance" means a drug, substance, or immediate precursor in Schedules I through VI of Article 5, *(§ 54.1-3443 et seq.) of* Chapter 34, *of* Title 54.1 of the Code of Virginia, which includes legend drugs that bear the warning "Caution, Federal Law restricts this drug to use by or on the order of a licensed veterinarian."

"Full service facility" means a stationary facility which shall provide surgery and encompass all aspects of health care for small or large animals or both.

"Inactive practitioner" means a veterinarian currently licensed by the board but not engaged in the practice of veterinary medicine in the Commonwealth.

"Large animal ambulatory facility" means a mobile practice in which health care of large animals, including surgery, is performed at the location of the animal.

"Practitioner" means a veterinarian currently licensed by the board.

"Preceptorship" or *"clerkship"* means a formal arrangement between a college of veterinary medicine approved by the board and a veterinarian licensed by the board, in which a veterinary medical student in his final year, enrolled in such college, obtains practical training in the practice of veterinary medicine under the immediate and direct on-premises supervision of the veterinarian.

"Professional judgment" includes any decision or conduct in the practice of veterinary medicine, as defined by § 54.1-3800 of the Code of Virginia.

"Schools or colleges accredited by the AVMA" means schools accredited by the American Veterinary Medical Association.

"Small animal house call facility" means a mobile practice in which health care of small animals is performed at the residence of the owner of the small animal.

"Small animal outpatient facility" means a stationary facility where health care of small animals is performed and may include surgery under certain conditions. Overnight hospitalization shall not be required.

"Surgery" means any invasive or manipulative procedure that requires anesthesia, sedation, or other restraint.

"Surgical lighting" is lighting which is designed to give off a concentrated light source, not give off harmful heat, is movable over the entire surface of the surgical table, and is shielded to prevent glass shatter.

"Veterinarian in charge" means the licensed veterinarian at each registered animal facility who is responsible for maintaining the facility within the standards for facilities set by the regulations, for complying with federal and state drug laws, and for notifying the board of the facility's closure.

"Veterinary technician" means a licensed animal technician as defined in § 54.1-3806 of the Code of Virginia.

~~§ 1.2.~~ *18 VAC 150-20-20.* Public participation guidelines.

A. Mailing list. The executive director of the board shall 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 proceeding," the subject of which is proposed or existing regulations.

3. Final regulations adopted.

B. Being placed on or deleted from list. Any person wishing to be placed on the mailing list may do so by writing the board. In addition, the board at its discretion, may add to the list any person, organization, or publication it believes will serve the purpose of responsible participation in the formulation or promulgation of regulations. Those on the list may be provided all information stated in subsection A of this section.

Those on the list may be periodically requested to indicate their desires 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 to conduct an informational proceeding as required by § 9-6.14:1 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 or the problem the regulation would address and invite any person to provide written comment on the subject matter. Such notice shall be transmitted to the Registrar of Regulations for inclusion in the Virginia Register of Regulations.

D. Informational 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 of Regulations for inclusion in the Virginia Register of Regulations. Such proceeding 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 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 of Regulations for inclusion in the Virginia Register of Regulations.

G. Advisory committees. The board may appoint advisory committees as it may deem necessary to provide for adequate citizen participation in the formulation, promulgation, adoption and review of regulations.

~~§ 1.3.~~ *18 VAC 150-20-30.* Register of practitioners, veterinary technicians and animal facilities.

A. Register of practitioners and veterinary technicians. The executive director as directed by the board shall record in a book to be kept for such purposes, the names of all practitioners of veterinary medicine and holders of certificates as veterinary technicians to whom licenses or certificates are issued as provided by law. The book shall be styled and recognized as the register of practitioners of veterinary medicine and holders of licenses as veterinary technicians in Virginia and it shall be admissible in evidence as a regularly kept record of the board. Such register shall be available for inspection during business hours in the board office. The board shall insert in the register any alteration in the name of any licensed person as it receives proof satisfactory to the board. A separate record shall be maintained of all addresses.

B. Register of animal facilities. The executive director of the board shall record in a book to be kept for such purposes the names of all animal facilities. Such book shall list the name and permit number of the animal facility and shall be admissible in evidence as a regularly kept record of the board.

C. Accuracy of address. It shall be the duty and responsibility of each licensee and holder of a registration permit to operate an animal facility to keep the board apprised at all times of his current address. All notices required by law or by ~~these regulations~~ *this chapter* to be mailed to any veterinarian, veterinary technician, or holder of a permit to operate an animal facility, shall be validly given when mailed to the address furnished to the board pursuant to this regulation. All address changes shall be furnished to the board within 30 days of such change.

~~§ 1.4.~~ *18 VAC 150-20-40.* Filing date.

Completed applications for licensure shall be filed with the board office at least 45 days prior to the announced date of the examination.

~~§ 1.5.~~ *18 VAC 150-20-50.* Records.

All completed applications and supporting papers submitted to the board with the application become a part of the applicant's examination records and become the property of the board.

~~§ 1.6.~~ *18 VAC 150-20-60.* Issuance of licenses.

The board shall issue to each applicant who fulfills the requirements for licensure as a veterinarian or a veterinary technician a license as appropriate. Each license shall be

subscribed by the president and secretary of the board and shall have affixed to it the seal of the board.

~~§ 1.7.~~ *18 VAC 150-20-70.* Renewal requirements.

A. Every person authorized by the board to practice veterinary medicine shall, before March 1 of every year, pay to the board a renewal fee as prescribed in ~~§ 1.10 of these regulations~~ *18 VAC 150-20-100* and every holder of a license of veterinary technology shall, in a like manner, pay a renewal fee as prescribed in ~~§ 1.10~~ *18 VAC 150-20-100.*

1. The board shall mail to each licensed person a notice to renew his license prior to the expiration of the license.

2. It shall be the responsibility of each person so licensed to return the renewal application with the prescribed fee so that it will be received by the board prior to the expiration date of his license. Failure to renew shall cause the license to lapse and become invalid.

3. A veterinarian's or veterinary technician's license may be renewed up to one year after the expiration date, provided a late fee as prescribed in ~~§ 1.10~~ *18 VAC 150-20-100* is paid in addition to the required renewal fee and further provided that the veterinarian or veterinary technician has not intentionally engaged in practice in Virginia after the expiration date of the license.

4. Reinstatement of licenses expired for one year or more shall be at the discretion of the board. The board shall require documentation of clinical competency and professional activities, and may require examination in addition to the prescribed reinstatement fee and the current renewal fee as conditions for reinstatement of a license.

B. On and after March 1, 1997, Virginia law requires veterinarians to have completed a minimum of 15 hours, and veterinary technicians shall be required to have completed a minimum of 6 hours of approved continuing education for each annual renewal of licensure. Continuing education credits or hours may not be transferred or credited to another year.

1. Approved continuing education credit shall be given for courses or programs related to the treatment and care of patients or the operation of a veterinary hospital and shall be either clinical courses in Veterinary Medicine or Veterinary Technology or related non-clinical courses.

2. An approved continuing education course or program shall be sponsored by one of the following:

a) American Veterinary Medical Association (AVMA) or its constituent and component/branch associations, specialty organizations, and board certified specialists in good standing within their specialty board;

b) Colleges of Veterinary Medicine approved by the AVMA Council on Education;

c) National or regional conferences of Veterinary Medicine;

d) Academies or species specific interest groups of veterinary medicine;

e) National Association of Licensed Veterinary Technicians (NALVT) or its constituent and component/branch associations;

f) North American Veterinary Technicians Association;

g) Community colleges with an approved program in Veterinary Technology;

h) State or federal government agencies;

i) Veterinary Hospital Managers Association or its constituent and component/branch associations;

j) American Animal Hospital Association (AAHA) or its constituent and component/branch associations;

k) The Compendium on Continuing Education for the Practice of Veterinary Medicine or The Compendium on Continuing Education for the Practice of Veterinary Technology; or

l) A sponsor approved by the Virginia Board of Veterinary Medicine provided the sponsor has submitted satisfactory documentation on forms provided by the Board at least 60 days prior to the program offering.

3. A licensee is exempt from completing continuing education requirements and considered in compliance on the first renewal date following his initial licensure.

4. The Board may grant an exemption for all or part of the continuing education requirements due to circumstances beyond the control of the licensee, such as temporary disability, mandatory military service, or officially declared disasters.

5. The Board may grant an extension for good cause of up to one year for the completion of continuing education requirements upon written request from the licensee prior to the renewal date. Such an extension shall not relieve the licensee of the continuing education requirement.

6. Licensees are required to attest to compliance with continuing education requirements on their annual license renewal and are required to maintain original documents verifying the date and subject of the program or course, the number of hours or credits, and certification from an approved sponsor. Original documents must be maintained at the location where the original license is posted for a period of two years following renewal.

7. A licensee who has requested that his license be placed on inactive status, has allowed his license to lapse, or has had his license suspended or revoked must submit evidence of completion of continuing education hours equal to the requirements for the number of years in which his license has not been active, but not to exceed two years.

8. Continuing education hours required by disciplinary order shall not be used to satisfy renewal requirements.

9. Failure to comply with the requirements of this section shall constitute unprofessional conduct.

~~B.~~ *C.* A new facility shall apply for registration with the board at least 60 days prior to opening for practice and pay to the board a registration fee as prescribed in ~~§ 1.10~~ *18 VAC 150-20-100* at the time of application.

1. Every such animal facility so registered shall be required to renew the registration permit annually and pay to the board a registration fee as prescribed in § ~~1.10 of these regulations~~ *18 VAC 150-20-100.*

2. Failure to renew the facility permit by March 1 of each year shall cause the permit to expire and become invalid. The permit may be reinstated without reinspection, within 60 days of expiration, provided the board receives a properly executed renewal application and a late fee as prescribed in ~~§ 1.10~~ *18 VAC 150-20-100* in addition to the required renewal fee. Reinstatement of an expired permit after 60 days shall be at the discretion of the board and contingent upon a reinspection and payment of the late fee, the reinspection fee, the renewal fee and the facility reinstatement fee.

3. Every new animal facility or an animal facility which changes location shall be inspected, approved and registered by the board prior to opening for the practice of veterinary medicine. Applications are to be made at least 60 days prior to the proposed opening date of the animal facility. If more than one inspection is required for approval, the reinspection fee shall be imposed for each additional inspection.

~~§ 1.8.~~ *18 VAC 150-20-80.* Licenses and registrations to be displayed.

A. Veterinarians.

1. Each licensed veterinarian shall publicly post his current Virginia license to practice veterinary medicine in the facility where he practices.

2. Each licensed veterinarian administering, prescribing or dispensing Schedule II-V drugs shall obtain and maintain on the premises a controlled substances registration certificate from the Virginia Board of Pharmacy as required by § 54.1-3422 of the Code of Virginia.

B. Veterinary technicians. Each licensed veterinary technician shall publicly post his current Virginia license as a veterinary technician at the facility of the employing veterinarian.

C. Animal facilities. Each animal facility shall publicly post the current Virginia registration permit to operate such a faciiity.

~~§ 1.9.~~ *18 VAC 150-20-90.* Reinstatement.

Any person who has had his license or permit suspended or revoked as herein provided may, at any time, apply to the board for relicensure or reregistration. Accordingly, such person may petition the board for a hearing, and the provisions of the Administrative Process Act shall apply.

~~§ 1.10.~~ *18 VAC 150-20-100.* Fees.

Veterinary examination fee	$125
Veterinary license fee (active)	125
Initial veterinary license fee for October exam (active)	65
Veterinary license fee (inactive)	50
Veterinary license renewal late fee	25
Veterinarian reinstatement fee	250
Veterinary technician national board examination fee	75
Veterinary technician state board examination fee	25
Veterinary technician license fee	25
Veterinary technician license renewal late fee	25
Veterinary technician reinstatement fee	50
Initial animal facility permit registration fee	100
Animal facility renewal fee	50
Animal facility renewal late fee	25
Animal facility reinstatement fee	100
Animal facility reinspection fee	100
Animal facility--change of location fee	100
Animal facility--change of veterinarian-in-charge fee	20
Duplicate certificate fee	20

PART II.
VETERINARIANS.

~~§ 2.1.~~ *18 VAC 150-20-110.* Requirements for licensure as a veterinarian.

A. The applicant, in order to be licensed by the board to practice veterinary medicine, shall:

1. Have received a degree in veterinary medicine from a college or school of veterinary medicine approved by the board; or have fulfilled the requirements of the Educational Commission of Foreign Veterinary Graduates (E.C.F.V.G.) of the American Veterinary Medical Association;

2. File the following documents with the board at least 45 days prior to the announced date of examination:

a. A complete and notarized application on a form obtained from the board;

b. An official copy, indicating veterinary degree, of the applicant's college or school transcript;

c. One passport photograph of reasonable likeness of the applicant taken within six months of the date of the application;

d. Certified check, cashier's check, or money order, payable to the Treasurer of Virginia, as prescribed in § ~~1.10~~ *18 VAC 150-20-100* for the examination fee and the applicable licensing fee; and

e. Certification of good standing by each board from which the applicant holds a license to practice veterinary medicine.

3. Pass the following examinations with a score on each determined acceptable by the board:

a. The national board examination;

b. The national clinical competency test; and

c. A written examination administered by the board which shall embrace such subjects as the board shall from time to time prescribe.

4. Have committed no acts which would constitute a violation of § 54.1-3807 of the Code of Virginia.

B. Reexamination.

1. The national board examination, national clinical competency test scores, and the transcripts required pursuant to this ~~regulation~~ *chapter* shall be acceptable as part of the application for reexamination for a period of two years following the date of the original examination. The board-administered written examination scores shall be acceptable for a period of one year.

2. All requests for reexamination shall be filed with the board at least 45 days prior to the date of examination which the applicant wishes to take. Such requests shall be accompanied by an updated application, one passport photograph of the applicant taken within six months of the date of the application, and a fee in the amount prescribed in ~~§ 1.10~~ *18 VAC 150-20-100.*

~~§ 2.2.~~ *18 VAC 150-20-120.* Requirements for licensure by endorsement.

A. The board may, in its discretion, grant a license by endorsement to an applicant who is licensed to practice veterinary medicine in another state, the District of Columbia or possessions or territories of the United States, and who has been continuously engaged in clinical practice for five years or more prior to the date of application provided that:

1. The applicant passes the written examination administered by the board;

2. The applicant has met all of the other requirements of ~~§ 2.1~~ *18 VAC 150-20-110*, provided however that the board may, in its discretion, waive the requirement that the applicant pass the national board exam or the clinical competency test, or both, if the applicant has been continuously engaged in clinical practice during the immediately preceding five years.

~~§ 2.3.~~ *18 VAC 150-20-130.* Requirements for practical training in a preceptorship.

The practical training and employment of qualified students of veterinary medicine by licensed veterinarians shall be governed and controlled as follows:

1. No student shall be qualified to receive practical training by a licensed veterinarian nor shall a licensed veterinarian give practical training to any student unless such student shall be duly enrolled and in good standing in a veterinary college or school, and shall be engaged in a preceptorship as defined by the board and authorized by his college or school.

2. No student receiving practical training from a licensed veterinarian shall at any time discharge or perform any function or act pertaining to the practice of veterinary medicine, except under the immediate and direct on-premises supervision of a veterinarian licensed by the board.

~~§ 2.4.~~ *18 VAC 150-20-140.* Unprofessional conduct.

Unprofessional conduct as referenced in § 54.1-3807(5) of the Code of Virginia, shall include the following:

1. Representing conflicting interests except by express consent of all concerned given after a full disclosure of the facts. Acceptance of a fee from both the buyer and the seller is prima facie evidence of a conflict of interest.

2. Practicing veterinary medicine where an unlicensed person has the authority to control the professional judgment of the licensed veterinarian.

3. Issuing a certificate of health unless he shall know of his own knowledge by actual inspection and appropriate tests of the animals that the animals meet the requirements for the issuance of such certificate on the day issued.

4. Violating the confidential relationship between himself and his clients.

5. Advertising in a manner which is false, deceptive, or misleading or which makes subjective claims of superiority.

6. Failing to maintain an animal facility as set forth by ~~these regulations~~ *this chapter.*

7. Practicing veterinary medicine in an animal facility that is not currently registered. This shall not apply to emergency situations.

8. Violating any state law, federal law, or board regulation pertaining to the dispensing or recordkeeping requirement, or both, for controlled substances or pertaining to the practice of veterinary medicine.

9. Dispensing or prescribing controlled substances not in the course of professional practice or when a bonafide veterinarian/client/patient relationship has not been established.

10. Permitting a person other than a licensed veterinarian, licensed veterinary technician, or person otherwise duly certified in x-ray technology to operate diagnostic radiographic equipment.

11. Permitting a person other than a licensed veterinarian or a licensed veterinary technician to induce anesthesia.

12. Practicing veterinary medicine in such a manner as to endanger the health and welfare of his patients or the public; or being unable to practice veterinary medicine with reasonable skill and safety by reason of illness, drunkenness, excessive use of drugs, narcotics,

chemicals or any other type of material or as a result of any mental or physical condition.

13. Performing surgery on small animals in an unlicensed facility or a facility not equipped with a surgery suite and adequate recovery area or performing surgery on large animals not in accordance with accepted standards of practice.

14. Failing to pay any required fees.

15. Failing to pay board-imposed fines.

16. Refusing the board or its agent the right to inspect a facility at reasonable hours.

17. Prescribing or dispensing, or both, controlled substances, including anabolic steroids for human use.

18. Allowing a preceptee to diagnose, prescribe, or perform surgery unless under the direct, on-premises supervision of a licensed veterinarian.

19. Practicing veterinary medicine in the Commonwealth while license is on inactive status.

PART III.
LICENSED VETERINARY TECHNICIANS.

~~§ 3.1.~~ *18 VAC 150-20-150.* Requirements for licensure as veterinary technician.

A. The applicant, in order to be licensed by the board as a veterinary technician, shall:

1. Have received a degree in veterinary technology from a college or school approved by the American Veterinary Medical Association;

2. File the following documents with the board at least 45 days prior to the announced date of examination:

a. A complete and notarized application on a form obtained from the board;

b. An official copy, indicating a veterinary technology degree, of the applicant's college or school transcript;

c. One passport photograph of reasonable likeness of the applicant taken within six months of the date of the application;

d. Certified check, cashier's check, or money order, payable to the Treasurer of Virginia, as prescribed in § ~~1.10~~ *18 VAC 150-20-100*, for the examination fee and the applicable licensure fee; and

e. Certification that the applicant is in good standing by each board from which the applicant holds a license/certificate/registration to practice animal technology.

3. Pass the following examinations with a score on each determined acceptable by the board:

a. The national board examination for veterinary technicians; and

b. A written examination administered by the board. The board shall administer this examination at least once annually. The board shall determine the subject matters included on this examination.

B. Reexamination.

1. The national board scores and transcript required pursuant to this regulation shall be acceptable as part of the application for reexamination for a period of two years following the date of the original examination. The board-administered written examination shall be acceptable for a period of one year.

2. Any veterinary technician applicant failing to pass either part of the examination shall be reexamined at his request, at the next scheduled examination administered by the board, on the part of the examination failed. If the applicant fails to pass this reexamination, he will be required to pass a subsequent examination in its entirety.

3. All requests for reexamination shall be filed with the board at least 45 days prior to the date of examination which the applicant wishes to take. Such requests shall be accompanied by an updated application, one passport photograph of the applicant taken within six months of the date of this application, and a fee in the amount prescribed in ~~§ 1.10~~ *18 VAC 150-20-100.*

~~§ 3.2.~~ *18 VAC 150-20-160.* Requirements for licensure by endorsement.

A. The board, at its discretion, may also grant a license by endorsement to a technician licensed, certified or registered in another state, the District of Columbia or possessions or territories of the United States based on a written examination administered by the board to an applicant who has not taken the national board examination, provided that:

1. The applicant has met all of the other requirements of ~~§ 3.1~~ *18 VAC 150-20-150*; and

2. The applicant has been issued a license as a veterinary technician in another state whose requirements are at least equal to those of Virginia.

~~§ 3.3.~~ *18 VAC 150-20-170.* Unprofessional conduct.

Unprofessional conduct as referenced in § 54.1-3807(5) of the Code of Virginia, shall include the following:

1. Compromising the confidentiality of the doctor/client relationship.

2. Practicing veterinary technology in an animal facility that is not currently registered. This shall not apply to emergency situations.

3. Violating any state law, federal law, or board regulation pertaining to the use of controlled substances or any provisions pertaining to the practice of veterinary medicine.

4. Diagnosing, performing surgery, or prescribing drugs.

PART IV.
ANIMAL FACILITIES.

~~§ 4.1.~~ *18 VAC 150-20-180.* Requirements to be registered as an ~~aminal~~ *animal* facility.

A. Every animal facility must possess an appropriate permit to operate. Veterinary medicine may only be practiced out of a registered facility. Applications must be made to the board 60 days in advance of opening or changing the location or designating a veterinarian in charge of the facility.

B. An animal facility will be registered by the board when:

1. It is inspected by the board and is found to meet the standards set forth by ~~§§ 4.2 and 4.3 of these regulations~~ *18 VAC 150-20-190 and 18 VAC 150-20-200* where applicable. If, during a new or routine facility inspection, violations or deficiencies are found necessitating a reinspection, the prescribed reinspection fee will be levied. Failure to pay the fee shall be deemed unprofessional conduct and, until paid, the facility shall be deemed to be unregistered.

2. A veterinarian currently licensed by and in good standing with the board is registered with the board in writing as veterinarian-in-charge and has paid the facility registration fee.

a. The veterinarian-in-charge is responsible for:

(1) "Maintaining the facility within the standards set forth by ~~§§ 4.2 and 4.3 of these regulations~~ *18 VAC 150-20-190 and 18 VAC 150-20-200*;

(2) Performing the biennial controlled substance inventory and ensuring compliance at the facility with any federal or state law relating to controlled substances as defined in § 54.1-3404 of the Code of Virginia;

(3) Notifying the board in writing of the closure of the permitted facility 10 days prior to closure.

b. Upon any change in veterinarian-in-charge, these procedures shall be followed:

(1) An application for a new permit, naming the new veterinarian-in-charge, shall be made 10 days prior to the change of the veterinarian-in-charge. This application shall be accompanied by a certified check, cashier's check or money order, payable to the Treasurer of Virginia, as prescribed by ~~§ 1.10~~ *18 VAC 150-20-100.*

(2) The previous facility permit is void on the date of the change of veterinarian-in-charge and shall be returned by the former veterinarian-in-charge to the board 10 days following the date of change.

(3) Prior to the opening of the business, on the date of the change of veterinarian-in-charge, the new veterinarian-in-charge shall take a complete inventory of all Schedule II-V drugs on hand. He shall date and sign the inventory and maintain it on-premises for two years. Unless the change of the veterinarian-in-charge is in conjunction with a change of ownership, this would not change the official biennial controlled substance inventory date.

~~§ 4.2.~~ *18 VAC 150-20-190.* Requirements for drug storage, dispensing, destruction, and records for all facilities, full service and restricted.

A. All drugs shall be maintained, administered, dispensed, prescribed and destroyed in compliance with state and federal laws.

B. All repackaged tablets and capsules dispensed for companion animals shall be in approved safety closure containers, except safety caps shall not be required when any person who requests that the medication not have a safety cap, or in such cases in which the medication is of such form or size that it cannot be reasonably dispensed in such containers (e.g., topical medications, ophthalmic, or otic).

C. All drugs dispensed for companion animals shall be labeled with the following:

1. Name and address of the facility;

2. Name of client;

3. Animal identification;

4. Date dispensed;

5. Directions for use;

6. Name, strength (if more than one dosage form exists), and quantity of the drug; and

7. Name of the prescribing veterinarian.

D. All drugs shall be maintained in a secured manner with precaution taken to prevent diversion.

1. All Schedule II drugs shall be maintained under lock at all times, with access to the veterinarian only, provided, however, that a working stock of Schedule II drugs under separate lock may be accessible to the licensed veterinary technician.

2. Whenever a veterinarian discovers a theft or any unusual loss of Schedule II, III, IV, or V drugs, he shall immediately report such theft or loss to the Board of Veterinary Medicine, to the Virginia Board of Pharmacy and to the U.S. Drug Enforcement Administration.

E. Schedule II, III, IV and V drugs may be destroyed by an investigator of the Virginia Department of Health Professions, the U.S. Drug Enforcement Administration or, if a veterinarian-in-charge wishes to destroy unwanted Schedule II through V drugs kept for dispensing in lieu of any disposal method provided by regulations promulgated by the U.S. Drug Enforcement Administration, he shall use the following procedures:

1. At least 14 days prior to the destruction date, the veterinarian-in-charge shall provide a written notice to the Board of Veterinary Medicine. The notice shall state the following:

a. Date, time, manner and place of destruction;

b. The names of the veterinarians who will witness the destruction process.

2. If the destruction date is changed or the destruction does not occur, a new notice shall be provided to the board as set forth in ~~§ 4.2 E 1 above~~ *subdivision 1 of this subsection*;

3. Drug Destruction Form No. 41 from the U.S. Drug Enforcement Administration shall be used to record all drugs destroyed;

4. The drugs shall be destroyed by burning in an incinerator or flushing if permitted by the municipality; and

5. The actual destruction shall be witnessed by the veterinarian-in-charge and by another veterinarian neither associated with nor employed by the veterinarian-in-charge.

6. Each destruction form shall show the following information:

a. Legible signatures of the veterinarian-in-charge and the other veterinarian witnessing the destruction;

b. The Board of Veterinary Medicine license numbers of the veterinarian-in-charge and the other witnessing veterinarian;

c. The date of the destruction;

d. Name and quantity of the drugs destroyed; and

e. Manner of destruction.

7. At the conclusion of the destruction of the drug stock, copies of the completed Drug Destruction Form No. 41 shall be distributed as follows:

a. The original and one copy shall be sent to the U.S. Drug Enforcement Administration at one of the following addresses:

(1) Facilities with zip codes beginning with the numbers 230 through 249 inclusive should mail their forms to the U.S. Drug Enforcement Administration, 8600 Staples Mill Road, Suite B, Richmond, Virginia 23228;

(2) Facilities with zip codes beginning with any numbers other than those listed above should mail their forms to the U.S. Drug Enforcement Administration, Washington Field Division, 400 Sixth Street SW, Room 2558, Washington, DC 20024.

b. One copy shall be sent to the Board of Veterinary Medicine; and

c. One copy shall be retained with the animal facility's records of Schedule II-V drugs.

F. The drug storage area shall have appropriate provision for temperature control for all drugs and biologics. The stock of drugs shall be reviewed frequently and removed from the working stock of drugs at the expiration date.

G. A distribution record shall be maintained in addition to the patient's record, in chronological order, for the administration and dispensing of all Schedule II-V drugs.

This record is to be maintained for a period of two years from the date of transaction. This record shall include the following:

1. Date of transaction;

2. Drug name, strength, and the amount dispensed, administered and wasted;

3. Client and animal identification; and

4. Identification of the veterinarian authorizing the administration or dispensing of the drug.

H. Invoices for all Schedule II, III, IV and V drugs received shall be maintained in chronological order on the premises where the stock of drugs is held. Invoices for Schedule II drugs shall be maintained separately from other records. All drug records shall be maintained for a period of two years from the date of transaction.

I. A complete and accurate inventory of all Schedule II, III, IV and V drugs shall be taken, dated, and signed on the same day every two years. Drug strength must be specified. This inventory shall indicate if it was made at the opening or closing of business and shall be maintained on the premises where the drugs are held for two years from the date of taking the inventory.

~~§ 4.3.~~ *18 VAC 150-20-200.* Standards for facilities.

A. Full-service facilities. A full-service facility is a stationary facility which shall provide surgery and encompass all aspects of health care for small or large animals or both. All full-service facilities shall meet the requirements set forth below:

1. Buildings and grounds must be maintained to provide sanitary facilities for the care and medical well being of patients.

a. Temperature. The facility shall be equipped so as to maintain temperatures between 59°F and 86°F consistent with the medical well-being of the patients.

b. Ventilation. The facility shall be equipped with the capacity to ventilate consistent with the medical well-being of the animals.

c. Lighting. The facility shall be equipped with lighting commensurate with the procedures performed.

d. Water and waste. There shall be on-premises:

(1) Hot and cold running water of drinking quality, as defined by the Virginia Department of Health;

(2) Sanitary toilet and lavatory for the personnel and for the clients;

(3) An acceptable method of disposal of deceased animals; and

(4) Refrigeration exclusively for carcasses of companion animals that require storage for 24 hours or more.

2. Areas within building. The areas within the facility shall include the following:

a. A reception area separate from other designated rooms;

b. Examination room(s);

c. Surgery. Surgery shall be performed in a room which is reserved only for surgery and used for no other purpose. Surgery shall not serve as a corridor. In order that surgery can be performed in a manner compatible with current veterinary medical practice with regard to anesthesia, asepsis, life support, and monitoring procedures, the surgery room shall:

(1) Be of a size adequate to accommodate a surgical table, anesthesia support equipment, surgical supplies, the veterinarian, an assistant, and the patient; and

(2) Be kept so that storage in the surgery room shall be limited to items and equipment normally related to surgery and surgical procedures.

d. Laboratory. The animal facility shall have, as a minimum, proof of use of either in-house laboratory service or consultant laboratory services for performing the following lab tests, consistent with appropriate professional care for the species treated:

(1) Urinalysis, including microscopic examination of sediment;

(2) Complete blood count, including differential;

(3) Flotation test for ova of internal parasites;

(4) Skin scrapings for diagnosing external parasites;

(5) Examinations for circulating blood microfilaria;

(6) Blood chemistries;

(7) Cultures and sensitivities;

(8) Biopsy;

(9) Complete necropses, including histopathology; and

(10) Serology.

e. Animal housing areas. These shall be provided with:

(1) Separate compartments constructed in such a way as to prevent residential contamination;

(2) Accommodations allowing for the effective separation of contagious and noncontagious patients; and

(3) Exercise runs which provide and allow effective separation of animals or walking the animals at medically appropriate intervals.

3. Radiology. An animal facility shall:

a. Have proof of use of either in-house or consultant services for obtaining diagnostic-quality radiographs.

b. If radiology is in-house:

(1) Each radiograph shall be permanently imprinted with the identity of the facility or veterinarian, patient and the date of exposure. Each radiograph shall also distinguish left from right, when appropriate by permanent imprinting.

(2) Document that radiographic equipment complies with all requirements of ~~§ 7.10.~~ *12 VAC 5-480-8520,* Veterinary Medicine Radiographic Installations, of the Virginia Department of Health document, "Ionizing Radiation Rules and Regulations" (1988), which requirements are adopted by this board and incorporated herewith by reference in ~~these regulations~~ *this chapter.*

c. Maintain radiographs with and as a part of the patient's record. If a radiograph is transferred to another facility, a record of this transfer must be maintained on or with the patient's records.

4. Equipment; minimum requirements.

a. Examination room.

(1) Table with nonporous surface;

(2) Waste receptacle; and

(3) Sanitizing solution.

b. Surgery suite.

(1) Surgical table with nonporous surface;

(2) Surgical supplies, instruments and equipment commensurate with the kind of surgical services provided;

(3) All new small animal facilities that perform surgeries and all existing facilities that change their veterinarian-in-charge will be required to have a circle gas anesthesia machine.

(4) Automatic emergency lighting;

(5) Surgical lighting;

(6) Instrument table, stand, or tray; and

(7) Waste receptacle.

c. Radiology (if in-house).

(1) Lead aprons;

(2) Lead gloves;

(3) Radiation exposure badges;

(4) X-ray machine.

d. Drug storage area.

(1) Refrigerator, with interior thermometer maintained between 36°F and 46°F;

(2) Locked storage for Schedule II drugs;

(3) Drugs stored at room temperature shall be maintained between 59°F and 86°F.

e. General equipment.

(1) Steam pressure sterilizer;

(2) Internal and external sterilization monitors;

(3) Stethoscope;

(4) Thermometer;

(5) Ophthalmoscope;

(6) Otoscope;

(7) Equipment for delivery of assisted ventilation, including but not necessarily limited to:

(a) A resuscitation bag; and

(b) Endotracheal tubes.

(8) Scales; and

(9) Storage for records.

5. Recordkeeping. Every veterinarian shall keep a written daily record of the animals he treats. This record shall include pertinent medical data such as drugs administered, dispensed or prescribed, and all relevant medical and surgical procedures performed.

a. Client records shall be kept for a period of three years following the last office visit or discharge of such animal from a veterinary facility.

b. Individual records shall be maintained on each patient, except that records for economic animals may be maintained on a per client basis.

c. An animal identification system must be used by the facility.

6. Disclosure of staffing hours. Every animal facility shall conspicuously post a sign which indicates the hours that the facility is staffed.

B. Restricted facilities. When the scope of practice is less than full service, a specifically restricted facility permit shall be required. Upon satisfactory inspection and payment of the permit fee, a restricted facility permit will be issued. Such restricted facilities shall have posted in a conspicuous manner the specific limitations on the scope of practice on a form acceptable to the board.

1. Large animal facility, ambulatory practice. A large animal ambulatory facility is a mobile practice in which health care of large animals is performed at the location of the animal. Surgery on large animals may be performed as part of a large animal ambulatory practice. All large animal ambulatory facilities shall meet the requirements set forth below:

a. Laboratory. At a minimum, proof of use of either in-house laboratory service or consultant laboratory services for performing the following lab tests, consistent with appropriate professional care for the species treated:

(1) Urinalysis, including microscopic examination of sediment;

(2) Complete blood count, including differential;

(3) Flotation test for ova of internal parasites;

(4) Skin scrapings for diagnosing external parasites;

(5) Blood chemistries;

(6) Cultures and sensitivities;

(7) Biopsy;

(8) Complete necropses, including histopathology; and

(9) Serology.

b. Radiology. A large animal ambulatory facility shall have the following:

(1) Proof of use of either in-house or consultant services for obtaining diagnostic-quality radiographs.

(2) If radiology is in-house.

(a) Each radiograph shall be permanently imprinted with the identity of the facility or veterinarian, the patient and the date of exposure. Each radiograph shall also distinguish left from right, when appropriate, by permanent imprinting.

(b) Document that radiographic equipment complies with all requirements of ~~§ 7.10~~ *12 VAC 5-480-8520*, Veterinary Medicine Radiographic Installations of the Virginia Department of Health document, "Ionizing Radiation Rules and Regulations" (1988), which requirements are adopted by this board and incorporated herewith by reference in ~~these regulations~~ *this chapter.*

(3) Maintain radiographs with and as a part of the patient's record. If the radiograph is transferred to another facility, documentation of this transfer shall be maintained on or with the client's record.

c. Equipment; minimum requirements.

(1) Surgical supplies, instruments and equipment commensurate with the kind of surgical services provided;

(2) Radiology (if in-house):

(a) Lead aprons;

(b) Lead gloves;

(c) Radiation exposure badges;

(d) X-ray machine.

(3) Drug storage area.

(a) Refrigerator, with interior thermometer maintained between 36°F and 46°F;

(b) Locked storage for Schedule II drugs;

(c) Drugs stored at room temperature should be maintained between 59°F and 86°F.

(4) General equipment.

(a) Steam pressure sterilizer;

(b) Internal and external sterilization monitors;

(c) Stethoscope;

(d) Ophthalmoscope;

(e) Thermometer;

(f) Storage for records.

d. Recordkeeping. The veterinarian shall keep a written record of treatment to include pertinent medical data.

(1) Individual records shall be maintained on each patient except that records for economic animals and equine may be maintained on a per client basis; and

(2) Client records shall be kept for a period ~~fo~~ *of* three years from the date of the last visit.

2. Small animal facility house call practice. A small animal house call facility is a mobile practice in which health care of small animals is performed at the residence of the owner of the small animal. Surgery may be performed only in a permitted, surgical facility. Small animal house call facilities shall meet the requirements set forth below:

a. Laboratory. At a minimum, proof of use of either in-house laboratory service or consultant laboratory services for performing the following lab tests, consistent with appropriate professional care for the species treated:

(1) Urinalysis, including microscopic examination of sediment;

(2) Complete blood count, including differential;

(3) Flotation test for ova of internal parasites;

(4) Skin scrapings for diagnosing external parasites;

(5) Examinations for circulating blood microfilaria;

(6) Blood chemistries;

(7) Cultures and sensitivities;

(8) Biopsy;

(9) Complete necropses, including histopathology; and

(10) Serology.

b. Radiology. A small animal house call facility shall:

(1) Have proof of services for obtaining diagnostic-quality radiographs.

(2) Maintain radiographs with and as a part of the patient's record. If a radiograph is transferred to another facility, documentation of the transfer must be maintained on or with the patient's record.

c. Equipment, minimum requirements.

(1) Drug storage area.

(a) Refrigerator, with interior thermometer maintained between 36°F and 46°F;

(b) Locked storage for Schedule II drugs;

(c) Drugs stored at room temperature should be maintained between 59°F and 86°F.

(2) General equipment.

(a) Stethoscope;

(b) Thermometer;

(c) Ophthalmoscope;

(d) Otoscope;

(e) Resuscitation bag and endotracheal tubes;

(f) Storage for records.

d. Recordkeeping. Every veterinarian shall keep a written daily record of the animals he treats. This record shall include pertinent medical data such as drugs administered, dispensed or prescribed, and all relevant medical and surgical procedures performed.

(1) Client records shall be kept for a period of three years following the last visit.

(2) Individual records shall be maintained on each patient, except that records for economic animals may be maintained on a per-client basis.

3. Small animal facility, outpatient practice. A small animal outpatient facility is a stationary facility where health care of small animals is performed. This practice may include surgery, provided the facility is equipped with a surgery suite *as required by subdivision A 2 b of this section* and an adequate recovery area as required by ~~§ 4.3 A 2 c~~ *subdivision A 2 c of this section.* Overnight hospitalization shall not be required.

a. Buildings and grounds must be maintained to provide sanitary facilities for the care and medical well-being of patients.

(1) Temperature. The facility shall be equipped so as to maintain temperatures between 59°F and 86°F consistent with the medical well-being of the patients.

(2) Ventilation. The facility shall be equipped with the capacity to ventilate consistent with the medical well-being of the animals.

(3) Lighting. The facility shall be equipped with lighting commensurate with the procedures performed.

(4) Water and waste. There shall be on-premises:

(a) Hot and cold running water of drinking quality, as defined by the Virginia Department of Health;

(b) Sanitary toilet and lavatory for the personnel and for the clients;

(c) An acceptable method of disposal of deceased animals; and

(d) Refrigeration exclusively for carcasses of companion animals that require storage for 24 hours or more.

b. Areas within building. The areas within the facility shall include the following:

(1) A reception area separate from other designated rooms;

(2) Examination room(s).

c. Laboratory. At a minimum, proof of use of either in-house laboratory service or consultant laboratory services for performing the following lab tests, consistent with appropriate professional care for the species treated:

(1) Urinalysis, including microscopic examination of sediment;

(2) Complete blood count, including differential;

(3) Flotation test for ova of internal parasites;

(4) Skin scrapings for diagnosing external parasites;

(5) Examinations for circulating blood microfilaria;

(6) Blood chemistries;

(7) Cultures and sensitivities;

(8) Biopsy;

(9) Complete necropses, including histopathology; and

(10) Serology.

d. Radiology. A small animal outpatient facility shall have the following:

(1) Proof of use of either in-house or consultant services for obtaining diagnostic-quality radiographs.

(2) If radiology is in-house:

(a) Each radiograph shall be permanently imprinted with the identity of the facility or veterinarian, the patient and the date of exposure. Each radiograph shall also distinguish left from right, when appropriate, by permanent imprinting.

(b) Document that radiographic equipment complies with all requirements of ~~§ 7.10~~ *12 VAC 5-480-8520*, Veterinary Medicine Radiographic Installations of the Virginia Department of Health document, "Ionizing Radiation Rules and Regulations" (1988), which requirements are adopted by this board and incorporated herewith by reference in ~~these regulations~~ *this chapter*.

(c) Maintain radiographs with and as a part of the patient's record. If a radiograph is transferred to another facility, documentation of the transfer must be maintained on or with the patient's record.

e. Equipment, minimum requirements.

(1) Examination room.

(a) Table with nonporous surface;

(b) Waste receptacle; and

(c) Sanitizing solution.

(2) Radiology (if in-house).

(a) Lead aprons;

(b) Lead gloves;

(c) Radiation exposure badges;

(d) X-ray machine.

(3) Drug storage area.

(a) Refrigerator, with interior thermometer maintained between 36°F and 46°F;

(b) Locked storage for Schedule II drugs; and

(c) Drugs stored at room temperature should be maintained between 59°F and 86°F.

(4) General equipment.

(a) Steam pressure sterilizer;

(b) Internal and external sterilization monitors;

(c) Stethoscope;

(d) Thermometer;

(e) Ophthalmoscope;

(f) Otoscope;

(g) Resuscitation bag and endotracheal tubes;

(h) Scales;

(i) Storage for records.

f. Recordkeeping. Every veterinarian shall keep a written daily record of the animals he treats. This record shall include pertinent medical data such as drugs administered, dispensed or prescribed, and all relevant medical and surgical procedures performed.

(1) Client records shall be kept for a period of three years following the last office visit or discharge of such animal from a veterinary facility.

(2) Individual records shall be maintained on each patient, except that records for economic animals may be maintained on a per client basis.

(3) An animal identification system must be used by the facility if animals are kept for the day.

4. Special-use permit. If a practice does not conform to one of the above-listed types of facilities, a veterinarian may apply for a special-use permit. A protocol, detailing the type of practice, must be submitted to the board with the application. The board will review the protocol and approve or deny the application on a case-by-case basis. If the board approves the application, limitations of practice and standards specific for the approved practice will be set.

5. Disclosure of staffing hours. Every animal facility shall conspicuously post a sign which indicates the hours that the facility is staffed.

The protocol must be resubmitted annually with the renewal application for board review and approval.

C. Combination practices. A combination practice may exist under a single facility permit. The practice may encompass two or more types of facilities as defined in subsections A and B of ~~§ 4.3~~ *this section*. The application for the permit must specify the types of facilities to be included within the combination practice. The types of facilities included must also be posted with the facility permit.

All standards listed under each type of facility included in the combination practice must be met.

~~§ 4.4.~~ *18 VAC 150-20-210.* Revocation or suspension of registration certificate.

A. The board may revoke or suspend the registration permit of an animal facility or may declare it as not meeting the standards set forth in ~~§§ 4.2 and 4.3 of these regulations~~ *18 VAC 150-20-190 and 18 VAC 150-20-200* if:

1. The board finds the facility to be in violation of ~~§ 1.7 "Renewal requirements"~~ *18 VAC 150-20-70*;

2. The board finds the facility to be in violation of ~~§§ 4.2 or 4.3 of these regulations~~ *18 VAC 150-20-190 or 18 VAC 150-20-200*;

3. The board or its agents are denied access to the facility to conduct an inspection;

4. The licensee does not pay any and all prescribed fees;

5. Performing procedures beyond the scope of a restricted facility permit; or

6. The facility has no veterinarian-in-charge registered at the facility.

B. The Administrative Process Act, Chapter 1.1:1 (9-6.14:1 et seq.) of Title 9 of the Code of Virginia, shall apply to any determination under ~~§ 4.4~~ *this section*.

/s/ John W. Hasty, Director
Department of Health Professions
Date: November 6, 1995

/s/ Robert W. Lauterberg, Director
Department of Planning and Budget
Date: December 21, 1995

/s/ John E. Littel
Deputy Secretary of Health and Human Resources
Date: January 10, 1996

/s/ George Allen
Governor
Date: January 24, 1996

COMMONWEALTH of VIRGINIA

Department of Health Professions
Board of Veterinary Medicine
Board of Optometry

Elizabeth A. Carter, Ph.D.
Executive Director for the Board

6606 West Broad Street, Fourth Floor
Richmond, Virginia 23230-1717
(804) 662-9915
FAX (804) 662-9943
TDD (804) 662-7197

THE VIRGINIA BOARD OF VETERINARY MEDICINE
CONTINUING EDUCATION PROGRAM

Virginia law requires a veterinarian to complete 15 hours and a veterinary technician to complete 6 hours of continuing education credit as a condition of license renewal. Courses must be sponsored by an approved provider according to Section B of Regulation 18 VAC 150-20-70 or receive Board approval before any credits can be granted.

Applications for approval of continuing education courses will be reviewed by the Continuing Education Committee and returned within 4 weeks of receipt. Upon request, a disapproval may be reviewed by the full Board.

Courses will be approved upon meeting the following criteria:

1. Application must be completed IN FULL. If thorough information about course content and instructions is lacking, the application will not be reviewed until the information is received.

2. Courses should pertain to a recognized veterinary subject or other subject matter which integrally relates to the practice of veterinary medicine and must increase the licensee's professional competence, skills, and ability to deliver quality veterinary services to the public.

3. Courses may not offer instruction on augmenting income.

4. Courses may not be designed to promote the sale of specific instruments or products.

5. Courses must have a sponsor or co-sponsor who will ensure that no part of the educational session is devoted to the promotion of specific instruments, products or marketing philosophies.

6. Course enrollment must be open to any veterinarian or veterinary technician.

7. Self-study correspondence courses are now accepted. Please advise the date the self-study was submitted to the sponsor on the letter of recognition.

8. COURSES MUST CONTAIN A COMPLETE COURSE OUTLINE AND CURRICULUM VITAE ON EACH INSTRUCTOR.

COMMONWEALTH of VIRGINIA

Department of Health Professions
Board of Veterinary Medicine
Board of Optometry

Elizabeth A. Carter, Ph.D.
Executive Director for the Board

6606 West Broad Street, Fourth Floor
Richmond, Virginia 23230-1717
(804) 662-9915
FAX (804) 662-9943
TDD (804) 662-7197

Dear Sponsor:

This letter acknowledges receipt of your request for approval of the following continuing education course:_____ _____. The checklist below indicates what materials must be submitted for review and approval:

_____ Title of the course
_____ Sponsoring organization(s)
_____ Name of the lecturer(s)
_____ Curriculum Vitae of the lecturer(s)
_____ Outline of the course's content
_____ Length of the course in clock hours
_____ Method of certification of attendance or completion if offered as a correspondence course
_____ Number of credit hours requested

No course shall be forwarded to the review committee until all the required information has been received by the Board office.

If you have questions or need further clarification, please do not hesitate to contact the Board office (804) 662-9915.

Cordially,

Terri H. Behr
Administrative Assistant

COMMONWEALTH OF VIRGINIA

BOARD OF VETERINARY MEDICINE

Department of Health Professions
6606 West Broad Street, 4th Floor
Richmond, Virginia 23230-1717
(804) 662-9915

APPLICATION FOR APPROVAL OF A CONTINUING EDUCATION COURSE

(Please Submit Application 45 Days Prior to Course Date.)

A. INDIVIDUAL REQUESTING COURSE APPROVAL		
Name - Last	First	Middle/Maiden
Street Address		
City	State	Zip Code
Area Code and Telephone Number		

B. COURSE PROVIDER		
Name		
Street Address		
City	State	Zip Code
Area Code and Telephone Number		

C. WILL OTHER ORGANIZATIONS ALSO SPONSOR COURSE? YES [ ] NO [ ]		
Name		
Street Address		
City	State	Zip Code
Area Code and Telephone Number		

D. TITLE OF PROGRAM		
Dates		Location
Beginning	Ending	
City	State	Zip Code

1. Attach list of courses to be given at program. Show beside each course title, the amount of credit hours requested. (The Board allows 1.0 credit hour for each 60 minutes of course work attended. This does not include welcoming remarks, introductions, breaks, and meals. Credit hours of instruction will be rounded to the nearest half hour).
2. ATTACH COMPREHENSIVE COURSE OUTLINES WITH LESSON PLANS, INCLUDING AMOUNT OF TIME TO BE DEVOTED TO ALL COMPONENTS, I.E., OPENING REMARKS, INTRODUCTION, INSTRUCTIONAL TIME, BREAKS AND MEALS.
3. Amount of credits requested for entire program:_____
4. ATTACH A CURRICULUM VITAE ON EACH LECTURER.
5. Manner of certifying attendance:_____
6. Will there be speeches or any literature or products distributed promoting a particular brand or company product? Yes_____ No_____. If yes, what will be the nature of the promotion?_____
7. Will there be an objective third party sponsor or co-sponsor to ensure the criteria for approval? Yes_____ No_____. Name and nature of organization:_____
8. Will the program be made available to any veterinarian or veterinary technician? Yes_____ No_____

_____
Signature

COURSEWORK WILL NOT BE SUBMITTED TO THE EDUCATION COMMITTEE UNLESS ALL THE ABOVE CRITERIA ARE MET.

VA.R. Doc. No. R96-213; Filed February 5, 1996, 12:28 p.m.

BUREAU OF INSURANCE

January 25, 1996

ADMINISTRATIVE LETTER 1996-1

TO: All Insurers Licensed to Write Commercial Liability Insurance

RE: Supplemental Reports for Potentially Noncompetitive Lines and Subclassifications of Commercial Liability Insurance as Required by Virginia Code Section 38.2-1905.2 Due May 1, 1996

Virginia Code Section 38.2-1905.1 requires the State Corporation Commission (SCC) to designate lines and subclassifications of insurance where it believes competition may not be an effective regulator of rates. Virginia Code Section 38.2-1905.2 provides that all insurers licensed to write the classes of insurance defined in Sections 38.2-117 (personal injury liability), 38.2-118 (property damage liability), and 38.2-119 (workers' compensation and employers' liability) shall file a report showing their direct experience in the Commonwealth attributable to all lines and subclassifications of liability insurance designated by the SCC in accordance with subsection B of Section 38.2-1905.1.

The lines and subclassifications where the SCC has cause to believe that competition may not be an effective regulator of rates have been designated in the SCC's report, "The Level of Competition, Availability, and Affordability in the Commercial Liability and Workers' Compensation Insurance Industry," submitted to the General Assembly in December of 1995. Copies of this report may be obtained by phoning the Property and Casualty Division of the Bureau of Insurance at (804) 371-9628. A listing of the designated lines and subclassifications is attached (see Exhibit 2). It should be noted that no subclassifications of workers' compensation and employer's liability insurance were designated as potentially noncompetitive in this report, thus insurers should not include any workers' compensation and employer's liability experience in this data call.

To collect the data required by Virginia Code Section 38.2-1905.2, the SCC has adopted the attached supplemental report form that each insurer is required to complete for the designated lines and subclassifications. The attached supplemental report form has not been changed substantially from the supplemental report forms adopted by the SCC in 1990, 1992, and 1994.

Pursuant to Virginia Code Section 38.2-1905.2.B, all supplemental reports should be submitted in machine readable format. A diskette reporting system has been developed to enable insurers to comply with this requirement. A diskette containing this system will be forwarded to you upon receipt of the Diskette Request Form contained in the attached instructions. Experience for 1994 and 1995 should be reported on one form for each market definition specified in Exhibit 2. The market definitions provided are to be used as a guide in defining specific lines and subclassifications which are required to be reported. Insurers should also report the required information for policies written under any comparable classification in use by the individual insurer. The information reported should include data for monoline policies as well as package policies.

Pursuant to the Commission's Order of December 20, 1995, a copy of which is attached, the reports are due, and must be received by, May 1, 1996. If some information is not available, insurers should estimate appropriate figures to complete the report. Items allocated from countrywide data must be allocated in the same manner as for the NAIC Annual Statement pursuant to Section 38.2-1905.2.B of the Code of Virginia. Insurers with no written premiums in one or more of the lines or subclassifications for 1994 and/or 1995 must complete and return Exhibit 6A and Exhibit 6B. No insurer licensed to write the classes of insurance as defined in Virginia Code Sections 38.2-117, 38.2-118, and 38.2-119 is exempted from this data call, regardless of whether or not said insurer wrote business in Virginia during the experience period.

If you have any questions regarding this data call, please contact:

Eric Lowe
Senior Insurance Analyst
Bureau of Insurance
P. O. Box 1157
Richmond, VA 23218
Telephone: (804) 371-9628

Virginia Code Section 38.2-218 provides that any person who knowingly or willfully violates any provision of the insurance laws shall be punished for each violation by a penalty of not more than $5,000. Failure to file this report in a substantially complete and accurate manner by the due date may be considered a willful violation and may subject the insurer to an appropriate penalty.

Attached is a sheet of additional instructions (see Exhibit 1) to facilitate accurate completion of the supplemental reports.

/s/ Steven T. Foster
Commissioner of Insurance

COMMONWEALTH OF VIRGINIA 9512200183

DOCUMENT CONTROL 1995 DEC 20 PM 2:30

STATE CORPORATION COMMISSION

AT RICHMOND, DECEMBER 20, 1995

REGISTRAR OF REGULATIONS

96 FEB -8 AM 9:53

COMMONWEALTH OF VIRGINIA

At the relation of the

STATE CORPORATION COMMISSION

Ex Parte: Adoption of supplemental report form pursuant to Virginia Code § 38.2-1905.2

CASE NO. INS950203

ORDER ADOPTING SUPPLEMENTAL REPORT FORM

PURSUANT to Virginia Code § 38.2-1905.2.A and B.,

IT IS ORDERED that the supplemental report form, which is attached hereto and made a part hereof, be, and it is hereby, ADOPTED; and

IT IS FURTHER ORDERED that licensed insurers file with the Commission their supplemental reports in the form adopted herein on or before May 1, 1996, as established in the Commission's December, 1995, Report to the Legislature pursuant to Virginia Code § 38.2-1905.1.A.

AN ATTESTED COPY hereof shall be sent by the Clerk of the Commission to Mary M. Bannister, Deputy Commissioner, Bureau of Insurance, who shall cause a copy of this order to be sent to every insurer licensed to transact the business of property and casualty insurance in the Commonwealth of Virginia.

A True Copy
Teste: William J. Bridge
Clerk of the
State Corporation Commission

SUPPLEMENTAL REPORT REQUIRED BY VIRGINIA CODE SECTION 38.2-1905.2
FOR CERTAIN LINES OR SUBCLASSIFICATIONS OF LIABILITY INSURANCE

BY ORDER OF THE STATE CORPORATION COMMISSION THIS REPORT IS DUE ON OR BEFORE MAY 1, 1996, AT THE STATE CORPORATION COMMISSION BUREAU OF INSURANCE, MAILING ADDRESS: P. O. BOX 1157, RICHMOND, VIRGINIA 23218, OR STREET ADDRESS: 1300 E. MAIN STREET, RICHMOND, VIRGINIA 23219.

96 FEB -8 AM 9:53

All insurers licensed to write the classes of insurance defined in Section 38.2-117 (Personal injury liability) and 38.2-118 (Property damage liability) shall file a report showing their direct experience in the Commonwealth attributable to the line or subclassification of liability insurance below which has been designated by the Commission in accordance with subsection B of Section 38.2-1905.1.

For the market designated, provide the information requested:

A. Market Number and Name:_____

B. Insurer:_____ C. NAIC#:_____

D. Group Name:_____ E. Group NAIC#:_____

(Each insurer must report separately; group reports are not permitted)

NOTE:
1. All figures are to be reported in whole numbers or dollars. Do not include dollar signs, decimal points, or commas.

2. For Item 1, policies written for other than a 12 month term should be adjusted to an annual basis.

3. Losses exclude all loss adjustment expenses which are reported in item 8.B..

4. Loss adjustment expenses reported in item 8.B. should include incurred but not reported loss adjustment expenses.

		Calendar Year (Except As Otherwise Specified)				
		1991	1992	1993	1994	1995
1.	Number of policies written					
2.	Direct premiums written					
3.	A. Direct premiums earned					
	B. Net premiums earned					
4.	Direct losses incurred					
	A. Direct losses paid during the calendar year:					
	(1)for the current accident year					
	(2)for prior accident years					
	B. Reserves for reported losses at the end of the calendar year:					
	(1)for the current accident year					
	(2) for prior accident years					
	C. Reserves for reported losses at the end of the previous calendar year					
	D. Reserves for incurred but not reported losses at the end of the calendar year:					
	(1) for the current accident year					
	(2) for prior accident years					
	E. Reserves for incurred but not reported losses at the end of the previous calendar year					
	F. Accident year incurred losses [A(1) + B(1) + D(1)]					
	G. Calendar year incurred losses [A(1) + A(2) + B(1) + B(2) - C + D(1) + D(2) - E]					

5. Number of claims closed with payment during the calendar year	_____	_____	_____	_____	_____
6. Number of open claims at the end of the calendar year	_____	_____	_____	_____	_____
7. Net investment gain (loss) including realized capital gains generated by the line or subclass of business attributable to net premium, loss and loss expense reserves.	_____	_____	_____	_____	_____
8. A. Direct underwriting expenses incurred in producing the written premium in line 2 (direct premiums written):					
(1) commissions	_____	_____	_____	_____	_____
(2) general expenses	_____	_____	_____	_____	_____
(3) other acquisition expenses	_____	_____	_____	_____	_____
(4) premium taxes, licenses and fees	_____	_____	_____	_____	_____
(5) Total (sum of all parts in question 8.A.)	_____	_____	_____	_____	_____
B. All direct loss adjustment expenses incurred on a calendar year basis:	_____	_____	_____	_____	_____

9. Have you sought to write or obtain new business within this line or subclassification within the past year?

Yes ____ No ____

10. A. What percentage of the 1995 premiums reported in Question 2 were based upon an RSO loss costs filing?

_____%

B. What percentage of the 1995 premiums reported in Question 2 were written using independent rates?

_____%

NOTE: The sum of the percents of written premium in A and B should total 100%.

C. Do you apply schedule, expense, experience, and/or package modifications to eligible risks?

1. Schedule Yes____ No ____
2. Expense Yes____ No ____
3. Experience Yes____ No ____
4. Package Modification Yes____ No ____

D. If yes, indicate:

1. The maximum schedule credits and/or debits allowed
(-)_____% to (+) _____%

2. The maximum expense credits allowed
(-)_____%

3. The package modification factor _____*

*This factor should be expressed as a final rating factor, i.e. 1.15 or .85. Enter only one factor; if you have different factors for different categories, please give a weighted average for all subclasses within this line.

Signed: _____ Title: _____

Telephone: _____ Print Name: _____

Date: _____

EXHIBIT 1
Page 1
SUPPLEMENTAL REPORTS DATA CALL INSTRUCTIONS

The following should be utilized to assure the proper completion and submission of the supplemental reports, which must be received by the Commission on or before May 1, 1996.

1. The report(s) must be submitted on diskette; however, insurers that cannot comply may submit the appropriate paper reports. A written request detailing why the reports cannot be submitted using the diskette reporting program must be submitted to Eric Lowe at the address on page 2 of this administrative letter. Once received, a written exemption will be issued to the requesting insurer if circumstances warrant the exception.

2. Please complete and return the diskette request form. The diskette will contain the supplemental report forms, previously reported data, the operating system, and detailed instructions. If you have any questions regarding the diskette filing procedure, please contact Eric Lowe at (804) 371-9628.

3. Insurers submitting data on the diskette will only be required to report 1994 and 1995 data, unless data from previous years is being amended. Insurers that submit **paper reports** must provide data for all five years (1991 through 1995) for all questions on the reporting form. Paper forms received without all five years of data will be considered substantially incomplete, invoking possible penalties as outlined on page 2 of this administrative letter. All paper reports must be typed. Handwritten reports will not be accepted.

4. Each supplemental report must contain the individual insurer name, NAIC number, group name and group NAIC number. **REPORTS ARE TO BE FILED FOR INDIVIDUAL INSURERS (DO NOT SUBMIT AGGREGATED GROUP REPORTS).**

5. Submit only one supplemental report per market definition. For example, **all contractors' subclassifications are considered one market and separate reports should not be submitted for the various subclassifications.** (Do not combine markets.)

6. Exhibits 6A and 6B must both be completed for all insurers that are licensed but that have no written premiums in any of the listed market definitions for 1994 or 1995.

7. Use whole dollars or numbers. Do not include dollar signs, decimal points, or commas in completing the supplemental report. DO NOT OMIT OOO'S. Do not use dashes, "N/A," or leave blanks within the report.

EXHIBIT 1
PAGE 2

8. Items 1, 2, 3, 5, 6, 7, and 8 of the supplemental reports shall be reported on a calendar year basis. The subparts of item 4 shall be reported on a calendar or accident year basis as required.

9. Items 4 B and C do not include incurred but not reported losses (IBNR).

10. Losses exclude all loss adjustment expenses which are reported in item 8 B.

11. Loss adjustment expenses reported in item 8 B should include any incurred but not reported loss adjustment expenses.

12. For item 1, policies written for other than a 12 month term should be adjusted to an annual basis.

13. **Additional instructions to assist in the completion of the supplemental reports are attached (Exhibits 2-5).**

EXHIBIT 1
PAGE 3

Additional Instructions for Completion of the Supplemental Reports

Company Description	Definition
A. Market Number and Name.	Defined by Virginia AL 1996-1.
B. Insurer.	Exact verbal name of insurer
C. NAIC Number.	NAIC Number for each insurer.
D. Group Name.	Exact verbal name of group.
E. Group NAIC Number.	Group NAIC Number.

Questions		Definition
NOTE: All accident year data should be evaluated as of the end of each calendar year being reported.		
1. Number of Policies Written.		A count of policies written in a calendar year within a Market Definition. The count should be annualized. Policy counts should be annualized (e.g. 6 months policies should be counted once in a given year and 3 year policies should be counted in each year).
2. Direct Premiums Written.		Standard definition.
3. A. Direct Premiums Earned		Standard definition.
B. Net Premiums Earned.		Standard definition.
4. A (1)	Direct Losses Paid During the Calendar Year for the Current Accident Year	Calendar year paids are divided between (1) paids where the accident year is the same as the calendar year and (2) other accident years. Where the calendar year and accident year are the same, this paid amount is reported under Question 4 A (1). (Paid losses in this item exclude Loss Adjustment Expense.)
A (2)	Direct Losses Paid During the Calendar Year for Prior Accident Years	Calendar year paids are divided between (1) paids where the accident year is the same as the calendar year and (2) other accident years. Where the calendar and accident year are NOT the same, this paid amount is reported under Question 4 A (2). (Paid losses in this item exclude Loss Adjustment Expense.)
		The sum of Questions 4 A (1) and 4 A (2) equals the total calendar year paid
B (1)	Reserves for Reported Losses at the End of the Calendar Year for the Current Accident Year	Reserves for reported losses at the end of the calendar year are divided between (1) those in which the accident year is the same as the calendar year and (2) other accident years. Where the calendar and accident year are the same, this reserve amount should be reported under Question 4 B (1). (Reserves in this item exclude Loss Adjustment Expense.)

EXHIBIT 1
PAGE 4

B.(2)	Reserves for Reported Losses at the End of the Calendar Year for Prior Accident Years.	Reserves for reported losses at the end of the calendar year are divided between (1) those in which the accident year is the same as the calendar year and (2) other accident years. Where the calendar year and accident year are NOT the same, this reserve amount should be reported under Question 4 B.(2). (Reserves in this item exclude Loss Adjustment Expense.)
		The sum of Questions 4 B.(1) and 4 B (2) equals the total reserves at the end of the calendar year.
C.	Reserves for Reported Losses at the End of the Previous Calendar Year.	Sum of Questions 4 B.(1) and 4 B (2) for the prior year end.
D.(1)	Reserves for Incurred But Not Reported Losses at the End of the Calendar Year for the Current Accident Year.	IBNR reserves at the end of the calendar year are divided between (1) those in which the accident year is the same as the calendar year and (2) other accident years. Where the calendar year and accident year are the same, this IBNR amount should be reported under Question 4 D (1). (This figure should exclude Loss Adjustment Expense.)
D.(2)	Reserves for Incurred But Not Reported Losses at the End of the Calendar Year for Prior Accident Years.	IBNR reserves at the end of the calendar year are divided between (1) those in which the accident year is the same as the calendar year and (2) other accident years. Where the calendar year and accident year are NOT the same this reserve amount should be reported under Question 4 D (2). (This figure should exclude Loss Adjustment Expense.)
		The sum of Questions 4 D.(1) and 4 D (2) equals the total IBNR reserves at the end of the calendar year.
E.	Reserves for Incurred But Not Reported Losses at the End of the Previous Calendar Year.	Sum of Questions 4 D.(1) and 4 D (2) for the prior year end
F.	Accident Year Incurred Losses	Sum of questions 4 A (1), 4 B (1) and 4 D (1)
G.	Calendar Year Incurred Losses	Sum of questions 4 A (1), 4 A (2), 4 B (1), 4 B (2), 4 D (1), and 4 D (2), minus 4 C and 4 E
5	Number of Claims Closed With Payment During the Calendar Year	A count of claims with indemnity and/or medical payments only
6	Number of Open Claims at the End of the Calendar Year.	Self defining

EXHIBIT 1
PAGE 5

7. Net Investment Gain (Loss).	Self defining.
8. A. Direct Underwriting Expenses Incurred.	Self defining.
B. All Direct Loss Adjustment Expenses Incurred During Each Calendar Year	Self defining
9. Seeking to write new business?	This question applies to experience year 1995 only
10. Rating Information Questions	These questions apply to experience year 1995 only

EXHIBIT 2

REGISTRAR OF REGULATIONS

SUPPLEMENTAL REPORT FOR CERTAIN LINES OR SUBCLASSIFICATIONS OF LIABILITY INSURANCE AS REQUIRED BY VIRGINIA CODE 38.2-1905.2

Market Number and Name		Market Definitions Commercial Statistical Plan (CSP) Classes
87001	Architects and Engineers Professional Liability	73908, 73909, 73910 (Subline 317)
87006	Insurance Agents Professional Liability	73123 (Subline 317)
87008	Lawyers Professional Liability	See Exhibit 4
87010	Medical Professional Liability	All subline 210, 220, 230 and 240 classes
87015	Real Estate Agents Professional Liability	73127 (Subline 317)
88022	Landfill Liability	All Classes*
88030	Volunteer Fire Departments and Rescue Squads Liability	See Exhibit 5
91002	Environmental Impairment Liability including Underground Storage Tank Liability	See Exhibit 3

The above market definitions are to be used as a guide in defining specific markets which are required to be reported. Companies should also report the required information for policies written under any comparable classification in use by the individual company.

* NOTE: The ISO CSP does not have specific classes for this market.

EXHIBIT 3
ENVIRONMENTAL IMPAIRMENT LIABILITY REGISTRAR OF REGULATIONS

Class Code 96 FEB -8 AM 9:54

Subline	Old	New	Description
325	90000		Pollution Liability
350		90100	Pollution Liability Form - Including Clean-up Costs Coverage
350		90105	Pollution Liability Form - Excluding Clean-up Costs Coverage
350		90110	CGL Coverage Form - Pollution Extension Endorsement (Excludes Clean-up Costs Coverage)
			Underground Storage Tanks (all classes and types)

EXHIBIT 4
LAWYERS PROFESSIONAL LIABILITY REGISTRAR OF REGULATIONS

96 FEB -8 AM 9:54

Subline	Class Code	Description
317	81220	Lawyers - not members or employees of a partnership
317	81113	Additional Charge: Employed Lawyers not named as insureds and employed law clerks, investigators and abstracters - not employees of a partnership.
317	81330	Lawyers - members or employees of a partnership
317	81114	Additional Charge: Employed Lawyers not named as insureds and employed law clerks, investigators and abstracters - employees of a partnership.
317	81400	Lawyers
317	81420	Employed law clerks, Investigators, Abstracters and Paralegals

EXHIBIT 5
VOLUNTEER FIRE DEPARTMENTS AND RESCUE SQUADS LIABILITY

Class Code

Subline	Old	New	Description
314	93131		Firehouses
314	89970		Volunteer First Aid and Rescue Squads
334		43551*	Fire Departments - volunteer
334		40030	Ambulance Service, First Aid or Rescue Squads

* Including Volunteer Rescue Squads operated in connection with Fire Departments

EXHIBIT 6A
1994 Zero Report

INSURER_____ NAIC #_____

Enter a zero beside the lines and/or subclassifications of liability insurance where you have no written premium in 1994.

87001	Architects and Engineers Professional Liability	_____
87006	Insurance Agents Professional Liability	_____
87008	Lawyers Professional Liability	_____
87010	Medical Professional Liability	_____
87015	Real Estate Agents Professional Liability	_____
88022	Landfill Liability	_____
88030	Volunteer Fire Departments and Rescue Squads Liability	_____
91002	Environmental Impairment Liability including Underground Storage Tank Liability	_____

I hereby certify that the information contained in this report contains all applicable Virginia data as reported to the NAIC on page 14 of the Annual Statement, line 5.2 (Multiperil Liability), line 11 (Medical Malpractice), line 17 (Other Liability), and line 18 (Products Liability).

Signed: _____

Print Name: _____

Title: _____

Telephone: _____

Date: _____

VA.R. Doc. No. R96-214; Filed February 8, 1996, 9:53 a.m.

EXHIBIT 6B
1995 Zero Report

REGISTRAR OF REGULATIONS

INSURER _____ NAIC # 96 FEB -8 AM 9:54

Enter a zero beside the lines and/or subclassifications of liability insurance where you have no written premium in 1995.

87001	Architects and Engineers Professional Liability	_____
87006	Insurance Agents Professional Liability	_____
87008	Lawyers Professional Liability	_____
87010	Medical Professional Liability	_____
87015	Real Estate Agents Professional Liability	_____
88022	Landfill Liability	_____
88030	Volunteer Fire Departments and Rescue Squads Liability	_____
91002	Environmental Impairment Liability including Underground Storage Tank Liability	_____

I hereby certify that the information contained in this report contains all applicable Virginia data as reported to the NAIC on page 14 of the Annual Statement, line 5.2 (Multiperil Liability), line 11 (Medical Malpractice), line 17 (Other Liability), and line 18 (Products Liability).

Signed: _____

Print Name: _____

Title: _____

Telephone: _____

Date: _____

DISKETTE REQUEST FORM

Mr. Eric C. Lowe
Senior Insurance Analyst
Bureau of Insurance
Post Office Box 1157
Richmond, Virginia 23218

REGISTRAR OF REGULATIONS

96 FEB -8 AM 9:54

RE: Administrative Letter 1996-1 Supplemental Report
Diskette Request Form

Dear Mr. Lowe:

– Our computer system can use both 3 1/2" high density (1.4M) and 5 1/4" low density (360K) diskettes.
Yes ____ No ____

– Our computer system requires that we use only:
3 1/2" high density (1.4M) ____
5 1/4" low density (360K) ____

Please forward the diskette program for the following company(s):

NOTE #1: All Companies licensed in Virginia for liability must be included on this list regardless of written premium size and even if the Company had no written premium for 1994 or 1995.

NAIC	Company
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

MAIL DISKETTE TO:

_____
(Please Type or Print) Name

_____
Title

_____
Company

_____
Address

_____
Phone Number Date

GOVERNOR'S COMMENTS ON PROPOSED REGULATIONS

DEPARTMENT OF STATE POLICE

Title of Regulation: **19 VAC 30-70-10 et seq. Motor Vehicle Safety Inspection Rules and Regulations.**

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: November 15, 1995

VA.R. Doc. No. R96-220; Filed February 13, 1996, 12:40 p.m.

STATE WATER CONTROL BOARD

Title of Regulation: **9 VAC 25-415-10 et seq. Policy for the Potomac River Embayments.**

Governor's Comment:

This regulation is requested by all affected localities in the Potomac River embayment area. I have reviewed it on a preliminary basis. While I reserve the right to take action authorized by the Administrative Process Act during the final adoption period, I have no objection to the proposed regulation based on the information and public comment currently available.

/s/ George Allen
Governor
Date: February 1, 1996

VA.R. Doc. No. R96-215; Filed February 13, 1996, 9:10 a.m.

SCHEDULES FOR COMPREHENSIVE REVIEW OF REGULATIONS

Governor George Allen issued and made effective Executive Order Number Fifteen (94) on June 21, 1994. This Executive Order was published in *The Virginia Register of Regulations* on July 11, 1994 (10:21 VA.R. 5457-5461 July 11, 1994). The Executive Order directs state agencies to conduct a comprehensive review of all existing regulations to be completed by January 1, 1997, and requires a schedule for the review of regulations to be developed by the agency and published in *The Virginia Register of Regulations*. This section of the *Virginia Register* has been reserved for the publication of agencies' review schedules. Agencies will receive public comment on the following regulations listed for review.

DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT

Pursuant to the Governor's Executive Order Number Fifteen (94) and the agency's Public Participation Guidelines, the Department of Housing and Community Development requests public comment regarding the essential purpose for the regulation, suggestions for less burdensome and intrusive alternatives for achieving the essential purpose of the regulation, and whether the regulation is clearly written and easily understandable, for the following regulations:

VR 394-01-102:1 [13 VAC 5-120-10 et seq.] Local Housing Rehabilitation Program: Program Guidelines.

VR 394-01-104 [13 VAC 5-140-10 et seq.] Congregate Housing Program Guidelines.

VR 394-01-106 [13 VAC 5-160-10 et seq.] Homeownership Assistance Program.

VR 394-01-31 [13 VAC 5-90-10 et seq.] Virginia Industrialized Building and Manufactured Home Safety Regulations/1993.

VR 394-01-4 [13 VAC 5-30-10 et seq.] Virginia Amusement Device Regulations/1993.

VR 394-01-6 [13 VAC 5-50-10 et seq.] Virginia Statewide Fire Prevention Code/1993.

VR 449-01-02 [13 VAC 6-20-10 et seq.] Manufactured Housing Licensing and Transaction Recovery Fund Regulations.

Written comments may be submitted until April 5, 1996, to Stephen W. Calhoun, CPA, 501 North Second Street, Richmond, Virginia 23219-1321.

DEPARTMENT OF SOCIAL SERVICES

Notice of Review of Existing Regulations in the Child Protective Services (CPS) Program

Pursuant to Executive Order Number Fifteen (94), the Department of Social Services is publishing this notice to inform the public that the Child Protective Services (CPS) Program regulation listed below will be reviewed to determine if it should be continued, amended or repealed.

Regulation

VR 615-45-3 [22 VAC 40-720-10 et seq.] Child Protective Services Release of Information to Family Advocacy Representatives of the U.S. Armed Forces.

Procedures for Submitting Comments

Written comments on the above regulation must be received no later than April 19, 1996, to be considered in the regulation review.

Please mail comments to the Child Protective Services Program Manager, Division of Service Programs, 730 East Broad Street, Richmond, Virginia 23219. Comments may also be submitted by facsimile transmission (FAX number (804) 692-2209).

The department contact for any questions about this notice is Jesslyn Cobb, CPS Program Consultant, Division of Service Programs, Department of Social Services, 730 East Broad Street, Richmond, Virginia 23219, telephone (804) 692-1255.

* * * * * * * *

Notice of Review of Existing Regulations in the Community Services Block Grant Program

Pursuant to Executive Order Number Fifteen (94), the Department of Social Services is publishing this notice to inform the public that the Community Services Block Grant Program regulation listed below will be reviewed to determine if it should be continued, amended or repealed.

Regulation

VR 615-90-01 [22 VAC 40-900-10 et seq.] Community Service Block Grant Guidelines.

Procedures for Submitting Comments

Written comments on the above regulation must be received no later than April 4, 1996, to be considered in the regulation review. In commenting, please begin by identifying the regulation by title. Please mail comments to Phyl Parrish, Special Projects Coordinator, Office of Community Services, Department of Social Services, 730 East Broad Street, Richmond, Virginia 23219-1849. Comments may also be submitted by facsimile transmission (FAX number (804) 692-1869). The department contact for any questions about this notice is Phyl Parrish, Office of Community Services, Department of Social Services, 730 East Broad Street, Richmond, Virginia 23219-1849, telephone (804) 692-1895.

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

DEPARTMENT OF LABOR AND INDUSTRY

† Notice to the Public

The Virginia State Plan for the enforcement of Virginia Occupational Safety and Health (VOSH) laws commits the Commonwealth to adopt regulations identical to, or as effective as, those promulgated by the U. S. Department of Labor, Occupational Safety and Health Administration.

Accordingly, public participation in the formulation of such regulations must be made during the adoption of such regulations at the federal level. Therefore, the Virginia Department of Labor and Industry is reissuing the following Federal OSHA notice:

U. S. DEPARTMENT OF LABOR

Occupational Safety and Health Administration

Permit-Required Confined Spaces

(Docket No. ICR-96-1)

29 CFR Part 1910

Agency: Occupational Safety and Health Administration (OSHA)

Action: Notice of proposed information collection request; submitted for public comment and recomendations.

Summary: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95)(44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and impact of collection requirements on respondents can be properly assessed. Currently, the Occupational Safety and Health Administration (OSHA) is soliciting comments concerning the proposed extension of approval for the paperwork requirements of 29 CFR 1910.146, Permit-Required Confined Spaces.

Text: Full text of the proposed rulemaking can be found in the Federal Register, Volume 61, No. 17, p. 2267 (January 25, 1996).

Dates: Written comments must be submitted on or before March 25, 1996. Written comments should:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

Addresses: Comments are to be submitted in quadruplicate to the Docket Office, Docket No. ICR-96-1, Room N-2625, U.S. Department of Labor, 200 Constitution Ave., N.W., Washington, D.C. 20210, (202) 219-7894. Written comments limited to 10 pages or less may be transmitted by facsimile to (202) 219-5046.

An additional copy should be submitted to the Policy Analyst, Division of Discrimination, Evaluation, Legal and Technical Assistance (DELTA), Virginia Department of Labor and Industry, 13 South Thirteenth Street, Richmond, Virginia 23219.

For Further Information Contact: Anne C. Cyr, Office of Information and Consumer Affairs, OSHA, U. S. Department of Labor, Room N3647, 200 Constitution Avenue, N.W., Washington, D.C. 20210, (202) 219-8148. Copies of the referenced information collection request are available for inspection and copying in the Docket Office and will be mailed immediately to persons who request copies by telephoning Vivian Allen at (202) 219-8076. For electronic copies, contact the Labor News Bulletin Board (202) 219-4784; or OSHA's WebPage on Internet at http://www.osha.gov/.

† Notice to the Public

The Virginia State Plan for the enforcement of Virginia Occupational Safety and Health (VOSH) laws commits the Commonwealth to adopt regulations identical to, or as effective as, those promulgated by the U. S. Department of Labor, Occupational Safety and Health Administration.

Accordingly, public participation in the formulation of such regulations must be made during the adoption of such regulations at the federal level. Therefore, the Virginia Department of Labor and Industry is reissuing the following Federal OSHA notice:

U. S. DEPARTMENT OF LABOR

Occupational Safety and Health Administration

Process Safety Management of Highly Hazardous Chemicals

(Docket No. ICR-95-6)

29 CFR Part 1910

Agency: Occupational Safety and Health Administration (OSHA)

Action: Notice of proposed information collection request; submitted for public comment and recommendations.

Summary: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burdens, is conducting a preclearance consultation program to provide the general public and federal agencies with an opportunity to comment on proposed and continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95)(44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and impact of collection requirements on respondents can be properly assessed. Currently, the Occupational Safety and Health Administration (OSHA) is soliciting comments concerning the proposed extension of approval for the paperwork requirements of 29 CFR 1910.119, Process Safety Management of Highly Hazardous Chemicals.

Text: Full text of the proposed rulemaking can be found in the Federal Register, Volume 61, No. 14, p. 1604 (January 22, 1996).

Dates: Written comments must be submitted on or before March 22, 1996. Comments should:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

Addresses: Comments on the proposal are to be submitted in quadruplicate to the Docket Office, Docket No. ICR-95-6, Room N-2625, U.S. Department of Labor, 200 Constitution Ave., N.W., Washington, D.C. 20210, (202) 219-7894. Written comments limited to 10 pages or less may be transmitted by facsimile to (202) 219-5046.

An additional copy should be submitted to the Policy Analyst, Division of Discrimination, Evaluation, Legal and Technical Assistance (DELTA), Virginia Department of Labor and Industry, 13 South Thirteenth Street, Richmond, Virginia 23219.

For Further Information Contact: Anne C. Cyr, Office of Information and Consumer Affairs, OSHA, U. S. Department of Labor, Room N3647, 200 Constitution Avenue, N.W., Washington, D.C. 20210, (202) 219-8148. Copies of the referenced information collection request are available for inspection and copying in the Docket Office and will be mailed immediately to persons who request copies by telephoning Vivian Allen at (202) 219-8076. For electronic copies, contact the Labor News Bulletin Board (202) 219-4784; or OSHA's WebPage on Internet at http://www.osha.gov/.

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

ERRATA

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Title of Regulation: 12 VAC 30-80-170. Payment of Medicare Part A and Part B Deductible/Coinsurance.

Publication: 12:5 VA.R. 792 November 27, 1995.

Correction to Final Regulation:

Page 792, column 2, replace the entire section with the following:

12 VAC 30-80-170. Payment of Medicare Part A and Part B Deductible/Coinsurance.

Except for a nominal recipient copayment (as specified in 12 VAC 30-20-150 and 12 VAC 30-20-160), if applicable, the Medicaid agency uses the following general method for payment:

1. Payments are limited to state plan rates and payment methodologies for the groups and payments listed below and designated with the letters "SP."

For specific Medicare services which are not otherwise covered by this state plan, the Medicaid agency uses Medicare payment rates unless a special rate or method is set out.

Not applicable. There are no special rates or methods used for specific Medicare services which are not otherwise covered by this state plan.

2. Payments are up to the full amount of the Medicare rate for the groups and payments listed below, and designated with the letters "MR."

Dual eligibles and qualified Medicare beneficiaries only for physical therapy, occupational therapy, and services for individuals with speech, hearing, and language disorders.

3. Payments are up to the amount of a special rate, or according to a special method for the groups and payments listed below and designated with the letters "NR."

4. Any exceptions to the general methods used for a particular group or payment are specified.

Payment of Medicare Part A and Part B Deductible/Coinsurance

QMBs	Part A	~~SP~~ MR	Deductibles	~~SP~~ MR	Coinsurance
	Part B	~~SP~~ MR	Deductibles	SP*	Coinsurance
Other Medicaid Recipients	Part A	~~SP~~ MR	Deductibles	~~SP~~ MR	Coinsurance
	Part B	~~SP~~ MR	Deductibles	SP*	Coinsurance
Dual Eligible (QMB Plus)	Part A	~~SP~~ MR	Deductibles	~~SP~~ MR	Coinsurance
	Part B	~~SP~~ MR	Deductibles	SP*	Coinsurance

NOTE: The payment of Title XIX state plan rates shall apply to all covered services with the exception of covered physical therapy, occupational therapy, and services for individuals with speech, hearing, and language disorders. These services (pursuant to 42 CFR 440.110) shall be paid at the full Medicare rate consistent with the order of the court.

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

† April 22, 1996 - 10 a.m. -- Open Meeting
† April 23, 1996 - 8 a.m. -- Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

An open meeting to discuss regulatory review and 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 board at least 10 days prior to the meeting so that suitable arrangements can be made. The department fully complies with the Americans with Disabilities Act.

Contact: Nancy Taylor Feldman, Assistant Director, Board for Accountancy, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8590, FAX (804) 367-2474 or (804) 367-9753/TDD ☎

VIRGINIA AGRICULTURAL COUNCIL

March 25, 1996 - 9 a.m. -- Open Meeting
March 26, 1996 - 9 a.m. -- Open Meeting
Boar's Head Inn, Route 250 West, Charlottesville, Virginia. ♿ (Interpreter for the deaf provided upon request)

A meeting to hear and act upon project proposals for financial assistance through the Virginia Agricultural Council. The council will entertain public comments at the conclusion of all other business not to exceed 30 minutes. Any person who needs any accommodations in order to participate at the meeting should contact Thomas R. Yates at least 10 days before the meeting date so that suitable arrangements can be made.

Contact: Thomas R. Yates, Assistant Secretary, Virginia Agricultural Council, 1100 Bank St., Room 703, Richmond, VA 23219, telephone (804) 786-6060.

DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

Virginia State Apple Board

† March 6, 1996 - 10 a.m. -- Open Meeting
Council on Information Management, Washington Building, 1100 Bank Street, Suite 901, 9th Floor, Richmond, Virginia. ♿

The board will discuss 1995 crop production, tax collections, and review budget and marketing plans for 1996. The board will entertain public comment at the conclusion of all other business for a period not to exceed 30 minutes. Any person who needs any accommodations in order to participate at the meeting should contact Nancy L. Israel at least two days before the meeting date so that suitable arrangements can be made.

Contact: Nancy L. Israel, Program Director, Virginia State Apple Board, Washington Bldg., 1100 Bank St., Suite 1008, Richmond, VA 23219, telephone (804) 371-6104.

Virginia Marine Products Board

March 6, 1996 - 6 p.m. -- Open Meeting
Bill's Seafood House, Route 17 and Denbigh Boulevard, Grafton, Virginia. ♿

A meeting to receive reports from the Executive Director of the Virginia Marine Products Board on finance, marketing, past and future program planning, publicity/public relations, and old/new business. The board will entertain public comment at the conclusion of all other business for a period not to exceed 30 minutes. Any person who needs any accommodations in order to participate at the meeting should contact Shirley Estes at least five days before the meeting date so that suitable arrangements can be made.

Contact: Shirley Estes, Executive Director, 554 Denbigh Boulevard, Suite B, Newport News, VA 23608, telephone (804) 874-3474.

Virginia Peanut Board

March 6, 1996 - 10 a.m. -- Open Meeting
Tidewater Agricultural Research and Extension Center, 6231 Holland Road, Suffolk, Virginia.

A meeting to review peanut research projects for possible funding in 1996. 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 Russell C. Schools at least five days before the meeting date so that suitable arrangements can be made.

Contact: Russell C. Schools, Program Director, Virginia Peanut Board, P.O. Box 356, Capron, VA 23829, telephone (804) 658-4573.

Pesticide Control Board

† April 11, 1996 - 9 a.m. -- Open Meeting
Washington Building, 1100 Bank Street, Board Room, Room 204, Richmond, Virginia.

Committee meetings and a general business meeting. Portions of the meeting may be held in closed session pursuant to § 2.1-344 of the Code of Virginia. The public will have an opportunity to comment on any matter not on the board's agenda beginning at 9 a.m. Any person who needs any accommodations in order to participate at the meeting should contact Dr. Marvin A. Lawson at least 10 days before the meeting date so that suitable arrangements can be made.

Contact: Dr. Marvin A. Lawson, Program Manager, Office of Pesticide Services, Department of Agriculture and Consumer Services, 1100 Bank St., Room 401, P.O. Box 1163, Richmond, VA 23218, telephone (804) 371-6558.

Virginia Sweet Potato Board

† March 7, 1996 - 6 p.m. -- Open Meeting
LJ's Sports Restaurant, 32210 Fairground Road, Onancock, Virginia.

A meeting to discuss promotion, research and education programs, the annual budget, and other business that may come before the board. The board will entertain public comment at the conclusion of all other business for a period not to exceed 30 minutes. Any person who needs any accommodations in order to participate at the meeting should contact J. William Mapp at least three days before the meeting date so that suitable arrangements can be made.

Contact: J. William Mapp, Program Director, Virginia Sweet Potato Board, P.O. Box 26, Onley, VA 23418, telephone (804) 787-5867.

STATE AIR POLLUTION CONTROL BOARD

† April 2, 1996 - 9 a.m. -- Open Meeting
General Assembly Building, 910 Capitol Square, House Room C, Richmond, Virginia.

A regular meeting of the board.

Contact: Cindy M. Berndt, Regulatory Coordinator, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4378.

* * * * * * * *

† April 8, 1996 - 10 a.m. -- Public Hearing
Department of Environmental Quality, 629 East Main Street, First Floor, Training Room, Richmond, Virginia.

† April 9, 1996 - 10 a.m. -- Public Hearing
Alexandria City Hall, 301 King Street, Room 2000, Alexandria, Virginia.

† May 3, 1996 -- Public comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Air Pollution Control Board intends to adopt regulations entitled: **9 VAC 5-150-10 et seq. Regulation for Transportation Conformity.** The regulation establishes criteria and procedures for the transportation planning organization to use when determining whether federally-funded transportation plans, programs, and projects are in conformance with air quality plans before they are adopted. In addition, highway or transit projects which are funded or approved by the Federal Highway Administration or the Federal Transit Administration must be found to conform before they are approved or funded by U.S. Department of Transportation or a Metropolitan Planning Organization. This will apply in the Northern Virginia, Richmond, and Hampton Roads nonattainment areas. "Conformity" means that the activity will not (i) cause or contribute to any new violation of any standard in any area, (ii) will not increase the frequency or severity of any existing violation of any standard in any area, or (iii) will not delay timely attainment of any standard or any required interim emission reductions or other milestones in any area.

A transportation activity must not adversely affect implementation of the state implementation plan or the timely attainment and maintenance of the National Ambient Air Quality Standards. This integration of transportation activities and air quality planning is intended to ensure that emissions growth projections are not exceeded, emissions reduction targets are met, and maintenance efforts are not undermined.

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 Ozone Nonattainment Area: Arlington County, Fairfax County, Fauquier County, Loudoun County, Prince William County, Stafford County, the City of Alexandria, the City of Fairfax, the City of Falls Church, the City of Manassas, and the City of Manassas Park.

2. The Richmond Ozone Nonattainment 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 Ozone Nonattainment 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.

4. Maintenance areas, i.e., the above areas when redesignated to attainment.

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 Office of Air Program Development (Eighth Floor), 629 East Main Street, Richmond, Virginia, and the department's regional offices (listed below) between 8:30 a.m. and 4:30 p.m. of each business day until the close of the public comment period.

Fredericksburg Satellite Office
Department of Environmental Quality
300 Central Road, Suite B
Fredericksburg, Virginia
Ph: (540) 899-4600

Piedmont Regional Office
Department of Environmental Quality
4949-A Cox Road
Innsbrook Corporate Center
Glen Allen, Virginia
Ph: (804) 527-5020

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., Friday, May 3, 1996 to the Director, Office of Air Program Development, Department of Environmental Quality, P.O. Box 10009, Richmond, Virginia 23240.

Contact: Mary E. Major, Policy Analyst Senior, Air Programs Section, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 762-4423.

* * * * * * * *

† April 8, 1996 - 10 a.m. -- Public Hearing
Department of Environmental Quality, 629 East Main Street, First Floor, Training Room, Richmond, Virginia.

† April 9, 1996 - 10 a.m. -- Public Hearing
Alexandria City Hall, 301 King Street, Room 2000, Alexandria, Virginia.

† May 3, 1996 -- Public comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Air Pollution Control Board intends to adopt regulations entitled: **9 VAC 5-160-10 et seq. Regulation for General Conformity.** The regulation establishes criteria and procedures for federal agencies to use when determining whether their nontransportation actions conform with air quality plans before they are adopted. It will apply in the Northern Virginia, Richmond, and Hampton Roads nonattainment areas. "Conformity" means that the activity will not (i) cause or contribute to any new violation of any standard in any area, (ii) will not increase the frequency or severity of any existing violation of any standard in any area, or (iii) will not delay timely attainment of any standard or any required interim emission reductions or other milestones in any area.

A federal activity must not adversely affect implementation of the state implementation plan or the timely attainment and maintenance of the National Ambient Air Quality Standards. This integration of federal activities and air quality planning is intended to ensure that emissions growth projections are not exceeded, emissions reduction targets are met, and maintenance efforts are not undermined.

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 Ozone Nonattainment Area: Arlington County, Fairfax County, Fauquier County, Loudoun County, Prince William County, Stafford County, the City of Alexandria, the City of Fairfax, the City of Falls Church, the City of Manassas, and the City of Manassas Park.

2. The Richmond Ozone Nonattainment 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 Ozone Nonattainment 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.

4. Maintenance areas, i.e., the above areas when redesignated to attainment.

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 Office of Air Program Development (Eighth Floor), 629 East Main Street, Richmond, Virginia, and the department's regional offices (listed below) between 8:30 a.m. and 4:30 p.m. of each business day until the close of the public comment period.

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
4949-A Cox Road
Innsbrook Corporate Center
Glen Allen, Virginia
Ph: (804) 527-5020

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., Friday, May 3, 1996 to the Director, Office of Air Program Development, Department of Environmental Quality, P.O. Box 10009, Richmond, Virginia 23240.

Contact: Karen G. Sabasteanski, Policy Analyst, Air Programs Section, Department of Environmental Quality, P.O. Box 10009, Richmond, Virginia 23240, telephone (804) 762-4426.

State Advisory Board on Air Pollution

† March 13, 1996 - 9 a.m. -- Open Meeting
† May 8, 1996 - 9 a.m. -- Open Meeting
James Monroe Building, 101 North 14th Street, Conference Room D, Richmond, Virginia.

The board will meet three times to discuss air quality topics and develop recommendations for the State Air Pollution Control Board on (i) what could and should be considered by the board in making regulatory changes; (ii) guidelines for small businesses in conducting environmental audits; and (iii) electronic information sharing between DEQ and the public. These recommendations will be presented to the board in the fall.

Contact: Kathy Frahm, Policy Analyst, Department of Environmental Quality, 629 E. Main St., Richmond, VA 23219, telephone (804) 698-4376 or FAX (804) 698-4346.

ALCOHOLIC BEVERAGE CONTROL BOARD

† March 4, 1996 - 9:30 a.m. -- Open Meeting
† March 18, 1996 - 9:30 a.m. -- Open Meeting
† April 1, 1996 - 9:30 a.m. -- Open Meeting
† April 15, 1996 - 9:30 a.m. -- Open Meeting
† April 29, 1996 - 9:30 a.m. -- Open Meeting
† May 13, 1996 - 9:30 a.m. -- Open Meeting
† May 29, 1996 - 9:30 a.m. -- Open Meeting
Department of Alcoholic Beverage Control, 2901 Hermitage Road, Richmond, Virginia.

A meeting to receive and discuss reports from and activities of staff members. Other matters have not yet been determined.

Contact: W. Curtis Coleburn, Secretary to the Board, Department of Alcoholic Beverage Control, 2901 Hermitage Rd., P.O. Box 27491, Richmond, VA 23261, telephone (804) 367-0712 or FAX (804) 367-1802.

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

March 20, 1996 - 9 a.m. -- Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia.

A meeting to conduct board business. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact the board at least 10 days prior to the meeting so that suitable arrangements can be made. The board fully complies with the Americans with Disabilities Act.

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

Board for Interior Designers

March 14, 1996 - 9 a.m. -- Open Meeting

Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia.

A meeting to conduct board business. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact the board at least 10 days prior to the meeting so that suitable arrangements can be made. The board fully complies with the Americans with Disabilities Act.

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

Board for Landscape Architects

March 7, 1996 - 9 a.m. -- Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia.

A meeting to conduct board business. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact the board at least 10 days prior to the meeting so that suitable arrangements can be made. The board fully complies with the Americans with Disabilities Act.

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

Board for Land Surveyors

† March 19, 1996 - 9 a.m. -- Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia.

A meeting to develop a task analysis instrument for use in developing the Land Surveyor Virginia Specific State Examination.

Contact: George O. Bridewell, Examination Administrator, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8572 or (804) 367-9753/TDD ☎

VIRGINIA COMMISSION FOR THE ARTS

† March 27, 1996 - 3:30 p.m. -- Open Meeting
The Jackson Center, 501 North 2nd Street, Board Room, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A quarterly meeting of the board.

Contact: Lorraine W. Lacy, Executive Secretary, Virginia Commission for the Arts, 223 Governor St., Richmond, VA 23219, telephone (804) 225-3132, FAX (804) 225-4327, or (804) 225-3132/TDD ☎

BOARD FOR ASBESTOS LICENSING AND LEAD CERTIFICATION

March 21, 1996 - 10 a.m. -- Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, Conference Room 4, Richmond, Virginia.

A meeting to conduct general board business.

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

VIRGINIA AVIATION BOARD

April 1, 1996 -- Public comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Virginia Aviation Board intends to amend regulations entitled: **VR 165-01-02:1 [24 VAC 5-20-10 et seq.] Regulations Governing the Licensing and Operation of Airports and Aircraft and Obstructions to Airspace in the Commonwealth of Virginia.** The purpose of the proposed action is to amend the Virginia Aviation Regulations to (i) comply with statutory changes; and (ii) enact provisions identified per the comprehensive review of regulations (Executive Order 15(94)).

Statutory Authority: §§ 5.1-2.2 and 5.1-2.15 of the Code of Virginia.

Contact: Michael A. Waters, Policy Analyst Senior, Department of Aviation, 5702 Gulfstream Rd., Sandston, VA 23150-2502, telephone (804) 236-3631, FAX (804) 236-3625, toll-free 1-800-292-1034 or (804) 236-3624/TDD ☎

CHILD DAY-CARE COUNCIL

† March 14, 1996 - 9:30 a.m. -- Open Meeting
Theater Row Building, 730 East Broad Street, Lower Level, Conference Room 1, Richmond, Virginia. (Interpreter for the deaf provided upon request)

The council will meet to discuss issues and concerns that impact child day centers, camps, school age programs, and preschool/nursery schools. Public comment will be received at noon. Please call ahead of time for possible changes in meeting time. Committee chairs will meet with the council chair at 9:30 a.m., and the regular meeting will start at 10 a.m. Contingent snow date is Friday, March 22 at same time and place.

Contact: Rhonda Harrell, Division of Licensing Programs, Department of Social Services, 730 E. Broad St., Richmond, VA 23219, telephone (804) 692-1775.

STATE BOARD FOR COMMUNITY COLLEGES

March 13, 1996 - 2:30 p.m. -- Open Meeting
Monroe Building, 101 North 14th Street, 15th Floor, Richmond, Virginia.

State board committee meetings.

Contact: Dr. Joy S. Graham, Assistant Chancellor, Public Affairs, State Board for Community Colleges, Monroe Bldg., 101 N. 14th St., 15th Floor, Richmond, VA 23219, telephone (804) 225-2126 or (804) 371-8504/TDD ☎

March 14, 1996 - 8:30 a.m. -- Open Meeting
Monroe Building, 101 North 14th Street, 15th Floor, Richmond, Virginia.

A regularly scheduled board meeting.

Contact: Dr. Joy S. Graham, Assistant Chancellor, Public Affairs, State Board for Community Colleges, Monroe Bldg., 101 N. 14th St., 15th Floor, Richmond, VA 23219, telephone (804) 225-2126 or (804) 371-8504/TDD ☎

DEPARTMENT OF CONSERVATION AND RECREATION

Falls of the James Scenic River Advisory Board

March 7, 1996 - Noon -- Open Meeting
April 4, 1996 - 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

Recovery Fund Committee

March 18, 1996 - 9 a.m. -- Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia.♿

A meeting to consider claims against the Virginia Contractor Transaction Recovery Fund. This meeting will be open to the public; however, a portion of the discussion may be conducted in Executive Session. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact Holly Erickson at least 2 weeks prior to the meeting so that suitable arrangements can be made. The board fully complies with the Americans with Disabilities Act.

Contact: Holly Erickson, Assistant Administrator, Board for Contractors, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8561.

DEPARTMENT OF CORRECTIONAL EDUCATION

† March 22, 1996 - 10 a.m. -- Open Meeting
James Monroe Building, 101 North 14th Street, 7th Floor, Richmond, Virginia.♿ (Interpreter for the deaf provided upon request)

A meeting to describe the subject matter and intent of proposed regulation 6 VAC 10-10-10, Public Participation Guidelines, and solicit the input of interested parties in the formation and development of the regulation.

Contact: Mark Monson, Budget Manager, Department of Correctional Education, James Monroe Bldg., 101 N. 14th St., 7th Floor, Richmond, VA 23219-3678, telephone (804) 225-3310, FAX (804) 225-3255, or (804) 371-8467/TDD ☎

BOARD OF CORRECTIONS

† March 13, 1996 - 10 a.m. -- Open Meeting
Department of Corrections, 6900 Atmore Drive, Board Room, Richmond, Virginia.♿

A meeting to discuss matters which may be presented to the board.

Contact: Barbara Fellows, Secretary to the Board, Department of Corrections, 6900 Atmore Dr., Richmond, VA 23225, telephone (804) 674-3235 or FAX (804) 674-3130.

† March 14, 1996 - 9:30 a.m. -- Open Meeting
Department of Corrections, 6900 Atmore Drive, Board Room, Richmond, Virginia.♿

A meeting to discuss criminal justice matters.

Contact: Barbara Fellows, Secretary to the Board, Department of Corrections, 6900 Atmore Dr., Richmond, VA 23225, telephone (804) 674-3235 or FAX (804) 674-3130.

Administration Committee

† March 13, 1996 - 8:30 a.m. -- Open Meeting
Department of Corrections, 6900 Atmore Drive, Board Room, Richmond, Virginia.♿

A meeting to discuss administrative matters which may be presented to the full board.

Contact: Barbara Fellows, Secretary to the Board, Department of Corrections, 6900 Atmore Dr., Richmond, VA 23225, telephone (804) 674-3235 or FAX (804) 674-3130.

Correctional Services Committee

† March 12, 1996 - 10 a.m. -- Open Meeting
Department of Corrections, 6900 Atmore Drive, Board Room, Richmond, Virginia.♿

A meeting to discuss correctional services matters which may be presented to the full board.

Contact: Barbara Fellows, Secretary to the Board, Department of Corrections, 6900 Atmore Dr., Richmond, VA 23225, telephone (804) 674-3235 or FAX (804) 674-3130.

CRIMINAL JUSTICE SERVICES BOARD

March 13, 1996 - 11 a.m. -- Open Meeting
Department of Criminal Justice Services, 805 East Broad Street, 5th Floor, Conference Room, Richmond, Virginia.

A meeting to consider matters related to the board's responsibilities for criminal justice training and improvement of the criminal justice system. Public comments will be heard before adjournment of the meeting.

Contact: Sherri Stader, Assistant to the Director, Department of Criminal Justice Services, 805 E. Broad St., 10th Floor, Richmond, VA 23219, telephone (804) 786-8718, FAX (804) 371-8981.

BOARD OF DENTISTRY

† March 8, 1996 - 9 a.m. -- Open Meeting
† March 15, 1996 - 9 a.m. -- Open Meeting
† March 16, 1996 - 9 a.m. -- Open Meeting
† March 22, 1996 - 9 a.m. -- Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 4, Richmond, Virginia. (Interpreter for the deaf provided upon request)

The Informal Conference Committee will hold conferences. This is a public meeting; however, no public comment will be taken.

Contact: Marcia J. Miller, Executive Director, Board of Dentistry, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9906 or (804) 662-7197/TDD ☎

Continuing Education Committee

† March 22, 1996 - 8 a.m. -- Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 2, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A meeting to discuss requests from licensees regarding exceptions to continuing education. This is a public meeting; however, no public comment will be taken.

Contact: Marcia J. Miller, Executive Director, Board of Dentistry, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9906 or (804) 662-7197/TDD ☎

VIRGINIA ECONOMIC DEVELOPMENT PARTNERSHIP

Board of Directors

† March 4, 1996 - 2 p.m. -- Open Meeting
Department of Economic Development, Riverfront Plaza, West Tower, 901 East Byrd Street, 19th Floor, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A meeting to provide the board with an update of actions taken by the General Assembly affecting the partnership, particularly bills relating to the transfer of the tourism functions to the partnership and the creation of the Department of Business Assistance. An update on the partnership's budget request will also be discussed. General business will include a discussion of recent economic development announcements of the Commonwealth and discussion of bylaws.

Contact: Wayne Sterling, Director, Department of Economic Development, 901 E. Byrd St., Richmond, VA 23219, telephone (804) 371-8100, FAX (804) 371-1212, or (804) 371-0327☎

LOCAL EMERGENCY PLANNING COMMITTEE - GLOUCESTER COUNTY

† April 24, 1996 - 6:30 p.m. -- Open Meeting
Gloucester County Administration Building, Conference Room, Gloucester, Virginia. (Interpreter for the deaf provided upon request)

A meeting to discuss the annual exercise, appointments to the committee, amendments to the bylaws, and a briefing on the recently updated County Emergency Operations Plan.

Contact: Georgette N. Hurley, Assistant County Administrator, P.O. Box 329, Gloucester, VA 23061, telephone (804) 693-4042 or (804) 693-1479/TDD ☎

DEPARTMENT OF ENVIRONMENTAL QUALITY

March 29, 1996 - 10 a.m. -- Open Meeting
Department of Environmental Quality, 629 East Main Street, Richmond, Virginia.

A meeting to obtain advice from interested parties to the Virginia Waste Management Board on desirable features to be incorporated into the Virginia Voluntary Remediation Program. This announcement is to provide public notice that the dates of meetings for the Voluntary Remediation Program has been changed from that which was previously advertised. The public should contact the Department of Environmental Quality prior to attendance to confirm the meeting's occurrence, location and time.

Contact: Dr. Wladimir Gulevich, Assistant Division Director, Office of Technical Assistance, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240-0009,

telephone (804) 698-4236, FAX (804) 698-4327, or (804) 698-4021/TDD ☎

Virginia Ground Water Protection Steering Committee

March 19, 1996 - 9 a.m. -- Open Meeting
Richmond Area (Call agency for location)♿

A regularly scheduled meeting. Meetings are open to the public. Anyone interested in ground water protection issues is encouraged to attend. A tour of the Division of Consolidated Laboratories is scheduled for the meeting. To obtain a meeting agenda and location, contact Mary Ann Massie at (804) 698-4042.

Contact: Mary Ann Massie, Environmental Program Planner, Department of Environmental Quality, P. O. Box 10009, Richmond, VA 23240-0009, telephone (804) 698-4042.

BOARD OF FORESTRY

Reforestation of Timberlands Board

† March 13, 1996 - 10 a.m. -- Open Meeting
Department of Forestry, Fontaine Research Park, 900 Natural Resources Drive, Charlottesville, Virginia.♿

A meeting to discuss the status of the legislative package, reforestation progress year to date, and budgeting matters.

Contact: Phil T. Grimm, Forest Development Team, Department of Forestry, P.O. Box 3758, Charlottesville, VA 22903, telephone (804) 977-6555.

BOARD OF FUNERAL DIRECTORS AND EMBALMERS

March 6, 1996 - 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 for 15 minutes at the beginning of the meeting. Formal hearings will follow the meeting.

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, FAX (804) 662-9943, or (804) 662-7197/TDD ☎

March 7, 1996 - 9 a.m. -- Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Richmond, Virginia.

Formal hearings continued from Wednesday, March 6, 1996.

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, FAX (804) 662-9943, or (804) 662-7197/TDD ☎

DEPARTMENT OF GAME AND INLAND FISHERIES

† March 11, 1996 - 6:30 p.m. -- Open Meeting
Smyth-Bland Regional Library, 118 South Sheffey Street, Conference Room, Marion, Virginia.

† March 12, 1996 - 7 p.m. -- Open Meeting
Central Virginia Community College, 3506 Wards Road, Amherst Classroom Building, Room 2123, Lynchburg, Virginia.

† March 13, 1996 - 7 p.m. -- Open Meeting
Norge Elementary School, 7311 Richmond Road, Gymnasium, Norge, Virginia.

† March 14, 1996 - 7 p.m. -- Open Meeting
Central Rappahannock Regional Library, 1201 Caroline Street, Conference Room, Fredericksburg, Virginia.

† March 18, 1996 - 7 p.m. -- Open Meeting
Augusta County Government Center, 4801 Lee Highway, Public Meeting Room, Verona, Virginia.

† March 20, 1996 - 7 p.m. -- Open Meeting
Mountain Empire Community College, U.S. 23 South, Dalton/Cantrell Auditorium, Big Stone Gap, Virginia.

Meetings will be held for the purpose of receiving public input as part of a comprehensive review of all Department of Game and Inland Fisheries regulations as listed in the Virginia Register, Vol. 12, Issue 3, p. 476. This regulatory review is in addition to, and does not replace, the regular full reviews of fish and wildlife regulations which DGIF conducts biennially. The regular biennial review of fish regulations scheduled for later in 1996, and the biennial review of wildlife regulations last conducted in 1995, and next scheduled for 1997, will occur as scheduled and in addition to the review process addressed in this notice.

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.

March 11, 1996 - 7 p.m. -- Open Meeting
Cave Spring High School, 3712 Chaparral Drive, Auditorium, Roanoke, Virginia.

March 12, 1996 - 7 p.m. -- Open Meeting
Bowling Green Town Hall, Bowling Green, Virginia.

March 14, 1996 - 7 p.m. -- Open Meeting
South Hill Fire Hall, South Hill, Virginia.

Meetings to receive comments regarding proposed changes to wildlife regulations related to foxhound training preserves, the live-trapping of foxes for the purpose of stocking such preserves, and the amount of the fee to be charged for permitting a foxhound training preserve. The Board of Game and Inland Fisheries

adopted such proposed regulations for advertisement at its January 18, 1996, meeting. Comments from the meetings will be summarized and reported to the board for consideration at its next scheduled meeting in April 1996. The proposed regulations to be addressed at the meetings are exempt from the Administrative Process Act pursuant to subdivision A 3 of § 9-6.14:4.1 of the Code of Virginia, which excludes from this act the Department of Game and Inland Fisheries when promulgating regulations regarding the management of wildlife. However, the department is required by § 9-6.14:22 of the Code of Virginia to publish all proposed and final wildlife management regulations, including length of seasons and bag limits allowed on the wildlife resources within the Commonwealth of Virginia.

Contact: Phil Smith, Policy Analyst, Department of Game and Inland Fisheries, 4010 W. Broad St., Richmond, VA 23226, telephone (804) 367-8341 or FAX (804) 367-2427.

CHARITABLE GAMING COMMISSION

† March 13, 1996 - 10 a.m. -- Open Meeting
Department of Alcoholic Beverage Control, 2901 Hermitage Road, Richmond, Virginia.

A regular meeting.

Contact: Kari Walker, Policy Analyst, Charitable Gaming Commission, 200 N. 9th St., Richmond, VA 23219, telephone (804) 786-0238 or FAX (804) 786-1079.

GEORGE MASON UNIVERSITY

Student Affairs Committee

† March 19, 1996 - 6:30 p.m. -- Open Meeting
George Mason University, Mason Hall, Room D23, Fairfax, Virginia.

A regular meeting.

Contact: Ann Wingblade, Administrative Assistant, or Rita Lewis, Administrative Staff Assistant, Office of the President, George Mason University, Fairfax, VA 22030-4444, telephone (703) 993-8701.

Board of Visitors

† March 20, 1996 - 2:30 p.m. -- Open Meeting
George Mason University, Mason Hall, Room D23, Fairfax, Virginia.

A regular meeting to hear reports of the standing committees, and to act on those recommendations presented by the standing committees. An agenda will be available seven days prior to the board meeting for those individuals or organizations who request it.

Contact: Ann Wingblade, Administrative Assistant, or Rita Lewis, Administrative Staff Assistant, Office of the President, George Mason University, Fairfax, VA 22030-4444, telephone (703) 993-8701.

STATE HAZARDOUS MATERIALS TRAINING ADVISORY COMMITTEE

March 12, 1996 - 10 a.m. -- Open Meeting
Department of Emergency Services, 308 Turner Road, Training Room, Richmond, Virginia.

A meeting to discuss curriculum course development and review existing hazardous materials courses. Individuals with a disability, as defined in the Americans with Disabilities Act of 1990, desiring to attend the meeting should contact the Department of Emergency Services 10 days prior to the meeting so appropriate accommodations can be made.

Contact: George B. Gotschalk, Jr., Department of Criminal Justice Services, 308 E. Broad St., Richmond, VA 23219, telephone (804) 786-8001.

DEPARTMENT OF HEALTH

Commissioner's Waterworks Advisory Committee

† March 21, 1996 - 10 a.m. -- Open Meeting
Office of Water Programs, Danville Field Office, 1347 Piney Forest Road, Danville, Virginia.

A general business meeting of the committee. The committee meets on the third Thursday of odd months at various locations around the state. Future locations and dates will be announced.

Contact: Thomas B. Gray, P.E., Special Projects Manager, Division of Water Supply Engineering, Department of Health, 1500 E. Main St., Room 109, Richmond, VA 23219, telephone (804) 786-5566.

VIRGINIA HEALTH SERVICES COST REVIEW COUNCIL

† March 26, 1996 - 9:30 a.m. -- Open Meeting
Trigon Blue Cross/Blue Shield, 2015 Staples Mill Road, Richmond, Virginia.

A monthly meeting.

Contact: Richard L. Walker, Director of Administration, Virginia Health Services Cost Review Council, 805 E. Broad St., 6th Floor, Richmond, VA 23219, telephone (804) 786-6371, FAX (804) 371-0284 or (804) 786-6371/TDD ☎

BOARD FOR HEARING AID SPECIALISTS

† March 11, 1996 - 8:30 a.m. -- Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia.

A general business meeting.

Contact: David E. Dick, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad

St., Richmond, VA 23230, telephone (804) 367-8507, FAX (804) 367-2475 or (804) 367-9753/TDD ☎

BOARD OF HISTORIC RESOURCES

State Review Board

March 20, 1996 - 10 a.m. -- Open Meeting
Virginia Historical Society, 428 North Boulevard, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A general business meeting to consider the following properties for nomination to the Virginia Landmarks Register and to the National Register of Historic Places.

1. Cahas Mountain Rural Historic District, Franklin County
2. Cannon Branch Fort, Manassas
3. Chandler Court and Pollard Park Historic District, Williamsburg
4. Coffee Pot, City of Roanoke
5. Dewberry, Hanover County
6. Down Salem Historic District, Salem
7. Epworth United Methodist Church, Norfolk
8. The Farm (A. J. Davis House), Charlottesville
9. Fort Belvoir Historic District, Fairfax County
10. Kennedy Lunsford Farm, Rockbridge County
11. Mount Ida (relocation), Buckingham County
12. Rose Hill, Town of Front Royal, Warren County
13. Soldier's Rest, Clarke County
14. Upper Brandon Plantation, Prince George County
15. West Point Historic District, King William County

Contact: Margaret Peters, Preservation Program Manager, Department of Historic Resources, 221 Governor St., Richmond, VA 23219, telephone (804) 786-3143, FAX (804) 225-4261, or (804) 786-1934/TDD ☎

HOPEWELL INDUSTRIAL SAFETY COUNCIL

March 5, 1996 - 9 a.m. -- Open Meeting
† April 2, 1996 - 9 a.m. -- Open Meeting
† May 7, 1996 - 9 a.m. -- Open Meeting
Hopewell Community Center, Second and City Point Road, Hopewell, Virginia. (Interpreter for the deaf provided upon request)

Local Emergency Preparedness Committee Meeting on emergency preparedness as required by SARA Title III.

Contact: Robert Brown, Emergency Services Coordinator, 300 N. Main St., Hopewell, VA 23860, telephone (804) 541-2298.

BOARD OF HOUSING AND COMMUNITY DEVELOPMENT

† April 15, 1996 - -- Public Hearing
Department of Housing and Community Development, The Jackson Center, 501 North Second Street, Richmond, Virginia.

† May 3, 1996 -- 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 Housing and Community Development intends to **repeal** regulations entitled: **13 VAC 5-110-10 et seq. Virginia Enterprise Zone Program Regulations** and **adopt** regulations entitled: **13 VAC 5-111-10 et seq. Virginia Enterprise Zone Program Regulations.** The purpose of the proposed regulation is to implement and administer new incentives and provisions of the Virginia Enterprise Zone Program provided in 1995 legislation. Amendments will also implement greater flexibility for businesses in qualifying for the use of these incentives. Amendments reflect an increase in number of zones statewide and greater flexibility for localities to have multiple zones.

Statutory Authority: § 59.1-278 of the Code of Virginia.

Contact: M. Shea Hollifield, Associate Director, Department of Housing and Community Development, The Jackson Center, 501 N. Second St., Richmond, VA 23219, telephone (804) 371-7030.

VIRGINIA HOUSING DEVELOPMENT AUTHORITY

† March 25, 1996 - 9 a.m. -- Open Meeting
† March 26, 1996 - 9 a.m. -- Open Meeting
Virginia Housing Development Authority, 601 South Belvidere Street, Richmond, Virginia.

A regular meeting of the Board of Commissioners. On March 25, 1996, the board will conduct a retreat to receive various reports from the staff of the Virginia Housing Development Authority and to discuss and consider such other matters as it may deem appropriate. On March 26, 1996, the Board of Commissions will (i) review and, if appropriate, approve the minutes from the prior monthly meeting; (ii) consider for approval and ratification mortgage loan commitments under its various programs; (iii) review the authority's operations for the prior month; and 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.

VIRGINIA INTERAGENCY COORDINATING COUNCIL

† March 13, 1996 - 9:30 a.m. -- Open Meeting
Henrico Area Mental Health, Mental Retardation Services, 10299 Woodman Road, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A quarterly meeting to advise and assist the Virginia Department of Mental Health, Mental Retardation and Substance Abuse Services as lead agency for Part H (of IDEA), early intervention for infants and toddlers with disabilities and their families. Discussion focuses on issues related to Virginia's implementation of the Part H program.

Contact: Richard B. Corbett, Part H, Program Support, Department of Mental Health, Mental Retardation and Substance Abuse Services, P.O. Box 1797, Richmond, VA 23218, telephone (804) 786-3710 or FAX (804) 371-7959.

DEPARTMENT OF LABOR AND INDUSTRY

Apprenticeship Council

† March 21, 1996 - 5 p.m. -- Open Meeting
Centreville Adult Education Center, 5775 Spindle Court, Centreville, Virginia. (Interpreter for the deaf provided upon request)

A regular meeting of the council.

Contact: Fred T. Yontz, Apprenticeship Program Manager, Department of Labor and Industry, 13 S. 13th St., Richmond, VA 23219, telephone (804) 371-0295.

Migrant and Seasonal Farmworkers Board

March 6, 1996 - 10 a.m. -- Open Meeting
Department of Motor Vehicles, 2300 West Broad Street, Monticello Room, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A regular meeting of the board.

Contact: Patti C. Bell, Staff Coordinator, Department of Labor and Industry, 13 S. 13th St., Richmond, VA 23219, telephone (804) 225-3083, FAX (804) 371-6524, or (804) 786-2376/TDD ☎

LIBRARY BOARD

† March 18, 1996 - 10:30 a.m. -- Open Meeting
The Library of Virginia, 11th Street at Capitol Square, 3rd Floor, Supreme Court Room, Richmond, Virginia.

A meeting to discuss administrative matters.

Contact: Jean H. Taylor, Secretary to the State Librarian, The Library of Virginia, 11th Street at Capitol Square, Richmond, VA 23219, telephone (804) 786-2332.

Automation and Networking Committee

† March 18, 1996 - 9:45 a.m. -- Open Meeting
The Library of Virginia, 11th Street at Capitol Square, Conference Room B, Richmond, Virginia.

A meeting to discuss automation and networking matters.

Contact: Jean H. Taylor, Secretary to the State Librarian, The Library of Virginia, 11th Street at Capitol Square, Richmond, VA 23219, telephone (804) 786-2332.

Executive Committee

† March 18, 1996 - 8:15 a.m. -- Open Meeting
The Library of Virginia, 11th Street at Capitol Square, Office of the State Librarian, Richmond, Virginia.

A meeting to discuss matters related to The Library of Virginia and its board.

Contact: Jean H. Taylor, Secretary to the State Librarian, The Library of Virginia, 11th Street at Capitol Square, Richmond, VA 23219, telephone (804) 786-2332.

Legislative and Finance Committee

† March 18, 1996 - 9 a.m. -- Open Meeting
The Library of Virginia, 11th Street at Capitol Square, Office of the Deputy State Librarian, Richmond, Virginia.

A meeting to discuss legislative and financial matters.

Contact: Jean H. Taylor, Secretary to the State Librarian, The Library of Virginia, 11th Street at Capitol Square, Richmond, VA 23219, telephone (804) 786-2332.

State Networking Users Advisory Board

† March 8, 1996 - 2 p.m. -- Open Meeting
The Library of Virginia, 11th Street at Capitol Square, Supreme Court Room, 3rd Floor, Richmond, Virginia.

A meeting to discuss administrative matters.

Contact: Jean H. Taylor, Secretary to the State Librarian, The Library of Virginia, 11th Street at Capitol Square, Richmond, VA 23219, telephone (804) 786-2332.

Publications and Cultural Affairs Committee

† March 17, 1996 - 4:15 p.m. -- Open Meeting
Omni Richmond Hotel, 100 South 12th Street, Richmond, Virginia.

A meeting to discuss matters related to the Publications and Cultural Affairs Division and The Library of Virginia.

Contact: Jean H. Taylor, Secretary to the State Librarian, The Library of Virginia, 11th Street at Capitol Square, Richmond, VA 23219, telephone (804) 786-2332.

Public Library Development Committee

† March 17, 1996 - 5:15 p.m. -- Open Meeting
Omni Richmond Hotel, 100 South 12th Street, Richmond, Virginia.

A meeting to discuss matters pertaining to public library development and The Library of Virginia.

Contact: Jean H. Taylor, Secretary to the State Librarian, The Library of Virginia, 11th Street at Capitol Square, Richmond, VA 23219, telephone (804) 786-2332.

Records Management Committee

† March 18, 1996 - 9:45 a.m. -- Open Meeting
The Library of Virginia, 11th Street at Capitol Square, Records Management Conference Room, Richmond, Virginia.

A meeting to discuss matters pertaining to records management.

Contact: Jean H. Taylor, Secretary to the State Librarian, The Library of Virginia, 11th Street at Capitol Square, Richmond, VA 23219, telephone (804) 786-2332.

Research and Information Services Committee

† March 18, 1996 - 9 a.m. -- Open Meeting
The Library of Virginia, 11th Street at Capitol Square, Conference Room B, Richmond, Virginia.

A meeting to discuss research and information services.

Contact: Jean H. Taylor, Secretary to the State Librarian, The Library of Virginia, 11th Street at Capitol Square, Richmond, VA 23219, telephone (804) 786-2332.

STATE COUNCIL ON LOCAL DEBT

† March 20 , 1996 - 11 a.m. -- Open Meeting
† April 17, 1996 - 11 a.m. -- Open Meeting
† May 15, 1996 - 11 a.m. -- Open Meeting
James Monroe Building, 101 North 14th Street, Treasury Board Conference Room, Richmond, Virginia.

A regular meeting subject to cancellation unless there are action items requiring the council's consideration. Persons interested in attending should call one week prior to the meeting to ascertain whether or not the meeting is to be held as scheduled.

Contact: Gary Ometer, Debt Manager, Department of the Treasury, P.O. Box 1879, Richmond, VA 23215, telephone (804) 225-4928.

COMMISSION ON LOCAL GOVERNMENT

March 4, 1996 - 10:30 a.m. -- Open Meeting
Round Hill Town Hall, 23 Main Street, Round Hill, Virginia.

Oral presentations regarding the Town of Round Hill - County of Loudoun Agreement Defining Annexation Rights. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact the commission.

Contact: Barbara Bingham, Administrative Assistant, Commission on Local Government, 702 8th Street Office Bldg., Richmond, VA 23219-1924, telephone (804) 786-6508 or (804) 786-1860/TDD ☎

March 4, 1996 - 7 p.m. -- Public Hearing
Round Hill Elementary School, 20 High Street, Auditorium, Round Hill, Virginia.

A public hearing regarding the Town of Round Hill - County of Loudoun Agreement Defining Annexation Rights. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact the commission.

Contact: Barbara Bingham, Administrative Assistant, Commission on Local Government, 702 8th Street Office Bldg., Richmond, VA 23219-1924, telephone (804) 786-6508 or (804) 786-1860/TDD ☎

March 5, 1996 - 9 a.m. -- Open Meeting
Loudoun County Board of Supervisors Meeting Room, 18 North King Street, Leesburg, Virginia.

A regular meeting of the commission to consider such matters as may be presented. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact the commission.

Contact: Barbara Bingham, Administrative Assistant, Commission on Local Government, 702 8th Street Office Bldg., Richmond, VA 23219-1924, telephone (804) 786-6508 or (804) 786-1860/TDD ☎

MANUFACTURED HOUSING BOARD

March 13, 1996 - 11 a.m. -- Open Meeting
Sheraton Airport, 2727 Ferndale Drive, Roanoke, Virginia.
(Interpreter for the deaf provided upon request)

A regular monthly meeting of the board.

Contact: Curtis L. McIver, Associate Director, Department of Housing and Community Development, Manufactured Housing Office, 501 N. 2nd St., Richmond, VA 23219, telephone (804) 371-7160 or (804) 371-7089/TDD ☎

BOARD OF MEDICAL ASSISTANCE SERVICES

† March 19, 1996 - 9 a.m. -- Open Meeting
Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Board Room, Richmond, Virginia.

A meeting to discuss medical assistance service and to take action on issues pertinent to the board. The board may also vote on suggested changes to the by-laws. A copy of the proposed changes to the by-laws may be

obtained by contacting the agency. The following articles will be amended: Articles I, II, III, V, VIII, and the Mission Statement.

Contact: Nancy Malczewski, Executive Secretary Senior, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 786-8099.

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

† May 4, 1996 -- Public comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Medical Assistance Services intends to amend regulations entitled: **12 VAC 30-50-100, Inpatient Hospital Services; 12 VAC 30-50-140, Physician's Services; and 12 VAC 30-70-50, Hospital Reimbursement System.** The purpose of this proposal is to make permanent policies to reduce the lengths of inpatient and obstetric stays when medically appropriate in compliance with amendments to the budget. By reducing the average Medicaid length of stay in inpatient hospitals to levels similar to that of patients of private insurance, DMAS estimated that the Commonwealth could generate significant cost savings in Medicaid expenditures. These changes enhance the economical performance of Virginia's Medicaid Program by preventing reimbursement for services that are not medically necessary. DMAS completed an analysis of inpatient hospital claims which showed that the length of stay for inpatient services among Medicaid patients in Virginia, by admission diagnosis and procedure performed, is higher than the lengths of stay among patients covered by private insurance. Based on this analysis, the Governor included in his 1995 amendments to the 1994-96 Appropriations Act two amendments reducing the Medicaid budget by decreasing the average length of stay for inpatient hospital services from six days to five days and by decreasing the length of stay for obstetric services to one day.

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

Public comments may be submitted until May 4, 1996, to Margot Fritts, 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 East Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 371-8850.

Virginia Medicaid Drug Utilization Review Board

March 28, 1996 - 3 p.m. -- Open Meeting
Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Board Room, Richmond, Virginia.

A quarterly meeting of the board to conduct routine business.

Contact: Marianne R. Rollings, DUR Program Coordinator, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 786-8057 or FAX (804) 786-0414.

Virginia Medicaid Prior Authorization and VHOP Advisory Committee

March 28, 1996 - 4:30 p.m. -- Open Meeting
Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Board Room, Richmond, Virginia.

A quarterly meeting to begin immediately following adjournment of the preceding DUR board meeting to conduct routine business.

Contact: David B. Shepherd, Pharmacy Supervisor, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 225-2773 or FAX (804) 786-0414.

BOARD OF MEDICINE

Informal Conference Committee

† March 14, 1996 - 9 a.m. -- Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Richmond, Virginia.

† March 14, 1996 - 9 a.m. -- Open Meeting
The Sheraton Inn, 2801 Plank Road, Fredericksburg, Virginia.

† March 22, 1996 - 9:30 a.m. -- Open Meeting
Marriott Hotel (formerly Kingsmill Hilton), 50 Kingsmill Road, Williamsburg, Virginia.

† March 26, 1996 - 9 a.m. -- Open Meeting
The Sheraton Inn, 2801 Plank Road, Fredericksburg, Virginia.

† April 3, 1996 - 10 a.m. -- Open Meeting
The Hotel Roanoke Conference Center of Roanoke, 106 Shenandoah Avenue, Roanoke, Virginia.

† April 23, 1996 - 9:30 a.m. -- Open Meeting
The Sheraton Inn, 2801 Plank Road, Fredericksburg, Virginia.

The Informal Conference Committee, composed of three members of the board, will inquire into allegations that certain practitioners may have violated laws and regulations governing the practice of medicine and other healing arts in Virginia. The committee will meet in open and closed sessions pursuant to § 2.1-344 A 7 and A 15 of the Code of Virginia. Public comment will not be received.

Contact: Karen W. Perrine, Deputy Executive Director, Department of Health Professions, 6606 W. Broad St., 4th

Floor, Richmond, VA 23230-1717, telephone (804) 662-7332, FAX (804) 662-9943 or (804) 662-7197/TDD ☎

Advisory Committee on Acupuncturists

† March 27, 1996 - 1 p.m. -- Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Board Room 1, Richmond, Virginia.♿

The committee will meet to discuss regulatory review of VR 465-11-01, Regulations Governing the Practice of Licensed Acupuncturists, and such other issues which may be presented. The board will entertain public comments during the first 15 minutes on agenda items.

Contact: Warren W. Koontz, M.D., Executive Director, Board of Medicine, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9960, FAX (804) 662-9943 or (804) 662-7197/TDD ☎

Advisory Committee on Physician's Assistants

† March 4, 1996 - 1 p.m. -- Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Board Room 1, Richmond, Virginia.♿ (Interpreter for the deaf provided upon request)

This meeting was to have been held on February 23, 1996, and is rescheduled. The committee will meet to review public comments and make recommendations to the board regarding the regulatory review of VR 465-05-1 [18 VAC 85-50-10 et seq.], Regulations Governing the Practice of Physician's Assistants, review physician's assistants' applications, and such other issues which may be presented. The committee will entertain public comments during the first 15 minutes on agenda items.

Contact: Warren W. Koontz, M.D., Executive Director, Board of Medicine, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9960, FAX (804) 662-9943 or (804) 662-7197/TDD ☎

DEPARTMENT OF MENTAL HEALTH, MENTAL RETARDATION AND SUBSTANCE ABUSE SERVICES

State Human Rights Committee

† March 22, 1996 - 9 a.m. -- Open Meeting
Maryview Hospital, 507 Oak Grove Road, Norfolk, Virginia.

A regular meeting of the committee to discuss business and conduct hearings relating to human rights issues. Agenda items are listed for the meeting.

Contact: Theresa P. Evans, State Human Rights Director, Department of Mental Health, Mental Retardation and Substance Abuse Services, 109 Governor St., Richmond, VA 23219, telephone (804) 786-3988, FAX (804) 371-2308, toll-free 1-800-451-5544 or (804) 371-8977/TDD ☎

State Management Team

March 7, 1996 - 10 a.m. -- Open Meeting
St. Joseph's Villa, 8000 Brook Road, Richmond, Virginia.♿

A monthly meeting to develop and recommend to the State Executive Council policies and procedures for implementing the Comprehensive Services Act. Public comment will begin at 1 p.m. Please inform the secretary if you wish to be added to the agenda.

Contact: Pamela Fitzgerald Cooper or Gloria Jarrell, Secretary, P.O. Box 1797, Richmond, VA 23218, telephone (804) 371-2177 or FAX (804) 371-0091.

STATE MENTAL HEALTH, MENTAL RETARDATION AND SUBSTANCE ABUSE SERVICES BOARD

† April 17, 1996 - 9 a.m. -- Open Meeting
James Madison Building, 109 Governor Street, 13th Floor, Board Room, Richmond, Virginia.

A regular meeting of the board. The agenda will be published one week in advance of the meeting.

Contact: Jane V. Helfrich, Board Administrator, Department of Mental Health, Mental Retardation and Substance Abuse Services, James Madison Bldg., 109 Governor St., Richmond, VA 23219, telephone (804) 786-7945 or FAX (804) 371-2308.

MOTOR VEHICLE DEALER BOARD

† March 19, 1996 - 10 a.m. -- Open Meeting
Department of Motor Vehicles Headquarters, 2300 West Broad Street, Room 702, Richmond, Virginia.♿ (Interpreter for the deaf provided upon request)

A meeting to conduct general board business. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact the Motor Vehicle Dealer Board at (804) 367-1100 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. A tentative agenda will be provided upon request by contacting the Motor Vehicle Dealer Board. A public comment period will be provided at the beginning of the meeting. Public comment will be subject to the board's guidelines for public comment.

Contact: Mary Beth Blevins, Administrative Assistant, Motor Vehicle Dealer Board, 2201 W. Broad St., Suite 104, Richmond, VA 23220, telephone (804) 367-1100 or FAX (804) 367-1053.

Advertising Committee

† March 19, 1996 - 8 a.m. -- Open Meeting
Department of Motor Vehicles Headquarters, 2300 West Broad Street, Room 702, Richmond, Virginia.♿ (Interpreter for the deaf provided upon request)

A meeting to conduct general board business. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact the Motor Vehicle Dealer Board at (804) 367-1100 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. A tentative agenda will be provided upon request by contacting the Motor Vehicle Dealer Board. A public comment period will be provided at the beginning of the meeting. Public comment will be subject to the board's guidelines for public comment.

Contact: Mary Beth Blevins, Administrative Assistant, Motor Vehicle Dealer Board, 2201 W. Broad St., Suite 104, Richmond, VA 23220, telephone (804) 367-1100 or FAX (804) 367-1053.

Dealer Licensing Committee

† March 18, 1996 - 10 a.m. -- Open Meeting
Department of Motor Vehicles Headquarters, 2300 West Broad Street, Room 702, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A meeting to conduct general board business. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact the Motor Vehicle Dealer Board at (804) 367-1100 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. A tentative agenda will be provided upon request by contacting the Motor Vehicle Dealer Board. A public comment period will be provided at the beginning of the meeting. Public comment will be subject to the board's guidelines for public comment.

Contact: Mary Beth Blevins, Administrative Assistant, Motor Vehicle Dealer Board, 2201 W. Broad St., Suite 104, Richmond, VA 23220, telephone (804) 367-1100 or FAX (804) 367-1053.

Dealer Practices Committee

† March 18, 1996 - 3 p.m. -- Open Meeting
Department of Motor Vehicles Headquarters, 2300 West Broad Street, Room 702, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A meeting to conduct general board business. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact the Motor Vehicle Dealer Board at (804) 367-1100 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. A tentative agenda will be provided upon request by contacting the Motor Vehicle Dealer Board. A public comment period will be provided at the beginning of the meeting. Public comment will be subject to the board's guidelines for public comment.

Contact: Mary Beth Blevins, Administrative Assistant, Motor Vehicle Dealer Board, 2201 W. Broad St., Suite 104, Richmond, VA 23220, telephone (804) 367-1100 or FAX (804) 367-1053.

Franchise Law Committee

† March 18, 1996 - 7 p.m. -- Open Meeting
Department of Motor Vehicles Headquarters, 2300 West Broad Street, Room 702, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A meeting to conduct general board business. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact the Motor Vehicle Dealer Board at (804) 367-1100 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. A tentative agenda will be provided upon request by contacting the Motor Vehicle Dealer Board. A public comment period will be provided at the beginning of the meeting. Public comment will be subject to the board's guidelines for public comment.

Contact: Mary Beth Blevins, Administrative Assistant, Motor Vehicle Dealer Board, 2201 W. Broad St., Suite 104, Richmond, VA 23220, telephone (804) 367-1100 or FAX (804) 367-1053.

Transaction Recovery Fund Committee

† March 18, 1996 - 9 a.m. -- Open Meeting
Department of Motor Vehicles Headquarters, 2300 West Broad Street, Room 702, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A meeting to conduct general board business. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact the Motor Vehicle Dealer Board at (804) 367-1100 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. A tentative agenda will be provided upon request by contacting the Motor Vehicle Dealer Board. A public comment period will be provided at the beginning of the meeting. Public comment will be subject to the board's guidelines for public comment.

Contact: Mary Beth Blevins, Administrative Assistant, Motor Vehicle Dealer Board, 2201 W. Broad St., Suite 104, Richmond, VA 23220, telephone (804) 367-1100 or FAX (804) 367-1053.

BOARD FOR OPTICIANS

March 22, 1996 - 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 discuss regulatory review and 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 interpretive services should contact the board at least 10 days prior to the meeting so that suitable arrangements can be made for appropriate accommodations. The department fully complies with the Americans with Disabilities Act.

Contact: Nancy Taylor Feldman, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8590, FAX (804) 367-2474 or (804) 367-9753/TDD☎

BOARD OF OPTOMETRY

† March 20, 1996 - 9 a.m. -- Open Meeting
Department of Health Professions, 6606 West Broad Street, 4th Floor, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

A meeting to conduct informal conferences. Public comments will be received at the beginning of the meeting.

Contact: Carol Stamey, Administrative Assistant, Board of Optometry, Southern States Bldg., 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9910 or (804) 662-7197/TDD ☎

† March 20, 1996 - 10:30 a.m. -- Open Meeting
Department of Health Professions, 6606 West Broad Street, 4th Floor, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

A meeting to conduct a formal hearing. Public comments will be received at the beginning of the meeting.

Contact: Carol Stamey, Administrative Assistant, Board of Optometry, Southern States Bldg., 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9910 or (804) 662-7197/TDD ☎

† March 20, 1996 - 1:15 p.m. -- Open Meeting
Department of Health Professions, 6606 West Broad Street, 4th Floor, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

A general board meeting. Public comments will be received at the beginning of the meeting.

Contact: Carol Stamey, Administrative Assistant, Board of Optometry, Southern States Bldg., 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9910 or (804) 662-7197/TDD ☎

BOARD OF PHARMACY

† March 15, 1996 - 9 a.m. -- Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 3, Richmond, Virginia.

A meeting of the Examination and Item Review Committees with the examination contractor to work on the state drug law examination. The meeting will consist of the workshop on the examination and will be held in Executive Session. Public comment will not be received.

Contact: Scotti W. Milley, Executive Director, Board of Pharmacy, 6606 W. Broad St., 4th Floor, Richmond, VA 23230, telephone (804) 662-9911.

DEPARTMENT OF STATE POLICE

April 5, 1996 -- 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 State Police intends to amend regulations entitled: **VR 545-01-07 [19 VAC 30-70-10 et seq.] Motor Vehicle Safety Inspection Rules and Regulations.** The purpose of the proposed amendments is to revise the Motor Vehicle Safety Inspection Rules and Regulations to be consistent with recent changes in state laws, federal regulations, and nationally accepted standards and automotive practices. Minor technical and administrative changes are included.

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

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

POLYGRAPH EXAMINERS ADVISORY BOARD

March 26, 1996 - 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 discuss regulatory review and other matters requiring board action. In addition, the Polygraph Examiners Licensing Examination will be administered to eligible polygraph examiner interns. A public comment period will be held at the beginning of the meeting. Persons desiring to participate in the meeting and requiring special accommodations or interpretive services should contact the board at least 10 days prior to the meeting so that suitable arrangements can be made for appropriate accommodations. The department fully complies with the Americans with Disabilities Act.

Contact: Nancy Taylor Feldman, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8590, FAX (804) 367-2474 or (804) 367-9753/TDD☎

BOARD OF PROFESSIONAL COUNSELORS AND MARRIAGE AND FAMILY THERAPISTS

† March 28, 1996 - 8:30 a.m. -- Open Meeting
† March 28, 1996 - 9:30 a.m. -- Open Meeting
† March 28, 1996 - 10:30 a.m. -- Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 1, Richmond, Virginia.

Informal conferences will be conducted pursuant to § 9-6.14:11 of the Code of Virginia. Public comment will not be heard.

Contact: Evelyn B. Brown, Executive Director, Board of Professional Counselors and Marriage and Family Therapists, 6606 W. Broad St., 4th Floor, Richmond, VA 23230, telephone (804) 662-9967.

Regulatory Committee

March 28, 1996 - 10 a.m. -- Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 4, Richmond, Virginia.

A committee meeting to develop regulations for marriage and family therapists licensure. No public comment will be received.

Contact: Janet Delorme, Deputy Executive Director, Department of Health Professions, 6606 W. Broad St., 4th Floor, Richmond, VA 23230, telephone (804) 662-9575.

BOARD FOR PROFESSIONAL AND OCCUPATIONAL REGULATION

† March 18, 1996 - 10 a.m. -- Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia.

A general business meeting. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact the board at least 10 days prior to the meeting. The department fully complies with the Americans with Disabilities Act.

Contact: Debra S. Vought, Agency Analyst, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8519, or (804) 367-9753/TDD ☎

REAL ESTATE BOARD

† March 28, 1996 - 9 a.m. -- Open Meeting
† May 3, 1996 - 9 a.m. -- Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia.

A general business meeting. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact the board at least 10 days prior to the meeting. The department fully complies with the Americans with Disabilities Act.

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

VIRGINIA RECYCLING MARKETS DEVELOPMENT COUNCIL

† March 15, 1996 - 10 a.m. -- Open Meeting
General Assembly Building, 910 Capitol Square, 4th Floor West Conference Room, Richmond, Virginia.

A subcommittee meeting to discuss barriers to market development. Focus will be on goals for source reduction and source separation. Call Paddy Katzen if you wish to speak on these issues.

Contact: Paddy Katzen, Assistant to the Secretary of Natural Resources, Department of Environmental Quality, 629 E. Main St., Richmond, VA 23219, telephone (804) 698-4488 or FAX (804) 698-4453.

† March 21, 1996 - 11 a.m. -- Open Meeting
State Capitol, Capitol Square, House Room 1, Richmond, Virginia.

A meeting to 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. Proposed legislation on absenteeism and funding will be discussed. The meeting will be dependent on a quorum of 10. Subcommittee meetings will be held prior to or after the general council meeting; subcommittee mandates at 9 a.m. Call Paddy Katzen for details.

Contact: Paddy Katzen, Assistant to the Secretary of Natural Resources, Department of Environmental Quality, 629 E. Main St., Richmond, VA 23219, telephone (804) 698-4488 or FAX (804) 698-4453.

DEPARTMENT OF REHABILITATIVE SERVICES

† March 18, 1996 - 7 p.m. -- Public Hearing
Department of Rehabilitative Services, Fair Oaks Office, 11150 Main Street, Fairfax, Virginia. (Interpreter for the deaf provided upon request)

† March 19, 1996 - 4 p.m. -- Public Hearing
Department of Rehabilitative Services, Roanoke Office, 3433 Brambleton Avenue, S.W., Roanoke, Virginia. (Interpreter for the deaf provided upon request)

† **March 20, 1996 - 4 p.m.** -- Public Hearing
Woodrow Wilson Rehabilitation Center, Mary Switzer Building, Anderson Room, Fishersville, Virginia. (Interpreter for the deaf provided upon request)

† **March 21, 1996 - 4 p.m.** -- Public Hearing
New Horizons Regional Education Center, 520 Butler Farm, Media Room, Hampton, Virginia. (Interpreter for the deaf provided upon request)

† **March 25, 1996 - 3:30 p.m.** -- Public Hearing
Virginia Beach Public Library, 4100 Virginia Beach Boulevard, Meeting Room B, Virginia Beach, Virginia. (Interpreter for the deaf provided upon request)

† **March 26, 1996 - 4 p.m.** -- Public Hearing
Department of Rehabilitative Services, 8004 Franklin Farms Drive, Conference Room, Richmond, Virginia. (Interpreter for the deaf provided upon request)

† **March 27, 1996 - 4 p.m.** -- Public Hearing
Department of Rehabilitative Services, Danville Office, 770 Piney Forest Road, Suite B, Danville, Virginia. (Interpreter for the deaf provided upon request)

† **March 28, 1996 - 4 p.m.** -- Public Hearing
Department of Rehabilitative Services, Abingdon Office, 468 East Main Street, Abingdon, Virginia. (Interpreter for the deaf provided upon request)

A public hearing for people with disabilities, vocational rehabilitation professionals, and other interested individuals and groups to help develop the 1996-97 state plan for vocational rehabilitation and supported employment services. Written comments will be accepted through April 1, 1996, to Stephen Webster, or you may phone your comments to Gloria O'Neal at (804) 662-7611 or 1-800-552-5019.

Contact: Stephen Webster, Agency Management Analyst Senior, Department of Rehabilitative Services, P.O. Box K300, Richmond, VA 23288-0300, telephone (804) 662-7572, FAX (804) 662-7616, toll-free 1-800-552-5019, or (804) 464-9950/TDD ☎

RICHMOND HOSPITAL AUTHORITY

Board of Commissioners

† **March 28, 1996 - 4 p.m.** -- Open Meeting
Richmond Nursing Home, 1900 Cool Lane, 2nd Floor, Classroom, Richmond, Virginia.

A monthly meeting of the board to discuss nursing home operations and related matters.

Contact: Marilyn H. West, Chairman, Richmond Hospital Authority, 700 East Main Street, Suite 904, P.O. Box 548, Richmond, VA 23204-0548, telephone (804) 782-1938.

SEWAGE HANDLING AND DISPOSAL ADVISORY COMMITTEE

March 21, 1996 - 10 a.m. -- Open Meeting
Main Street Station, 1500 East Main Street, Suite 115, Richmond, Virginia.

A regular meeting.

Contact: Karen Jackson, Assistant, Department of Health, P.O. Box 2448, Suite 115, Richmond, VA 23219, telephone (804) 786-1750.

SEWAGE HANDLING AND DISPOSAL APPEALS REVIEW BOARD

March 6, 1996 - 10 a.m. -- CANCELLED
County of Henrico Government Complex, Parham and Hungary Springs Road, Administration Building, Board Room, Richmond, Virginia.

The 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 (12 VAC 5-610-10 et seq.) Sewage Handling and Disposal Regulations has been cancelled.

Contact: Beth Bailey Dubis, Secretary to the Board, Department of Health, 1500 E. Main St., Suite 115, P.O. Box 2448, Richmond, VA 23218, telephone (804) 786-1750.

DEPARTMENT OF TAXATION

March 22, 1996 - 10 a.m. -- Public Hearing
Department of Taxation, 2220 West Broad Street, Richmond, Virginia.

March 31, 1996 -- 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 Taxation intends to adopt regulations entitled: **VR 630-3-439 [23 VAC 10-120-291 through 23 VAC 10-120-299]. Major Business Facility Job Tax Credit.** The regulation provides guidance for qualification, computation and recapture of the major business facility job tax credit.

Statutory Authority: § 58.1-439 of the Code of Virginia.

Contact: David M. Vistica, Tax Policy Analyst, Office of Tax Policy, Department of Taxation, P.O. Box 1880, Richmond, VA 23282-1880, telephone (804) 367-0167 or FAX (804) 367-6020.

COMMONWEALTH TRANSPORTATION BOARD

† **March 20, 1996 - 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.

† March 21, 1996 - 10 a.m. -- Open Meeting
Department of Transportation, 1401 East Broad Street, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A monthly meeting of the board to vote on proposals presented regarding bids, permits, additions and deletions to the highway system, and any other matters requiring board approval. Public comment will be received at the outset of the meeting on items on the meeting agenda for which the opportunity for public comment has not been afforded the public in another forum. Remarks will be limited to five minutes. Large groups are asked to select one individual to speak for the group. The board reserves the right to amend these conditions. Separate committee meetings may be held on call of the chairman. Contact Department of Transportation Public Affairs at (804) 786-2715 for schedule.

Contact: Robert E. Martinez, Secretary of Transportation, 1401 E. Broad St., Richmond, VA 23219, telephone (804) 786-8032.

TREASURY BOARD

† March 20 , 1996 - 9 a.m. -- Open Meeting
† April 17, 1996 - 9 a.m. -- Open Meeting
† May 15, 1996 - 9 a.m. -- Open Meeting
James Monroe Building, 101 North 14th Street, Treasury Board Room, 3rd Floor, Richmond, Virginia.

A regular meeting.

Contact: Gloria Hatchel, Administrative Assistant, Department of the Treasury, James Monroe Bldg., 101 N. 14th St., Richmond, VA 23219, telephone (804) 371-6011.

VIRGINIA RACING COMMISSION

† March 20, 1996 - 9:30 a.m. -- Open Meeting
Tyler Building, 1300 East Main Street, Richmond, Virginia.

A meeting to include a report from Colonial Downs and a review of regulations relating to pari-mutuel wagering.

Contact: William H. Anderson, Policy Analyst, Virginia Racing Commission, P.O. Box 1123, Richmond, VA 23218, telephone (804) 371-7363, FAX (804) 371-6127 or (804) 371-6169/TDD ☎

BOARD FOR THE VISUALLY HANDICAPPED

April 20, 1996 - 10 a.m. -- Open Meeting
Department for the Visually Handicapped, Administrative Headquarters, 397 Azalea Avenue, Richmond, Virginia. (Interpreter for the deaf provided upon request)

The board is responsible for advising the Governor, the Secretary of Health and Human Resources, the Commissioner, and the General Assembly on the delivery of public services to the blind and the protection of their rights. The board also reviews and comments on policies, budgets and requests for appropriations for the department. At this regular quarterly meeting, the board members will receive information regarding department activities and operations, review expenditures from the board's institutional fund, and discuss other issues raised by board members.

Contact: Katherine C. Proffitt, Administrative Assistant, Department for the Visually Handicapped, 397 Azalea Ave., Richmond, VA 23227, telephone (804) 371-3140/TDD☎ or toll-free 1-800-622-2155.

DEPARTMENT FOR THE VISUALLY HANDICAPPED

† March 19, 1996 - 1:30 p.m. -- Open Meeting
Department for the Visually Handicapped, 111 Commonwealth Avenue, Bristol, Virginia. (Interpreter for the deaf provided upon request)

† March 20, 1996 - 5 p.m. -- Open Meeting
Lions Sight Foundation, 501 Elm Avenue, S.W., Roanoke, Virginia. (Interpreter for the deaf provided upon request)

† March 22, 1996 - 2 p.m.-- Open Meeting
Holiday Inn, Sunspree Resort, 39th and Atlantic, Virginia Beach, Virginia. (Interpreter for the deaf provided upon request)

† March 26, 1996 - 5 p.m. -- Open Meeting
Virginia Rehabilitation Center for the Blind, 401 Azalea Avenue, Richmond, Virginia. (Interpreter for the deaf provided upon request)

† March 28, 1996 - 6:30 p.m. -- Open Meeting
Independent Living Center of Northern Virginia, 2111 Wilson Boulevard, Suite 400, Arlington, Virginia. (Interpreter for the deaf provided upon request)

† March 29, 1996 - 2 p.m. -- Open Meeting
Travel Lodge, 160 Front Royal Pike, Third Floor Banquet Meeting Room, Winchester, Virginia. (Interpreter for the deaf provided upon request)

A meeting to invite comments from the public regarding vocational rehabilitation services for persons with visual disabilities. All comments will be considered in developing the state plan for this program.

Contact: James G. Taylor, Vocational Rehabilitation Program Director, Department for the Visually Handicapped,

397 Azalea Ave., Richmond, VA 23227, telephone (804) 371-3140/TDD or toll-free 1-800-622-2155.

Vocational Rehabilitation Advisory Council

March 16, 1996 - 10 a.m.-- Open Meeting
Department for the Visually Handicapped, Administrative Headquarters, 397 Azalea Avenue, Richmond, Virginia. (Interpreter for the deaf provided upon request)

The council meets quarterly to advise the Department for the Visually Handicapped on matters related to services for blind and visually handicapped citizens of the Commonwealth.

Contact: James G. Taylor, Vocational Rehabilitation Program Director, Department for the Visually Handicapped, 397 Azalea Ave., Richmond, VA 23227, telephone (804) 371-3140/TDD or toll-free 1-800-622-2155.

VIRGINIA VOLUNTARY FORMULARY BOARD

March 14, 1996 - 10:30 a.m. -- Open Meeting
Washington Building, 1100 Bank Street, 2nd Floor, Board Room, Richmond, Virginia.

A meeting to consider public hearing comments and review new product data for products pertaining to the Virginia Voluntary Formulary.

Contact: James K. Thomson, Director, Bureau of Pharmacy Services, Virginia Voluntary Formulary, Monroe Bldg., 101 N. 14th St., Room S-45, Richmond, VA 23219, telephone (804) 786-4326.

VIRGINIA WASTE MANAGEMENT BOARD

March 20, 1996 - 10 a.m. -- Open Meeting
General Assembly Building, 910 Capitol Square, House Room C, First Floor, Richmond, Virginia. (Interpreter for the deaf provided upon request)

As required by § 10.1-1429.1 of the Code of Virginia, the Virginia Waste Management Board shall promulgate regulations to allow voluntary remediation of contaminated property. The purpose of this meeting is to obtain comments and advice from interested parties on desirable features to be incorporated into the Voluntary Remediation Regulations. Written comments can be submitted to the Department of Environmental Quality no later than April 20, 1996, to assure consideration. Interested parties should contact the Department of Environmental Quality prior to attendance to confirm the meeting's occurrence, location, and time.

Contact: Dr. Wladimir Gulevich, Office of Technical Assistance, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240-0009, telephone (804) 698-4236, FAX (804) 698-4327 or (804) 698-4021/TDD ☎

STATE WATER CONTROL BOARD

† March 21, 1996 - 9 a.m. -- Open Meeting
General Assembly Building, 910 Capitol Square, House Room C, Richmond, Virginia.

A regular meeting of the board

Contact: Cindy M. Berndt, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4378.

* * * * * * * *

March 25, 1996 - 7 p.m. -- Public Hearing
Rockingham County Board of Supervisors Room, 20 East Gay Street, Harrisonburg, Virginia.

March 26, 1996 - 1 p.m. -- Public Hearing
Municipal Office Building, 150 East Monroe Street, Multi Purpose Room, Wytheville, Virginia.

March 27, 1996 - 7 p.m. -- Public Hearing
James City County Board of Supervisors Room, 101 C Mounts Bay Road, Building C, Williamsburg, Virginia.

March 28, 1996 - 1:30 p.m. -- Public Hearing
Prince William County Administration Center, One County Complex, 4850 Davis Ford Road, McCoart Building, Board Chambers, Prince William, Virginia.

April 22, 1996 -- Public comments may be submitted until 4 p.m. on this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Water Control Board intends to amend regulations entitled: **9 VAC 25-260-10 et seq. Water Quality Standards.** The purpose of the proposed amendments is to amend the Water Quality Standards as part of the state's triennial review of the regulation and to meet federal requirements.

Question and Answer Period: A question and answer period will be held one-half hour prior to the beginning of each public hearing at the same location. Department of Environmental Quality staff will be present to answer questions regarding the proposed action.

Accessibility to Persons with Disabilities: The meetings will be held at public facilities believed to be accessible to persons with disabilities. Any person with questions on the accessibility of the facilities should contact Mrs. Elleanore Daub, Department of Environmental Quality, P.O. Box 10009, Richmond, VA, 23240, or by telephone at (804) 698-4111 or TDD (804) 698-4261. Persons needing interpreter services for the deaf must notify Mrs. Daub no later than 4 p.m. on Thursday, March 7, 1996.

Other Pertinent Information: The department has conducted analyses on the proposed action related to basis, purpose, substance, issues and estimated impacts. These are available upon request from Ms. Elleanore Daub at the address below.

Statutory Authority: § 62.1-44.15(3a) of the Code of Virginia.

Contact: Elleanore Daub, Office of Environmental Research and Standards, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4111.

* * * * * * * *

March 28, 1996 - 1:30 p.m. -- Public Hearing
Prince William County Administration Center, One County Complex, 4850 Davis Ford Road, McCoart Building, Board Chambers, Prince William, Virginia.

April 22, 1996 -- Public comments may be submitted until 4 p.m. on this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Water Control Board intends to adopt regulations entitled: **9 VAC 25-415-10 et seq. Policy for the Potomac River Embayments.** The purpose of the proposed regulation is to establish effluent limits for sewage treatment plants discharging into the Potomac River in Virginia from the Chain Bridge in Arlington County to Route 301 Bridge in King George County.

Question and Answer Period: A question and answer period will be held one-half hour prior to the beginning of the public hearing at the same location. Department of Environmental Quality staff will be present to answer questions regarding the proposed action.

Accessibility to Persons with Disabilities: The meetings will be held at public facilities believed to be accessible to persons with disabilities. Any person with questions on the accessibility of the facilities should contact Mr. Tom Faha, Department of Environmental Quality, 1519 Davis Ford Road, Suite 14, Woodbridge, VA, 22192, or by telephone at (703) 490-8922 or TDD (804) 698-4261. Persons needing interpreter services for the deaf must notify Mr. Faha no later than 4 p.m. on Thursday, March 7, 1996.

Statutory Authority: § 62.1-44.15(10) of the Code of Virginia.

Contact: Tom Faha, Department of Environmental Quality, Northern Regional Office, 1519 Davis Ford Road, Suite 14, Woodbridge, VA 22192, telephone (703) 490-8922.

* * * * * * * *

† April 11, 1996 - 2 p.m. -- Public Hearing
Roanoke County Administration Center, 5204 Bernard Drive, Board of Supervisor's Room, Roanoke, Virginia.

† April 11, 1996 - 7 p.m. -- Public Hearing
Harrisonburg City Council Chambers, 345 South Main Street, Harrisonburg, Virginia.

† April 15, 1996 - 2 p.m. -- Public Hearing
Department of Environmental Quality, 629 East Main Street, First Floor, Training Room, Richmond, Virginia.

† May 6, 1996 -- Public comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Water Control Board intends to amend regulations entitled: **9 VAC 25-110-10 et seq. Virginia Pollutant Discharge Elimination System (VPDES) General Permit for Sewage Discharges of Less Than or Equal to 1,000 Gallons Per Day.** The purpose of the proposal is to readopt, with amendments, the general VPDES permit for discharges of treated wastewater from individual home treatment works and other small volume sources of domestic sewage.

Question and Answer Period: A question and answer period will be held one-half hour prior to the public hearing at the same location. Interested citizens will have an opportunity to ask questions pertaining to the proposal at that time.

Accessibility to Persons with Disabilities: The public hearing will be held at facilities believed to be accessible to persons with disabilities. Any person with questions should contact Mr. Richard W. Ayers at the address below. Persons needing interpreter services for the deaf should notify Mr. Ayers no later than April 5, 1996.

Request for Comments: The board is seeking written comments from interested persons on both the proposed regulatory action and the draft permit. Also, comments regarding the benefits of the stated alternative or any other alternatives are welcome.

Other Information: The department has conducted analyses on the proposed regulation related to the basis, purpose, substance, issues and estimated impacts. These are available upon request from Mr. Ayers at the address below.

Statutory Authority: § 62.1-44.15(10) of the Code of Virginia.

Contact: Richard Ayers, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4075.

BOARD FOR WATERWORKS AND WASTEWATER WORKS OPERATORS

April 4, 1996 - 10 a.m. - Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, 4th Floor, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A meeting to discuss regulatory review and other matters requiring board action. A public comment period will be held at the beginning of the meeting. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact the board at least 10 days prior to the meeting so that suitable arrangements can be made. The board fully complies with the Americans with Disabilities Act.

Contact: Nancy Taylor Feldman, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8590, FAX (804) 367-2474 or (804) 367-9753/TDD ☎

VIRGINIA WORKERS' COMPENSATION COMMISSION

March 8, 1996 -- Public comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Virginia Workers' Compensation Commission intends to amend regulations entitled: **16 VAC 30-50-10 et seq. Rules of the Virginia Workers' Compensation Commission.** A new Rule 14 provides a definition of community for the purpose of determining prevailing charges for medical treatment.

Statutory Authority: § 65.2-201 of the Code of Virginia.

Public comments may be submitted until March 8, 1996, to David W. Haines, Virginia Workers' Compensation Commission, 1000 DMV Drive, Richmond, VA 23220.

Contact: Aljuana C. Brown, Administrative Assistant, Virginia Workers' Compensation Commission, 1000 DMV Dr., Richmond, VA 23220, telephone (804) 367-2067.

BOARD OF YOUTH AND FAMILY SERVICES

March 13, 1996 - 9 a.m. -- Open Meeting
April 10, 1996 - 9 a.m. -- Open Meeting
Department of Youth and Family Services, 700 East Main Street, Richmond, Virginia.

Beginning at 9 a.m., committees will meet to review secure and nonsecure services; at 10 a.m. the full board will meet to act on certifications, policy matters, and other business that may come before the board.

Contact: Donald R. Carignan, Policy Analyst, Department of Youth and Family Services, 700 Centre, 700 E. Main St., P.O. Box 1110, Richmond, VA 23208-1110, telephone (804) 371-0743 or FAX (804) 371-0773.

LEGISLATIVE

Notice to Subscribers

Legislative meetings held during the Session of the General Assembly are exempted from publication in The Virginia Register of Regulations. You may call Legislative Information for information on standing committee meetings. The number is (804) 786-6530.

CHRONOLOGICAL LIST

OPEN MEETINGS

March 4
† Alcoholic Beverage Control Board
† Economic Development Partnership, Virginia
- Board of Directors
Local Government, Commission on
† Medicine, Board of
- Advisory Committee on Physician's Assistants

March 5
Hopewell Industrial Safety Council
Local Government, Commission on

March 6
Agriculture and Consumer Services, Department of
- Virginia State Apple Board
- Virginia Marine Products Board
- Virginia Peanut Board
Funeral Directors and Embalmers, Board of
Labor and Industry, Department of
- Migrant and Seasonal Farmworkers Board
Sewage Handling and Disposal Appeals Review Board

March 7
† Agriculture and Consumer Services, Department of
- Virginia Sweet Potato Board
Architects, Professional Engineers, Land Surveyors and Landscape Architects, Board for
- Board for Landscape Architects
Conservation and Recreation, Department of
- Falls of the James Scenic River Advisory Board
Funeral Directors and Embalmers, Board of
Mental Health, Mental Retardation and Substance Abuse Services, Department of
- State Management Team

March 8
† Dentistry, Board of
† Library Board
- State Networking Users Advisory Board

March 11
Game and Inland Fisheries, Department of
† Hearing Aid Specialists, Board for

March 12
† Corrections, Board of
- Correctional Services Committee
Game and Inland Fisheries, Department of
Hazardous Materials Training Advisory Committee, State

March 13
† Air Pollution Control Board, State
- State Advisory Board on Air Pollution
Community Colleges, State Board for
† Corrections, Board of
- Administration Committee
Criminal Justice Services Board
- Committee on Training
† Forestry, Department of
- Reforestation of Timberlands Board
† Game and Inland Fisheries, Department of
† Gaming Commission, Charitable
† Interagency Coordinating Council, Virginia
Manufactured Housing Board, Virginia
Youth and Family Services, Board of

March 14
Architects, Professional Engineers, Land Surveyors and Landscape Architects, Board for
- Board for Interior Designers
† Child Day-Care Council
Community Colleges, State Board for
† Corrections, Board of
Game and Inland Fisheries, Department of
† Medicine, Board of
Voluntary Formulary Board, Virginia

March 15
† Dentistry, Board of
† Pharmacy, Board of
† Recycling Markets Development Council, Virginia

March 16
† Dentistry, Board of
Visually Handicapped, Department for the
- Vocational Rehabilitation Advisory Council

March 17
† Library Board
- Publications and Cultural Affairs
- Public Library Development Committee

March 18
† Alcoholic Beverage Control Board
Contractors, Board for
† Game and Inland Fisheries, Department of
† Library Board
- Automation and Networking Committee
- Executive Committee
- Legislative and Finance Committee
- Records Management Committee
- Research and Information Services Committee
† Motor Vehicle Dealer Board
- Dealer Licensing Committee
- Dealer Practices Committee
- Franchise Law Committee
- Transaction Recovery Fund Committee
† Professional and Occupational Regulation, Board for
† Rehabilitative Services, Department of

March 19
† Architects, Professional Engineers, Land Surveyors and Landscape Architects, Department of
- Land Surveyor Board
Environmental Quality, Department of
- Virginia Ground Water Protection Steering Committee
† Medical Assistance Services, Board of
† Motor Vehicle Advisory Board
- Advertising Committee
† Visually Handicapped, Department for the

March 20
Architects, Professional Engineers, Land Surveyors and Landscape Architects, Board for
Environmental Quality, Department of
† Game and Inland Fisheries, Department of
† George Mason University
- Board of Visitors
Historic Resources, Board of
- State Review Board
† Local Debt, State Council on
† Optometry, Board of
† Transportation Board, Commonwealth
† Treasury Board
† Virginia Racing Commission
† Visually Handicapped, Department for the

March 21
Asbestos Licensing and Lead Certification, Board for
† Health, Department of
- Commissioner's Waterworks Advisory Committee
† Labor and Industry, Department of
- Apprenticeship Council
† Recycling Markets Development Council, Virginia
Sewage Handling and Disposal Advisory Committee
† Transportation Board, Commonwealth
† Water Control Board, State

March 22
† Correctional Education, Department of
† Dentistry, Board of
† Medicine, Board of
† Mental Health, Mental Retardation and Substance Abuse Services, Department of
- State Human Rights Committee
Opticians, Board for
† Visually Handicapped, Department for the

March 25
Agricultural Council, Virginia
† Housing Development Authority, Virginia

March 26
Agricultural Council, Virginia
† Health Services Cost Review Council, Virginia
† Housing Development Authority, Virginia
† Medicine, Board of
Polygraph Examiners Advisory Board
† Visually Handicapped, Department for the

March 27
† Arts, Commission for the
† Medicine, Board of
- Advisory Committee on Acupuncturists

March 28
Medical Assistance Services, Department of
- Virginia Medicaid Drug Utilization Review Board
- Virginia Medicaid Prior Authorization and VHOP Advisory Committee
Professional Counselors and Marriage and Family Therapists, Board of
- Regulatory Committee
† Real Estate Board
† Richmond Hospital Authority
- Board of Commissioners
† Visually Handicapped, Department for the

March 29
† Visually Handicapped, Department for the

April 1
† Alcoholic Beverage Control Board

April 2
† Air Pollution Control Board, State
† Hopewell Industrial Safety Council

April 3
† Medicine, Board of

April 4
Conservation and Recreation, Department of
- Falls of the James Scenic River Advisory Board
Waterworks and Wastewater Works Operators, Board for

April 10
Youth and Family Services, Board of

April 11
† Agriculture and Consumer Services, Department of
- Pesticide Control Board

April 15
† Alcoholic Beverage Control Board

April 17
† Local Debt, State Council on
† Mental Health, Mental Retardation and Substance Abuse Services Board, State
† Treasury Board

April 20
Visually Handicapped, Board for the

April 22
† Accountancy, Board for

April 23
† Accountancy, Board for
† Medicine, Board of

April 24
† Emergency Planning Committee - Local, Gloucester

April 29
† Alcoholic Beverage Control Board

May 3
† Real Estate Board

May 7
† Hopewell Industrial Safety Council

May 13
† Alcoholic Beverage Control Board

May 15
† Local Debt, State Council on
† Treasury Board

May 29
† Alcoholic Beverage Control Board

PUBLIC HEARINGS

March 18
† Rehabilitative Services, Department of

March 19
† Rehabilitative Services, Department of

March 20
† Rehabilitative Services, Department of

March 21
† Rehabilitative Services, Department of

March 22
Taxation, Department of

March 25
† Rehabilitative Services, Department of
Water Control Board, State

March 26
† Rehabilitative Services, Department of
Water Control Board, State

March 27
† Rehabilitative Services, Department of
Water Control Board, State

March 28
† Rehabilitative Services, Department of
Water Control Board, State

April 8
† Air Pollution Control Board, State

April 9
† Air Pollution Control Board, State

April 11
† Water Control Board, State

April 15
† Housing and Community Development, Board of
† Water Control Board, State