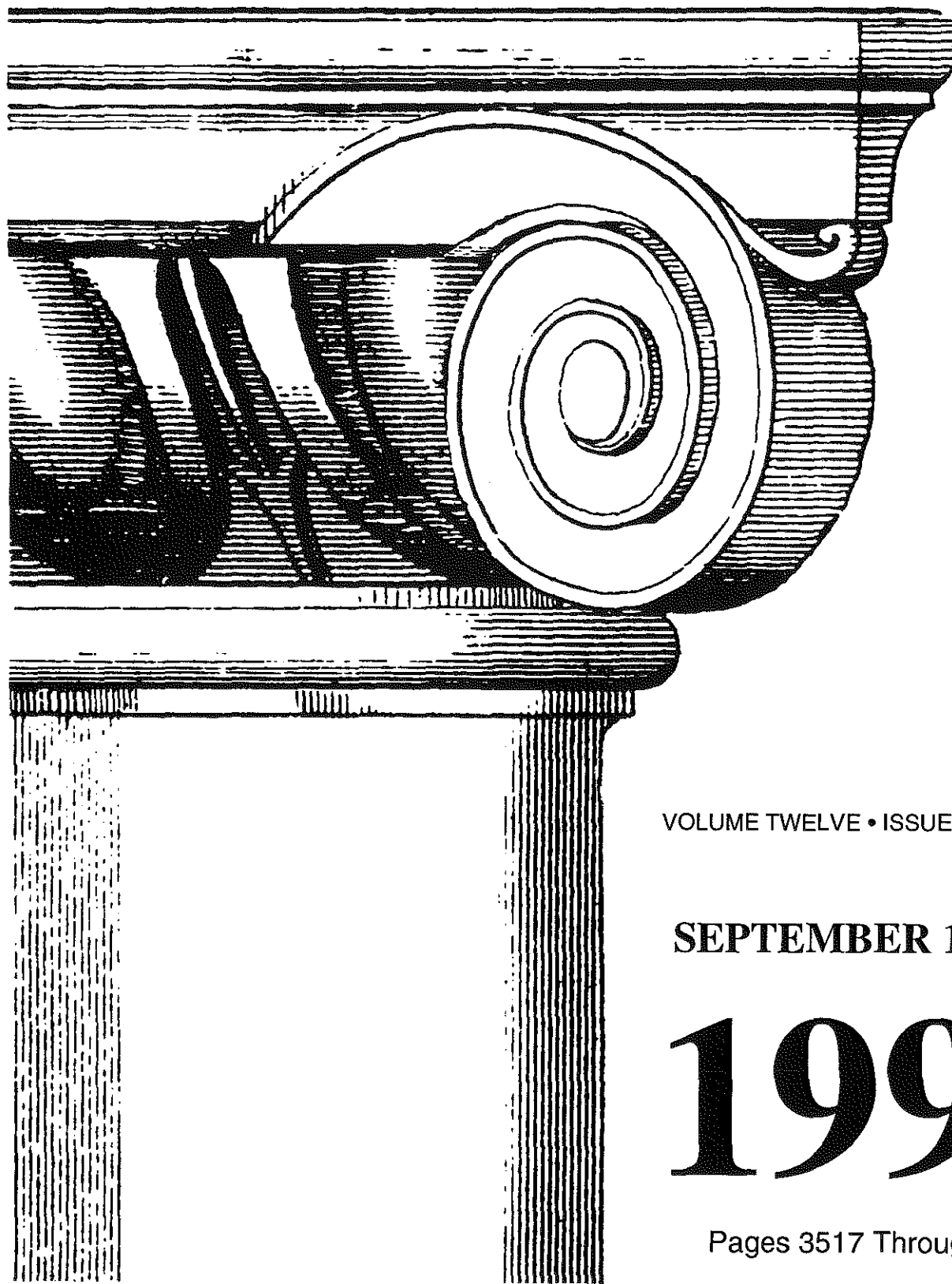


THE VIRGINIA REGISTER

OF REGULATIONS



VOLUME TWELVE • ISSUE TWENTY-SIX

SEPTEMBER 16, 1996

1996

Pages 3517 Through 3676

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.

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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.

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

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

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September 1996 through June 1997

<u>Material Submitted By Noon Wednesday</u>		<u>Will Be Published On</u>
	<u>Volume 12</u>	
August 28, 1996		September 16, 1996
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	<u>Volume 13</u>	
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
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December 31, 1996 (Tuesday)		January 20, 1997
January 15, 1997		February 3, 1997
January 29, 1997		February 17, 1997
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Symbol Key

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

DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES (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 Agriculture and Consumer Services intends to consider promulgating regulations entitled: **2 VAC 5-205-10 et seq. Rules and Regulations Pertaining to Shooting Enclosures.** The purpose of the proposed regulation is to establish regulations pertaining to shooting enclosures pursuant to § 3.1-763.5:5 of the Code of Virginia. The agency intends to hold a public hearing on the proposed regulation after publication. The agency invites comment on whether there should be an advisor appointed for the present regulatory action. An advisor is (i) a standing advisory panel; (ii) an ad hoc advisory panel; (iii) consultation with groups; (iv) consultation with individuals; or (v) any combination thereof.

Statutory Authority: § 3.1-763.5:5 of the Code of Virginia.

Public comments may be submitted until 8:30 a.m. on September 20, 1996, to Dr. W. M. Sims, Jr., Department of Agriculture and Consumer Services, Division of Animal Industry Services, P.O. Box 1163, Richmond, VA 23218-1163.

Contact: T. R. Lee, Program Supervisor, Department of Agriculture and Consumer Services, Office of Veterinary Services, P.O. Box 1163, Richmond, VA 23218-1163, telephone (804) 786-2483.

VA.R. Doc. No. R96-505; Filed July 23, 1996, 4:50 p.m.

BOARD OF AUDIOLOGY AND SPEECH-LANGUAGE PATHOLOGY

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 Audiology and Speech-Language Pathology intends to consider amending regulations entitled: **18 VAC 30-20-10 et seq. Regulations Governing Audiology and Speech-Language Pathology.** The purpose of the proposed action is to eliminate unnecessary or redundant regulations, clarify or simplify regulations according to recommendations of the board in its review pursuant to Executive Order 15(94), and consider regulations on the appropriate use of unlicensed support personnel. The agency intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: §§ 54.1-2400 and 54.1-2600 et seq. of the Code of Virginia.

Public comments may be submitted until September 18, 1996.

Contact: Elizabeth Kirksey, Executive Director, Board of Audiology and Speech-Language Pathology, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9111, FAX (804) 662-9943, or (804) 662-7197/TDD ☎

VA.R. Doc. No. R96-507; Filed July 25, 1996, 12:31 p.m.

DEPARTMENT OF EDUCATION (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 Education intends to consider amending regulations entitled: **8 VAC 20-130-10 et seq., Regulations Establishing Standards for Accrediting Public Schools in Virginia.** The purpose of the proposed action is to ensure improved compliance with the Standards of Quality which require the Board of Education to promulgate regulations establishing standards for accrediting public schools in Virginia. The board seeks to amend the existing standards of accreditation to focus the accreditation and evaluation of schools more strongly on student academic achievement and school level progress toward meeting the academic objectives in the standards of learning recently adopted by the board. The Board of Education will hold preliminary public hearings in August to receive suggestions from the public for revisions to the accrediting standards. The specific dates, times, and location will be published in a future issue of the *Virginia Register*, as well as announced at the July 25 Board of Education meeting and advertised through the state media. Speakers are requested to provide their comments in writing, if possible, at the time they speak. Comments will also be received by mail at the Board of Education, P.O. Box 2120, Richmond, Virginia 23218-2120. In addition to these preliminary public hearings, the board will hold additional hearings following publication of the proposed revisions to the regulations.

Statutory Authority: §§ 22.1-16, 22.1-19 and 22.1-253.13:3 B of the Code of Virginia.

Public comments may be submitted until September 30, 1996.

Contact: Lin Corbin-Howerton, Policy Director, Department of Education, P.O. Box 2120, Richmond, VA, 23218-2120, telephone (804) 225-2543, toll free (800) 292-3820 or FAX (804) 225-2053.

Notices of Intended Regulatory Action

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Medical Assistance Services intends to consider amending regulations entitled: **12 VAC 30-70-10 et seq. Methods and Standards for Establishing Payment Rates--Inpatient Hospital Care**, and **12 VAC 30-80-10 et seq. Methods and Standards for Establishing Payment Rates--Other Types of Care (Diagnosis Related Grouping)**. The purpose of the proposed action is to promulgate permanent regulations which are substantially the same as the currently effective emergency regulation. The amendments will change the current reimbursement system by basing payment on the case rather than the day. The agency does not intend to hold a public hearing on the proposed regulations after publication.

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

Public comments may be submitted until October 2, 1996, to Scott Crawford, Manager, Division of Financial Operations, 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. R96-527; Filed August 13, 1996, 11:41 a.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Medical Assistance Services intends to consider promulgating regulations entitled: **12 VAC 30-100-250 et seq. Part III, HIV Premium Assistance Program**. The purpose of the proposed action is to promulgate a permanent regulation, which is substantially the same as the emergency regulation, to supersede the current emergency regulation. The program pays health insurance premiums for persons diagnosed as HIV-positive. 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 September 19, 1996, to Michael Lupien, Supervisor, PDS, 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. R96-513; Filed July 31, 1996, 11:44 a.m.

VIRGINIA PUBLIC TELECOMMUNICATIONS 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 Public Telecommunications Board intends to consider repealing regulations entitled: **VR 410-01-02, Master Plan for Public Telecommunications, 1973**. The purpose of the proposed action is to repeal the 1973 plan. The revised version adopted in 1991 is not a regulation. The agency intends to hold a public hearing on the proposed repeal of the regulation after publication.

Statutory Authority: § 2.1-563.25 of the Code of Virginia.

Public comments may be submitted until September 30, 1996.

Contact: Suzanne J. Piland, Public Telecommunications Branch Manager, Department of Information Technology, 110 South 7th Street, Richmond, VA, 23219, telephone (804) 371-5544 or FAX (804) 371-5556.

DEPARTMENT OF SOCIAL SERVICES (STATE BOARD OF)

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Board of Social Services intends to consider promulgating regulations entitled: **22 VAC 40-675-10 et seq. Performance Standards for Local Superintendents/Directors of Social Services**. The purpose of the proposed action is to develop performance standards for evaluation of local directors and superintendents for use by the Commissioner of the Department of Social Services. The agency intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: §§ 63.1-26, 63.1-37, 63.1-61 and 63.1-62 of the Code of Virginia.

Public comments may be submitted until October 16, 1996.

Contact: Wayne D. Wolfe, Manager, Classification and Compensation, Department of Social Services, 730 E. Broad St., 5th Floor, Richmond, VA 23219, telephone (804) 692-1560, FAX (804) 692-1599, or toll-free 1-800-828-1120.

VA.R. Doc. No. R96-552; Filed August 28, 1996, 10:04 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.

DEPARTMENT OF CORRECTIONS (STATE BOARD OF)

October 16, 1996 - 10 a.m. -- Public Hearing
Department of Corrections, 6900 Atmore Drive, Board Room,
Richmond, Virginia.

November 16, 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 Board of Corrections intends to amend regulations entitled: **6 VAC 15-20-10 et seq. Regulations Governing Certification and Inspection.** The Regulations Governing Certification and Inspection comply with § 53.1-5 of the Code of Virginia, which requires the Board of Corrections to develop program standards for correctional facilities and services and to monitor the activities of the department and its effectiveness in implementing those standards. These regulations, then, serve to enforce all facility and program standards promulgated by the board. The regulations provide uniform factors for evaluating all programs and establish the proper steps in the certification, appeal and waiver processes. Through a regular board and departmental review, the attached amendments are being proposed to (i) strengthen the regulations by tightening requirements for timeliness and communication of departmental information to the board; (ii) meet specific recommendations made by the Joint Legislative Audit and Review Commission; and (iii) comply with the requirements of § 53.1-68 of the Code of Virginia, which was recently amended to require one unannounced annual inspection and one unannounced annual health inspection of local correctional facilities.

Statutory Authority: §§ 53.1-5 and 53.1-68 of the Code of Virginia.

Contact: Amy Miller, Regulatory Coordinator, Department of Corrections, P.O. Box 26963, Richmond, VA 23261-6963, telephone (804) 674-3119.

DEPARTMENT OF HEALTH (STATE BOARD OF)

October 10, 1996 - 9:30 a.m. -- Public Hearing
Department of Professional and Occupational Regulation,
3600 West Broad Street, 3rd Floor Conference Room,
Richmond, Virginia.

November 16, 1996 -- Public comments may be submitted until 5 p.m. on this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Board of Health intends to amend regulations entitled: **12 VAC 5-220-10 et seq. Virginia Medical Care Facilities Certificate of Public Need Rules and Regulations.** The purpose of the proposed amendment is to establish a distinct process for acceptance and consideration of requests for Certificates of Public Need which involve the establishment of new nursing home facilities or increasing the number of beds at an existing medical care facility, and to implement changes to the Certificate of Public Need law effective July 1, 1996.

Statutory Authority: §§ 32.1-12 and 32.1-102.1 et seq. of the Code of Virginia.

Public comments may be submitted until 5 p.m. on November 16, 1996, to Nancy R. Hofheimer, Director, Office of Health Facilities Regulation, Department of Health, 3600 West Broad Street, Suite 216, Richmond, Virginia 23230.

Contact: Paul E. Parker, Director, Division of Resource Development, Office of Health Facilities Regulation, Department of Health, 3600 W. Broad St., Suite 216, Richmond, VA 23230, telephone (804) 367-2127 or FAX (804) 367-2149.

October 10, 1996 - 11 a.m. -- Public Hearing
Department of Professional and Occupational Regulation,
3600 West Broad Street, 3rd Floor Conference Room,
Richmond, Virginia.

November 16, 1996 -- Public comments may be submitted until 5 p.m. on this date.

Public Comment Periods - Proposed Regulations

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Board of Health intends to amend regulations entitled: **12 VAC 5-360-10 et seq., State Medical Facilities Plan: Nursing Home Services.** The purpose of the proposed regulation is to revise and expand project review standards for the evaluation of nursing home Certificate of Public Need requests. The amendments are proposed to prepare the Department of Health for competitive review of nursing home bed applications which has not occurred since 1988.

Reclamation, P.O. Drawer 900, Big Stone Gap, VA 24219, telephone (540) 523-8100, FAX (540) 523-8163, or toll-free 1-800-828-1120 (VA Relay Center).

Statutory Authority: §§ 32.1-12, 32.1-102.2, and 32.1-145 of the Code of Virginia.

Public comments may be submitted until 5 p.m. on November 16, 1996, to Nancy R. Hofheimer, Director, Office of Health Facilities Regulation, Department of Health, 3600 West Broad Street, Suite 216, Richmond, Virginia 23230.

Contact: Paul E. Parker, Director, Division of Resource Development, Office of Health Facilities Regulation, Department of Health, 3600 W. Broad St., Suite 216, Richmond, VA 23230, telephone (804) 367-2127 or FAX (804) 367-2149.

DEPARTMENT OF MINES, MINERALS AND ENERGY

November 14, 1996 - 10 a.m. -- Public Hearing
Department of Mines, Minerals and Energy, U. S. Route 23 South, Big Stone Gap, Virginia.

November 15, 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 Mines, Minerals and Energy intends to amend regulations entitled: **4 VAC 25-130-10 et seq. Coal Surface Mining Reclamation Regulations.** The Department of Mines, Minerals and Energy is proposing amendments to the Virginia Coal Surface Mining Reclamation Regulations governing protection against uncontrolled blowouts of water from underground coal mine workings. The amendments are identical to the emergency regulation amendments effective from March 29, 1996, through March 28, 1997 (see 12:16 VA.R. 2193-2198 April 29, 1996). The amendments add a requirement that applicants for coal mining permits must include information in their permit applications about the steps to be taken during mining to prevent the sudden release of accumulated water from the underground mine workings. The amendments also establish a minimum width for the barrier of coal to be left in place where the coal seam being mined dips toward the land surface and where the barrier may impound water. The amendments provide a standard formula for calculating the required barrier thickness, or alternately allows for site-specific designs to determine the needed barrier thickness.

Statutory Authority: §§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Contact: Danny R. Brown, Division Director, Department of Mines, Minerals and Energy, Division of Mined Land

PROPOSED REGULATIONS

For information concerning Proposed Regulations, see Information Page.

Symbol Key

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

DEPARTMENT OF CORRECTIONS (STATE BOARD OF)

Title of Regulation: 6 VAC 15-20-10 et seq. Regulations Governing Certification and Inspection (amending 6 VAC 15-20-10, 6 VAC 15-20-30 through 6 VAC 15-20-120; adding 6 VAC 15-20-130 through 6 VAC 15-20-230; repealing 6 VAC 15-20-20).

Statutory Authority: §§ 53.1-5 and 53.1-68 of the Code of Virginia.

Public Hearing Date: October 16, 1996 - 10 a.m.

Public comments may be submitted until November 16, 1996.

(See Calendar of Events section for additional information)

Basis: Section 53.1-5 of the Code of Virginia requires the Board of Corrections to develop and establish program and fiscal standards and goals governing the operation of state, local and community correctional facilities and community correctional services. This section also requires the board to monitor the activities of the department and its effectiveness in implementing the standards and goals of the board. In addition, § 53.1-68 of the Code of Virginia was amended by the 1995 Session of the General Assembly to require that one unannounced annual inspection and one unannounced annual health inspection be conducted of local correctional facilities.

Purpose: With regard to the governing statutes, the amendments are needed to clarify how the results of annual inspections will be used by the board in establishing or continuing a jail's certification. The regulations are also needed to clarify the process for using the results of the state and local health departments' annual inspections in establishing or continuing a jail's certification.

Substance: The amendments are as follows:

1. The title has been changed to reflect that the regulations govern both the certification process, as required by § 53.1-5 of the Code of Virginia, and the inspection process, as required by § 53.1-68 of the Code of Virginia;
2. Under 6 VAC 15-20-10; a definition has been added for "annual inspection," to clarify the meaning of the inspections required by the Code of Virginia;
3. The definition for "conditional certification" has been deleted, since this status of certification is no longer granted by the board;
4. The definition of "decertified" as been clarified to promote understanding of this status of certification;
5. The definition of "deficiency" has been clarified to promote understanding of this certification term;

6. The definition of "deputy director" has been changed to reflect the reorganization of the Department of Corrections;

7. The definition of "facility" has been amended to include private correctional facilities as entities governed by this chapter;

8. A definition of "interim compliance audit" has been added to distinguish this type of audit from regularly scheduled audits;

9. A definition of "life, health, safety alert" has been added to promote understanding of this term;

10. The definition for "preparatory audit" has been clarified to promote understanding of this term;

11. A definition of "private correctional facility" has been added;

12. The definition of "program" has been clarified;

13. The definition of "regional administrator" has been clarified;

14. The definition of "unconditional certification" has been amended to increase the requirements of this status from 90% to 100% compliance of applicable standards;

15. The legal basis has been deleted to conform with Virginia Register format requirements;

16. 6 VAC 15-20-30 has been amended to clarify requirements for frequency of audits and to strengthen the audit process by adding interim compliance audits to the system;

17. 6 VAC 15-20-40 has been amended to require the Certification Unit to develop an annual schedule instead of a three year schedule;

18. Under 6 VAC 15-20-40 B, the composition of teams has been changed to require team members to be outside of the region auditing the facility or program;

19. 6 VAC 15-20-40 C, 6 VAC 15-20-50, 6 VAC 15-20-70, 6 VAC 15-20-80 2, and 6 VAC 15-20-90 A have been revised to tighten time requirements in the certification process;

20. 6 VAC 15-20-80 has been clarified to promote understanding of variance requests;

21. 6 VAC 15-20-90 has been clarified to promote understanding of the appeal process and schedule;

22. 6 VAC 15-20-100 B has been amended to change the mechanisms by which the board determines audit results;

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23. 6 VAC 15-20-100 has been clarified to promote understanding of the notification process; and

24. Part III has been added to include regulations for unannounced inspections and unannounced health inspections of local correctional facilities.

Issues: Advantages: The amendments to these regulations, which clarify how the results of annual inspections will be used by the board in establishing or continuing a jail's certification and clarify the process for using the results of the state and local health departments' annual inspections in establishing or continuing a jail's certification, should prove advantageous to regulated entities because the regulations create a uniform, understandable mechanism for complying with the statute. The technical amendments should prove advantageous, both for the department and regulated entities, in providing a more clear, understandable document to describe the certification and inspection process. The tightened time requirements, the new "life, health, safety alert," and the new interim compliance requirements should prove advantageous to regulated entities, the board, and the department in that certification results will be determined faster and, consequently, deficiencies or other public safety issues will be more quickly addressed, if needed. Finally, inmates and the general public should benefit from these amendments in that facilities and programs will be inspected more often, and audit results will be communicated much quicker.

The amendments should not prove disadvantageous to the board, department, or the regulated entities. The tightened time requirements may demand quicker turnaround time for facility/program administrators in developing plans of actions, and for the department in communicating audit results, but a panel of certification unit staff and local correctional facility staff unanimously indicated that the tightened time frames were manageable with existing resources.

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 affects.

Summary of the Proposed Regulation. The proposed regulation amends current regulations governing the certification and inspection of all state, local, private, and community based correctional facilities and programs affiliated with the Department of Corrections (DOC). Certification audits are conducted by DOC every three years and assess each facility according to 119 standards. Inspections are conducted annually and assess each facility according to a 34 standard subset of the more

comprehensive audit standards. The primary proposed amendments to the regulation are as follows:

1. Shortening of certain certification audit time requirements;
2. Provision for interim certification audits; and
3. Reflecting amendments to § 53.1-68 of the Code of Virginia made by the 1995 General Assembly, provision for one unannounced annual inspection and one annual health inspection of each local correctional facility.

Estimated Economic Impact.

Item 1

The shortening of various certification audit time requirements is not anticipated to have any significant economic effect. Although these changes will demand faster turnaround by facility administrators and program administrators in developing action plans, and by DOC in the notification of audit results, they are not expected to significantly affect resource needs.

Items 2 and 3

The interim certification audits and unannounced annual inspections called for in items 2 and 3 are likely to have two economic effects: First, they will necessitate additional agency resources in DOC and the Department of Health (DOH). DOC has accommodated these resource needs in part by reallocating two full time personnel positions to its Local Facilities Unit as part of a departmental reorganization. In addition, DOC estimates that it will incur approximately \$5,000 annually in additional travel and other support expenses. DOH has accommodated these resource needs with the addition of one full time grade 10 position.

Second, they will likely increase local correctional facility compliance with required standards and, as a result, have a positive affect on health and safety. It would be cost prohibitive to quantify the exact magnitude of this positive effect however.

Businesses and Entities Particularly Affected. The proposed regulation particularly affects 45 state correctional facilities, 41 probation and parole offices, 12 residential community centers, 87 local jails, 13 regional jails, 18 lockups, and the inmates supervised by these facilities.

Localities Particularly Affected. No localities are particularly affected by the proposed regulation.

Projected Impact on Employment. The proposed regulation is not anticipated to have a significant effect on employment.

Affects on the Use and Value of Private Property. The proposed regulation is not anticipated to have a significant effect on the use and value of private property.

Comments. The 1995 amendments to § 53.1-68 of the Code of Virginia require DOC to conduct unannounced inspections of each local correctional facility every year. A probably unintended consequence of this requirement is that every third year annual inspections are conducted contemporaneously with the more comprehensive triennial certification audit. Given that the annual inspection is done

using a subset of the standards used in the triennial audit, this duplication of effort would seem to represent a redundant and inefficient use of staff resources. This apparent inefficiency could be avoided if the General Assembly were to amend § 53.1-68 of the Code of Virginia to permit, but not require, annual inspections in those years when a triennial certification audit is also conducted. Such a change would eliminate a large portion of the increased agency costs associated with this proposed regulation.

Summary of Analysis. DPB anticipates that the proposed amendments to the current regulation governing certification and inspection of correctional facilities will have two primary economic effects: 1) a modest increase in agency costs; and 2) an associated increase in health and safety.

Agency's Response to Department of Planning and Budget's Economic Impact Analysis: The department has reviewed the Department of Planning and Budget's Economic Impact Analysis with respect to the Board of Corrections' proposed Regulations Governing Certification and Inspection (6 VAC 15-20-10 et seq.) The department concurs with the analysis prepared by the Department of Planning and Budget.

Summary:

These regulations serve to enforce all facility and program standards promulgated by the board. The regulations provide uniform factors for evaluating all programs and establish the proper steps in the certification, appeal and waiver processes.

Through a regular board and departmental review, the amendments are being proposed to (i) strengthen the regulations by tightening requirements for timeliness and communication of departmental information to the board, (ii) meet specific recommendations made by the Joint Legislative Audit and Review Commission, and (iii) comply with the requirements of § 53.1-68 of the Code of Virginia, which was amended by the 1995 Session of the General Assembly to require one unannounced annual inspection and one unannounced annual health inspection of local correctional facilities.

CHAPTER 20. RULES AND REGULATIONS GOVERNING THE CERTIFICATION PROCESS AND INSPECTION.

PART I. INTRODUCTION.

6 VAC 15-20-10. Definitions.

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

"Affiliated agencies" means agencies not under the administrative control of the board or department but subject to board standards.

"Annual inspection" means an on-site official review of a local correctional facility by local facilities managers to assess compliance with life, health and safety standards promulgated by the board.

"Appeal" means the action taken by a facility or program administrator when there is disagreement with a compliance audit finding.

"Audit report" means the official report of compliance audit findings prepared by the Certification Unit manager for the department and submitted to the board.

"Board" means the State Board of Corrections.

"Certification inspector" means a person assigned to the Certification Unit who serves as chairperson or team leader of the certification team.

"Certification team" means those persons appointed by the deputy director to conduct compliance audits.

"Certification Unit" means the organizational unit of the department responsible for scheduling and conducting compliance audits to board standards.

"Compliance" means that no deficiency was cited by the certification team or that cited deficiencies have been corrected through completion of the tasks identified in the plan of action.

"Compliance audit" or **"audit"** means an on-site official review of a facility or program by the certification team to evaluate compliance with standards promulgated by the board.

"Compliance documentation" means specific documents or information including records, reports, observations and verbal responses required to verify compliance with standards by a facility or program.

~~**"Conditional certification"** means a status granted by the board for a specific period of time to correct deficiencies beyond the control of the facility or program.~~

~~**"Decertified"** means the board has a status imposed by the board when it is determined that a facility or program has not met a minimum acceptable level of compliance with standards.~~

~~**"Deficiency"** means a facility or program does not meet noncompliance with a specific board standard.~~

~~**"Department"** means the Department of Corrections.~~

~~**"Deputy director"** means the administrative head or designee of the a division of Community Corrections or the Division of Institutions or designee the Department of Corrections.~~

~~**"Director"** means the Director of the Department of Corrections.~~

~~**"Facility"** means the physical plant of a state or, local or private correctional facility or community correctional facility.~~

~~**"Facility or program administrator"** means the individual responsible for the operation of a facility or program subject to standards, rules or regulations of the board.~~

~~**"Interim compliance audit"** means an on-site official review of a facility or program by the Certification Unit staff to evaluate compliance with standards promulgated by the board which occurs at an interval other than the regular~~

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schedule as provided in 6 VAC 15-20-20. The interim compliance audit may consist of a determination of compliance with all standards applicable to the facility or program or may be limited to specific standards as directed by the board.

"Life, health, safety alert" means a process by which the board is provided immediate notice by department staff of life, health and safety deficiencies identified in local facilities/programs.

"Life, health, safety standards" or "LHS standards" means those standards directly related to life, health or safety issues as identified by the board.

"Plan of action" means a document stating what has been or will be done to bring all deficiencies into compliance with standards, including a description of the activities undertaken, staff responsibilities, and a time table for completion.

"Preparatory audit" means an unofficial review of the operation of a facility or program against appropriate standards by regional office staff to evaluate compliance with standards promulgated by the board.

"Private correctional facility" means a facility which is operated by an entity which has entered into a legal agreement to provide any correctional services to the Department of Corrections with respect to inmates under the custody of the Commonwealth.

"Probationary certification" means a status granted by the board for a specific period of time to correct deficiencies within the control of the facility or program.

"Program" means a system of services provided to clients offenders by CDI and probation and parole officers offices and other community-based services.

"Region" means the geographic area in which a facility or program is located as established by the department.

"Regional administrator administrator/director" means the administrative head of a specific geographic region within the Division of Community Corrections or the Division of Institutions in the department.

"Regional office" means the administrative offices of a specific region within the department.

"Unconditional certification" means that a facility or program is in 100% compliance with life, health, safety, or supervision standards, and is in compliance with a minimum of 90% of the remaining all applicable standards.

"Variance" means a decision by the board to temporarily suspend the requirements of a specific standard for a specific period of time.

6 VAC 15-20-20. Legal basis: (Repealed.)

Section 53-1-5 of the Code of Virginia authorizes the board to develop and establish program and fiscal standards for state, local and community correctional facilities, lockups and community correctional services, to monitor the activities of the department in implementing the standards and to adopt

such rules and regulations required to carry out the provisions of the Code of Virginia.

PART II.

GENERAL PROVISIONS CERTIFICATION PROCESS.

6 VAC 15-20-30. Frequency of audits.

A. All state, local, private and community correctional facilities and programs operated by or affiliated with the department shall be audited every three years.

~~1. A new facility or program shall undergo a compliance audit within 12 months of opening.~~

a. 1. The regional office staff shall notify the Certification Unit staff in writing within 30 days after a new facility or program accepts the first client offender.

b. 2. The regional office staff shall conduct a preparatory audit of a new facility or program during the first six months of operation.

e. 3. The Certification Unit staff shall conduct a compliance audit during the second six months of operation and on a regular schedule thereafter as provided by this section.

B. The scheduled compliance audit may be postponed for up to six months due to circumstances beyond the control of the facility or program, such as natural or manmade disasters.

1. The facility or program administrator shall notify the certification inspector and provide details of the circumstances requiring the postponement.

2. The certification inspector shall complete a written notice of change and submit it to the Certification Unit manager for approval.

3. The certification inspector shall send copies of the approved written notice of change to the board, facility or program administrator, the appropriate regional administrator administrator/director, and the team members.

C. Any state, local, private or community correctional facility or program may be scheduled for an interim compliance audit at the direction of the board. An interim audit may be scheduled for a facility or program which has:

1. Undergone renovations or additions that have resulted in additional inmate capacity or significant changes to the numbers and duties of security staff;

2. Exhibited difficulty in maintaining compliance with the board's standards;

3. Been cited for noncompliance with the board's standards as a result of Department of Corrections inspections, Department of Health inspections or informal visits made by Department of Corrections staff, or

4. Been placed in probationary or decertified status.

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6 VAC 15-20-40. Preparation for audit.

A. The Certification Unit staff shall develop ~~a three-year~~ an annual audit schedule.

1. The schedule shall be submitted to the appropriate deputy director for review, comment and approval.
2. Upon approval, the Certification Unit staff shall:
 - a. Disseminate the final schedule to the regional offices, and
 - b. Review the schedule as necessary and make adjustments for additional audits.
3. Changes to the final audit schedule shall be agreed upon by the appropriate deputy director and the Certification Unit manager.
4. The Certification Unit staff shall notify the facility or program administrator of the change. Changes shall not extend the audit date beyond the established frequency limits without board approval.

B. The deputy director shall appoint certification team members.

1. Team members shall have prior audit experience or have completed certification training.
- ~~2. At least one person shall be a staff member of the same type of facility or program being audited.~~
- ~~3. At least one member~~ 2. All team members shall be from outside of the region.
4. 3. The team leader shall coordinate and facilitate the audit.
- ~~5. 4. The certification team auditing jails and lockups local correctional facilities shall consist of a certification inspector and a regional local facilities manager from the Division of Community Corrections.~~

C. The Certification Unit staff shall notify the facility or program administrator in writing at least ~~60~~ 30 days prior to a compliance audit. A copy of this chapter, a copy of the standards compliance form, and a list of the compliance documentation required during an audit shall be enclosed with the notification.

D. A certification inspector shall visit the facility or program administrator prior to an audit to discuss the audit process. Exceptions to the visit prior to an audit shall be documented and approved by the Certification Unit manager.

6 VAC 15-20-50. On-site audit procedures.

The certification inspector shall use on the first day of the audit to orient the team to the audit process and afford the facility or program administrator an opportunity to brief the team on aspects of the facility or program which may have a bearing on the audit.

1. The facility or program administrator shall grant the team access to all documents, staff and areas of the facility or program which are relevant to establishing compliance.

2. Data will *shall* be collected through documentation, interview and observation.

3. The certification inspector shall brief the facility or program administrator daily on audit progress and preliminary findings.

4. The entire certification team shall make compliance decisions.

a. When a team member finds an indication of noncompliance, the team member shall notify the entire team and provide all available information regarding the standard in question.

~~b. The team shall review the information available to determine if the deficiency is minor in nature.~~

(+) b. A majority vote of the team shall determine the compliance.

(2) c. If a majority vote cannot be obtained, the matter shall be referred to the appropriate deputy director by the Certification Unit manager.

5. The team shall hold a meeting with the facility or program administrator to discuss the team's compliance audit findings. At this time the facility or program administrator shall *may* introduce additional data having a bearing on the team's findings.

6. At the request of the facility or program administrator, the certification inspector shall report compliance audit findings to facility or program staff.

6 VAC 15-20-60. Audit findings.

The Certification Unit staff shall mail the audit findings to the facility or program administrator and the regional office within ~~40~~ five working days following the compliance audit.

6 VAC 15-20-70. Development of a plan of action.

A plan of action shall be developed for all deficiencies noted in the compliance audit findings. The regional office staff shall be available to assist the facility or program administrator in developing the plan of action.

1. The plan of action must identify the following:

- a. The tasks required to correct a noted deficiency;
- b. The personnel responsible for completing the tasks; and
- c. The actual or proposed date of task completion.

2. The facility or program administrator shall submit the plan of action to the regional office within ~~20~~ seven working days of receipt of the notification of deficiencies.

3. The regional administrator administrator/director shall review the plan of action. If approved, it shall be submitted to the deputy director within five working days of receipt.

4. If the regional administrator administrator/director does not approve the plan, a report indicating the review and reasons with a copy of the plan of action shall be

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submitted to the deputy director within five working days of receipt of the plan of action.

5. The deputy director shall either approve, amend or return the plan of action to the regional administrator ~~administrator/director~~ for revision within ~~40~~ five working days of receipt.

6. The regional administrator ~~administrator/director~~ shall complete any revisions requested and return the plan to the deputy director within ~~40~~ five working days of receipt.

7. The deputy director may grant one 30-day extension to a facility or program administrator for the development of a plan of action. The deputy director shall notify the board of the extension and its justification. The board may grant additional extensions.

8. If a facility or program administrator fails to submit a plan of action within the time specified, the department shall submit the audit report with recommendations to the board.

6 VAC 15-20-80. Variance requests.

A variance ~~shall~~ may be requested by a facility or program administrator when unable to comply with a standard.

1. Variance requests shall be submitted *along* with the plan of action *for any deficiencies cited during the audit*.

2. The regional administrator ~~administrator/director~~ shall make a recommendation on the variance request and submit it and the plan of action to the deputy director.

3. The deputy director shall review the variance request and plan of action and either submit them to the board *with a recommendation* or return them to the regional administrator ~~administrator/director~~ for revision.

~~4. If a variance request is disapproved, the deputy director shall notify the board.~~

~~5.~~ 4. Variance requests shall include:

- a. Standard which cannot be met; or
- b. Justification for variance;
- ~~c. Actions being taken to comply;~~
- ~~d. Estimated date of compliance; and~~
- ~~e. Individual responsible for the action.~~

~~6.~~ 5. A facility or program with an approved variance shall provide ~~a copy~~ *such documentation* to the certification team.

6 VAC 15-20-90. Appeal process and schedule.

A facility or program administrator may appeal a team decision of *noncompliance* from *compliance* audit findings using the following appeal levels and guidelines:

1. The appeal review levels ~~for facilities and programs that are state operated~~ are:

- a. Deputy director ~~and chief deputy director~~;
- b. Director; *and*

c. Board of Corrections (if a locally or privately operated facility or program).

~~2. The appeal review levels for facilities and programs that are locally operated are:~~

- ~~a. Deputy director and chief deputy director;~~
- ~~b. Director;~~
- ~~c. Board of Corrections.~~

~~3.~~ 2. Appeals shall be submitted to the regional office staff along with the plan of action within ~~20~~ seven working days of receipt of the notification of deficiencies.

4. 3. The regional administrator ~~administrator/director~~ shall submit the appeal and the plan of action to the deputy director within five working days of receipt. Upon receipt of notification from the deputy director, the Certification Unit manager shall coordinate a review of the appeal issues with the persons identified in ~~subsections subdivision 1 and 2 of this section~~.

~~5. With the exception of the Board of Corrections,~~ 4. Each appeal level shall complete its review of the appeal and notify the Certification Unit manager of its decision within five working days of receipt of the appeal. ~~The Board of Corrections shall complete its review and notify the Certification Unit manager of its decision within 20 working days.~~

~~6. The Certification Unit manager shall notify the facility or program administrator of the decision within three working days of receipt of the appeal response.~~

5. *Upon completion of the board's review of the appeal, notification of its decision shall be forwarded no later than five days after the board meeting to the facility or program administrator.*

7. 6. If the appeal is denied *at any level*, the facility or program administrator shall:

- a. Submit a plan of action to the regional administrator ~~administrator/director~~; or
- b. Request that the appeal be forwarded to the next level.

~~8.~~ 7. If the appeal is *ultimately* denied by the ~~Board of Corrections board or other level~~, the facility or program administrator shall submit a plan of action *for the deficiency which was appealed within a time frame specified by the review level*.

6 VAC 15-20-100. Board action on audit results.

A. The Certification Unit manager shall submit audit reports to the board no later than ~~90~~ 60 days after completion of the audit. Audit reports shall include:

1. A list of deficiencies;
2. Plans of corrective action and completion status;
3. Similar deficiencies from the previous audit; and
4. Recommended action for consideration by the board.

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B. Based upon the audit report the board shall take one of the following actions and issue a certificate:

1. A letter requesting corrective action on deficiencies within a specific time frame shall be issued to the facility or program.

2. A Certificate of Unconditional Certification shall be issued to a facility or program that has: *complied with all applicable standards.*

a. ~~Complied 100% with life, health, safety standards;~~
or

b. ~~Complied 100% with supervision standards, when life, health, safety standards do not apply; or~~

c. ~~Complied with at least 90% of the remaining standards.~~

3. A Certificate Letter of Probationary Certification indicates deficiencies within the control of the facility or program. It shall *may* be issued to a facility or program that has: *not met all applicable standards if the board grants a specific period of time to correct deficiencies.*

a. ~~Complied with less than 100% of the life, health, safety standards; or~~

b. ~~Complied with less than 100% of the supervision standards, when life, health, safety standards do not apply; or~~

c. ~~Complied with less than 90% of the remaining standards.~~

~~A probationary certification shall be valid for not more than one year as approved by the board. The department shall provide periodic status reports to the board.~~

3. A Certificate of Conditional Certification indicates deficiencies beyond the control of the facility or program as determined by the board, for example, lack of legislative action or capital funding. It shall be issued to a facility or program that has:

a. ~~Complied with less than 100% of the life, health, safety standards; or~~

b. ~~Complied with less than 100% of the supervision standards, when life, health, safety standards do not apply; or~~

c. ~~Complied with less than 90% of the remaining standards.~~

~~A conditional certification shall be valid for not more than one year as approved by the board. The board may grant one extension not to exceed one year. The department shall provide status reports to the board as requested.~~

4. A Letter of Decertification will be issued by the board when a facility or program with a conditional or probationary certification does not meet the requirements for certification within the time limits approved by the board. The department shall provide status reports to

the board during this period *and notify the board when all deficiencies have been corrected.*

a. ~~A decertified facility or program may request to be reaudited at any time.~~

b. ~~The appropriate deputy director shall notify the Certification Unit manager to schedule a new audit.~~

C. A facility or program's certification status shall remain in effect until notified of a specific change by the subsequent board action.

6 VAC 15-20-110. Notifications.

The Certification Unit staff shall notify the facility or program administrator of a facility or program's certification status within four weeks after immediately following the board's action. ~~Facilities or programs~~ The facility or program administrator shall post the letter or certificate in a place conspicuous to the public.

6 VAC 15-20-120. Actions that can be taken when decertified.

When a facility or program is decertified the board may consider taking the following actions in compliance with statutes, policies, and procedures established by the board, the department or other state or federal agencies:

1. Board action for facilities or programs that are state or privately operated may include, but not be limited to, the following:

a. The facility or program director authorized to take action may bring about a reorganization of the facility or program structure or other personnel actions deemed necessary to bring it into compliance with standards; or

b. The facility or program may be closed in accordance with established procedures.

2. Board action for facilities and programs that are locally operated may include, but not be limited to, the following:

a. Recommend that the facility or program administrator authorized to take action bring about a reorganization of the facility or program structure or other personnel actions deemed necessary to bring it into compliance with standards; or

b. Recommend that the facility or program be closed or the termination of contractual agreements terminated in accordance with established procedures; or

c. Initiate proceedings for the withholding of funds under the appropriate sections of the Code of Virginia.

PART III. INSPECTION PROCESS.

6 VAC 15-20-130. Inspection method.

Annual inspections shall be unannounced to the facility being inspected for compliance with all life, health and safety standards in the Board of Corrections' Minimum Standards for Local Jails and Lockups (6 VAC 15-40-10 et seq.).

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6 VAC 15-20-140. Inspection schedule.

A. All local correctional facilities shall undergo at least one unannounced life, health and safety inspection annually by the Local Facilities Unit.

B. The Chief of Operations, Local Facilities Unit, shall prepare the inspection schedule annually.

1. The inspection schedule shall not be published outside the Board of Corrections, Department of Corrections and Virginia Department of Health.

2. The inspection schedule shall be prepared in conjunction with the certification audit schedule.

3. Jails which undergo certification audits in a given year shall be scheduled for an inspection at least three months apart from the audit date if scheduling permits.

C. New local correctional facilities shall be inspected only after the regional preparatory audit and first year certification audit have been completed.

D. Local correctional facility inspections shall be postponed or rescheduled only upon approval of the Chief of Operations, Local Facilities Unit.

6 VAC 15-20-150. Preparation for inspection.

Inspections shall be conducted by a Local Facilities Unit manager on the basis of annual schedule assignment.

1. Larger local correctional facilities may require more than one staff to perform the inspection. In this event, the manager assigned the inspection may request assistance of other local facilities staff, Certification Unit, or regional office personnel.

2. The Local Facilities Manager may coordinate the inspection with local health department officials.

6 VAC 15-20-160. On-site inspection procedures.

A. The Local Facilities Manager shall announce the intent of the visit and produce official identification if required upon arrival at the local correctional facility.

B. The local correctional facility shall grant access to all documents, staff and areas of the facility necessary to complete the inspection and assess standards compliance.

C. Denial of access to the facility for any reasons other than bonafide security or emergency situations shall result in findings of noncompliance on all standards. In the event of denial of access, the Local Facilities Manager will notify the Chief of Operations immediately. The inspection may be rescheduled if it is determined that denial of access was warranted.

D. Compliance data shall be gathered through documentation, interview and observation.

E. The Local Facilities Manager assigned the inspection shall determine compliance in the event more than one staff conduct the inspection.

F. All life, health and safety standards shall be assessed for compliance at the time of the inspection using the

inspection form to indicate a yes or no finding. Situations which prevent access to documentation, observation or interview to determine compliance shall result in a finding of noncompliance for the applicable standard.

G. A debriefing with the facility administrator or staff in charge shall be held upon inspection completion. If requested, the Local Facilities Manager may debrief other jail personnel.

6 VAC 15-20-170. Inspection findings.

The inspection report shall be provided the facility upon completion of the inspection and a copy of the report mailed to the regional office within five working days.

6 VAC 15-20-180. Correction of deficiencies.

A. Facility administrators shall advise the Chief of Operations in writing of the correction of all cited deficiencies within seven days following the inspection. Adequate documentation to support deficiency corrections shall be provided.

B. The Local Facilities Manager shall assist facilities in correcting deficiencies where necessary and monitor the submission of written notification of deficiency corrections.

C. The Local Facilities Manager shall maintain copies of all inspection reports and provide a monthly report to the Chief of Operations on inspection results. Deficiencies not corrected within 30 days shall be reported as life, health and safety alerts.

6 VAC 15-20-190. Board action on inspection results.

A. Inspection results shall be reported by the Chief of Operations to the board on a monthly basis and deficiencies not corrected will be reported as life, health and safety alerts.

B. The results of all inspections conducted shall be reported to the board.

C. The board shall be notified immediately of all life, health and safety alerts, including denial of access. Upon review of alert deficiencies, the Board of Corrections chairman, or in his absence the vice chairman, may change the certification status of the facility in question.

D. Board actions taken in response to inspection results shall be as described in the section of this chapter relating to certification audits.

6 VAC 15-20-200. Health inspection schedule.

A. All local correctional facilities shall undergo at least one annual inspection by the Virginia Department of Health.

B. Virginia Department of Health environmental staff, under the delegated power of the State Health Commissioner and the district health director, shall be responsible for scheduling and administering local correctional facility inspections.

C. The Office of Environmental Health Services of the Virginia Department of Health shall provide the technical and administrative guidance to district and local health departments as necessary or requested. Local health departments may coordinate the inspections with the department's Local Facilities Unit.

6 VAC 15-20-210. On-site health inspection procedures.

A. Virginia Department of Health staff shall announce the intent of the visit and produce official identification if required upon arrival at the facility.

B. The facility shall grant access to all documents, staff and areas of the local correctional facility necessary to complete the inspection.

C. Virginia Department of Health staff shall evaluate jail kitchen facilities in accordance with the Rules and Regulations Governing Restaurants, 12 VAC 5-420-10. A food establishment permit shall be issued to facilities which comply with the Rules and Regulations Governing Restaurants. No permit shall be issued to facilities which are not in substantial compliance with the regulations.

D. Virginia Department of Health staff shall also inspect all areas of the facility necessary to determine compliance with standards for facility cleanliness and housing areas of local correctional facilities designated in the interagency letter of agreement between the Board of Corrections and the Virginia Department of Health.

E. Compliance data shall be gathered through documentation, interview and observation. Situations which prevent access to documentation, observation or interview to determine compliance shall result in a finding of noncompliance for the applicable standard.

F. If possible, food service and standards compliance inspections should occur on the same visit to the facility. In those cases where follow-up visits are necessary, those visits may be coordinated with appropriate facility staff.

G. At the conclusion of the inspection, the facility administrator or designee or both shall be briefed on the inspection findings.

6 VAC 15-20-220. Health inspection findings.

The inspection report shall be provided to the facility upon completion of the inspection and a copy shall be forwarded to the department's Certification Unit within 30 days. In a situation where sanitation and environmental conditions could pose a health hazard, the department shall be notified immediately.

6 VAC 15-20-230. Board action on health inspection results.

Inspection results which report sanitation and environmental hazards or evidence of noncompliance with standards shall be reported to the board by the Certification Unit staff on a monthly basis. Board action taken in response to inspection results shall be as described in the section of this chapter relating to certification audits. Follow-up relative to standards shall be the responsibility of the board and the department.

VA.R. Doc. No. R96-550; Filed August 27, 1996, 5:03 p.m.

DEPARTMENT OF GAME AND INLAND FISHERIES

REGISTRAR'S NOTICE: The Department of Game and Inland Fisheries is exempt from the Administrative Process Act pursuant to subdivision A 3 of § 9-6.14:4.1 of the Code of Virginia when promulgating regulations regarding the management of wildlife.

Title of Regulation: 4 VAC 15-20-10 et seq. Definitions and Miscellaneous: In General (amending 4 VAC 15-20-160).

Statutory Authority: §§ 29.1-501 and 29.1-502 of the Code of Virginia.

Notice to the Public: The Board of Game and Inland Fisheries has ordered to be published, pursuant to §§ 29.1-501 and 29.1-502 of the Code of Virginia, the following proposed amended board regulation. Comments regarding the proposed amended regulation are solicited from the public, should be submitted in writing, and should be sent to: Chief, Wildlife Division, Department of Game and Inland Fisheries, 4010 West Broad Street, Richmond, Virginia 23230, or faxed to (804) 367-0262. A public hearing on the advisability of adopting, or amending and adopting, the proposed regulations, or any part thereof, will be held at the Department of Game and Inland Fisheries, 4010 West Broad Street, Richmond, Virginia, beginning at 10 a.m. on Thursday, October 24, 1996, at which time any interested citizen present shall be heard. If the board is satisfied that the proposed regulations or any part thereof, are advisable, in the form in which published or as amended as a result of the public hearing, the board may adopt such proposal at that time.

Summary:

The proposed amendment adds mute swan (*Cygnus olor*), an exotic species to Virginia which has established feral wild populations in the Commonwealth, to the list of bird species designated by the board as nuisance species.

4 VAC 15-20-160. Nuisance species designated.

A. The board hereby designates the following species as nuisance species pursuant to § 29.1-100 of the Code of Virginia.

1. Mammals.
 - a. House mouse (*Mus musculus*);
 - b. Norway rat (*Rattus norvegicus*);
 - c. Black rat (*Rattus rattus*); and
 - d. Coyote (*Canis latrans*).
2. Birds.
 - a. European starling (*Sturnus vulgaris*);
 - b. English (house) sparrow (*Passer domesticus*); and
 - c. Pigeon (Rock Dove) (*Columba livia*); and
 - d. Mute swan (*Cygnus olor*).

B. It shall be unlawful to take, possess, transport, or sell all other wildlife species not classified as game, furbearer or

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nuisance, or otherwise specifically permitted by law or regulation.

VA.R. Doc. No. R96-546; Filed August 27, 1996, 10:39 a.m.

Title of Regulation: 4 VAC 15-30-10 et seq. **Definitions and Miscellaneous: Importation, Possession, Sale, Etc., of Animals (amending 4 VAC 15-30-40).**

Statutory Authority: §§ 29.1-501 and 29.1-502 of the Code of Virginia.

Notice to the Public: The Board of Game and Inland Fisheries has ordered to be published, pursuant to §§ 29.1-501 and 29.1-502 of the Code of Virginia, the following proposed amended board regulation. Comments regarding the proposed amended regulation are solicited from the public, should be submitted in writing, and should be sent to: Chief, Fish Division, Department of Game and Inland Fisheries, 4010 West Broad Street, Richmond, Virginia 23230, or faxed to (804) 367-2628. At the conclusion of a series of meetings being held around the state for the purpose of providing the public with an opportunity to review and comment on all fish regulations, a public hearing will be held on the advisability of adopting, or amending and adopting fish regulations, or any part thereof. Because all fish regulations are open for consideration, the board may amend any fish regulation at that time. These changes may be more liberal than, or more stringent than those being proposed under this notice. The public hearing on the advisability of adopting, or amending and adopting, the proposed regulation, or any part thereof, will be held at the Department of Game and Inland Fisheries, 4010 West Broad Street, Richmond, Virginia, beginning at 10 a.m. on Thursday, October 24, 1996, at which time any interested citizen present shall be heard. If the board is satisfied that the proposed regulation or any part thereof, are advisable, in the form in which published or as amended as a result of the public hearing, the board may adopt such proposal at that time.

Summary:

The amendment prohibits the importation, possession, or sale of the nonnative exotic aquatic species, the tubenose goby (Proterorhinus marmoratus) and the round goby (Neogobius melanostomus).

4 VAC 15-30-40. Importation requirements, possession and sale of nonnative (exotic) animals.

A. Permit required. A special permit is required and may be issued by the department, if consistent with the department's fish and wildlife management program, to import, possess, or sell those nonnative (exotic) animals listed below that the board finds and declares to be predatory or undesirable within the meaning and intent of § 29.1-542 of the Code of Virginia, in that their introduction into the Commonwealth will be detrimental to the native fish and wildlife resources of Virginia:

AMPHIBIANS:

Order	Family	Genus/Species	Common Name
Anura	Bufoiidae	Bufo marinus	Giant or marine toad*
	Pipidae	Xenopus spp.	Tongueless or African clawed frog
Caudata	Ambystomatidae	Ambystoma tigrum mavortium	Barred tiger salamander
		A. t. diaboli	Gray tiger salamander
		A. t. melanostictum	Blotched tiger salamander

BIRDS:

Order	Family	Genus/Species	Common Name
Psittaciformes	Psittacidae	Myiopsitta monachus	Monk parakeet*

FISH:

Order	Family	Genus/Species	Common Name
Cypriniformes	Catostomidae	Ictiobus bubalus	Smallmouth buffalo*
		I. cyprinellus	Bigmouth buffalo*
		I. niger	Black buffalo*
	Characidae	Pygopristis spp. Pygocentrus spp. Rooseveltiella spp. Serrasalmo spp. Serrasalmus spp. Taddyella spp.	Piranhas
	Cyprinidae	Aristichthys nobilis	Bighead carp*
		Ctenopharyngodon idella	Grass carp or white amur
		Cyprinella lutrensis	Red shiner
		Hypophthalmichthys molitrix	Silver carp*
		Mylopharyngodon piceus	Black carp
		Scardinius erythrophthalmus	Rudd
		Tinca tinca	Tench*
Gobiesociformes	Gobiidae	Proterorhinus marmoratus	Tubenose goby

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		<i>Neogobius melanostomus</i>	Round goby
Perciformes	Cichlidae	Tilapia spp.	Tilapia
		Gymnocephalus cernuum	Ruffe*
Siluriformes	Clariidae	All Species	Air-breathing catfish

MAMMALS:

Order	Family	Genus/Species	Common Name
Artiodactyla	Suidae	All Species	Pigs or Hogs*
	Cervidae	All Species	Deer*
Carnivora	Canidae	All Species	Wild Dogs*, Wolves, Coyotes or Coyote hybrids, Jackals and Foxes
	Ursidae	All Species	Bears*
	Procyonidae	All Species	Raccoons and* Relatives
	Mustelidae	All Species (except <i>Mustela putorius furo</i>)	Weasels, Badgers,* Skunks and Otters Ferret
	Viverridae	All Species	Civets, Genets,* Lingsangs, Mongooses, and Fossas
	Herpestidae	All Species	Mongooses*
	Hyaenidae	All Species	Hyenas*
	Proteidae	<i>Proteles cristatus</i>	Aardwolf*
	Felidae	All Species	Cats*
Chiroptera		All Species	Bats*
Lagomorpha	Lepridae	<i>Lepus europeaeus</i>	European hare
		<i>Oryctolagus cuniculus</i>	European rabbit

MOLLUSKS:

Order	Family	Genus/Species	Common Name
Veneroida	Dreissenidae	<i>Dreissena polymorpha</i>	Zebra Mussel

REPTILES:

Order	Family	Genus/Species	Common Name
Squamata	Alligatoridae	All Species	Alligators, Caimans*
	Colubridae	<i>Boiga irregularis</i>	Brown tree snake*
	Crocodylidae	All Species	Crocodiles*
	Gavialidae	All Species	Gavials*

B. Temporary possession permit for certain animals. Notwithstanding the permitting requirements of subsection A, a person, company or corporation possessing any nonnative (exotic) animal, designated with an asterisk (*) in subsection A, prior to July 1, 1992, must declare such possession in writing to the department by January 1, 1993. This written declaration shall serve as a permit for possession only, is not transferable, and must be renewed every five years. This written declaration must include species name, common name, number of individuals, date or dates acquired, sex (if possible), estimated age, height or length, and other characteristics such as bands and band numbers, tattoos, registration numbers, coloration, and specific markings. Possession transfer will require a new permit according to the requirements of this subsection.

C. Exception for certain monk parakeets. A permit is not required for monk parakeets (quakers) that have been captive bred and are closed-banded.

D. Exception for parts or products. A permit is not required for parts or products of those nonnative (exotic) animals listed in subsection A that may be used in the manufacture of products or used in scientific research, provided that such parts or products be packaged outside the Commonwealth by any person, company, or corporation duly licensed by the state in which the parts originate. Such packages may be transported into the Commonwealth, consistent with other state laws and regulations, so long as the original package remains unbroken, unopened and intact until its point of destination is reached. Documentation concerning the type and cost of the animal parts ordered, the purpose and date of the order, point and date of shipping, and date of receiving shall be kept by the person, business or institution ordering such nonnative (exotic) animal parts. Such documentation shall be open to inspection by a representative of the Department of Game and Inland Fisheries.

E. Exception for certain mammals. Nonnative (exotic) mammals listed in subsection A that are imported or possessed by dealers, exhibitors, transporters, and researchers who are licensed or registered by the United States Department of Agriculture under the Animal Welfare Act (7 USC §§ 2131 et seq.) will be deemed to be permitted pursuant to this section, provided that those individuals wanting to import such animals notify the department 24 hours prior to importation with a list of animals to be imported, a schedule of dates and locations where those animals will be housed while in the Commonwealth, and a copy of the current license or licenses or registration or registrations from the U.S. Department of Agriculture, and further provided that such animals shall not be liberated within the Commonwealth.

F. All other nonnative (exotic) animals. All other nonnative (exotic) animals, not listed in subsection A may be possessed and sold; provided, that such animals shall be subject to all applicable local, state, and federal laws and regulations, including those that apply to threatened/ endangered species, and further provided, that such animals shall not be liberated within the Commonwealth.

VA.R. Doc. No. R96-555; Filed August 28, 1996, 11:46 a.m.

Proposed Regulations

Title of Regulation: 4 VAC 15-320-10 et seq. Fish: Fishing Generally (amending 4 VAC 15-320-10 through 4 VAC 15-320-40, 4 VAC 15-320-90, and 4 VAC 15-320-120).

4 VAC 15-330-10 et seq. Fish: Trout Fishing (amending 4 VAC 15-330-110, 4 VAC 15-330-120, 4 VAC 15-330-150, and 4 VAC 15-330-160; repealing 4 VAC 15-330-170).

4 VAC 15-340-10 et seq. Fish: Seines and Nets (amending 4 VAC 15-340-40 and 4 VAC 15-340-60).

4 VAC 15-350-10 et seq. Fish: Gigs, Grab Hooks, Trotlines, Snares, Etc. (amending 4 VAC 15-350-60 and 4 VAC 15-350-70).

4 VAC 15-360-10 et seq. Fish: Aquatic Invertebrates, Amphibians, Reptiles and Nongame Fish (amending 4 VAC 15-360-10).

Statutory Authority: §§ 29.1-501 and 29.1-502 of the Code of Virginia.

Notice to the Public: The Board of Game and Inland Fisheries has ordered to be published, pursuant to §§ 29.1-501 and 29.1-502 of the Code of Virginia, the following proposed amended board regulations. Comments regarding the proposed amended regulations are solicited from the public, should be submitted in writing, and should be sent to: Chief, Fish Division, Department of Game and Inland Fisheries, 4010 West Broad Street, Richmond, Virginia 23230, or faxed to (804) 367-2628. At the conclusion of a series of meetings being held around the state for the purpose of providing the public with an opportunity to review and comment on all fish regulations, a public hearing will be held on the advisability of adopting, or amending and adopting fish regulations, or any part thereof. Because all fish regulations are open for consideration, the board may amend any fish regulation at that time. These changes may be more liberal than, or more stringent than those being proposed under this notice. The public hearing on the advisability of adopting, or amending and adopting, the proposed regulations, or any part thereof, will be held at the Department of Game and Inland Fisheries, 4010 West Broad Street, Richmond, Virginia, beginning at 10 a.m. on Thursday, October 24, 1996, at which time any interested citizen present shall be heard. If the board is satisfied that the proposed regulations or any part thereof, are advisable, in the form in which published or as amended as a result of the public hearing, the board may adopt such proposals at that time.

Summary:

4 VAC 15-320-10 et seq. Fish: Fishing Generally. The amendments (i) change the open season for anadromous (coastal) striped bass above the fall line in coastal rivers of the Chesapeake Bay to that set by the Virginia Marine Resources Commission; (ii) establish an aggregate daily creel limit of five rock bass (redeye) and Roanoke bass in the Meherrin and Nottoway rivers and their tributaries; (iii) establish the size limits on anadromous (coastal) striped bass above the fall line in coastal rivers of the Chesapeake Bay as that set by the Virginia Marine Resources Commission, remove the 12-inch minimum size limit on largemouth bass in Chickahominy Reservoir, and establish an eight-inch

minimum size limit on rock bass (redeye) in the Nottoway and Meherrin rivers and their tributaries; (iv) clarify under what conditions game fish and catfish may be sold in the Commonwealth; (v) add North Fork of Pound Reservoir to the waters exempted from the National Forest permit to fish; and (vi) establish a short (five-day) closed season to allow preparation for the annual opening of the three fee fishing areas, eliminate the fee fishing program at Douthat State Park in the summer months, extend the fee fishing season in the fall at all three areas, allow the establishment of "children only" areas at all three areas, and allow unpermitted children to fish in the Douthat Fee Fishing Area as long as they are accompanied by a permitted adult and the combined creel limit of the adult and children does not exceed the adult's legal limit.

4 VAC 15-330-10 et seq. Fish: Trout Fishing. The amendments (i) remove the Hidden Valley section of Jackson River in Bath County from the list of special regulation 12-inch minimum size limit, six trout per day creel limit special regulation trout streams; (ii) add the Hidden Valley section of Jackson River in Bath County to the list of 16-inch minimum size limit, two trout per day creel limit special regulation trout streams; (iii) clarify the boundaries of the South Fork Holston River catch and release section and add Jackson River from Gathright Dam downstream to the Westvaco Dam at Covington to the list of catch and release, artificial lures only trout streams; (iv) add Accotink Creek (Fairfax County), Passage Creek (Shenandoah County), and North Fork of Pound and Pound rivers (Wise County) to the list of delayed harvest regulation trout streams; and (v) repeal 4 VAC 15-330-170 so the Jackson River from Gathright Dam downstream to the Westvaco Dam at Covington can be added to the list of catch and release, artificial lures only trout streams.

4 VAC 15-340-10 et seq. Fish: Seines and Nets. The amendments (i) clarify that dip netting for shad, herring, mullet and suckers requires either a valid fishing license or a dip net permit; and (ii) add Hungry Mother Creek above Hungry Mother Lake (Smyth County) to the list of streams where the use of nets, seines and traps is prohibited in the Commonwealth; provided, however, this shall not apply to hand landing nets for landing legally hooked fish.

4 VAC 15-350-10 et seq. Fish: Gigs, Grab Hooks, Trotlines, Snares, Etc. The amendments (i) change the requirement for the use of nonferrous metal tags to identify the owners of trotlines, juglines and set poles to that which allows for the permanent marking of the equipment by any means, and add the requirement of including a telephone number along with owners name and address; and (ii) establish a continuous open season for bow fishing for carp and gar instead of just during daylight hours.

4 VAC 15-360-10 et seq. Fish: Aquatic Invertebrates, Amphibians, Reptiles and Nongame Fish. The amendment adds an exception to eliminate a conflict between 4 VAC 15-360-10 and subdivision 8 of 4 VAC 15-320-20 regarding possession limits for anadromous (coastal) shad and herring.

4 VAC 15-320-10. Continuous open season for all species except anadromous (coastal) striped bass above the fall line in coastal rivers of the Chesapeake Bay.

Except as otherwise specifically provided by sections appearing in this chapter, there shall be a continuous open season for fishing to take all species of fish *except anadromous (coastal) striped bass above the fall line in coastal rivers of the Chesapeake Bay, where the open season shall be that set by the Virginia Marine Resources Commission for tidal waters.*

4 VAC 15-320-20. Creel limits.

The creel limits (including live possession) for the various species of fish shall be as follows:

1. Largemouth, smallmouth and spotted bass, five a day in the aggregate.
2. Landlocked striped bass and landlocked striped bass X white bass hybrids, in the aggregate, four a day; except, that in Smith Mountain Reservoir and its tributaries, including the Roanoke River upstream to Niagara Dam, the limit shall be two a day in the aggregate. For anadromous (coastal) striped bass above the fall line in all coastal rivers, the limit shall be zero (catch and release only). The creel limit on striped bass in the Meherrin, Nottoway, Blackwater (Chowan Drainage), North Landing and Northwest Rivers and their tributaries plus Back Bay shall be four per day.
3. White bass, 25 per day, except that in New River and Claytor Lake from the Buck Dam on New River in Carroll County downstream to the Claytor Lake Dam, the limit shall be five per day.
4. Walleye or yellow pike perch and chain pickerel or jackfish, eight a day of each; except, that in Gaston Reservoir and Buggs Island (Kerr) Reservoir there shall be no daily limit for chain pickerel or jackfish.
5. Northern pike and muskellunge, two a day.
6. Sauger, eight per day.
7. Bluegill (bream) and other sunfish, excluding crappie (silver perch), rock bass (redestye) and Roanoke bass, 50 a day in the aggregate; crappie (silver perch) and rock bass (redestye), 25 a day of each species; *rock bass (redestye) and Roanoke bass, 5 a day in the aggregate, on the Nottoway and Meherrin rivers and their tributaries.* There shall be no limit on any of the species included in this subdivision 7 in Gaston and Buggs Island (Kerr) Reservoirs and that portion of the New River from the Virginia-North Carolina state line downstream to the confluence of the New and Little Rivers in Grayson County.
8. American shad and hickory shad, in the James River above the fall line (14th Street Bridge), in the Meherrin River above Emporia Dam, in the Chickahominy River above Walkers Dam, in the Appomattox River above Harvell Dam, in the Mattaponi River and Pamunkey River above the Route 360 bridge, and in the Rappahannock River above the Route 1 bridge, zero (catch and release only). Alewife and blueback herring in the James River

above Boshers Dam, in the Meherrin River above Emporia Dam, in the Chickahominy River above Walkers Dam, in the Appomattox River above Harvell Dam, in the South Anna River above the U.S. Route 1 bridge, and in the Rappahannock River above Embrey Dam, zero (catch and release only).

4 VAC 15-320-30. Size limit limits.

Except as provided in this chapter, 4 VAC 15-330-50, and 4 VAC 15-330-110 through 4 VAC 15-330-140, there shall be no size limit on any species of fish.

1. There shall be a 30-inch minimum size limit on muskellunge, and a 20-inch minimum size limit on northern pike, landlocked striped bass (rockfish) and landlocked striped bass X white bass hybrids. *For anadromous (coastal) striped bass above the fall line in coastal rivers of the Chesapeake Bay, the size limit shall be that set by the Virginia Marine Resources Commission for tidal waters.*
2. There shall be a 14-inch minimum size limit on largemouth, smallmouth and spotted bass in Occoquan Reservoir from the reservoir dam upstream to the Lake Jackson Dam on Occoquan Creek and upstream to the Yates Ford Bridge (Route 612) on Bull Run Creek. It shall be unlawful to have any such bass less than 14 inches in length in one's possession on the above described waters of this reservoir.
3. There shall be a 12-inch minimum size limit on largemouth, smallmouth and spotted bass in the Chickahominy, Claytor, Philpott and Flannagan Reservoirs, and in Lake Moomaw (Gathright Project). It shall be unlawful to have any largemouth, smallmouth or spotted bass less than 12 inches in length in one's possession while on any of the waters mentioned in the preceding sentence.
4. There shall be a 14-inch minimum size limit on largemouth, smallmouth and spotted bass on the Roanoke (Staunton) and Dan Rivers and their tributaries and impoundments (Gaston, John Kerr, Leesville and Smith Mountain Reservoirs) downstream from Niagara Dam on the Roanoke River and the Brantly Steam Plant Dam on the Dan River; except, that as many as two of such bass of a lesser size caught in such waters may be retained in the creel, but no more than two such bass may be in possession on such waters that are less than 14 inches in length.
5. It shall be unlawful to have any largemouth, smallmouth or spotted bass from 12 to 15 inches in length, both inclusive, in one's possession on North Anna Reservoir and its tributaries, on Briery Creek Lake (Prince Edward County), on Chesdin Reservoir or the Appomattox River from the Brasfield (Chesdin) Dam to Bevel's Bridge on Chesterfield County Route 602, on Beaverdam Reservoir (Loudoun County) and on the waters of Quantico Marine Reservation.
6. It shall be unlawful to have any smallmouth, largemouth or spotted bass from 11 to 14 inches in length, both inclusive, in one's possession on the Shenandoah River, including the North and South Forks

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downstream from the Route 42 bridge on the North Fork and from the confluence of the North and South Rivers on the South Fork below Port Republic; on the New River from Claytor Dam to the West Virginia boundary line; on the James River from the confluence of the Jackson and Cowpasture rivers downstream to the Interstate 95 bridge at Richmond; on North Fork Pound Reservoir; or on the Clinch River within the boundaries of Scott, Wise, Russell or Tazewell Counties.

7. It shall be unlawful to have any largemouth, smallmouth or spotted bass less than 15 inches in length from March 1 through June 15, both inclusive, in the Virginia tidal tributaries of the Potomac River upstream of the Route 301 Bridge. There shall be no size limit for largemouth, smallmouth or spotted bass from June 16 through the last day of February in those tributaries.

8. It shall be unlawful to have any *rock bass (redeye)* or Roanoke bass less than eight inches in length in one's possession on the Nottoway and Meherrin rivers and their tributaries.

4 VAC 15-320-40. Sale of freshwater molluscs, mussels, game fish or and catfish prohibited.

~~It shall be unlawful to sell, offer for sale or buy any species of freshwater mollusc or mussel, game fish or catfish, provided that this shall not apply to game fish sold alive for propagation purposes, or catfish artificially raised, by a holder of a Permit to Propagate and Sell Certain Wildlife or Permit to Hold and Sell Certain Wildlife, or sold pursuant to 4 VAC 15-330-180 and 4 VAC 15-330-190, or to any catfish taken from tidewater. Game fish and catfish raised in a privately owned facility by the holder of a Permit to Propagate and Sell Certain Wildlife or Permit to Hold and Sell Certain Wildlife may be sold as follows: (i) game fish for stocking private waters; (ii) game fish for stocking public waters only with approval from the department pursuant to 4 VAC 15-320-60; (iii) trout pursuant to 4 VAC 15-330-180 and 4 VAC 15-330-190; and (iv) catfish for stocking private waters, public waters pursuant to 4 VAC 15-330-60, or for human consumption. Catfish taken from tidewater may also be sold in accordance with Virginia Marine Resources Commission regulations.~~

4 VAC 15-320-90. Exception to requirement of national forest permit.

A national forest permit, as provided for in § 29.1-408 of the Code of Virginia shall not be required to fish from national forest lands in the North and South forks of the Shenandoah River, in Skidmore Lake in Rockingham County, in Lake Moomaw (Gathright Project), in the Jackson River below Gathright Dam, in North Fork Pound Reservoir, and in Wilson Creek downstream of Douthat Lake in Alleghany and Bath Counties.

4 VAC 15-320-120. Department-owned or controlled lakes, ponds or streams; special daily permit for fishing in Clinch Mountain Wildlife Management Area, Douthat State Park Lake and Crooked and Wilson creeks.

It shall be unlawful to fish in the Clinch Mountain Wildlife Management Area (except in Little Tumbling Creek), in Douthat State Park Lake and in Wilson Creek both above the

lake to the park boundary and downstream to the lower USFS boundary, and in the Crooked Creek fee fishing area in Carroll County without having first paid to the department for such privilege a daily use fee. Such daily use fee shall be in addition to all other license fees provided by law. Upon payment of the daily use fee the department shall issue a special permit which shall be signed and carried by the person fishing. This fee will be required from the ~~third Saturday in March through Labor Day~~ *first Saturday in April through September 30* at Clinch Mountain Wildlife Management Area (except Little Tumbling Creek) and at Crooked Creek fee fishing area in Carroll County, and from the ~~third first Saturday in March~~ *April through September 30* at Douthat State Park Lake and Wilson Creek, except that the director may temporarily suspend fee requirements if conditions cause suspension of trout stocking. During the remainder of the year, these waters will revert to designated stocked trout waters and a trout license will be required except as provided in 4 VAC 15-20-190. *No fishing is permitted in these waters for five days preceding the opening day. Upon written request from Douthat State Park and subsequent approval from the department, the department may recognize clearly marked "children only" fishing areas within Douthat State Park any department fee fishing area.* Within these "children only" areas, children 12 years old or less may fish without the daily use fee if accompanied by a fully licensed adult who has purchased a valid daily permit. No person over 12 years of age may fish in these children-only areas. *Also, children 12 years and under can fish without a permit in the entire Douthat Fee Fishing Area if under the direct supervision of a permitted adult. However, the combined daily creel limit for both adult and child/children in such a party shall not exceed six trout.* During the fee fishing season these waters will be subject to 4 VAC 15-330-60, 4 VAC 15-330-80, and 4 VAC 15-330-90, as it relates to designated stocked trout waters.

4 VAC 15-330-110. Special provisions applicable to certain portions of Green Cove Creek, Jackson River, Smith Creek, Snake Creek and Whitetop Laurel Creek.

It shall be lawful to fish using only artificial lures with single hooks in that portion of Green Cove Creek in Washington County from Route 859 downstream to its mouth, Jackson River in Bath County from the swinging bridge located just ~~upstream from the mouth of Muddy Run, upstream 3.0 miles to the last ford on FS-481D,~~ in that portion of Smith Creek in Alleghany County from the Clifton Forge Reservoir Dam downstream to a sign at the Forest Service boundary above the C & O Dam, on Snake Creek in Carroll County upstream from its mouth to Hall's Fork on Big Snake Fork and to the junction of Routes 922 and 674 on Little Snake Fork, and in Whitetop Laurel Creek in Washington County upstream from the first railroad trestle above Taylor Valley to the mouth of Green Cove Creek at Creek Junction. All trout caught in these waters under 12 inches in length shall be immediately returned to the water unharmed. It shall be unlawful for any person to have in his possession any bait or any trout under 12 inches in length in these areas.

4 VAC 15-330-120. Special provisions applicable to certain portions of Buffalo Creek, Dan River, Jackson River, Sinking Creek, Smith Creek, Smith River, and South Fork Holston River.

A. It shall be lawful year around to fish using only artificial lures with single hooks in that portion of Buffalo Creek in Rockbridge County from the confluence of Colliers Creek upstream 2.9 miles to the confluence of North and South Buffalo Creeks, in that portion of Smith River in Henry County from signs below the east bank of Towne Creek for a distance of approximately three miles downstream, in that portion of the Dan River in Patrick County from Talbott Dam approximately six miles downstream to a sign posted just upstream from the confluence of Dan River and Townes Reservoir and, in that portion of the South Fork Holston River in Smyth County from a sign posted at the Jefferson National Forest boundary downstream from the confluence of the South Fork and Comers Creek upstream for approximately two miles to a sign posted at the upper Jefferson National Forest boundary, and in that portion of Jackson River in Bath County from the swinging bridge located just upstream from the mouth of Muddy Run, upstream three miles to the last ford on FS 481D.

B. It shall be lawful year around to fish using only artificial flies with single hooks in that portion of Sinking Creek in Giles County from a cable and department sign 0.4 miles below the State Route 703 low-water bridge upstream 1.8 miles to a cable and department sign 0.1 miles above the Reynolds Farm covered bridge, in that portion of Sinking Creek in Craig County from a cable and department sign 1.0 mile below the State Route 642 Bridge upstream to a cable and department sign 0.5 miles above the State Route 642 Bridge, and in that portion of Smith Creek in Rockingham County from a sign posted 1.0 miles below the confluence of Lacy Spring to a sign posted 0.4 miles above Lacy Spring.

C. The daily creel limit in these waters shall be two trout a day year around and the size limit shall be 16 inches or more in length. All trout caught in these waters under 16 inches in length shall be immediately returned to the water unharmed. It shall be unlawful for any person to have in his possession any bait or any trout under 16 inches in length in these areas.

4 VAC 15-330-150. Special provision applicable to Stewarts Creek Trout Management Area; certain portions of Dan, Jackson, Rapidan, South Fork Holston and Staunton rivers, the East Fork of Chestnut Creek, Roaring Fork, and their tributaries.

It shall be lawful year around to fish for trout using only artificial lures with single hooks within the Stewarts Creek Trout Management Area in Carroll County, in the Rapidan and Staunton rivers and their tributaries upstream from a sign at the Lower Shenandoah National Park boundary in Madison County, in the Dan River and its tributaries between the Townes Dam and the Pinnacles Hydroelectric Project powerhouse in Patrick County and, in the Jackson River from Gathright Dam downstream to the Westvaco Dam at Covington in Alleghany County, in the East Fork of Chestnut Creek (Farmer's Creek) and its tributaries upstream from the Blue Ridge Parkway in Grayson and Carroll counties, and in Roaring Fork and its tributaries upstream from the southwest

boundary of Beartown Wilderness Area in Tazewell County and in that section of the South Fork Holston River and its tributaries within the boundaries from the concrete dam at Buller Fish Culture Station downstream to the lower boundary of the Buller Fish Culture Station in Smyth County. All trout caught in these waters must be immediately returned to the water. No trout may be in possession at any time in these areas.

4 VAC 15-330-160. Special provisions applicable to certain portions of Accotink Creek, Back Creek, North River, Passage Creek, North Fork of Pound and Pound rivers, and South River.

It shall be lawful to fish from October 1 through May 31, both dates inclusive, using only artificial lures with single hooks in Accotink Creek (Fairfax County) from Route 236 (Little River Turnpike) downstream 1.9 miles to Route 620 (Braddock Road), in Back Creek (Bath County) from the Route 600 bridge just below the Virginia Power Back Creek Dam downstream 1.5 miles to the Route 600 bridge at the lower boundary of the Virginia Power Recreational Area, in the North River (Augusta County) from the base of Elkhorn Dam downstream 1.5 miles to a sign posted at the head of Staunton City Reservoir, in Passage Creek (Shenandoah County) from the lower boundary of the Front Royal State Hatchery upstream 0.9 miles to the Shenandoah/Warren County line, in North Fork of Pound and Pound rivers from the base of North Fork of Pound Dam downstream to the confluence with Indian Creek, and in the South River from the Second Street Bridge upstream 2.4 miles to the base of Rife Loth Dam in the city of Waynesboro. From October 1 through May 31, all trout caught in these waters must be immediately returned to the water unharmed, and it shall be unlawful for any person to have in possession any bait or trout. During the period of June 1 through September 30, the above restrictions will not apply.

4 VAC 15-330-170. Special provisions applicable to certain portion of Jackson River. (Repealed.)

~~It shall be unlawful to creel or possess trout on that portion of the Jackson River from Gathright Dam downstream to the Westvaco Dam at Covington. Such closure shall end when special regulations pertaining to trout fishing on such portion of the Jackson River are enacted by the Board of Game and Inland Fisheries.~~

4 VAC 15-340-40. Dip nets; generally.

A. Authorization to take fish with dip nets. A county dip net permit shall authorize the holder to take shad, herring, mullet and suckers, in the county named on the face of the permit with a dip net in inland waters, except where otherwise prohibited by local legislation or by the sections appearing in this chapter.

B. Persons required to have permit; inspection by game wardens. A dip net permit, or valid fishing license, shall be required for all persons using or assisting in the use of a dip net and permits, or licenses, shall be carried at all times while using such nets and shall be subject to inspection by game wardens.

Proposed Regulations

C. Release of certain fish netted. All fish, except shad, herring, mullet, suckers and carp, when taken with a dip net shall be returned to the water alive with as little injury as possible.

D. Special provisions applicable only to suckers. The following special provisions shall apply only to the taking of suckers, with a dip net:

1. Not more than 20 may be taken by any person in one day;
2. The open season for taking same with a dip net shall be from February 15 through May 15, both dates inclusive; and
3. Dip nets for taking such fish shall not be more than six feet square.

4 VAC 15-340-60. Seines, traps and nets prohibited in certain areas.

A. It shall be unlawful to use seines and nets of any kind for the taking of fish from the public waters of the Roanoke (Staunton) and Dan Rivers in Campbell, Charlotte, Halifax and Pittsylvania counties, and in the City of Danville; provided, however, this section shall not be construed to prohibit the use of hand-landing nets for the landing of fish legally hooked or the taking of fish bait from these waters pursuant to the provisions of 4 VAC 15-360-10 et seq.

B. In Lick Creek in Smyth and Bland counties, and in Bear Creek and Hungry Mother Creek above Hungry Mother Lake in Smyth County, it shall be unlawful to use seines, nets or traps; provided, however, this section shall not be construed to prohibit the use of hand-landing nets for the landing of fish legally hooked.

4 VAC 15-350-60. Trotlines, juglines or set poles.

A. Generally. Except ~~or~~ as otherwise provided by local legislation and by subsection B of this section, and except on waters stocked with trout and within 600 feet of any dam, it shall be lawful to use trotlines, juglines or set poles for the purpose of taking nongame fish and turtles, provided that no live bait is used. Notwithstanding the provisions of this section, live bait other than game fish may be used on trotlines to take catfish in the Clinch River in the Counties of Russell, Scott and Wise. Any person setting or in possession of a trotline, jugline or set pole shall have it *clearly* marked by ~~permanent means of a nonferrous metal tag bearing~~ with his name ~~and~~, address ~~and telephone number~~, and is required to check all lines at least once each day and remove all fish and animals caught. This requirement shall not apply to landowners on private ponds, nor to a bona fide tenant or lessee on private ponds within the bounds of land rented or leased by him, nor to anyone transporting any such device from its place of purchase.

B. Quantico Marine Reservation. It shall be unlawful to fish with trotlines in any waters within the confines of Quantico Marine Reservation.

4 VAC 15-350-70. Taking carp and gar with bow and arrow.

A. Season. Except as otherwise provided by local legislation *or as posted*, it shall be lawful to take carp and gar from the public inland waters of the Commonwealth, except waters stocked with trout, by means of bow and arrow ~~during the daylight hours only~~.

B. Crossbows, poison arrows or explosive-head arrows prohibited. It shall be unlawful to use a crossbow, poison arrows or arrows with explosive heads at any time for the purpose of taking carp or gar in the public inland waters of the Commonwealth.

C. Fishing license required. All persons taking fish in the manner mentioned in this section shall be required to have a regular fishing license.

4 VAC 15-360-10. Taking aquatic invertebrates, amphibians, reptiles, and nongame fish for private use.

A. Possession limits. Except as otherwise provided for in § 29.1-418 of the Code of Virginia, 4 VAC 15-20-130, *subdivision 8 of 4 VAC 15-320-40* and the sections of this chapter, it shall be lawful to capture and possess live for private use and not for sale no more than five individuals of any single native or naturalized (as defined in 4 VAC 15-20-50) species of amphibian and reptile and 20 individuals of any single native or naturalized (as defined in 4 VAC 15-20-50) species of aquatic invertebrate and nongame fish unless specifically listed below:

1. The following species may be taken in unlimited numbers from inland waters statewide: carp, bowfin, longnose gar, mullet, bullhead catfish, suckers, gizzard shad, blueback herring, white perch, yellow perch, alewife, stoneroller (hornyhead), fathead minnow, golden shiner, and goldfish.

2. The following species may be taken in unlimited numbers from inland waters below the fall line: channel catfish, white catfish and blue catfish.

3. For the purpose of this chapter, "fish bait" shall be defined as native or naturalized species of minnows and chubs (Cyprinidae), salamanders, crayfish, and hellgrammites. The possession limit for taking "fish bait" shall be 50 individuals in aggregate, unless said person has purchased "fish bait" and has a receipt specifying the number of individuals purchased by species, except salamanders which cannot be sold pursuant to the provisions of 4 VAC 15-360-60. However, stonerollers (hornyheads), fathead minnows, golden shiners, and goldfish may be taken and possessed in unlimited numbers as provided for in subdivision 1 of this subsection.

4. The daily limit for bullfrogs and snapping turtles shall be 15 and bullfrogs and snapping turtles may not be taken from the banks or waters of designated stocked trout waters.

B. Methods of taking species in subsection A. Except as otherwise provided for in the Code of Virginia, 4 VAC 15-20-130, other regulations of the board, and except in any waters where the use of nets is prohibited, the species listed in

subsection A may only be taken by hand, hook and line, with a seine not exceeding four feet in depth by 10 feet in length, an umbrella type net not exceeding five by five feet square, small minnow traps with throat openings no larger than one inch in diameter, cast nets not to exceed six feet in radius and hand-held bow nets with diameter not to exceed 20 inches and handle length not to exceed eight feet (such cast net and hand-held bow nets when so used shall not be deemed dip nets under the provisions of § 29.1-416 of the Code of Virginia). Bullfrogs may also be taken by gigging or bow and arrow and, from private waters, by firearms no larger than .22 caliber rimfire.

C. Areas restricted from taking mollusks. Except as provided for in §§ 29.1-418 and 29.1-568 of the Code of Virginia, it shall be unlawful to take mussels and the spiny riversnail (*Io fluvialis*) in the Tennessee drainage in Virginia (Clinch, Powell and the North, South and Middle Forks of the Holston Rivers and tributaries), and it shall be unlawful to take mussels in the James River and tributaries west of U.S. Route 29 and in the entire North Fork of the Shenandoah River.

D. Areas restricted from taking salamanders. Except as provided for in §§ 29.1-418 and 29.1-568 of the Code of Virginia, it shall be unlawful to take salamanders in Grayson Highlands State Park and on National Forest lands in the Jefferson National Forest in those portions of Grayson, Smyth and Washington counties bounded on the east by State Route 16, on the north by State Route 603 and on the south and west by U.S. Route 58.

VA.R. Doc. No. R96-556; Filed August 28, 1996, 11:46 a.m.

REGISTRAR'S NOTICE: The Board of Game and Inland Fisheries is claiming an exemption from the Administrative Process Act in accordance with § 9-6.14:4.1 C 3, which excludes regulations that consist only of changes in style or form or corrections of technical errors. The Board of Game and Inland Fisheries will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: 4 VAC 15-370-10 et seq. Watercraft: In General (amending 4 VAC 15-370-10).

Statutory Authority: §§ 29.1-501, 29.1-502, 29.1-701 and 29.1-802 of the Code of Virginia.

Notice to the Public: The Board of Game and Inland Fisheries has ordered to be published, pursuant to §§ 29.1-501, 29.1-701, and 29.1-802 of the Code of Virginia, the following proposed amended board regulation. Comments regarding the proposed amended regulation are solicited from the public, should be submitted in writing, and should be sent to: Assistant Director of Boating and Facilities, Department of Game and Inland Fisheries, 4010 West Broad Street, Richmond, Virginia 23230, or faxed to (804) 367-0405. A public hearing on the advisability of adopting, or amending and adopting, the proposed regulations, or any part thereof, will be held at the Department of Game and Inland Fisheries, 4010 West Broad Street, Richmond,

Virginia, beginning at 10 a.m. on Thursday, October 24, 1996, at which time any interested citizen present shall be heard. If the board is satisfied that the proposed regulations or any part thereof, are advisable, in the form in which published or as amended as a result of the public hearing, the board may adopt such proposal at that time.

Summary:

The proposed amendment effectuates the most current versions of previously adopted federal rules and regulations regarding safe boating operation and boating safety equipment in the waters of the Commonwealth, updating Virginia's adoption of those federal rules and regulations from the versions of prior years. The proposed amendment also incorporates a section of federal regulation which had previously been excepted from the Virginia regulation, pertaining to personal flotation device requirements on boats less than 16 feet long, and to the new Type V (hybrid inflatable) personal flotation devices.

4 VAC 15-370-10. Adoption of federal regulations and statutes concerning boating safety equipment and lights to apply to vessels in Virginia.

A. The following federal rules and regulations are hereby adopted by the board as its regulations. These rules and regulations shall apply by their own terms to all vessels within the Commonwealth. As used in 33 CFR 175.3, the word "engaged" shall mean "hired for use."

1. 33 USC §§ 2001, 2002, 2003, 2020 through 2030 (~~1976 and supplement 1985~~).

2. 33 CFR 175 (~~1985~~), except 33 CFR 175.17.

3. 46 CFR, Subparts 25.25, 25.30, 25.35, 25.40-1(a) and (b) (~~1985~~).

B. These regulations are adopted under the authority of § 29.1-735 of the Code of Virginia.

VA.R. Doc. No. R96-547; Filed August 27, 1996, 10:39 a.m.

GEORGE MASON UNIVERSITY

REGISTRAR'S NOTICE: George Mason University is claiming an exemption from the Administrative Process Act in accordance with § 9-6.14:4.1 A 6 of the Code of Virginia, which exempts educational institutions operated by the Commonwealth.

Title of Regulation: 8 VAC 35-20-10 et seq. Motor Vehicle Parking Policies and Procedures (REPEALING).

Statutory Authority: § 23-91.29 of the Code of Virginia.

Summary:

Because of privatization of George Mason University's parking services office effective January 1, 1996, significant changes in decal and permit/pass policies are being proposed. Therefore, this regulation is being repealed.

VA.R. Doc. No. R96-551; Filed August 27, 1996, 2:08 p.m.

Proposed Regulations

Title of Regulation: 8 VAC 35-21-10 et seq. **Motor Vehicle Parking Policies and Regulations.**

Statutory Authority: § 23-91.29 of the Code of Virginia.

Summary:

These proposed regulations set out the proper parking policies and procedures for faculty, staff, students, and visitors at George Mason University.

**CHAPTER 21.
MOTOR VEHICLE PARKING POLICIES AND REGULATIONS.**

**PART I.
SCOPE.**

8 VAC 35-21-10. Purpose and applicability.

A. The purpose of this chapter is to set forth consistent and written parking directives for George Mason University faculty, staff, students, and visitors.

B. This chapter applies to all motor vehicles and motor vehicle operators, including motorcycles, operated on university owned or leased property, regardless of whether or not the vehicle is operated by the registered owner.

**PART II.
PARKING POLICIES AND REGULATIONS.**

8 VAC 35-21-20. Parking lot locations and designations.

A map illustrating lot locations and designations is available from the university.

8 VAC 35-21-30. Faculty eligible for faculty/staff parking.

Only faculty members defined and categorized in this section are eligible to purchase faculty/staff parking decals and permits and park in spaces restricted for faculty/staff use:

1. Full-time faculty. Instructional faculty who teach four courses, or who teach and do research to full-time equivalency and receive benefits.
2. Part-time or adjunct faculty. Instructional faculty who teach up to three courses without benefits.
3. Administrative faculty. Individuals under contract with the university as administrative faculty whose positions are primarily administrative in nature. These individuals receive benefits and may also teach part time.
4. Affiliate faculty. Individuals who teach a course or courses or do research without salary or benefits.
5. Emeritus faculty. Retired faculty named to emeritus status by deans and the provost and approved by the Board of Visitors.

8 VAC 35-21-40. Staff eligible for faculty/staff parking.

Only staff members defined and categorized in this section are eligible to purchase faculty/staff parking decals and permits and park in spaces restricted for faculty/staff use.

1. Classified staff - full time. Full-time classified staff are those individuals hired to work 40 hours per week with benefits under the state classification system. These individuals may take an unlimited class load and still maintain full-time staff status.

2. Classified staff - part time. Part-time classified staff are those individuals hired under the state classification system with limited benefits to work 20 to 39 hours per week. These individuals may take an unlimited class load and still qualify for a faculty/staff parking decal or permit.

3. Wages employees. Individuals employed on an hourly basis without benefits and limited to working a maximum of 1,500 hours per year. These individuals may be eligible for faculty/staff parking providing they carry fewer than nine hours per term and are not classified as full-time students.

8 VAC 35-21-50. Employees not eligible for faculty/staff parking.

Employees not eligible for faculty/staff parking privileges are listed and defined in this section.

1. Graduate assistants. Graduate assistants and graduate teaching assistants maintain student status and are eligible to purchase student decals only.

2. Student wages employees. Full-time undergraduate students taking nine credit hours or more who work 20 hours or less per week without benefits and who are limited to work a maximum of 1,500 hours per year.

3. Temporary employees. Individuals hired directly as contract employees of the university or through a temporary agency to work on temporary assignments. Parking permits may be issued to them at prevailing rates on a daily, weekly, monthly, semester or annual basis upon written request from the Human Resources Department.

8 VAC 35-21-60. Faculty/staff permit and parking requirements.

A. Faculty/staff parking is restricted to employees displaying a valid GMU or NOVA faculty/staff parking decal.

1. Deck reserved permits and day passes validated for faculty/staff use will also be honored in faculty/staff designated spaces.

2. Decals and permits must be displayed as directed and in clear view. Failure to do so may result in citation for "no permit," "restricted area" or "improper display."

3. Vehicles may park only in spaces designated by painted control lines.

B. Faculty/staff members displaying a valid GMU or NOVA faculty/staff decal or permit may park in the following locations:

1. Surface lots. Faculty/staff parking is permitted in any surface parking lot restricted to faculty/staff use.

2. Faculty/staff restricted space. Faculty/staff parking is permitted in designated spaces within surface lots restricted to faculty/staff use.

3. Other nonrestricted surface spaces. Faculty/staff parking is permitted in surface lots not restricted to student decal parking, or other restricted use posted by signage.

C. Faculty/staff members may also use meter and deck parking at prevailing rates.

D. Parking Services will monitor the faculty/staff decal requirement in restricted areas during normal hours of surface lot enforcement operations. Nondecal or student decal parking between painted control lines will be permitted at all other times. Refer to 8 VAC 35-21-370 for enforcement hours.

8 VAC 35-21-70. NOVA faculty and staff parking.

A reciprocal agreement between George Mason University and Northern Virginia Community College (NOVA) allows vehicles displaying NOVA faculty/staff decals to have the same parking privileges and responsibilities afforded to vehicles displaying valid GMU faculty/staff permits.

8 VAC 35-21-80. Reserved parking.

A. Reserved parking is approved by the Vice President for Operational Services and allocated by the Parking Services Office. This space is reserved Monday through Friday from 7 a.m. through 6 p.m.

B. A limited number of spaces have been allocated for reserved subscription parking in the parking deck. Deck reserved space is available on a first-come-first-served basis to faculty, staff and students at prevailing published rates. Annual rates begin on September 1 of each academic year and are prorated and charged according to the schedule cited in 8 VAC 35-21-300.

8 VAC 35-21-90. Visitor parking.

Visitor parking is restricted to the parking deck during hours of surface lot enforcement unless otherwise directed by Parking Services or in printed literature provided by sponsoring departments/activities with the approval of the Parking Services Office.

8 VAC 35-21-100. Student parking.

A. A student is defined as an individual enrolled in a class offered by George Mason University. This also includes Graduate Teaching Assistants, Graduate Research Assistants and Graduate Staff Assistants. Full-time faculty and staff members attending courses are not considered students. Refer to 8 VAC 35-21-30 for definitions.

B. Students presenting valid GMU identification are eligible to purchase annual, semester or summer decals at prevailing rates. An official class schedule and driver's license proving identity may also be used as valid identification. Students on financial suspension may be denied decal purchase.

C. Students may purchase day passes which are valid in nonrestricted areas of surface lots. Day passes are available

at parking information booths and must be scratched off appropriately to be valid. Day passes are only valid in the lots listed on the permit and are sold only to students, faculty and staff with valid GMU identification.

D. Students displaying a valid GMU parking decal may park between painted control lines in surface lots restricted for student use only and in nonrestricted areas of surface lots. Students may also use the parking deck at prevailing rates.

PART III. VISITOR/GUEST PARKING POLICY.

8 VAC 35-21-110. Visitor parking.

A. A visitor is defined as any person who is not classified as faculty, staff or student at George Mason University, including individuals invited to campus by faculty, staff or students.

B. Family of faculty, staff or students must prominently display a valid decal or day pass on their vehicle when parked in nonmetered areas of surface lots. Family members of faculty, staff or students are subject to citation if parked illegally while on campus. The GMU faculty, staff or student may be held responsible for payment of any citation or citations issued.

C. Visitors to campus may park only in the parking deck or in metered space at prevailing rates unless otherwise directed by the Parking Services Office.

D. Deck parking is available to visitors on a first-come-first-served basis. Rates and hours are posted at deck entrances.

E. Metered parking is available to visitors at several locations on campus. Meters are enforced from 7 a.m. to 11 p.m. seven days a week. Hours of enforcement are posted on meters, near metered areas or by tuning to 1610 AM radio information channel.

F. Visitors to campus may tune to 1610 AM on the radio for current parking and visitor information as they approach or drive around campus.

G. Visitor and parking information is available as follows:

1. Information booths are located in front of Finley Building on Pohick Lane, in Lot K near Roanoke Lane and at the east entrance to the parking deck on Level 3.

2. Visitor and parking information is available by tuning to 1610 AM on the radio.

3. Visitor and parking information at the Arlington Campus is available per directional signage.

H. Visitors may not park in restricted areas or spaces reserved for special permit holders.

I. Visitors may be assigned parking for special events. Parking Services may designate specific parking areas or issue special permits to visitors or to a sponsoring university program/activity for distribution.

Proposed Regulations

PART IV. HANDICAP PARKING POLICY.

8 VAC 35-21-120. Handicap parking.

A. Valid GMU permits for handicap parking are issued only by the Parking Services Office and only to students, faculty and staff. Handicap permit rates are the same as all other GMU parking permits issued for comparable periods of time. The GMU issued permit must be prominently displayed at all times on the rear view mirror or front dash. Department of Motor Vehicles (DMV) issued handicap permits are not in themselves valid for handicap parking at GMU-owned or operated facilities.

B. Parking Services defines long-term parking for individuals with disabilities as those requiring handicap parking for more than six months. These individuals must provide proof of disability to the Parking Services Office and also purchase and prominently display a GMU handicap permit when using handicap facilities on campus. Refer to subsection D of this section for proof of disability information.

C. Individuals with a temporary disability are defined as those requiring handicap parking from one day to six months. These individuals must provide proof of disability and obtain a temporary handicap permit from the Parking Services Office. The handicap permit must then be displayed in full view together with a valid GMU decal or day pass. Refer to subsection D of this section for proof of disability information.

D. Persons requiring a handicap permit must provide Parking Services the following proof of disability:

1. Proof of long-term disability may consist of a copy of both sides of a valid DMV hangtag or a copy of the vehicle registration showing DMV handicap license tags. This proof will be photocopied and kept on file in the Parking Services Office.

2. Temporary or short-term proof of disability may consist of a doctor's request on prescription form or letterhead stating the type and duration of the disability or any of the items listed in subsection C of this section. The information will be photocopied and kept on file in the Parking Services Office. Short-term handicap requests may not be renewed beyond a six-month period without DMV proof as stated in subsection C of this section.

E. A DMV issued license plate, hangtag or other permit is not in itself a valid handicap permit when parked at any handicap designated space on property owned or operated by George Mason University. Visitors with disabilities may use handicap parking as follows:

1. Visitors may pay for deck parking at prevailing rates and use handicap designated spaces in the parking deck. The elevator enables easy access to campus and to the Center for the Arts. These individuals may also opt to park near the lower level deck entrance.

2. Visitors displaying a valid handicap parking permit issued by a state or District of Columbia Department of Motor Vehicles may pay and park at meters for up to twice the maximum allowable time shown on the meter,

but not to exceed a maximum of four hours, providing no other handicap parking is available.

3. Handicapped visitors may purchase a day pass at the parking information booths by presenting their DMV issued permit to the attendant on duty. The day pass must be scratched off appropriately and displayed to show the day, month and year. The day pass and the DMV issued permit must be displayed in clear view and in close proximity to each other to avoid citation.

4. Van lift handicap parking is available to all persons with lift-equipped vehicles only.

5. Two-day temporary handicap permits may be obtained from the Parking Services Office without written proof of disability in emergency situations. The permit will be issued without charge providing the individual displays a valid GMU decal or day pass or opts to pay for parking in metered space or the parking deck. The emergency permit is not ordinarily renewable without proof of disability outlined in subsection D of this section.

F. Handicap parking applications. All handicap permit applications are subject to approval by the Parking Services Office. The Disability Support Services Office may be consulted and submit recommendations if necessary.

G. Handicap parking designation. All parking spaces reserved for the use of persons with disabilities are identified by above-grade signs. Handicap parking is available to students, faculty and staff whose vehicles display a valid GMU handicap permit as follows:

1. Surface lots. Handicap parking is available in surface lot spaces marked with above-grade handicap signs. Only those with lift-equipped vans may park in van lift designated spaces.

2. Parking deck. Handicap parking is available in the parking deck with valid GMU decal at no additional charge. Vehicles without a decal may use handicap designated space but must pay prevailing rates.

3. Parking meters. Handicap parking is available in metered spaces for up to four hours without charge providing no other handicap space is available. A valid GMU handicap permit or valid DMV issued permit with a valid day pass must be displayed to qualify and avoid citation.

4. Van lift handicap parking. Several campus locations have accommodations for lift-equipped vans or wheelchair users. Individuals requiring such facilities should contact the Parking Services Office or the Disability Support Services Office for specific locations. Depending on need and the recommendations of the Disability Support Services Office, additional space may be created as circumstances require.

5. Metered handicap parking for visitors. Vehicles displaying a valid handicap parking permit from a state or the District of Columbia Department of Motor Vehicles may pay to park at meters for up to twice the maximum allowable time shown on the meter, but may not exceed a maximum of four hours providing no other handicap

parking is available. Individuals may also park for up to four hours in metered space by displaying a valid GMU day pass together with a DMV issued permit.

H. Use restrictions for handicap permits. Handicap permits may only be used for or by the persons to whom they were issued. Parking in handicap space is not permitted unless the permit holder leaves the vehicle. When individuals no longer require the disabled permit, they must return the permit to the Parking Services Office immediately. This also applies to persons who were issued a handicap permit to transport a disabled person for whom they no longer provide transportation.

I. Prohibited zones for handicap parking. Handicap parking does not apply to zones where stopping, standing, or parking is prohibited to all vehicles, or which is reserved for special types of vehicles. Neither does it apply where parking would clearly present a traffic or safety hazard.

J. Photocopied handicap parking permits. Photocopied handicap permits are not valid.

K. Number of handicap parking permits. Individuals are limited to one handicap permit. The permit may be displayed in any vehicle they use.

L. Replacement of handicap parking permits. Handicap decals will be replaced at the same rate as regular decals.

8 VAC 35-21-130. Metered parking.

A. Metered parking is intended for short-term, quick-turnover use of parking spaces.

B. Meters are monitored from 7 a.m. to 11 p.m., seven days a week. Enforcement hours are posted on all meters.

C. Meter rates vary depending on location. Refer to 8 VAC 35-21-190 for rate schedule. A GMU parking decal or day pass is not valid as payment at a meter except for handicap situations described in 8 VAC 35-21-120.

D. Vehicles parked at missing or inoperable meters are subject to citation. Meters are deemed inoperable when coins cannot be inserted or the violation sign remains visible. The space will remain closed until the meter is repaired or replaced. Malfunctioning or missing meters should be reported to the Parking Services Office.

E. Valid currency. Only United States currency may be used in parking meters. The use of other currency, altered U.S. currency or other objects is prohibited by law.

F. Multiple meter citations. Vehicles remaining parked in metered space are subject to multiple citations. Multiple citations may be issued one hour after the previous citation was written. Additional meter citations carry a lesser fine than the initial citation. Refer to Part X (8 VAC 35-21-400 et seq.) for parking fine rate schedule.

G. Cases of meter vandalism may be charged in a court of law as destruction of property or larceny or both.

8 VAC 35-21-140. Loading and unloading zones.

A. Parking spaces have been designated for load/unload use throughout the campus to provide short-term, close-in access to buildings.

B. Prohibited load/unload zones. Loading and unloading is permitted only in designated areas. Prohibited and restricted areas, handicap spaces and fire lanes are not designated loading and unloading zones. Loading and unloading in these areas is subject to citation and towing.

C. Load/unload permits. Departments may apply for annual load/unload hangtags for faculty and staff members from the Parking Services Office. Individuals, including faculty/staff, students and visitors, may obtain a limited temporary hangtag from Parking Services. Individuals requesting temporary permits are required to provide Parking Services with their name, identification, license tag and phone number, and the location of the load/unload activity.

D. Use of load/unload space. Both annual and temporary load/unload permits must be displayed together with a valid decal or day pass. Blinkers or flashers must be activated when vehicles are parked in load/unload zones. Load/unload parking is limited to 30 minutes, unless Parking Services enforcement grants an exception for special circumstances. Vehicles exceeding the posted 30-minute time limit are subject to citation.

E. Loading and unloading when no designated space exists. Under certain unusual circumstances, close-up building access may be required for load/unload purposes where no space has been designated. In those instances the individual must contact the enforcement section of Parking Services to get permission and direction to ensure that campus safety measures are met and that Parking Services can readily contact the individuals in the event the vehicle must be moved for emergency equipment. All other load/unload regulations apply as set out in this section.

8 VAC 35-21-150. Service and repair spaces.

A. Service and repair parking is designed to accommodate vehicles providing a variety of services in support of university buildings, equipment and activities. Service and repair vehicles may be owned and operated by university or nonuniversity personnel. Valid GMU service and repair permits are required.

B. Prohibited parking areas. Service and repair vehicles may not park in prohibited zones, restricted areas, handicap spaces, firelanes, on grassy landscaped or sidewalk areas. These areas are strictly enforced, and vehicles are subject to citation.

C. Permit requirements. Nonuniversity vehicles parked in service and repair space must purchase and prominently display a valid permit at all times. Valid service and repair permits are issued only by the Parking Services Office. Vehicles without permits are subject to citation and towing.

D. Permit costs. Service and repair costs are based on the prevailing rate charged for annual, semester, monthly, weekly or daily permits.

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E. *Special circumstances.* Vehicle operators requiring service and repair access to campus locations where no space has been allocated should contact the enforcement section in the Parking Services Office for direction.

F. *University/state service vehicles.* Service vehicles with state tags registered to the Commonwealth need not pay for or display a service and repair permit.

PART VI. DECALS AND PERMITS.

8 VAC 35-21-160. Parking permit requirements.

A. All vehicles parked on property owned or operated by the university are required to display a valid GMU decal or permit.

B. The registered owner of a motor vehicle is responsible for all violations issued to the vehicle regardless of who is operating the vehicle. If the vehicle is displaying a valid decal and incurs a citation for violation of these rules and regulations, the registered owner of the decal will be held responsible for all citations issued to vehicles displaying that decal.

8 VAC 35-21-170. Decal sales.

A. All faculty, staff, and student decals are sold by the Parking Services Office located in Student Union I, Room 201A or other designated locations.

B. Decal purchase applications are mailed to all registered students and faculty and staff members of record at the beginning of each academic year. Interested purchasers should complete applications, include payment and return the material to the Parking Services Office allowing two weeks for delivery.

C. Decals may be purchased 24 hours per day by dialing (703) 993-2747. The service is available to students, faculty and staff.

D. Individuals may purchase decals in person from the Parking Services Sales Office or designated sales office. The Sales Office is located in Student Union I, Room 201.

E. Acceptable payment is as follows:

1. *Mail.* Mail-in applicants may pay by check, money order, American Express, Choice, Diners, Discover, Mastercard or Visa. Faculty/staff may elect payroll deduction payment. Cash by mail is discouraged.

2. *Phone.* Phone-in applicants may pay by Mason Money, American Express, Choice, Diners, Discover, Mastercard or Visa. Full-time faculty and classified staff may elect payroll deduction payment.

3. *In person.* In-person applicants may pay by cash, check, money order, American Express, Choice, Diners, Discover, Mastercard or Visa. Faculty/staff may elect payroll deduction payment.

F. To purchase a parking decal, individuals must comply with GMU and associated state regulations and not have any outstanding citations. Individuals must provide the following:

1. A valid GMU identification, class schedule with printed name and accompanying driver's license, or letter from Human Resources confirming job offer;

2. A valid state registration;

3. A valid state driver's license; and

4. A valid certificate of insurance from a recognized company showing coverage for public liability.

G. Current faculty or staff identification or proof of employment is needed to purchase a faculty/staff decal. Faculty and staff may purchase decals only for their vehicle and use. Decals are not transferrable to other nonfaculty/staff persons. Faculty/staff status is defined in 8 VAC 35-21-30.

8 VAC 35-21-180. Decal and parking rates.

A. Decal and other parking rates are subject to change. Refer to 8 VAC 35-21-190 for current fee chart.

B. Senior citizens are defined as individuals 60 years of age or older. Refer to 8 VAC 35-21-190 for rate schedule and qualifications for faculty, staff and students.

C. Senior citizen students who qualify for free tuition or course audits as outlined in the GMU catalog shall be entitled to a free parking decal for the duration of their enrollment under that status. Only one free permit will be issued. Valid proof of age and tuition waiver from the Registrar's Office is required to qualify.

D. The terms applicable to campus parking situations as defined in the Senior Citizens Higher Education Act of 1974 (§ 23-38.54 et seq. of the Code of Virginia) are as follows:

1. Under the terms of the Senior Citizens Higher Education Act of 1974, "eligible Virginia residents over 60 years of age with a taxable income of less than \$10,000 are entitled to enroll in courses offered for academic credit on a space-available basis without payment of tuition or fees."

2. The act also covers auditing and noncredit courses on a space available basis regardless of income.

3. "Tuition, however, may be charged for courses designed exclusively for senior citizen groups."

4. "No senior citizen may change registration status in any given semester once he has initially registered for classes."

E. University volunteers and temporary employees must observe all decal and pass requirements and parking regulations when using university operated facilities. Decals, day passes and special permits will be sold and issued only upon written request to the Parking Services Office by a sponsoring department. Departments may underwrite the cost of parking for volunteers and temporary employees. Valid proof of age such as a driver's license is required to qualify for senior citizen rates.

F. Employees and volunteers of contractors and vendors must observe all decal and day pass requirements and parking regulations when using university operated facilities.

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Contractors and vendors must submit written verification of an individual's employment or volunteer status to the Parking Services Office. Contractors and vendors may underwrite parking costs for their employees and volunteers. Valid proof of age such as a driver's license is required to qualify for senior citizen rates.

G. Health Education Program (HEP) participants shall purchase and prominently display parking permits. The permits are valid in nonrestricted areas of surface lots. HEP participants must observe all parking rules and regulations when using university operated facilities. Participants are subject to citation for parking without a permit or other regulation infractions. Refer to 8 VAC 35-21-190 for permit rate schedule.

8 VAC 35-21-190. Decal and parking rates effective July 1, 1996.

Full year decal.....	\$125
Semester decal.....	\$75
Summer decal.....	\$40
Senior citizen annual.....	\$60
Senior citizen semester.....	\$35
Senior citizen summer.....	\$20
Motorcycle.....	\$25
Day pass rate - surface (Note 1).....	\$4
Weekly rate (Note 2).....	\$10
Monthly rate (Note 2).....	\$20
Reserved space - surface.....	\$250
Reserved parking deck - annual.....	\$425
Reserved parking deck - semester.....	\$225
Meter rates depending on location	
..... (Hourly from \$.50 to \$1.50)	
Reserved parking deck - summer.....	\$115
Hourly deck rate.....	\$1
Maximum daily rate (Per entry).....	\$5
Special event deck rate (Per entry).....	\$3
Lost or stolen decals..... (See 8 VAC 35-21-195 for Schedule)	
Proof of forcible entry replacement.....	No Charge
Health Education Program (HEP).....	\$5

Notes:

Note 1: Sales limited to students, faculty/staff with valid GMU identification.

Note 2: Sales limited to special classes and programs and to temporary faculty/staff.

8 VAC 35-21-200. Faculty/staff and student decal refund and replacement fee schedule effective July 1, 1996, through June 30, 1998.

The following are the parking decal refund and replacement fee schedules for FY97 and FY98. Students must provide proof of class withdrawal and faculty/staff must provide proof of employment termination from the Human Resources Department before a refund is issued.

Annual Decal Refund Fee Schedule:

Transaction	Date Span	Dollar Amount
Refund	July 1 - September 3	\$125.00
Refund	September 4 - September 10	\$108.25

Refund	September 11 - September 17	\$ 83.75
Refund	September 18 - February 12	\$ 50.00
Refund	February 13 - June 30	\$ 0.00

*Refunds on annual decals are intended for students who purchased a decal with the intent of attending fall, spring or summer sessions.

Fall Semester Decal Refund Fee Schedule:

Refund	July 1 - September 3	\$ 75.00
Refund	September 4 - September 10	\$ 50.25
Refund	September 11 - September 17	\$ 24.75
No Semester Decal Refund	September 18 - December 31	\$ 0.00
Replacement Fee	September 18 - December 31	\$ 20.00

Spring Semester Decal Refund Fee Schedule:

Refund	December 1 - January 29	\$ 75.00
Refund	January 30 - February 2	\$ 50.25
Refund	February 3 - February 12	\$ 24.75
No Refund	February 13 - June 30	\$ 0.00

Decal Replacement Fee Schedule:

Replacement	July 1 - September 3	\$125.00
Replacement	September 4 - September 10	\$108.25
Replacement	September 11 - September 17	\$ 83.75
Replacement	September 18 - January 29	\$ 75.00
Replacement	January 30 - February 3	\$ 50.25
Replacement	February 4 - February 12	\$ 24.75
Replacement	February 13 - June 30	\$ 20.00
Forcible Entry Replacement	July 1 - June 30	No Charge

Decal Rate Sales Calendar:

Annual & Fall Semester		
Decals	July 1 - November 30	\$125.00
Spring Semester		
Decals	December 1 - April 30	\$ 75.00
Summer Decals	May 1 - June 30	\$ 40.00

Summer Decal Refund and Replacement Policy:

Definition of Summer Decal: A summer decal is one specifically purchased for summer use. No refunds will be issued on what may be considered the summer portion of an annual decal.

Refund/Replacement: Full summer decal cost charged and/or refund up to and including last drop date with no tuition liability of session in which enrolled.

50% Refund/Replacement: A 50% charge or refund will be issued up to and including last drop date without dean's approval.

0% Refund: No refund will be given from the day after the published last drop date without dean's approval. The last drop date refers to the session in which the student was enrolled.

Cost after Last Summer Session Drop Date: A \$10 replacement fee will be charged the day after the last drop date without the dean's approval of the session in

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which the student is enrolled. Proof of session enrollment and withdrawal is required.

8 VAC 35-21-210. Lost decals.

A. A lost decal is defined as one that may have been inadvertently misplaced, damaged or not retrieved as a result of an accident, blown away, left in a rental car or another vehicle and not retrievable, etc.

B. Before a replacement decal is issued, the purchaser must acknowledge in writing that the decal is lost and that he understands that the registered owner or owners of any vehicle displaying or using a decal verified as lost by the purchaser will be cited for fraudulent display and subject to any and all fines and legal ramifications imposed by the university or the Commonwealth.

C. Replacements for lost decals shall be issued only to the original purchaser. All outstanding citations and accrued late fees must be paid or the purchaser must enter into a contractual agreement to pay fines before a replacement decal is issued. Only one reduced rate replacement decal shall be issued per academic year. All other replacements will be at the prevailing sales rates.

8 VAC 35-21-220. Nonforcible entry stolen decals.

A. A nonforcible entry stolen decal is one which has been removed from the purchaser's vehicle without visible evidence of forcible entry and reported to a law-enforcement agency or office as stolen.

1. All stolen decals must be reported to a law-enforcement agency or official on the date of the theft and in the jurisdiction in which the theft occurred. The purchaser may obtain their decal number from Parking Services upon presentation of valid GMU identification.

2. A copy of the police report or number must be submitted with the request for a replacement of a stolen decal by nonforcible entry.

3. Parking Services shall base any determination of forcible or nonforcible entry upon an official police report.

4. The purchaser may obtain their lost decal numbers from Parking Services by presenting valid GMU identification.

B. Nonforcible stolen decals replacement costs will be based on a written fee schedule posted in the Parking Services Office. The fee schedule and dates will be based on the prevailing rates for annual, semester and summer decals as well as the add/drop dates for tuition liability.

C. The purchaser must sign an acknowledgement indicating that the decal was stolen and that he understands that the registered owner or owners of any vehicle displaying or using a decal verified as lost by the purchaser will be cited for fraudulent display and subject to any and all fines and legal ramifications imposed by the university or the Commonwealth.

D. Replacements for stolen decals shall be issued only to the original purchaser upon presentation of GMU identification. In addition, all outstanding citations and

accrued late fees must be paid or the purchaser must enter into a contractual agreement to pay said fines before a replacement decal is issued.

8 VAC 35-21-230. Forcible entry stolen decals.

A. Forcible entry is defined as unlawful violence used to gain access or entry to the interior of a locked vehicle by obvious forcible means resulting in visible damage to remove property.

1. All stolen decals must be reported to a law-enforcement agency or official on the date the theft occurred and in the jurisdiction in which the theft occurred.

2. A copy of the police report or number must be submitted with the request for replacement of a stolen decal by forcible entry.

3. Parking Services shall base any determination of forcible entry loss upon an official police report.

4. The purchaser may obtain their lost decal numbers from Parking Services by presenting valid GMU identification.

B. The purchaser must sign an acknowledgement indicating that the decal was stolen and that he understands that the registered owner or owners of any vehicle displaying or using a decal verified as lost by the purchaser will be cited for fraudulent display and subject to any and all fines and legal ramifications imposed by the university or the Commonwealth.

C. Any fee levied for the replacement of a decal stolen by forcible entry would be part of the published fee schedule posted and adjusted each year to reflect changes in the cost of annual, semester and summer decals as well as the add/drop dates for tuition liability.

8 VAC 35-21-240. Refunds and replacement fees.

A. A replacement fee is the monetary charge for a second decal issued to an individual reporting a lost or stolen decal within the same academic or fiscal year or both.

B. A decal refund is the monetary reimbursement given to the decal purchaser.

C. A refund can be issued only to the original purchaser. Purchasers must present official GMU identification and surrender the decal before a refund can be processed. All refunds are issued from the Commonwealth and take approximately six weeks to process.

D. No refund will be issued on what may be considered the unused portion of a summer decal.

E. All outstanding citations and accrued fees will be deducted from the decal refund due.

F. Students must provide official proof of class withdrawal before a refund is issued.

G. Faculty/staff must provide official proof of employment termination from the Human Resources Department before a refund is processed.

8 VAC 35-21-250. Refunds on decals.

Only the original purchaser of a decal may receive a refund of the purchase price of a decal according to the following schedule and conditions.

1. Student decal refunds will be handled as follows:
 - a. A full refund will be given up to and including the last published drop date where no tuition liability is incurred of the semester in which the decal was purchased.
 - b. An 87% refund will be given up to and including the last published add/drop day of the semester in which the decal was purchased.
 - c. A 33% refund will be given up to and including the last published add/drop day of the semester in which the decal was purchased.
 - d. Students who purchased an annual decal and who do not plan to attend spring semester are eligible to receive a 40% refund provided they apply on or before the last add/drop date of the spring semester.
 - e. Summer students will receive a full refund up to and including the last add/drop day of the session in which they registered upon proof of withdrawal. No other prorated refund will be given.
 - f. No refund will be given for what might be considered the "unused" summer portion of an annual decal.
 - g. Students must provide proof of withdrawal from the university in order to receive a decal refund.
 - h. Outstanding citations and accrued late fees will be deducted from the decal refund due.
2. Faculty/staff refunds will be handled on the same schedule as student refunds. Refer to subdivision 1 of this subsection.
3. Proof of termination provided by the Human Resources Department must be presented before a refund is given.
4. All outstanding parking fees will be deducted from any refund due.

8 VAC 35-21-260. Decal payment options.

In general, decals may be purchased by cash, check, money order, Mason Money, American Express, Choice, Diners, Discover, Mastercard or Visa. Classified staff and full-time faculty members may also pay through a payroll deduction plan. Cash by mail is discouraged. Refer to sections below for specific payment information.

1. Mail-in decal payment. Payment for mail-in decal purchases may be by check, money order, American Express, Choice, Diners, Discover, Mastercard or Visa. Checks and money orders should be made out to Colonial Parking, Inc. and should include the university identification number. Credit card payment must include signed authorization. Cash by mail is discouraged.

2. Phone-in decal payment. Payment for phone-in decal purchases may be by Mason Money, American Express, Choice, Diners, Discover, Mastercard or Visa. Classified staff and full-time faculty members may also pay through a payroll deduction plan.

3. In-person decal payment. Payment for in-person decal purchases may be by cash, check, money order, Mason Money, American Express, Diners, Discover, Mastercard or Visa. Checks and money orders should be made payable to Colonial Parking, Inc. and should include the university identification number. Full-time faculty and staff may also pay by payroll deduction.

4. Payment by coin. Payment by coin, whether rolled or unrolled, is not an acceptable form of payment.

5. Lost/stolen decal payment. Lost or stolen decals will be replaced for a fee. Refer to 8 VAC 35-21-190 for fee schedule and 8 VAC 35-21-220 and 8 VAC 35-21-230 for stolen decal replacement requirements.

6. Payroll deduction. Full-time faculty and classified staff may choose payroll deduction to purchase an annual, semester or summer decal. Equal amounts will be deducted from each pay period until the total amount due is satisfied. The last payment may be adjusted slightly depending on the balance due. Any balance due will be deducted from leave pay upon termination of employment. The employee is responsible for requesting a refund from Parking Services based on the refund policy outlined in 8 VAC 35-21-250.

8 VAC 35-21-270. Decal sales restrictions.

A. Decals may not be resold from one individual to another. Decals are the property of the original purchaser.

B. Individuals displaying a resold decal may be cited for fraudulent display.

C. Only Parking Services or its authorized agent or agents may sell parking decals or permits.

8 VAC 35-21-280. Additional decal purchases.

All decals, except those issued to senior citizens, carry an equal monetary value. No discount or reduced rate is given for multiple decal purchases.

8 VAC 35-21-290. Motorcycle decals.

Motorcycles must display a valid GMU motorcycle decal on the rear bumper. Parking of motorcycles is restricted to areas designated for motorcycle use. Citations will be issued to motorcycles parking in spaces intended for four-wheel vehicles.

8 VAC 35-21-300. Decal sales schedule.

Parking decals are sold and prorated according to the following schedule:

1. Full-price annual decals which are valid from September 1 to August 31 of the following year are sold at the annual rate from September 1 to November 30.

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2. Semester decals, valid from December 1 to August 31 of the following year, are sold from December 1 to April 30.

3. Summer decals, valid from May 1 to August 31 of the same calendar year, are sold from May 1 to August 31.

4. Annual decals may be sold or distributed earlier in the summer than listed in 8 VAC 35-21-270 A depending upon the vendor's delivery schedule. Early decal purchasers should verify the date the permit becomes valid for use to avoid citation.

5. A one-week grace period is granted during the first week of school in the fall semester only to allow for decal purchase and schedule adjustments. No other grace periods are offered unless so advertised.

6. Faculty members duly appointed to emeritus status by a dean and the provost are eligible to receive one free parking decal upon proof of status or written notification from the appointing dean or provost's office.

8 VAC 35-21-310. Decal placement.

A. All transferable decals must be displayed in clear view on the inside, lower left corner of the rear window of the vehicle.

B. Bumper decals must be displayed on the left rear bumper.

C. Motorcycle adhesive decals must be displayed in clear view on the rear fender of the motorcycle in order to avoid citation.

D. Failure to display a decal properly may result in citation.

8 VAC 35-21-320. Citation responsibility.

The registered owner of a vehicle is ultimately responsible for any citations issued to said vehicle. A decal owner may also be responsible for all citations issued to his decal.

PART VII. DAY PASSES.

8 VAC 35-21-330. Day passes.

A. Single day passes are available at the Finley Circle and Braddock Road parking information booths. Multiple day passes may be purchased at the Parking Services Office located in Student Union I, Room 201. Permits are sold during normal hours of operation.

Finley Circle and Braddock Road information booths are open from 7 a.m. to 8 p.m. Monday through Friday. The Finley Booth is open until 2 p.m. on Saturday when classes are in session.

B. Day passes are sold only to students, faculty and staff who present valid GMU identification. All others must pay to park in metered space or the parking deck unless otherwise directed by the Parking Services Office.

C. Day pass and decal parking is enforced only when at least one parking information booth is open to sell permits.

D. Day passes and special permits are valid only in the lots specified on the permit. The user is responsible for scratching off the appropriate month, day and year to validate permit. Failure to do so may result in the vehicle being cited for improper display.

E. Refer to 8 VAC 35-21-190 for fee schedule.

PART VIII. SPECIAL PERMITS.

8 VAC 35-21-340. Special parking permits.

University faculty, staff and students with special parking needs must make prior arrangements to obtain the necessary permit through the Parking Services Office during normal hours of operation.

1. Handicap permits. Applications for handicap parking permits are available at the Parking Services Office. Refer to Section 8 VAC 35-21-120 for specific handicap information and regulations.

2. Load/unload permits. Loading and unloading permits are available at the Parking Services Office. Refer to Section 8 VAC 35-21-140 for specific information on availability and regulations.

3. Service and repair permits. Service and repair permits may be purchased from the Parking Services Administrative Office during normal hours of operation. Refer to Section 8 VAC 35-21-150 for specific information on cost, availability and regulations. Also refer to 8 VAC 35-21-190 for fee schedule.

4. Contractor, subcontractor and contractor employee permits. Contractor, subcontractor and contractor employee permits are available through the Parking Services Office.

a. All contractors, subcontractors and their employees must purchase and prominently display valid permits issued by the Parking Services Office.

b. Arrangements for contractor-related permits are made through the Parking Services Office in conjunction with the Office of Facilities Planning or the Physical Plant and the appropriate representative of the contractor.

c. Contractors and subcontractors are responsible for adhering to and advising all employees of GMU parking regulations as outlined in their contractual agreement with the university.

d. Contractors, subcontractors and contractor employees are responsible for any citations issued to their vehicles.

e. Permits issued to contractors or commercial firms may be restricted as to date, time, duration, and parking area. Contractor permits may not be used for any other parking purposes.

PART IX. ENFORCEMENT.

8 VAC 35-21-350. Enforcement and applicability.

A. All regulations enacted by the Commonwealth and George Mason University are duly enforced. Vehicles in violation of the rules and regulations set forth in this chapter may be subject to citation, immobilization, impoundment or towing at the owner's expense.

B. No motor vehicle operator, including university personnel, shall park a motor vehicle which violates any part of this chapter.

8 VAC 35-21-360. Parking permit display.

All vehicles parked in surface lots owned and operated by the university must prominently display a valid decal or parking permit and observe all parking space restrictive signage during hours of enforcement at the risk of citation. Exceptions to the permit display requirement are listed in subdivisions 1, 2 and 3 of this section.

1. Patriot Center parking. Parking fees are included in the cost of Patriot Center tickets. Parking permit display is not required for scheduled Patriot Center events. Event parking is limited to Lots A, C and K or as otherwise approved by the Parking Services Office.

2. Center for the Arts parking. Parking for Center for the Arts events is limited to Lot K and the parking deck unless otherwise approved by the Parking Services Office. Parking permit display is not required for scheduled events. Refer to 8 VAC 35-21-190 for parking deck rates.

3. Intercollegiate and club sports parking. Parking for intercollegiate sports events is limited to Lot K or the Field House lots unless otherwise approved by the Parking Services Office. Parking permit display is not required for scheduled events.

8 VAC 35-21-370. Hours of enforcement.

Hours of enforcement are as follows when the university is in session.

1. Decal/day pass parking. Decal and day pass parking is enforced in surface lots from 7 a.m. to 8 p.m., Monday through Friday, and from 7 a.m. to 2 p.m. on Saturday. Surface lots are enforced for permit parking when at least one of the parking information booths is open to sell day passes.

2. Metered parking. Metered parking is enforced from 7 a.m. to 11 p.m. seven days a week. Refer to 8 VAC 35-21-130 for specific meter parking details.

3. Handicap parking. Handicap parking is enforced 24 hours a day, seven days a week. Parking in or blocking handicap access is subject to citation. Refer to 8 VAC 35-21-120 for specific handicap parking details.

4. Load/unload parking. Load/unload parking is subject to time limitations and is enforced from 7 a.m. to 11 p.m., seven days a week. Refer to 8 VAC 35-21-140 for specific details.

5. Service/repair parking. Service and repair parking is enforced from 7 a.m. to 11 p.m., seven days a week. Refer to 8 VAC 35-21-150 for specific details.

6. Reserved surface space parking. Reserved spaces are enforced from 7 a.m. to 6 p.m. Monday through Friday.

7. Deck reserved space parking. Reserved spaces in the parking deck are enforced from 7 a.m. to 6 p.m. Monday through Friday.

8. Other prohibited parking areas. Parking is prohibited in the following locations:

a. Areas posted as "No Parking."

b. At painted yellow curbs, on crosswalks, sidewalks, landscaped areas, blocking trash dumpsters or barricaded areas. Parking in these areas constitutes parking in a "prohibited zone."

c. Within 15 feet of a fire hydrant, where curbs are painted red, or in areas posted as "Fire Lanes." Parking in these areas constitutes parking in a "fire lane." These violations subject the vehicle to citation or towing or both.

d. Restricted or reserved space without proper permit.

8 VAC 35-21-380. Parking space designation.

Parking is permitted only between painted control lines in surface lots and the parking deck.

8 VAC 35-21-390. Restricted areas.

A. As outlined in 8 VAC 35-21-20, certain lots and areas are restricted as to the type of permit required. Vehicles without proper permit are subject to a "restricted area" citation.

B. Evening and weekend enforcement. Although decals are not required in the evening or on the weekend, all other rules and regulations are enforced 24 hours a day, seven days a week.

C. Restricted area enforcement. As outlined in Part II, Parking Policies (8 VAC 35-21-20 et seq.), certain lots and areas are restricted as to the type of permit required. Vehicles parked in improper areas will be subject to citation for "restricted areas."

D. Reserved space enforcement. Reserved spaces are enforced Monday through Friday 7 a.m. to 6 p.m.

E. Handicap space enforcement. Parking in handicap spaces without the appropriate pass is subject to enforcement 24 hours a day. (Refer to 8 VAC 35-21-120.) This includes individuals who have handicap passes but do not park in the appropriate spaces.

F. Load/unload zone enforcement. Load/unload zones are subject to time limitations. Vehicles exceeding the posted or 30 minute time limit are subject to citation.

G. Displaying a previously issued citation. Displaying a previously issued citation as a "decoy" is cause for citation. The fine and rationale for the citation would depend on the

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violation at the time the ticket was issued. Any alteration of a parking permit or decal subjects the vehicle/owner to citation for "no permit or fraudulent display."

H. Meter citations. Parking in a metered space after a citation has been issued may result in multiple citations. A citation may be issued one hour after the last citation was issued. These citations will carry a lesser charge than the original citation.

PART X. FINES.

8 VAC 35-21-400. Parking fines; fine payment methods.

A. Current parking fines and corresponding fees charged for fines are listed in 8 VAC 35-21-430.

B. Parking fines must be paid or appealed within 10 calendar days of issue. Refer to 8 VAC 35-21-440 for appeal information.

C. Mail-in fine payment. Fine payment by mail may be made by check, money order, American Express, Choice, Diners, Discover, Mastercard or Visa. Checks and money orders should be made out to Colonial Parking, Inc. The ticket or ticket number and the individual's identification number should be included with payment for proper credit. Credit card payment must include amount to be charged and must include a signed authorization. Cash by mail is discouraged.

D. Phone-in fine payment. Phone-in fine payment may be made by Mason Money, American Express, Choice, Diners, Discover, Mastercard or Visa. The ticket number and the individual's identification number should be included for proper credit.

E. In-person fine payment. In-person fine payment may be made by cash, check, money order, Mason Money, American Express, Choice, Diners, Discover, Mastercard or Visa. Checks and money orders should be made payable to Colonial Parking, Inc. The ticket or ticket number and the individual's identification number should be included with payment for proper credit.

F. Facsimile (FAX) fine payment. Credit card payment may be faxed to the Parking Services Office. The FAX number is (703) 993-2719. A signed credit card authorization statement is required which includes the amount to be charged. A copy of the ticket or the ticket number and the individual's identification number is required for proper credit to the outstanding account.

8 VAC 35-21-410. Fine payment information.

The following general information is related to fine payment.

1. Mailing address. The Parking Services mailing address is as follows:

MSN 1G4
Colonial Parking, Inc.
George Mason University
4400 University Drive
Fairfax, VA 22030-4444

2. Telephone numbers. The telephone number for phone-in decal purchase and fine payment is (703) 993-2747. The general parking information number is (703) 993-2710. For special events, call 993-2716.

3. Facsimile (FAX) number. The Parking Services FAX number is (703) 993-2719.

4. Sales office hours/location. The Parking Services Sales Office is open from 8:30 a.m. to 5 p.m. Monday through Friday and until 2 p.m. on Saturday. The sales office is located in Student Union I, Room 201.

5. Payment by coin. Fine payment by coin, whether rolled or unrolled, is not an acceptable form of payment.

6. Citation/citation number inclusion. The citation or citation number must be included with all methods of payment for proper credit.

8 VAC 35-21-420. Fine payment requirements and penalties.

A. Fine due dates. Fines are to be paid within 10 days of receipt of citation. All fines not paid or appealed within 10 days will be assessed a \$10 late fee. Fines not paid within 30 calendar days of issuance will be assessed an additional \$10 late fee. Refer to Part XI of this chapter for appeal information.

B. Late letter reminders. Parking Services mails three late letter reminders to individuals who have outstanding parking fines. The first letter is mailed to the address of record 10 days after a citation was issued. The second letter is sent 20 days after the citation was issued. The third and final letter is sent 30 days after date of issuance.

C. Student delinquent fines. Students who fail to pay or appeal citations will be placed on financial suspension. As stated in the GMU catalog, "financial suspension" means that no transcripts or records are issued, no diplomas are released, and no registrations are permitted until outstanding obligations including the reinstatement fee, have been paid in full.

D. Faculty, staff and visitor delinquent fines. Faculty, staff and visitor accounts are considered delinquent 30 days after the fine is levied. Said delinquencies are referred to a collection agency, the Department of Taxation, Division of Set-Off Debt Collection, and a credit bureau. If the account remains unpaid, the individual becomes responsible for the payment of all additional agency costs. Collection costs may be as much as one-third of the balance due referred by the university.

E. Tax set-off. Parking fines outstanding for 90 days or longer and chargeable to a resident of the Commonwealth will be reported to the Department of Taxation. The balance of the unpaid account will be deducted from the individual's state income tax refund. The amount deducted will be forwarded to George Mason University, an agency of the Commonwealth.

F. Vehicle immobilization and conditions of release. Vehicles with outstanding fines in excess of \$100 are subject to towing, immobilization or impoundment. All outstanding fines must be paid in full or the ticket holder/vehicle owner must enter into a contractual payment agreement with the

university before the vehicle will be released. If the outstanding account is not satisfied by payment or contractual agreement within 72 hours, the vehicle may be impounded and moved to an impoundment site.

G. Vehicle release policy. Immobilized or impounded vehicles will be released only to the registered owner. Owners must prove ownership by producing the original vehicle title or registration together with a picture identification proving the claimant's identity. If the claimant is not the registered owner of the vehicle, he must produce a written and notarized letter with embossed seal from the owner permitting the university to release the vehicle to the claimant. The original title and registration or copies thereof must accompany the letter of release.

H. Payment plan agreement. Faculty, staff and students who have incurred parking fines over \$300 and who are unable to pay said fines in full may opt to enter into a contractual payment plan agreement with the university to satisfy their indebtedness. A one-third initial payment is required before the payor can be released from financial suspension or have an immobilized vehicle unbooted. These individuals are responsible for making a maximum three additional timely payments without benefit of a reminder. Any default by the payor as outlined in the contract will negate the agreement.

I. Department of Motor Vehicle (DMV) access. As an agency of the Commonwealth, the university has access to certain DMV computer files. Said access enables the university to determine the name and address of a vehicle owner by license tag or vehicle identification number.

J. Parking citation liability. Ultimately, the registered owner of a vehicle is responsible for all citations issued to his vehicle whether or not the owner was in fact the driver. In addition to the registered owner of the vehicle, the holder of a university parking sticker may also be held financially responsible for citations issued to the vehicle for which the university parking sticker is registered or assigned. Vehicle owners who believe they were not the registered owner of a vehicle at the time a parking fine was levied may contact the Customer Service Department, Department of Motor Vehicles at (703) 761-4655 or (804) 367-0538 and ask that DMV send verification to the Parking Services Office that the licensed tag number belonged to another party on the date the citation or citations was issued.

8 VAC 35-21-430. Schedule of fine rates effective July 1, 1996.

Parking fines and corresponding fees charged for said fines are listed below:

Improper display	\$15
Parking over the designated lines.....	\$15
Overtime meter parking	\$25
Restricted parking.....	\$25
Parking in prohibited zone	\$25
Parking in loading zone.....	\$25
Fraudulent registration.....	\$75
No decal.....	\$60
Double parking.....	\$15
Parking left/wrong side of curb.....	\$15

Unauthorized parking in handicap area.....	\$100
Blocking handicap access	\$100
Boot removal.....	\$25
Towing.....	\$35
Parking in a firelane.....	\$50
Parking in excess of one hour at meter.....	\$5

PART XI.
APPEALS.

8 VAC 35-21-440. Appeals.

Parking tickets must be appealed within 10 days of the date of issue. Except in rare and unusual circumstances, the basis for an appeal is the contention that the cited regulations were not violated. Towing and booting charges are not appealable.

8 VAC 35-21-450. Appeal forms.

Appeal forms are available from the Parking Services Administrative and Sales Offices, parking information booths and information kiosk. Appeal forms will also be mailed or faxed to individuals upon request. Both sides of the appeal form must be completed and the agreement section signed before the form will be processed. A self-addressed postcard and the citation should be attached to the appeal form and returned in person or by mail to the Parking Services Administrative Office located in Student Union I, Room 354.

8 VAC 35-21-460. Appeals process.

The Parking Services Office will forward all incoming appeals to a hearing officer for review. The appellant will be notified by postcard of the hearing officer's decision approximately two weeks after the appeal was submitted.

8 VAC 35-21-470. Appellant's right to in-person hearing.

If dissatisfied with the initial decision, the appellant may schedule a hearing date and present his case in person before the Parking Appeal Review Board. Hearings may be scheduled by calling the Parking Services appeals desk at (703) 993-2711.

8 VAC 35-21-480. Appellant's responsibilities to attend hearing.

Appellants are responsible for attending the scheduled hearing or calling at least two hours in advance of the hearing to reschedule. Appellants will be given only one opportunity to reschedule a hearing to ensure timely disposition. Failure to appear at a hearing without calling to reschedule will cause the Parking Appeal Review Board to make a decision based on the written materials presented to them.

8 VAC 35-21-490. Impartiality of appeals review process.

Neither the hearing officer nor members of the Parking Appeal Review Boards are employees of Parking Services.

8 VAC 35-21-500. Appeals deadline.

Failure to file within 10 days of issuance of the citation shall constitute a waiver of the individual's right to appeal the citation.

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8 VAC 35-21-510. Finality of decision.

All decisions of the Parking Appeal Review Boards are final. Persons wishing to pursue their appeal may request a University Administrative Review.

8 VAC 35-21-520. Appellant's responsibility for accurate information.

Appellants are responsible for providing complete and accurate information on the appeal form including the correct address so proper notification can be mailed to them.

PART XII. ARLINGTON CAMPUS.

8 VAC 35-21-530. Arlington Campus regulations.

All regulations set forth herein shall be applicable at the Arlington Campus.

8 VAC 35-21-540. Arlington Campus decals.

A. Arlington Campus decals may be purchased at either the Arlington or Fairfax Campus sales locations or by mail-in or phone-in application. Refer to 8 VAC 35-21-100 and 8 VAC 35-21-190 for decal purchase information.

B. Arlington Campus decals will be sold only to those students, faculty or staff members who show valid proof of course registration or employment at Arlington Campus.

C. Arlington Campus decals are valid at all parking locations owned and operated by George Mason University. Fairfax decals are not valid at Arlington Campus parking sites.

D. Arlington decals shall be sold at the same rates as all other GMU decals unless otherwise stated in 8 VAC 35-21-190.

E. Arlington Campus decals, presented with valid GMU identification, will be honored without additional charge in allocated space at the National Science Foundation parking garage during operating hours scheduled and posted by the university.

8 VAC 35-21-550. Visitors to Arlington Campus.

During the construction process, students, faculty/staff visitors to the Arlington Campus must use on-street metered parking or pay the prevailing rate at the satellite parking location. Shuttle service to and from the off-site parking garage is free of charge with valid identification.

8 VAC 35-21-560. Faculty/staff visitors.

Faculty/staff attending to official business at Arlington Campus should contact the sponsoring department to inquire about or make parking arrangements during the construction process.

PART XIII. AMENDMENTS AND ADDITIONS.

8 VAC 35-21-570. Amendments and additions.

All amendments and additions to these Motor Vehicle Parking Policies and Regulations are to be reviewed and approved by the Provost, the Office of the Executive Vice

President for Administration, and the Office of the Executive Vice President for Finance and Planning.

VA.R. Doc. No. R96-541; Filed August 23, 1996, 12:10 p.m.

Title of Regulation: 8 VAC 35-50-10 et seq. **Poster Posting Policy and Procedures.**

Statutory Authority: § 23-91.29(a) of the Code of Virginia.

Summary:

These regulations set out the posting policy and procedures for faculty, staff, students, and visitors of George Mason University.

CHAPTER 50. POSTER POSTING POLICY AND PROCEDURES.

PART I. GENERAL PROVISIONS.

8 VAC 35-50-10. Scope.

The policies and procedures provided herein apply to all George Mason University faculty, staff, and students, university contractors, and the general public. This chapter applies to all university facilities and grounds owned or leased.

8 VAC 35-50-20. Policy statement.

George Mason University facilities are for the primary use by its students, faculty, and staff in their efforts to advance the educational mission of the university. The primary purpose of the poster policy is to ensure the wise use of space available, balancing the need for effective and orderly advertising, maintenance of facilities and avoidance of littering. No information will be posted that is inconsistent with the educational mission of the university. Federal and Commonwealth of Virginia official signage will be posted in accordance with applicable regulations and is exempt from this chapter.

PART II. DEFINITIONS.

8 VAC 35-50-30. Definitions.

"Academic" means those activities associated with the studies, teaching programs or learning mission of the university such as notices of lectures, symposiums, etc.

"Banner" means a strip of paper, plastic, cloth, or vinyl normally larger than 11 x 17 inches but not exceeding the size requirements specified for various locations advertising an on-campus event, function or special meeting.

"Federal/official signage" means those signs required for compliance with regulations or laws such as equal employment opportunity, labor or safety requirements.

"Flyers/leaflets" means handbills designed for mass distribution. Flyers also include any papers not exceeding the size 8 1/2 x 11 inches.

"Nonacademic" means those activities not associated with the studies or teaching programs of the university such as notices for special events such as dances or other social events.

"Posters" means papers not exceeding 11 x 17 inches.

"Upbeat style banners" means banners made of cloth or similar material designed to slide or fit on brackets mounted on utility poles. The banners are normally 30 inches wide x 60 inches high with a one to two inch open seam which slides over a rod at the top and bottom next to the pole grommet or ties string is located at the side of the banner next to the pole for securing the banner to the pole. Banners to be placed on the exterior poles at the George Johnson Center Plaza should be 30 inches wide x 94 inches high with a 4 3/4 inch open seam. Grommets are required.

PART III. POLICY.

8 VAC 35-50-40. Policy.

The posting of information on the George Mason University campuses is subject to prior authorization and must be conducted in accordance with regulations established by the university. These guidelines augment but do not preempt applicable student housing, student unions, libraries, or athletics policies currently in effect for those facilities. The university off-campus organizations may post flyers/leaflets, posters and banners with prior approval from the Office of Operational Services.

8 VAC 35-50-50. Posters and flyers.

Bulletin boards are provided for the posting of signs, papers, posters, and advertisements, subject to the following:

1. Assigned bulletin boards:

- a. Selected bulletin boards are assigned for the exclusive use of academic departments (within the department office) or organizations assigned the posting space (within public areas);
- b. Assigned bulletin boards are labeled and are the responsibility of the department or the organization to which they are assigned;
- c. No materials may be posted on assigned bulletin boards without the authorization of the department or the organization assigned the posting space; and
- d. The departments or organizations assigned the posting space are responsible for removal of unauthorized materials and for keeping posted materials updated.

2. General bulletin boards.

- a. General bulletin boards are mounted in various campus locations and are available for the use and benefit of the campus community;
- b. Material posted on general bulletin boards is subject to approval by the officer or his designated representative as listed in 8 VAC 35-50-90;

c. Areas designated for the posting of materials are designed to provide a means to advertise campus events, publicize services for students, faculty, any staff of on-campus and off-campus activities and to disseminate educational or informative information. All individuals and organizations posting notices are expected to design and display their materials in a manner respectful of the diverse beliefs, opinions, and attitudes that exist in an institution of higher learning. Posted items must be educational or informative in nature. Items advocating an infraction of any law, ordinance, or official university policy or regulation may not be displayed and are subject to removal; and

d. Posters and flyers should never be hung where they cover up any previously posted current materials, unless the previously posted material is past the date of the event advertised or seven days in the case of educational flyers.

3. Residential housing areas.

- a. Flyers and posters may be placed on the kiosks outside of the student apartments and residence halls;
- b. In the residence halls, flyers may be posted only on the bulletin boards in the lobbies; extra copies may be left at the main desk for general distribution.

4. Quantities. The following quantities (or combination of posters and flyers) may be posted in the building listed at any one time for one event:

College, Mason, Fine Arts	5
Commerce Buildings I and II	5
Concert Hall	NONE
East Building	5
Enterprise Hall	10
Fenwick Library	10
Field House	1
Finley Building	5
King Hall	10
Krug Hall	10
Lecture Hall	2
Metro Center	5
Performing Arts	5
Physical Education Building	5
Prince William Institute	5
Robinson Hall, Wing A	10
Robinson Hall, Wing B	10
Science & Tech I	10
Science & Tech II	10
Student Union I	10
Student Union II	2
Thompson Hall	20
George W. Johnson Center	20
West Building	2

5. Size. Poster size normally may not exceed 11 x 17 inches, although larger artistic posters may on occasion be approved at the discretion of the Typing and Computer Center staff or their designated representative, Student Union I.

6. Removal.

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a. Display time will be limited to seven days prior to the day of the activity;

b. Individuals or groups who post material are responsible for removal when obsolete; and

c. All materials displayed longer than seven days will be removed every Tuesday between 9 a.m. and noon by university staff.

8 VAC 35-50-60. Prohibited locations.

No materials may be posted on the exterior surface of any university building, on interior or exterior pillars, breezeways or walkways, trees, light and lamp posts/poles, traffic control signs, or other existing permanent signs or posts. In addition, nothing shall be affixed to any walls, windows, doors, or door frames, glass panels, or painted surfaces either inside or outside. Placing materials on windshields of vehicles on campus or under residence hall doors is considered littering and is strictly prohibited. The only exceptions are materials relating to fire, health, or safety (such materials must be reviewed by the Emergency Communications Committee and approved for posting by the Director, Media Relations, D217, Mason Hall) or notifications of utility outages approved by the Physical Plant.

8 VAC 35-50-70. Methods of posting.

Individuals posting materials should use thumbtacks, staples or masking tape as appropriate. Under no circumstances should transparent tape be used.

8 VAC 35-50-80. Banners.

A. General. Banners may be placed by student organizations in the main lounge and cafeteria of Student Union I on metal wires which have been provided for this purpose, on the beam at the entrance to Student Union II, and in the gymnasium of the Physical Education Building. The Center for the Arts may hang a banner on the hooks provided on the Performing Arts Building. Upbeat style banners may be placed on those light poles fitted with the appropriate mounting brackets. Banners may not be placed in, on, or between any other university building, between any light poles (safety) or on the university grounds.

B. Student Unions. Banners to be placed in Student Unions I or II must conform to size limitations specified in the University Unions Poster Policy. It is the responsibility of the student organization to remove the banner within 24 hours after the function. Banners placed on the front or rear metal wires of the Student Union Main Lounge may be draped or temporarily removed for the duration of scheduled programs taking place in the main lounge, so as not to interfere with or distract from such programs. It is the responsibility of the sponsor of the program scheduled in the main lounge to carefully remove or drape and to replace or undrape the banner immediately following the main lounge function.

C. Campus grounds. The mounting of "upbeat" style banners on campus light poles must be requested through the Physical Plant. The work request for installation is to specify the desired dates of installation and removal. The banners will be available for pick up at the Physical Plant

Work Control Center by the requesting organization once removed.

D. Banners to be mounted in the gymnasium and on the Performing Arts Building will be mounted and removed by the appropriate recreational activity or Center for the Arts staff.

8 VAC 35-50-90. Stamping/approval requirements.

A. All student activity posters or flyers and banners, whether they advertise on-campus or off-campus functions or services, must be stamped at the Typing and Computer Center or their designated representative prior to posting on the campus.

B. All nonuniversity or general public organization posters, flyers or banners must be approved by the University Outreach Office prior to posting.

C. All posters or banners to be mounted on stakes placed in the ground must also be approved by the Physical Plant to ensure underground utility lines are not damaged.

D. All posters, flyers or banners to be posted in the George W. Johnson Center must be approved and stamped at the George W. Johnson Center Information Desk prior to posting.

E. All posters, flyers or banners to be posted in the field house must be approved by the Assistant Athletic Director for Facilities or his designated representative prior to posting.

F. All posters, flyers or banners to be posted in the Physical Education Building must be approved by the Athletic Department Community Relations Office prior to posting.

G. All posters, flyers or banners to be posted at the Arlington Campus must be approved and stamped by the Associate Dean of the Law School or his designated representative prior to posting.

H. All posters, flyers or banners to be posted at the Prince William Institute must be approved and stamped by the Assistant to the Director, Prince William Institute, prior to posting.

8 VAC 35-50-100. Approval criteria.

A. The name of the sponsoring group or organization must appear on each poster, flyer or banner.

B. No material will be approved for posting which advertises activities, events or groups which would:

1. Interfere with or be incompatible with the primary educational mission and goals of the university as stated in the introduction to the university catalog;

2. Have a clear and present potential hazard of interfering with the process of the university, infringing upon the rights of others, or endangering the health or safety of the university community or their guests; or

3. Restrict participation on the basis of sex (except social fraternities and sororities and other groups exempted by Title IX of the Higher Education Amendments of 1971), race, color, religion, creed, national origin, political affiliation, handicap, or the

exercise of rights secured by the First Amendment of the United States Constitution.

C. Materials for posting may not include reference to a cost per alcoholic drink; may not contain any statement, symbol depiction, or reference that would tend to induce persons to consume to excess such as "all you can drink," "free flowing taps"; and may not give the impression that alcoholic beverages will be free.

D. All advertising of events where alcohol will be served must indicate that a GMU identification card is necessary for admission.

E. Events where alcohol is being served on campus may not be advertised outside the university community.

F. For fund raisers, all beneficiaries of the fund raising effort must be specified in the promotional materials.

G. Foreign language materials may be approved for posting if the name of the sponsoring organization appears in English on the poster, and if the sponsoring organization provides a written translation of the material to the Typing and Computer Center staff or the designated representative.

8 VAC 35-50-110. Leafletting and petitioning.

Noncommercial written materials may be hand distributed or names collected for petitions by student organizations, individual students, and others at reserved tables in accordance with Administrative Policy Number 53, 8 VAC 35-40-10 et seq. Vending Sales and Solicitation, in the main lounges of the student unions or on the sidewalk area immediately in front of the student unions, provided these actions are not disruptive of normal university functions. A copy of any materials to be hand distributed should be delivered to the Typing and Computer Center at least 24 hours prior to the activity and must bear the name of the sponsoring organization or individuals. Organizations, groups or individuals distributing leaflets are responsible for continually policing the immediate area for any dropped literature.

8 VAC 35-50-120. Directional signs for special events.

A. Makeshift paper or cardboard directional signs are not to be fastened to campus signs, light posts or traffic signs. Parking Services will be contacted for the availability of PVC pipe sign boards for use in displaying temporary directional signage. The requesting activity is responsible for the placement and return of the signboards.

B. Parking Services will be contacted for the manufacture and placement of directional signs located at the entrance to the campus. These signs will be mounted and removed by Parking Services staff.

8 VAC 35-50-130. Violations.

A. Violation of these provisions constitute potential grounds for (i) removal of the material, (ii) denial of approval to post materials by that organization for a specified period of time, (iii) loss of access to duplicating services or other facilities use restrictions as determined by the Associate Vice President of Operational Services or his designated

representative, and (iv) charges for the cost of removal of the material and any associated repairs.

B. Posting of materials or distribution of flyers without prior approval as specified above will be considered as littering and is subject to the laws of the Commonwealth.

8 VAC 35-50-140. Interpretations.

Requests for waivers or exceptions to this policy must be made to the Associate Vice President of Operational Services or his designated representative.

PART IV.

POSTING BY NONUNIVERSITY ORGANIZATIONS.

8 VAC 35-50-150. Policy on posting by nonuniversity organizations.

A. This chapter applies to nonuniversity organizations desiring to post posters, banners or distribute flyers on campus independently or if sponsored by a recognized student organization. This chapter also applies to outside organizations on campus either independently or sponsored by an organization to distribute literature or solicit memberships. Vendors wanting to distribute newspapers are regulated by University Administrative Policy Number 53, 8 VAC 35-40-10 et seq. Vending Sales and Solicitation.

B. All nonuniversity organizations must conform to the laws of the Commonwealth.

C. The offices having approval authority for posting of information pursuant to 8 VAC 35-50-100 reserves the right to assign nonuniversity organizations to specific locations for the posting of information.

D. At no time shall GMU grant or deny authorization of distribution of information on its content, unless such distribution is commercially motivated. However, the distribution of said material shall be subject to reasonable time, place and manner restrictions.

E. Only a limited amount of space is available to nonuniversity activities. Preference for assignment of space will take into account the number of previous approvals for the group or activity, status as a major campus-wide activity, and time constraints of events that may be advertised. Priority will be given to activities conducted by students, faculty or staff, alone or in conjunction with nonuniversity activities, over those conducted solely by nonuniversity activities.

F. At no time are nonuniversity activities to be advertised on campus except in campus newspapers or on approved bulletin boards or locations unless otherwise indicated in writing by an authorizing official. This includes, but is not limited to, the use of e-mail, mailboxes, bulletin boards, flyers on cars, hand-out flyers to students, sandwich boards, etc.

G. These posting regulations may not apply to nonuniversity activities in special campus-sponsored events, as determined by the officer in charge of overseeing this regulation, which occur from time to time on campus. However, those events may have their own regulations which apply to non-university organizations. These regulations must be submitted for review by and approval from the

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authorized university official in charge of overseeing this chapter.

8 VAC 35-50-160. Procedures for obtaining approval for posting.

A. All nonuniversity organization posters, flyers or banners must be approved by the University Outreach Office prior to posting.

B. Once approved for posting on campus, the nonuniversity activity sponsor must obtain the approval of the Office of Information Services and the approving authority for specific areas outlined in 8 VAC 35-50-100 where applicable prior to posting.

8 VAC 35-50-170. Use of bulletin boards and posting materials.

Nonuniversity organizations will comply with the guidelines provided in Part III of this chapter.

PART V. AMENDMENTS AND ADDITIONS.

8 VAC 35-50-180. Amendments and additions.

All amendments and additions to this chapter are to be reviewed and approved by the Office of the Provost, the Office of the Executive Vice President for Administration and the Office of the Executive Vice President for Finance and Planning.

VA.R. Doc. No. R96-542; Filed August 23, 1996, 12:10 p.m.

DEPARTMENT OF HEALTH (STATE BOARD OF)

Title of Regulation: 12 VAC 5-220-10 et seq. Virginia Medical Care Facilities Certificate of Public Need Rules and Regulations (amending 12 VAC 5-220-10, 12 VAC 5-220-20, 12 VAC 5-220-40, 12 VAC 5-220-70, 12 VAC 5-220-110, 12 VAC 5-220-140, 12 VAC 5-220-150, 12 VAC 5-220-200, 12 VAC 5-220-210, 12 VAC 5-220-230, 12 VAC 5-220-250, 12 VAC 5-220-270, and 12 VAC 5-220-320 through 12 VAC 5-220-390; adding 12 VAC 5-220-325 through 12 VAC 5-220-500; and repealing 12 VAC 5-220-320 through 12 VAC 5-220-400).

Statutory Authority: §§ 32.1-12 and 32.1-102.1 of the Code of Virginia.

Public Hearing Date: October 10, 1996 - 9:30 a.m.

Public comments may be submitted until November 16, 1996.

(See Calendar of Events section for additional information)

Basis: Section 32.1-12 of the Code of Virginia authorizes the State Board of Health to "make, adopt, promulgate and enforce such regulations ... as may be necessary to carry out the provisions of ..." Title 32.1, Health, of the Code of Virginia, 1950 "and other laws of the Commonwealth administered by it, the Commissioner or the Department."

Section 32.1-102.1, et seq. of the Code of Virginia is Virginia's Certificate of Public Need (COPN) statute. Section 32.1-102.2 authorizes the Board of Health to "promulgate

regulations which are consistent with this article and ... establish procedures for the review of applications for certificates (of public need) consistent with the provisions of this article."

Purpose: House Bill 1302, signed by the Governor on April 10, 1996, amends § 32.1-102.3:2 of the Code of Virginia so that, effective July 1, 1996, projects that increase the supply of nursing home beds in Virginia, with the exception of certain retirement community projects, may only seek COPN authorization when filed in response to a Request for Application (RFA) issued by the Commissioner of Health. These proposed amendments to the regulations, which govern the review of COPN applications, will implement this new review process for nursing home bed applications.

Substance: The key provisions of the amended regulation are:

1. Part V of the regulations describes the standard review process that is applicable to most COPN requests and is currently applicable to nearly all nursing home facility requests. The amendments to Part V will specify that only bed projects of continuing care retirement communities and nursing home facility projects that do not involve increases in bed capacity will be subject to the standard review process, which includes scheduled, semi-annual batching cycles.

2. A new Part VII of the regulations is proposed which describes the review process for nursing home facility bed applications that became effective on July 1, 1996, consistent with the Code of Virginia amendments of House Bill 1302. It provides for issuance of RFAs, at least annually, as a prerequisite for acceptance of most nursing home bed COPN requests. The review process outlined in the new Part VII is essentially the same as the standard review process with the exception that it is initiated and limited by the terms of a RFA.

3. Most of Part X of the regulations is eliminated, consistent with the Code of Virginia amendments of House Bill 1302. This law is eliminating the eight year old prohibition on the issuance of nursing home bed COPNs by the Commissioner, also known as the nursing home bed moratorium, and replacing it with the RFA review process. It is also eliminating the "exceptions" to the moratorium adopted into law from 1989 to 1995.

Issues: The primary advantage anticipated from the proposed regulatory changes is the creation of a process in Virginia for allocating a scarce resource, new nursing home beds, in a more objective and equitable manner.

Virginia has an interest in controlling the development of new nursing homes and the expansion of existing nursing homes because of its role in funding, through the Virginia Medicaid Program, most nursing home care provided in the state. Restricting the supply of nursing home beds and, thus, keeping bed occupancy at high levels, is perceived as having a positive impact on restraining increases in Medicaid expenditures. This policy perspective resulted in the current moratorium on the issuance of nursing home bed COPNs, which was instituted in 1988 at a time when many thousands of new nursing home beds were authorized by the Department of Health but not yet built.

The nursing home beds authorized in the mid-1980s have been built and most have been operating now for several years. Since 1989, the General Assembly has had an ad hoc process of allowing for expansion of nursing home bed supply through legislative exceptions to the moratorium. This process has not involved a comprehensive examination of where bed shortages may exist and the relative severity of such shortages. Rather, it has tended to result in highly specific exceptions crafted to allow for one individual or organization to make application to the Department of Health.

At this point in time, some areas of the state are experiencing persistently high bed occupancy rates which are making it difficult to find placements for hospital patients awaiting discharge. In 1994, the Department of Health, in cooperation with the Department of Medical Assistance Services, examined the issue of the moratorium policy and recommended bringing the moratorium to an end in 1996, but replacing it with a process which would make it more likely for the department to authorize modest increases in bed supply targeted to areas of greatest need. House Bill 1302 embodies the recommendations of that report. These regulatory changes are proposed as a result of House Bill 1302.

The potential disadvantage of these changes is that it may result in greater numbers of new nursing home beds being constructed in Virginia than might otherwise be constructed if the moratorium continued, which would increase fiscal demands on the Medicaid budget. However, any such disadvantage is considered to be short-term in nature. Clearly, pressure for relief from the moratorium would undoubtedly build within the next few years if the moratorium was extended, given projected growth in the state's nursing home patient census. This pressure would probably result in many more legislative exceptions or elimination of the moratorium without the controls provided for in House Bill 1302, either of which would result in more applicants.

Estimated Impact: The proposed regulation replaces the moratorium on issuing Certificates of Public Need for new nursing facility beds, scheduled to expire July 1, 1996. A statutory change mandates a new review and decision-making process that would limit the approval of nursing home bed COPN requests to those which are consistent with a new RFA process that is jointly developed by the Department of Health and the Department of Medical Assistance Services. The procedural rules outlined in these regulations are directly derived from the statute and are necessary to assure that informed decisions can be made by the department in an orderly fashion that preserves due process for applicants and all other parties involved.

As discussed in the statement accompanying the amendment to the State Medical Facilities Plan also being promulgated at this time, calculations based on need, utilization, and demographic data suggest that seven health districts have a need for 1,020 new nursing home beds over the next three years. Fiscal projections assume that the 1,020 beds will be approved, following implementation of the new RFA program. Both the department and the Department of Medical Assistance Services anticipate that COPNs for those 1,020 beds will be phased in over two years. The two-stage review schedule will delay the point in time when all beds will be

operational for a full year. Allowing for design, construction and startup, the department projects that the earliest time all of those beds will be open for an entire year is FY 99. The fully annualized costs of all 1,020 beds, however, will not be experienced until FY 2000 or later.

There are currently nine classified FTEs to process 12 new projects which are not already included in the base workload. The new nursing home projects represent a 16% growth in workload. A 16% growth in expenditures, as compared with FY 95, would generate new costs of approximately \$107,000. However, the 12 new projects are expected to generate \$120,000 in new revenue under the current fee schedule. Thus, the expanded workload will generate revenue sufficient to cover increased expenditures. If the new regulations become effective by January 1, 1997, the new RFA cycle should generate sufficient revenue in the second half of the fiscal year to cover annual costs.

The long-range fiscal effect of the RFA process will depend on: (i) when it would go into effect, (ii) the degree to which the RFA process is structured to restrain anticipated growth, and (iii) private sector decisions which cannot be anticipated. Any projections of the fiscal impact of the RFA process remains subject to significant revision as cost projection methodologies become more refined and more experience is gained with the process.

By their very nature, the regulations derived from the COPN law have always been contentious, since they define the manner in which the state will interfere with the capital investment decisions of privately controlled medical care facilities. Small businesses or organizations contracting with COPN applicants for development services would be affected by the revised regulation. This would include consultants and lawyers hired to help guide applicants through the COPN process.

Medicaid reform legislation at the federal level could significantly change the context in which the COPN program (and consequently the RFA process) operates and thereby affect fiscal projections. If the legislation takes the form of establishing Medicaid as a block grant, the Commonwealth may be able to develop other more direct methods of controlling Medicaid expenditures on nursing home care. However, the regulations can be expected to give the Commonwealth more control over Medicaid expenditures for nursing home care. As long as the RFA process continues to phase in beds more slowly than might otherwise occur and to better target those beds to areas of greatest need, fiscal impact will be less than without the process.

There are 258 nursing homes, located statewide, serving approximately 29,870 patients. No particular locality is affected more than another by this regulation.

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

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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 proposed change to the Certificate of Public Need (COPN) rules implements HB 1302 by removing material related to the moratorium on approving new nursing facilities, and it adds a section for nursing facilities that explicitly requires that all applications for a COPN be in response to a Request for Application (RFA). The proposed changes are wholly procedural in nature. The criteria for determining when a RFA may be issued by the Commissioner may be found in the State Medical Facilities Plan (12 VAC 5-360-10 et seq.). The economic implications of the Plan are discussed in the Economic Impact Analysis that accompanies the publication of the proposed changes to that regulation.

Estimated Economic Impact. Since this proposal is procedural in nature, it does not have any economic impact independent of the State Medical Facilities Plan (SMFP).

Businesses and entities affected. There will be no affect on businesses or other entities independent of the SMFP.

Localities particularly affected. No localities are more affected than others by this regulation.

Projected impact on employment. This regulation will not have any impact on employment.

Affects on the use and value of private property. As a procedural change, this regulation will not have any affect on the use or value of private property.

Agency's Response to Department of Planning and Budget's Economic Impact Analysis: The Department of Health concurs with the economic impact analysis of the proposed amendments to the Virginia Medical Care Facilities Certificate of Public Need Rules and Regulations as developed by the Department of Planning and Budget.

Summary:

The proposed changes are in response to amendments to the Certificate of Public Need (COPN) Law that became effective on July 1, 1996, through the passage of HB 1302 from the 1996 Session of Virginia's General Assembly. The proposed regulations establish a distinct process for acceptance and consideration of requests for COPNs which involve the establishment of nursing home facilities or an increase in the total number of nursing home facility beds at an existing medical care facility.

12 VAC 5-220-10. Definitions.

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

"Acquisition" means an expenditure of \$600,000 or more that changes the ownership of a medical care facility. It shall also include the donation or lease of a medical care facility.

An acquisition of a medical care facility shall not include a capital expenditure involving the purchase of stock.

"Amendment" means any modification to an application which is made following the public hearing and prior to the issuance of a certificate and includes those factors that constitute a significant change as defined in this chapter. An amendment shall not include a modification to an application which serves to reduce the scope of a project.

"Applicant" means the owner of an existing medical care facility or the sponsor of a proposed medical care facility project submitting an application for a certificate of public need.

"Application" means a prescribed format for the presentation of data and information deemed necessary by the board to determine a public need for a medical care facility project.

"Application fees" means fees required for a project application and application for a significant change. Fees shall not exceed the lesser of 1.0% of the proposed capital expenditure or cost increase for the project or \$10,000.

"Board" means the State Board of Health.

"Capital expenditure" means any expenditure by or in behalf of a medical care facility which, under generally accepted accounting principles, is not properly chargeable as an expense of operation and maintenance. Such expenditure shall also include a series of related expenditures during a 12-month period or a financial obligation or a series of related financial obligations made during a 12-month period by or in behalf of a medical care facility. Capital expenditures need not be made by a medical care facility so long as they are made in behalf of a medical care facility by any person. See definition of "person."

"Certificate of public need" means a document which legally authorizes a medical care facility project as defined herein and which is issued by the commissioner to the owner of such project.

"Clinical health service" means a single diagnostic, therapeutic, rehabilitative, preventive or palliative procedure or a series of such procedures that may be separately identified for billing and accounting purposes.

"Commissioner" means the State Health Commissioner who has authority to make a determination respecting the issuance or revocation of a certificate.

"Competing applications" means applications for the same or similar services and facilities which are proposed for the same planning district or medical service area and which are in the same review cycle. See 12 VAC 5-220-220.

"Completion" means conclusion of construction activities necessary for substantial performance of the contract.

"Construction" means the building of a new medical facility or the expansion, remodeling, or alteration of an existing medical care facility.

"Construction, initiation of" means that a project shall be considered under construction for the purpose of certificate extension determinations upon the presentation of evidence

by the owner of: (i) a signed construction contract; (ii) the completion of short term financing and a commitment for long term (permanent) financing when applicable; (iii) the completion of predevelopment site work; and (iv) the completion of building foundations.

"Date of issuance" means the date of the commissioner's decision awarding a certificate of public need.

"Department" means the State Department of Health.

"Designated medically underserved areas" means (i) areas designated as medically underserved areas pursuant to § 32.1-122.5 of the Code of Virginia; (ii) federally designated Medically Underserved Areas (MUA); or (iii) federally designated Health Professional Shortage Areas (HPSA).

"Ex parte" means any meeting which takes place between (i) any person acting in behalf of the applicant or holder of a certificate of public need or any person opposed to the issuance or in favor of the revocation of a certificate of public need and (ii) any person who has authority in the department to make a decision respecting the issuance or revocation of a certificate of public need for which the department has not provided 10 days written notification to opposing parties of the time and place of such meeting. An ex parte contact shall not include a meeting between the persons identified in (i) and staff of the department.

"Gamma knife surgery" means stereotactic radiosurgery, where stereotactic radiosurgery is the noninvasive therapeutic procedure performed by directing radiant energy beams from any source at a treatment target in the head to produce tissue destruction. See definition of "project."

"Health planning region" means a contiguous geographical area of the Commonwealth with a population base of at least 500,000 persons which is characterized by the availability of multiple levels of medical care services, reasonable travel time for tertiary care, and congruence with planning districts.

"Informal fact-finding conference" means a conference held pursuant to § 9-6.14:11 of the Code of Virginia.

"Inpatient beds" means accommodations within a medical care facility with continuous support services (such as food, laundry, housekeeping) and staff to provide health or health-related services to patients who generally remain in the medical care facility in excess of 24 hours. Such accommodations are known by varying nomenclatures including but not limited to: nursing beds, intensive care beds, minimal or self care beds, isolation beds, hospice beds, observation beds equipped and staffed for overnight use, and obstetric, medical, surgical, psychiatric, substance abuse, medical rehabilitation and pediatric beds, including pediatric bassinets and incubators. Bassinets and incubators in a maternity department and beds located in labor or birthing rooms, recovery rooms, emergency rooms, preparation or anesthesia inductor rooms, diagnostic or treatment procedures rooms, or on-call staff rooms are excluded from this definition.

"Medical care facility" means any institution, place, building, or agency, at a single site, whether or not licensed or required to be licensed by the board or the State Mental Health, Mental Retardation and Substance Abuse Services

Board, whether operated for profit or nonprofit and whether privately owned or operated or owned or operated by a local governmental unit, (i) by or in which facilities are maintained, furnished, conducted, operated, or offered for the prevention, diagnosis or treatment of human disease, pain, injury, deformity or physical condition, whether medical or surgical, of two or more nonrelated mentally or physically sick or injured persons, or for the care of two or more nonrelated persons requiring or receiving medical, surgical, or nursing attention or services as acute, chronic, convalescent, aged, physically disabled, or crippled or (ii) which is the recipient of reimbursements from third party health insurance programs or prepaid medical service plans. For purposes of this chapter, only the following medical care facility classifications shall be subject to review:

1. General hospitals.
2. Sanitariums.
3. Nursing homes.
4. Intermediate care facilities.
5. Extended care facilities.
6. Mental hospitals.
7. Mental retardation facilities.
8. Psychiatric hospitals and intermediate care facilities established primarily for the medical, psychiatric or psychological treatment and rehabilitation of alcoholics or drug addicts.
9. Specialized centers or clinics or that portion of a physician's office developed for the provision of out-patient or ambulatory surgery, cardiac catheterization, computed tomographic (CT) scanning, gamma knife surgery, lithotripsy, magnetic resonance imaging (MRI), magnetic source imaging (MSI), positron emission tomographic (PET) scanning, radiation therapy, single photon emission computed tomography (SPECT) scanning, or such other specialty services as may be designated by the board by chapter.
10. Rehabilitation hospitals.

For purposes of this chapter, the following medical care facility classifications shall not be subject to review:

1. Any facility of the Department of Mental Health, Mental Retardation and Substance Abuse Services.
2. Any nonhospital substance abuse residential treatment program operated by or contracted primarily for the use of a community services board under the Department of Mental Health, Mental Retardation and Substance Abuse Services Comprehensive Plan.
3. Any physician's office, except that portion of the physician's office which is described in subdivision 9 of the definition of "medical care facility."

"Medical service area" means the geographic territory from which at least 75% of patients come or are expected to come to existing or proposed medical care facilities, the delineation of which is based on such factors as population characteristics, natural geographic boundaries, and

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transportation and trade patterns, and all parts of which are reasonably accessible to existing or proposed medical care facilities.

"Modernization" means the alteration, repair, remodeling, replacement or renovation of an existing medical care facility or any part thereto, including that which is incident to the initial and subsequent installation of equipment in a medical care facility. See definition of "construction."

"Operating expenditure" means any expenditure by or in behalf of a medical care facility which, under generally accepted accounting principles, is properly chargeable as an expense of operation and maintenance and is not a capital expenditure.

"Operator" means any person having designated responsibility and legal authority from the owner to administer and manage a medical care facility. See definition of "owner."

"Other plans" means any plan(s) which is formally adopted by an official state agency or regional health planning agency and which provides for the orderly planning and development of medical care facilities and services and which is not otherwise defined in this chapter.

"Owner" means any person who has legal responsibility and authority to construct, renovate or equip or otherwise control a medical care facility as defined herein.

"Person" means an individual, corporation, partnership, association or any other legal entity, whether governmental or private. Such person may also include the following:

1. The applicant for a certificate of public need;
2. The regional health planning agency for the health planning region in which the proposed project is to be located;
3. Any resident of the geographic area served or to be served by the applicant;
4. Any person who regularly uses health care facilities within the geographic area served or to be served by the applicant;
5. Any facility or health maintenance organization (HMO) established under § 38.2-4300 et seq. of the Code of Virginia which is located in the health planning region in which the project is proposed and which provides services similar to the services of the medical care facility project under review;
6. Third party payors who provide health care insurance or prepaid coverage to 5.0% or more patients in the health planning region in which the project is proposed to be located; and
7. Any agency which reviews or establishes rates for health care facilities.

"Physician's office" means a place, owned or operated by a licensed physician or group of physicians practicing in any legal form whatsoever, which is designed and equipped solely for the provision of fundamental medical care whether diagnostic, therapeutic, rehabilitative, preventive or palliative

to ambulatory patients and which does not participate in cost-based or facility reimbursement from third party health insurance programs or prepaid medical service plans excluding pharmaceuticals and other supplies administered in the office. See definition of "medical care facility."

"Planning district" means a contiguous area within the boundaries established by the Department of Planning and Budget as set forth in § 15.1-1402 of the Code of Virginia.

"Predevelopment site work" means any preliminary activity directed towards preparation of the site prior to the completion of the building foundations. This includes, but is not limited to, soil testing, clearing, grading, extension of utilities and power lines to the site.

"Primary medical care services" means first-contact, whole-person medical and health services delivered by broadly trained, generalist physicians, nurses and other professionals, intended to include, without limitation, obstetrics/gynecology, family practice, internal medicine and pediatrics.

"Progress" means actions which are required in a given period of time to complete a project for which a certificate of public need has been issued. See 12 VAC 5-220-340 or 12 VAC 5-220-450, *Demonstration of Progress*.

"Project" means:

1. The establishment of a medical care facility. See definition of "medical care facility."
2. An increase in the total number of beds or operating rooms in an existing or authorized medical care facility.
3. Relocation at the same site of 10 beds or 10% of the beds, whichever is less, from one existing physical facility to another in any two-year period; however, a hospital shall not be required to obtain a certificate for the use of 10% of its beds as nursing home beds as provided in § 32.1-132 of the Code of Virginia.
4. The introduction into any existing medical care facility of any new nursing home service such as intermediate care facility services, extended care facility services or skilled nursing facility services except when such medical care facility is an existing nursing home as defined in §§ 32.1-12 and 32.1-123 of the Code of Virginia.
5. The introduction into an existing medical care facility of any new cardiac catheterization, computed tomography (CT), gamma knife surgery, lithotripsy, magnetic resonance imaging (MRI), magnetic source imaging (MSI), medical rehabilitation, neonatal special care services, obstetrical services, open heart surgery, positron emission tomographic (PET) scanning, organ or tissue transplant service, radiation therapy, single photon emission computed tomography (SPECT), psychiatric, substance abuse treatment, or such other specialty clinical services as may be designated by the board by regulation, which the facility has never provided or has not provided in the previous 12 months.
6. The conversion of beds in an existing medical care facility to medical rehabilitation beds or psychiatric beds.

7. The addition or replacement by an existing medical care facility of any medical equipment for the provision of cardiac catheterization, computed tomography (CT), gamma knife surgery, lithotripsy, magnetic resonance imaging (MRI), magnetic source imaging (MSI), open heart surgery, positron emission tomographic (PET) scanning, radiation therapy, single photon emission computed tomography (SPECT), or other specialized service designated by the board by regulation, except for the replacement of any medical equipment identified in this part which the commissioner has determined to be an emergency in accordance with 12 VAC 5-220-150.

8. Any capital expenditure of \$1 million or more by or on behalf of a medical care facility which is not defined as reviewable under subdivisions 1 through 7 of this definition, except capital expenditures registered with the commissioner of less than \$2 million that do not involve the expansion of any space in which patient care services are provided, including, but not limited to, expenditures for nurse call systems, materials handling and management information systems, parking lots and garages, child care centers, and laundry services. See definition of "capital expenditure."

"*Public hearing*" means a proceeding conducted by a regional health planning agency at which an applicant for a certificate of public need and members of the public may present oral or written testimony in support or opposition to the application which is the subject of the proceeding and for which a verbatim record is made. See subsection A of 12 VAC 5-220-230.

"*Regional health plan*" means the regional plan adopted by the regional health planning agency board.

"*Regional health planning agency*" means the regional agency, including the regional health planning board, its staff and any component thereof, designated by the Virginia Health Planning Board to perform health planning activities within a health planning region.

"*Schedule for completion*" means a timetable which identifies the major activities required to complete a project as identified by the applicant and which is set forth on the certificate of public need. The timetable is used by the commissioner to evaluate the applicant's progress in completing an approved project.

"*Significant change*" means any alteration, modification or adjustment to a reviewable project for which a certificate of public need has been issued or requested following the public hearing which:

1. Changes the site;
2. Increases the capital expenditure amount authorized by the commissioner on the certificate of public need issued for the project by 10% or more;
3. Changes the service(s) proposed to be offered;
4. Extends the schedule for completion of the project beyond three years (36 months) from the date of certificate issuance or beyond the time period approved by the commissioner at the date of certificate issuance,

whichever is greater. See ~~12 VAC 5-220-390~~ 12 VAC 5-220-440 and ~~12 VAC 5-220-340~~ 12 VAC 5-220-450.

"*Standard review process*" means the process utilized in the review of all certificate of public need requests with the exception of:

1. Certain bed relocation, equipment replacement, and new service introduction projects as specified in 12 VAC 5-220-280;
2. Certain projects which involve an increase in the number of beds in which nursing facility or extended care services are provided as specified in 12 VAC 5-220-325.

"*State Medical Facilities Plan*" means the planning document adopted by the Board of Health which shall include, but not be limited to (i) methodologies for projecting need for medical care facility beds and services; (ii) statistical information on the availability of medical care facilities and services; and (iii) procedures, criteria and standards for review of applications for projects for medical care facilities and services. The most recent applicable State Medical Facilities Plan shall remain in force until any such chapter is amended, modified or repealed by the Board of Health.

"*Virginia Health Planning Board*" means the statewide health planning body established pursuant to § 32.1-122.02 of the Code of Virginia which serves as the analytical and technical resource to the Secretary of Health and Human Resources in matters requiring health analysis and planning.

12 VAC 5-220-20. Authority for regulations.

The Virginia Medical Care Facilities Certificate of Public Need Law, which is codified as §§ 32.1-102.1 through 32.1-102.11 of the Code of Virginia, requires the owners or sponsors of medical care facility projects to secure a certificate of public need from the State Health Commissioner prior to initiating such projects. Sections 32.1-102.2 and 32.1-12 and 32.1-145 of the Code of Virginia direct the Board of Health to promulgate and prescribe such rules and chapters *regulations* as are deemed necessary to effectuate the purposes of this statute.

12 VAC 5-220-40. Administration of chapters.

This chapter is administered by the following:

1. The Board of Health is the governing body of the State Virginia Department of Health. The Board of Health has the authority to promulgate and prescribe such rules and regulations as it deems necessary to effectuate the purposes of the Act.
2. The State Health Commissioner is the executive officer of the State Virginia Department of Health. The commissioner is the designated decision maker in the process of determining public need under the Act.

12 VAC 5-220-70. Application of chapter.

~~These rules and chapters have~~ This chapter has general applicability throughout the Commonwealth. The requirements of the Virginia Administrative Process Act (§ 9-6.14:1 et seq.) of the Code of Virginia apply to their promulgation.

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12 VAC 5-220-110. Requirements for registration of certain capital expenditures of \$1 million or more but less than \$2 million.

At least 30 days before any person contracts to make or is otherwise legally obligated to make a capital expenditure by or on behalf of a medical care facility that is \$1 million or more but is less than \$2 million and does not involve the expansion of any space in which patient care services are provided, including, but not limited to, expenditures for nurse call systems, materials handling and management information systems, parking lots and garages, child care centers, and laundry services, and has not been previously authorized by the commissioner, the owner of any medical care facility as defined in these chapters *this chapter*, physician's office or specialized center or clinic shall register in writing such expenditure with the commissioner. The format for registration shall include information concerning the purpose of such expenditure and projected impact that the expenditure will have upon the charges for services. For purposes of registration, the owner shall include any person making the affected capital expenditure. See definition of "project."

12 VAC 5-220-140. Requirements for health maintenance organizations (HMO).

An HMO must obtain a certificate of public need prior to initiating a project. Such HMO must also adhere to the requirements for the acquisition of medical care facilities if appropriate. See definition of "project" and ~~12 VAC 5-220-120~~ 12 VAC 5-220-110.

12 VAC 5-220-150. Requirements for emergency replacement of equipment; notification of decision.

The commissioner shall consider requests for emergency replacement of medical equipment as identified in Part I of this chapter. Such an emergency replacement is not a "project" of a medical care facility requiring a certificate of public need. To request authorization for such replacement, the owner of such equipment shall submit information to the commissioner to demonstrate that (i) the equipment is inoperable as a result of a mechanical failure, Act of God, or other reason which may not be attributed to the owner and the repair of such equipment is not practical or feasible; or (ii) the immediate replacement of the medical equipment is necessary to maintain an essential clinical health service or to assure the safety of patients or staff.

For purposes of this section, "inoperable" means that the equipment cannot be put into use, operation, or practice to perform the diagnostic or therapeutic clinical health service for which it was intended.

Within 15 days of the receipt of such requests the commissioner will notify the owner in the form of a letter of the decision to deny or authorize the emergency replacement of equipment.

PART IV. DETERMINATION OF PUBLIC NEED (REQUIRED CONSIDERATIONS).

PART V. STANDARD REVIEW PROCESS.

12 VAC 5-220-200. One hundred twenty-day review cycle.

The department shall review the following groups of completed applications in accordance with the following 120-day scheduled review cycles and the following descriptions of projects within each group, except as provided for in 12 VAC 5-220-220.

BATCH GROUP	GENERAL DESCRIPTION	REVIEW CYCLE	
		Begins	Ends
A	General Hospitals/ Obstetrical Services/ Neonatal Special Care Services	Feb 10	Jun 10
		Aug 10	Dec 8
B	Open Heart Surgery/Cardiac Catheterization/Ambulatory Surgery Centers/ Operating Room Additions/Transplant Services	Mar 10	Jul 8
		Sep 10	Jan 8
C	Psychiatric Facilities/ Substance Abuse Treatment/ Mental Retardation Facilities	Apr 10	Aug 8
		Oct 10	Feb 7
D	Diagnostic Imaging Facilities/ Services	May 10	Sep 7
		Nov 10	Mar 10
E	Medical Rehabilitation Beds/ Services	Jun 10	Oct 8
		Dec 10	Apr 9
F	Selected Therapeutic Facilities/ Services	Jul 10	Nov 7
		Jan 10	May 10
G	Nursing Home Beds/Services <i>Nursing Home Beds at Retirement Communities/ Bed Relocations/Miscellaneous Expenditures by Nursing Homes</i>	Jan. 10	May 10
		Mar. 10	July 8
		May 10	Sep. 7
		July 10	Nov. 7
		Sep. 10	Jan. 8
		Nov. 10	Mar. 10
		Jan 10	May 10
Jul 10	Nov 7		

Batch Group A includes:

1. The establishment of a general hospital.
2. An increase in the total number of general acute care beds in an existing or authorized general hospital.
3. The relocation at the same site of 10 general hospital beds or 10% of the general hospital beds of a medical care facility, whichever is less, from one existing physical facility to any other in any two-year period.
4. The introduction into an existing medical care facility of any new neonatal special care or obstetrical services

which the facility has not provided in the previous 12 months.

5. Any capital expenditure of \$1 million or more, not defined as a project category included in Batch Groups B through G, by or in behalf of a general hospital.

Batch Group B includes:

1. The establishment of a specialized center, clinic, or portion of a physician's office developed for the provision of outpatient or ambulatory surgery or cardiac catheterization services.
2. An increase in the total number of operating rooms in an existing medical care facility or establishment of operating rooms in a new facility.
3. The introduction into an existing medical care facility of any new cardiac catheterization, open heart surgery, or organ or tissue transplant services which the facility has not provided in the previous 12 months.
4. The addition or replacement by an existing medical care facility of any medical equipment for the provision of cardiac catheterization services.
5. Any capital expenditure of \$1 million or more, not defined as a project category in Batch Group A or Batch Groups C through G, by or in behalf of a specialized center, clinic, or portion of a physician's office developed for the provision of outpatient or ambulatory surgery or cardiac catheterization services.
6. Any capital expenditure of \$1 million or more, not defined as a project category in Batch Group A or Batch Groups C through G, by or in behalf of a medical care facility, which is primarily related to the provision of surgery, cardiac catheterization, open heart surgery, or organ or tissue transplant services.

Batch Group C includes:

1. The establishment of a mental hospital, psychiatric hospital, intermediate care facility established primarily for the medical, psychiatric or psychological treatment and rehabilitation of alcoholics or drug addicts, or mental retardation facility.
2. A increase in the total number of beds in an existing or authorized mental hospital, psychiatric hospital, intermediate care facility established primarily for the medical, psychiatric or psychological treatment and rehabilitation of alcoholics or drug addicts, or mental retardation facility.
3. An increase in the total number of mental hospital, psychiatric hospital, substance abuse treatment and rehabilitation, or mental retardation beds in an existing or authorized medical care facility which is not a dedicated mental hospital, psychiatric hospital, intermediate care facility established primarily for the medical, psychiatric or psychological treatment and rehabilitation of alcoholics or drug addicts, or mental retardation facility.
4. The relocation at the same site of 10 mental hospital, psychiatric hospital, substance abuse treatment and rehabilitation, or mental retardation beds or 10% of the

mental hospital, psychiatric hospital, substance abuse treatment and rehabilitation, or mental retardation beds of a medical care facility, whichever is less, from one existing physical facility to another in any two-year period.

5. The introduction into an existing medical care facility of any new psychiatric or substance abuse treatment service which the facility has not provided in the previous 12 months.

6. Any capital expenditure of \$1 million or more, not defined as a project category in Batch Groups A and B or Batch Groups D through G, by or in behalf of a mental hospital, psychiatric hospital, intermediate care facility established primarily for the medical, psychiatric or psychological treatment and rehabilitation of alcoholics or drug addicts, or mental retardation facility.

7. Any capital expenditure of \$1 million or more, not defined as a project category in Batch Groups A and B or Batch Groups D through G, by or in behalf of a medical care facility, which is primarily related to the provision of mental health, psychiatric, substance abuse treatment or rehabilitation, or mental retardation services.

Batch Group D includes:

1. The establishment of a specialized center, clinic, or that portion of a physician's office developed for the provision of computed tomographic (CT) scanning, magnetic resonance imaging (MRI), magnetic source imaging (MSI), positron emission tomographic (PET) scanning, or single photon emission computed tomography (SPECT).
2. The introduction into an existing medical care facility of any new computed tomography (CT), magnetic resonance imaging (MRI), magnetic source imaging (MSI), positron emission tomographic (PET) scanning, or single photon emission computed tomography (SPECT) services which the facility has not provided in the previous 12 months.
3. The addition or replacement by an existing medical care facility of any equipment for the provision of computed tomography (CT), magnetic resonance imaging (MRI), magnetic source imaging (MSI), positron emission tomographic (PET) scanning, or single photon emission computed tomography (SPECT).
4. Any capital expenditure of \$1 million or more, not defined as a project category in Batch Groups A through C or Batch Groups E through G, by or in behalf of a specialized center, clinic, or that portion of a physician's office developed for the provision of computed tomographic (CT) scanning, magnetic resonance imaging (MRI), magnetic source imaging (MSI), positron emission tomographic (PET) scanning, or single photon emission computed tomography (SPECT).
5. Any capital expenditure of \$1 million or more, not defined as a project category in Batch Groups A through C or Batch Groups E through G, by or in behalf of a medical care facility, which is primarily related to the provision of computed tomographic (CT) scanning,

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magnetic resonance imaging (MRI), magnetic source imaging (MSI), positron emission tomographic (PET) scanning, or single photon emission computed tomography (SPECT).

Batch Group E includes:

1. The establishment of a medical rehabilitation hospital.
2. An increase in the total number of beds in an existing or authorized medical rehabilitation hospital.
3. An increase in the total number of medical rehabilitation beds in an existing or authorized medical care facility which is not a dedicated medical rehabilitation hospital.
4. The relocation at the same site of 10 medical rehabilitation beds or 10% of the medical rehabilitation beds of a medical care facility, whichever is less, from one existing physical facility to another in any two-year period.
5. The introduction into an existing medical care facility of any new medical rehabilitation service which the facility has not provided in the previous 12 months.
6. Any capital expenditure of \$1 million or more, not defined as a project category in Batch Groups A through D or Batch Groups F and G, by or in behalf of a medical rehabilitation hospital.
7. Any capital expenditure of \$1 million or more, not defined as a project category in Batch Groups A through D or Batch Groups F and G, by or in behalf of a medical care facility, which is primarily related to the provision of medical rehabilitation services.

Batch Group F includes:

1. The establishment of a specialized center, clinic, or that portion of a physician's office developed for the provision of gamma knife surgery, lithotripsy, or radiation therapy.
2. Introduction into an existing medical care facility of any new gamma knife surgery, lithotripsy, or radiation therapy services which the facility has never provided or has not provided in the previous 12 months.
3. The addition or replacement by an existing medical care facility of any medical equipment for the provision of gamma knife surgery, lithotripsy, or radiation therapy.
4. Any capital expenditure of \$1 million or more, not defined as a project in Batch Groups A through E or Batch Group G, by or in behalf of a specialized center, clinic, or that portion of a physician's office developed for the provision of gamma knife surgery, lithotripsy, or radiation therapy.
5. Any capital expenditure of \$1 million or more, not defined as a project in Batch Groups A through E or Batch Group G, by or in behalf of a medical care facility, which is primarily related to the provision of gamma knife surgery, lithotripsy, or radiation therapy.

Batch Group G includes:

1. The establishment of a nursing home, intermediate care facility, or extended care facility *at a continuing care retirement community by a continuing care provider registered with the State Corporation Commission pursuant to Chapter 49 (§ 38.2-4900 et seq.) of Title 38.2 of the Code of Virginia.*

2. An increase in the total number of beds in an existing or authorized nursing home, intermediate care facility, or extended care facility *at a continuing care retirement community by a continuing care provider registered with the State Corporation Commission pursuant to Chapter 49 (§ 38.2-4900 et seq.) of Title 38.2 of the Code of Virginia.*

~~3. An increase in the total number of nursing home beds, intermediate care facility beds, or extended care facility beds in an existing or authorized medical care facility which is not a dedicated nursing home, intermediate care facility, or extended care facility.~~

4. ~~3.~~ The relocation at the same site of 10 nursing home, intermediate care facility, or extended care facility beds or 10% of the nursing home, intermediate care facility, or extended care facility beds of a medical care facility, whichever is less, from one physical facility to another in any two-year period, *when the capital expenditure for such relocation is \$1 million or more.*

~~5. The introduction into any existing medical care facility of any new nursing home service such as intermediate care facility services, extended care facility services or skilled nursing facility services except when such medical care facility is an existing nursing home as defined in § 32.1-12 and 32.1-1453 of the Code of Virginia.~~

~~6.~~ 4. Any capital expenditure of \$1 million or more, not defined as a project category in Batch Groups A through F, by or in behalf of a nursing home, intermediate care facility, or extended care facility, *which does not increase the total number of beds of the facility.*

~~7.~~ 5. Any capital expenditure of \$1 million or more, not defined as a project category in Batch Groups A through F, by or in behalf of a medical care facility, which is primarily related to the provision of nursing home, intermediate care, or extended care services, *and does not increase the number of beds of the facility.*

12 VAC 5-220-210. Requests for application (RFA).

The commissioner may request the submission of applications for his consideration which address a specific need for services and facilities as identified in the State Medical Facilities Plan. The department shall give notice of such RFA in a newspaper of general circulation in the locality or the planning district where the specific services or facility is requested. Such notice shall be published at least 120 days prior to the first day of the appropriate review cycle for the type of project being requested. A written copy of an RFA shall also be available upon request from the department and the regional health planning agency in the appropriate geographic area. The process for adoption of an RFA by the commissioner *for projects other than nursing home bed*

projects (see 12 VAC 5-220-325) shall be set forth in the State Medical Facilities Plan.

12 VAC 5-220-230. Review of complete application.

A. Review cycle. At the close of the work day on the 10th day of the month, the department shall provide written notification to applicants specifying the acceptance date and review schedule of completed applications including a proposed date for any informal fact-finding conference that may be held. The regional health planning agency shall conduct no more than two meetings, one of which must be a public hearing conducted by the regional health planning agency board or a subcommittee of the board and provide applicants with an opportunity, prior to the vote, to respond to any comments made about the project by the regional health planning agency staff, any information in a staff report, or comments by those voting in completing its review and recommendation by the 60th day of the cycle. By the 70th day of the review cycle, the department shall complete its review and recommendation of an application and transmit the same to the applicant(s) and other appropriate persons. Such notification shall also include the proposed date, time and place of any informal fact-finding conference.

An informal fact-finding conference shall be held when (i) determined necessary by the department or (ii) requested by any person opposed to a project seeking to demonstrate good cause at the conference. Any person seeking to demonstrate good cause shall file, no later than seven days prior to the conference, written notification with the commissioner, applicant(s) and other competing applicants, and regional health planning agency stating the grounds for good cause.

For purposes of this section, "good cause" means that (i) there is significant, relevant information not previously presented at and not available at the time of the public hearing, (ii) there have been significant changes in factors or circumstances relating to the application subsequent to the public hearing or (iii) there is a substantial material mistake of fact or law in the department staff's report on the application or in the report submitted by the regional health planning agency. See § 9-6.14:11 of the Code of Virginia.

The commissioner shall render a final determination by the 120th day of the review cycle. Unless agreed to by the applicant and, when applicable, the parties to any informal fact-finding conference held, the review schedule shall not be extended.

B. Regional health planning agency required notifications. Upon notification of the acceptance date of a complete application as set forth in subsection A of this section, the regional health planning agency shall provide written notification of its review schedule to the applicant. The regional health planning agency shall notify health care providers and specifically identifiable consumer groups who may be affected by the proposed project directly by mail and shall also give notice of the public hearing in a newspaper of general circulation in such county or city wherein a project is proposed or a contiguous county or city at least nine days prior to such public hearing. Such notification by the regional health planning agency shall include: (i) the date and location of the public hearing which shall be conducted on the

application except as otherwise provided in ~~these rules and chapters~~ *this chapter*, in the county or city wherein a project is proposed or a contiguous county or city and (ii) the date, time and place the final recommendation of the regional health planning agency shall be made. The regional health planning agency shall maintain a verbatim record which may be a tape recording of the public hearing. Such public hearing record shall be maintained for at least a one-year time period following the final decision on a certificate of public need application. See definition of "public hearing."

C. Ex parte contact. After commencement of a public hearing and before a final decision is made, there shall be no ex parte contacts between the State Health Commissioner and any person acting on behalf of the applicant or holder of a certificate or any person opposed to the issuance or in favor of revocation of a certificate of public need, unless written notification has been provided. See definition of "ex parte."

12 VAC 5-220-250. Amendment to an application.

The applicant shall have the right to amend an application at any time. Any amendment which is made to an application following the public hearing and prior to the issuance of a certificate unless otherwise specified in ~~these chapters~~ *this chapter* shall constitute a new application and shall be subject to the review requirements set forth in Part V of ~~the chapters~~ *this chapter*. If such amendment is made subsequent to the issuance of a certificate of public need, it shall be reviewed in accordance with 12 VAC 5-220-130.

12 VAC 5-220-270. Action on an application.

A. Commissioner's responsibility. Decisions as to approval or disapproval of applications or a portion thereof for certificates of public need shall be rendered by the commissioner. Any decision to issue or approve the issuance of a certificate shall be consistent with the most recent applicable provisions of the State Medical Facilities Plan. However, if the commissioner finds, upon presentation of appropriate evidence, that the provisions of either such plan are inaccurate, outdated, inadequate or otherwise inapplicable, the commissioner, consistent with such finding, may issue or approve the issuance of a certificate and shall initiate procedures to make appropriate amendments to such plan.

Conditions of approval. The commissioner may condition the approval of an application for a project (i) on the agreement by the applicant to provide an acceptable level of free care or care at a reduced rate to indigents, or (ii) on the agreement of the applicant to provide care to persons with special needs, or (iii) upon the agreement of the applicant to facilitate the development and operation of primary medical care services in designated medically underserved areas of the applicant's service area. The terms of such agreements shall be specified in writing prior to the commissioner's decision to approve a project. Any person willfully refusing, failing or neglecting to honor such agreement shall be subject to a civil penalty of \$100 per violation per day from the date of receipt from the department of written notice of noncompliance until the date of compliance. Upon information and belief that a person has failed to honor such agreement in accordance with this provision, the department

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shall notify the person in writing and 15 days shall be provided for response in writing including a plan for immediate correction. In the absence of an adequate response or necessary compliance or both, a judicial action shall be initiated in accordance with the provisions of § 32.1-27 of the Code of Virginia.

B. Notification process-extension of review time. The commissioner shall make a final determination on an application for a certificate of public need and provide written notification detailing the reasons for such determination to the applicant with a copy to the regional health planning agency by the 120th day of the review cycle unless an extension is agreed to by the applicant and an informal fact-finding conference described in 12 VAC 5-220-230 is held. When an informal fact-finding conference is held, the 120-day review cycle shall not be extended unless agreed to by the parties to the conference. Such written notification shall also reference the factors and bases considered in making a decision on the application and, if applicable, the remedies available for appeal of such decision and the progress reporting requirements. The commissioner may approve a portion of a project provided the portion to be approved is agreed to by the applicant following consultation, which may be subject to the ex parte provision of these chapters *this chapter*, between the commissioner and the applicant.

PART VII.

NURSING HOME BED REVIEW PROCESS.

12 VAC 5-220-325. Applicability.

The following categories of projects as determined by the State Health Commissioner shall be subject to the nursing home bed review process:

1. The establishment of a nursing home, intermediate care facility, or extended care facility, except when such nursing home, intermediate care facility, or extended care facility is proposed by a continuing care retirement community and the project is sponsored by a continuing care provider registered with the State Corporation Commission pursuant to Chapter 49 (§ 38.2-4900 et seq.) of Title 38.2 of the Code of Virginia.
2. An increase in the total number of beds in an existing or authorized nursing home, intermediate care facility, or extended care facility, except when the nursing home, intermediate care facility, or extended care facility is a component of a continuing care retirement community and the project is sponsored by a continuing care provider registered with the State Corporation Commission pursuant to Chapter 49 (§ 38.2-4900 et seq.) of Title 38.2 of the Code of Virginia.
3. An increase in the total number of nursing home beds, intermediate care facility beds, or extended care facility beds in an existing or authorized medical care facility which is not a dedicated nursing home, intermediate care facility, or extended care facility.
4. The introduction into any existing medical care facility of any new nursing home service such as intermediate care facility services, extended care facility services or skilled nursing facility services except when such

medical care facility is an existing nursing home as defined in § 32.1-123 of the Code of Virginia.

12 VAC 5-220-335. Request for Applications (RFA).

A. Frequency. The commissioner shall periodically issue, in consultation and cooperation with the Department of Medical Assistance Services, a Request for Applications (RFA) from project applicants proposing projects which would result in an increase in the number of beds in which nursing facility or extended care services are provided. An RFA shall be issued at least annually. (See 12 VAC 5-220-320)

B. Issuance. At least 60 days prior to the issuance of a RFA, the board shall publish the proposed RFA in the Virginia Register for public comment together with an explanation of (i) the regulatory basis for the planning district bed needs set forth in the proposed RFA and (ii) the rationale for the RFA's planning district designations. Any person objecting to the contents of the proposed RFA may notify, within 14 days of the publication, the board and the commissioner of his objection and the objection's regulatory basis. The commissioner shall prepare, and deliver by registered mail, a written response to each such objection within two weeks of the date of receiving the objection. The objector may file a rebuttal to the commissioner's response in writing within five days of receiving the commissioner's response. If objections are received, the board shall, after considering the provisions of the RFA, any objections, the commissioner's responses, and if filed, any written rebuttals of the commissioner's responses, hold a public hearing to receive comments on the specific RFA. Prior to making a decision on the RFA, the commissioner shall consider any recommendations made by the board.

C. Content. A RFA from project applicants proposing projects which would result in an increase in the number of beds in which nursing facility or extended care services are provided shall be based on analyses of the need for increases in the nursing home bed supply in each of Virginia's planning districts in accordance with standards included in the State Medical Facilities Plan. Such RFAs shall also include a schedule for the review of applications submitted in response to the RFA which allows for at least 120 days between the day on which the RFA is issued and the first day of the review cycle for such applications.

12 VAC 5-220-345. Limitation on acceptance of nursing home bed applications.

Applications for projects which would result in an increase in the number of beds in which nursing facility or extended care services are provided (see 12 VAC 5-22-325) shall only be accepted for review when properly filed in response to a RFA. Furthermore, the commissioner shall only accept for review applications which propose projects located in the planning districts from which applications are requested in the RFA and propose authorization of a number of new beds in which nursing facility or extended care services are provided which is less than or equal to the total number of beds identified as needed for the planning district in which the project will be located.

12 VAC 5-220-355. Application forms.

A. *Letter of intent.* A nursing home bed applicant shall file a letter of intent with the commissioner to request appropriate application forms, and submit a copy of that letter to the appropriate regional health planning agency by the letter of intent deadline specified in the RFA. The letter shall identify the owner, the type of project for which an application is requested, and the proposed scope (size) and location of the proposed project. The department shall transmit application forms to the applicant within seven days of the receipt of the letter of intent. A letter of intent filed with the department shall be considered void if an application is not filed for the project by the application deadline specified in the RFA.

B. *Application fees.* The department shall collect application fees for applications that request a nursing home bed certificate of public need. The fee required for an application is the lesser of 1.0% of the proposed capital expenditure for the project or \$10,000. No application will be deemed to be complete for review until the required application fee is paid.

C. *Filing application forms.* Applications must be submitted to the department and the appropriate regional health planning agency by the application filing deadline specified in the RFA. All applications including the required data and information shall be prepared in triplicate; two copies to be submitted to the department; and one copy to be submitted to the appropriate regional health planning agency. No application shall be deemed to have been submitted until required copies have been received by the department and the appropriate regional health planning agency.

12 VAC 5-220-365. Review for completeness.

The applicant shall be notified by the department within 15 days following receipt of the application if additional information is required to complete the application or the application is complete as submitted. No application shall be reviewed until the department has determined that it is complete. To be complete, all questions must be answered to the satisfaction of the commissioner and all requested documents supplied, when applicable and the application fee submitted. Additional information required to complete an application shall be submitted to the department and the appropriate regional health planning agency at least five days prior to the first day of the review cycle, as specified in the RFA, to be considered in the review cycle.

12 VAC 5-220-375. Consideration of applications.

Nursing home bed applications proposed for the same planning district shall be considered as competing applications by the commissioner. The commissioner shall determine whether an application is competing and provide written notification to the competing applicants and the regional health planning agency.

12 VAC 5-220-385. Review of complete application.

A. *Review cycle.* The department shall provide written notification to applicants specifying the acceptance date and review schedule of completed applications including a proposed date for any informal fact-finding conference that may be held. The regional health planning agency shall

conduct no more than two meetings, one of which must be a public hearing conducted by the regional health planning agency board or a subcommittee of the board and provide applicants with an opportunity, prior to the vote, to respond to any comments made about the project by the regional health planning agency staff, any information in a staff report, or comments by those voting in completing its review and recommendation by the 60th day of the cycle. By the 70th day of the review cycle, the department shall complete its review and recommendation of an application and transmit the same to the applicant or applicants and other appropriate persons. Such notification shall also include the proposed date, time and place of any informal fact-finding conference.

An informal fact-finding conference shall be held when (i) determined necessary by the department or (ii) requested by any person opposed to a project seeking to demonstrate good cause at the conference. Any person seeking to demonstrate good cause shall file, no later than seven days prior to the conference, written notification with the commissioner, applicant or applicants and other competing applicants, and regional health planning agency stating the grounds for good cause.

For purposes of this section, "good cause" means that (i) there is significant, relevant information not previously presented at and not available at the time of the public hearing, (ii) there have been significant changes in factors or circumstances relating to the application subsequent to the public hearing, or (iii) there is a substantial material mistake of fact or law in the department staff's report on the application or in the report submitted by the regional health planning agency. (See § 9-6.14:11 of the Code of Virginia.)

The commissioner shall render a final determination by the 120th day of the review cycle. Unless agreed to by the applicant or applicants and, when applicable, the parties to any informal fact-finding conference held, the review schedule shall not be extended.

B. *Regional health planning agency required notifications.* Upon notification of the acceptance date of a complete application as set forth in subsection A of this section, the regional health planning agency shall provide written notification of its review schedule to the applicant. The regional health planning agency shall notify health care providers and specifically identifiable consumer groups who may be affected by the proposed project directly by mail and shall also give notice of the public hearing in a newspaper of general circulation in such county or city wherein a project is proposed or a contiguous county or city at least nine days prior to such public hearing. Such notification by the regional health planning agency shall include: (i) the date and location of the public hearing which shall be conducted on the application except as otherwise provided in this chapter, in the county or city wherein a project is proposed or a contiguous county or city; and (ii) the date, time and place the final recommendation of the regional health planning agency shall be made. The regional health planning agency shall maintain a verbatim record which may be a tape recording of the public hearing. Such public hearing record shall be maintained for at least a one-year time period following the final decision on a certificate of public need application. See definition of "public hearing."

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Ex parte contact. After commencement of a public hearing and before a final decision is made, there shall be no *ex parte* contacts between the State Health Commissioner and any person acting on behalf of the applicant or holder of a certificate or any person opposed to the issuance or in favor of revocation of a certificate of public need, unless written notification has been provided. See definition of "*ex parte*."

12 VAC 5-220-395. Participation by other persons.

Any person affected by a proposed project under review may directly submit written opinions, data and other information to the appropriate regional health planning agency and the commissioner for consideration prior to their final action.

12 VAC 5-220-405. Amendment to an application.

The applicant shall have the right to amend an application at any time. Any amendment which is made to an application following the public hearing and prior to the issuance of a certificate unless otherwise specified in this chapter shall constitute a new application and shall be subject to the review requirements set forth in this part of this chapter. If such amendment is made subsequent to the issuance of a certificate of public need, it shall be reviewed in accordance with 12 VAC 5-220-130.

12 VAC 5-220-410. Withdrawal of an application.

The applicant shall have the right to withdraw an application from consideration at any time without prejudice by written notification to the commissioner.

12 VAC 5-220-420. Action on an application.

A. *Commission's responsibility.* Decisions as to approval or disapproval of applications or a portion thereof for certificates of public need shall be rendered by the commissioner. Any decision to issue or approve the issuance of a certificate shall be consistent with the most recent applicable provisions of the State Medical Facilities Plan. However, if the commissioner finds, upon presentation of appropriate evidence, that the provisions of such plan are inaccurate, outdated, inadequate or otherwise inapplicable, the commissioner, consistent with such finding, may issue or approve the issuance of a certificate and shall initiate procedures to make appropriate amendments to such plan.

The commissioner may condition the approval of an application for a project (i) on the agreement by the applicant to provide an acceptable level of free care or care at a reduced rate to indigents or, (ii) on the agreement of the applicant to provide care to persons with special needs, or (iii) upon the agreement of the applicant to facilitate the development and operation of primary medical care services in designated medically underserved areas of the applicant's service area. The terms of such agreements shall be specified in writing prior to the commissioner's decision to approve a project. Any person willfully refusing, failing or neglecting to honor such agreements shall be subject to a civil penalty of \$100 per violation per day from the date of receipt from the department of written notice of noncompliance until the date of compliance. Upon information and belief that a person has failed to honor such agreement in accordance with this provision, the department

shall notify the person in writing and 15 days shall be provided for a response in writing including a plan for immediate correction. In the absence of an adequate response or necessary compliance or both, a judicial action shall be initiated in accordance with the provisions of § 32.1-27 of the Code of Virginia.

B. *Notification process - extension of review time.* The commissioner shall make a final determination on an application for a certificate of public need and provide written notification detailing the reasons for such determination to the applicant with a copy to the regional health planning agency by the 120th day of the review cycle unless an extension is agreed to by the applicant and an informal fact-finding conference described in 12 VAC 5-220-380 is held. When an informal fact-finding conference is held, the 120-day review cycle shall not be extended unless agreed to by the parties to the conference. Such written notification shall also reference the factors and bases considered in making a decision on the application and, if applicable, the remedies available for appeal of such decision and the progress reporting requirements. The commissioner may approve a portion of a project provided the portion to be approved is agreed to by the applicant following consultation, which may be subject to the *ex parte* provision of this chapter, between the commissioner and the applicant.

PART VIII.

DURATION, EXTENSION, AND REVOCATION OF CERTIFICATES.

~~12 VAC 5-220-320.~~ 12 VAC 5-220-430. Duration.

A certificate of public need shall be valid for a period of 12 months and shall not be transferrable from the certificate holder to any other legal entity regardless of the relationship, under any circumstances.

~~12 VAC 5-220-330.~~ 12 VAC 5-220-440. Extension.

A certificate of public need is valid for a 12-month period and may be extended by the commissioner for additional time periods which shall be specified at the time of the extension.

A. *Basis for certificate extension within 24 months.* An extension of a certificate of public need beyond the expiration date may be granted by the commissioner by submission of evidence to demonstrate that progress is being made towards the completion of the authorized project as defined in ~~12 VAC 5-220-340~~ 12 VAC 5-220-450. Such request shall be submitted to the commissioner in writing with a copy to the appropriate regional health planning agency at least 30 days prior to the expiration date of the certificate or period of extension.

B. *Basis for certificate extension beyond 24 months.* An extension of a certificate of public need beyond the two years following the date of issuance may be granted by the commissioner when substantial and continuing progress is being made towards the development of the authorized project. In making the determination, the commissioner shall consider whether: (i) any delays in development of the project have been caused by events beyond the control of the owner; (ii) substantial delays in development of the project may not be attributed to the owner; and (iii) a schedule of completion has been provided and determined to be

reasonable. Such request shall be submitted in writing with a copy to the appropriate regional health planning agency at least 30 days prior to the expiration date of the certificate of period of extension. The commissioner shall not grant an extension to the schedule for completion of a project beyond three years (36 months) of the date of certificate issuance or beyond the time period approved at the date of certificate issuance, whichever is greater, unless such extension is authorized in accordance with the provisions for a significant change. See 12 VAC 5-220-130, *Significant change limitation*.

C. Basis for indefinite extension. A certificate shall be considered for an indefinite extension by the commissioner when satisfactory completion of a project has been demonstrated as set forth in subsection C of ~~12 VAC 5-220-340~~ 12 VAC 5-220-450.

D. Regional health planning agency review. All requests for an extension of a certificate of public need shall be reviewed by the appropriate regional health planning agency within 30 days of receipt by the department and the regional health planning agency. The recommendations on the request by that agency shall be forwarded to the commissioner who shall act upon the progress report within 35 days of receipt by the department and the regional health planning agency. Failure of the regional health planning agency to notify the commissioner within the time frame prescribed shall constitute a recommendation of approval by such regional health planning agency.

E. Notification of decision. Extension of a certificate of public need by the commissioner shall be made in the form of a letter from the commissioner with a copy to the appropriate regional health planning agency and shall become part of the official project file.

~~12 VAC 5-220-340.~~ 12 VAC 5-220-450. **Demonstration of progress.**

The applicant shall provide reports to demonstrate progress made towards the implementation of an authorized project in accordance with the schedule of development which shall be included in the application. Such progress reports shall be filed in accordance with the following intervals and contain such evidence as prescribed at each interval:

A. Twelve months following issuance. Documentation that shows: (i) proof of ownership or control of site; (ii) the site meets all zoning and land use requirements; (iii) architectural planning has been initiated; (iv) preliminary architectural drawings and working drawings have been submitted to appropriate state reviewing agencies and the State Fire Marshal; (v) construction financing has been completed or will be completed within two months and (vi) purchase orders or lease agreements exist for equipment and new service projects.

B. Twenty-four months following issuance. Documentation that shows that (i) all required financing is completed; (ii) preconstruction site work has been initiated; (iii) construction bids have been advertised and the construction contractor has been selected; (iv) the construction contract has been awarded and (v) construction has been initiated.

C. Upon completion of a project. Any documentation not previously provided which: (i) shows the final costs of the project, including the method(s) of financing; and (ii) shows that the project has been completed as proposed in accordance with the application originally submitted, including any subsequent approved changes. See "completion" as defined in 12 VAC 5-220-10.

~~12 VAC 5-220-350.~~ 12 VAC 5-220-460. **Revocation of certificate.**

A. Lack of progress. Failure of any project to meet the progress requirements stated in ~~12 VAC 5-220-340~~ 12 VAC 5-220-450 shall be cause for certificate revocation, unless the commissioner determines sufficient justification exists to permit variance, considering factors enumerated in ~~12 VAC 5-220-340~~ 12 VAC 5-220-450.

B. Failure to report progress. Failure of an applicant to file progress reports on an approved project in accordance with ~~12 VAC 5-220-340~~ 12 VAC 5-220-450 shall be cause for revocation, unless, due to extenuating circumstances, the commissioner, in his sole discretion, extends the certificate, in accordance with subsection B of ~~12 VAC 5-220-339~~ 12 VAC 5-220-440.

C. Unapproved changes. Exceeding a capital expenditure amount not authorized by the commissioner or not consistent with the schedule of completion shall be cause for revocation. See definition of "significant change" and "schedule of completion."

D. Failure to initiate construction. Failure to initiate construction of the project within two years following the date of issuance of the certificate of public need shall be cause for revocation, unless due to extenuating circumstances the commissioner extends the certificate, in accordance with subsection B of ~~12 VAC 5-220-339~~ 12 VAC 5-220-440.

E. Misrepresentation. Upon determination that an applicant has knowingly misrepresented or knowingly withheld relevant data or information prior to issuance of a certificate of public need, the commissioner may revoke said certificate.

F. Noncompliance with assurances. Failure to comply with the assurances or intentions set forth in the application or written assurances provided at the time of issuance of a certificate of public need shall be cause for revocation.

PART VIII IX. APPEALS.

~~12 VAC 5-220-360.~~ 12 VAC 5-220-470. **Court review.**

A. Appeal to circuit court. Appeals to a circuit court shall be governed by applicable provisions of Virginia's Administrative Process Act, § 9-6.14:15 et seq. of the Code of Virginia.

Any applicant aggrieved by a final administrative decision on its application for a certificate, any third party payor providing health care insurance or prepaid coverage to 5.0% or more of the patients in the applicant's service area, a regional health planning agency operating in the applicant's service area or any person showing good cause or any person issued a certificate aggrieved by a final administrative decision to revoke said certificate, within 30 days after the decision, may obtain a review, as provided in § 9-6.14:17 of

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the Code of Virginia by the circuit court of the county or city where the project is intended to be or was constructed, located or undertaken. Notwithstanding the provisions of § 9-6.14:16 of the Administrative Process Act, no other person may obtain such review.

B. Designation of judge. The judge of the court referred to in subsection A of this section shall be designated by the Chief Justice of the Supreme Court from a circuit other than the circuit where the project is or will be under construction, located or undertaken.

C. Court review procedures. Within five days after the receipt of notice of appeal, the department shall transmit to the appropriate court all of the original papers pertaining to the matter to be reviewed. The matter shall thereupon be reviewed by the court as promptly as circumstances will reasonably permit. The court review shall be upon the record so transmitted. The court may request and receive such additional evidence as it deems necessary in order to make a proper disposition of the appeal. The court shall take due account of the presumption of official regularity and the experience and specialized competence of the commissioner. The court may enter such orders pending the completion of the proceedings as are deemed necessary or proper. Upon conclusion of review, the court may affirm, vacate or modify the final administrative decision.

D. Further appeal. Any party to the proceeding may appeal the decision of the circuit court in the same manner as appeals are taken and as provided by law.

PART IX X. SANCTIONS.

~~12 VAC 5-220-370. 12 VAC 5-220-480. Violation of rules and chapters regulations.~~

Commencing any project without a certificate required by this chapter shall constitute grounds for refusing to issue a license for such project.

~~12 VAC 5-220-380. 12 VAC 5-220-490. Injunctive relief.~~

On petition of the commissioner, the Board of Health or the Attorney General, the circuit court of the county or city where a project is under construction or is intended to be constructed, located or undertaken shall have jurisdiction to enjoin any project which is constructed, undertaken or commenced without a certificate or to enjoin the admission of patients to the project or to enjoin the provision of services through the project.

PART X XI. OTHER.

~~12 VAC 5-220-390. Certificate of public need moratorium. 12 VAC 5-220-500. Exemption of state home for aged and infirm veterans.~~

~~Notwithstanding any law to the contrary, the commissioner shall not approve, authorize or accept applications for the issuance of any certificate of public need pursuant to the chapters for a medical care facility project which would increase the number of beds in which nursing facility or extended care services are provided from the effective date of the chapters through June 30, 1995. However, the~~

~~commissioner may approve or authorize the issuance of a certificate of public need for the following projects:~~

~~1. The renovation or replacement on site of a nursing home, intermediate care or extended care facility or any portion thereof or replacement off-site of an existing facility at a location within the same city or county and within reasonable proximity to the current site when replacement on the current site is proven unfeasible when a capital expenditure is required to comply with life safety codes, licensure, certification or accreditation standards. Under no circumstances shall the State Health Commissioner approve, authorize, or accept an application for the issuance of a certificate for any project which would result in the continued use of the facility replaced as a nursing facility.~~

~~2. The conversion on site of existing licensed beds of a medical care facility other than a nursing facility or nursing home, extended care, or intermediate care facility to beds certified for skilled nursing services (SNF) when (i) the total number of beds to be converted does not exceed the lesser of 20 beds or 15% of the beds in the facility; (ii) the facility has demonstrated that the SNF beds are needed specifically to serve a specialty heavy care patient population, such as ventilator dependent and AIDS patients and that such patients otherwise will not have reasonable access to such services in existing or approved facilities; and (iii) the facility further commits to admit such patients on a priority basis once the SNF unit is certified and operational.~~

~~3. The conversion on site of existing beds in an adult care residence licensed pursuant to Chapter 9 (§ 63.1-172 et seq.) of Title 63.1 of the Code of Virginia as of March 1, 1990, to beds certified as nursing facility beds when (i) the total number of beds to be converted does not exceed the lesser of 30 beds or 25% of the beds in the adult care residence; (ii) the adult care residence has demonstrated that nursing facility beds are needed specifically to serve a patient population of AIDS, or ventilator dependent, or head and spinal cord injured patients, or any combination of the three, and that such patients otherwise will not have reasonable access to such services in existing or approved nursing facilities; (iii) the adult care residence further commits to admit such patients once the nursing facility beds are certified and operational; and (iv) the licensed adult care residence otherwise meets the standards for nursing facility beds as set forth in the chapters of the Board of Health.~~

~~4. Any project for an increase in the number of beds in which nursing facility or nursing home or extended care services are provided, or the creation of new beds in which such services are to be provided, by a continuing care provider registered as of January 15, 1991, with the State Corporation Commission pursuant to Chapter 49 (§ 38.2-4900 et seq.) of Title 38.2 of the Code of Virginia, if (i) the total number of new or additional nursing home beds does not exceed 32 when the beds are to be added by new construction, or 25 when the beds are to be added by conversion on site of existing beds in an adult care residence licensed pursuant to Chapter 9 (§ 63.1-~~

172 et seq.) of Title 63.1 of the Code of Virginia as of January 15, 1991, and (ii) such beds are necessary to meet existing or reasonably anticipated obligations to provide care to present or prospective residents of the continuing care facility pursuant to continuing care contracts meeting the requirements of § 38.2-4905 of the Code of Virginia. No application for a certificate of public need for the creation or addition of nursing facility or nursing home beds pursuant to this section shall be accepted from a provider who, as of January 15, 1991, had an existing complement of beds, unless such provider agrees in writing not to seek certification for the use of such new or additional beds by persons eligible to receive medical assistance services pursuant to Title XIX of the United States Social Security Act. Further, if a certificate is approved, pursuant to this section, to increase the number of nursing facility or nursing home beds for a provider who has an existing complement of such beds, admissions to such beds shall, thereafter, be restricted to persons who have entered into continuing care contracts meeting the requirements of § 38.2-4905 of the Code of Virginia.

5. Notwithstanding the foregoing and other provisions of Article 1.1 (§ 32.1-102.1 et seq.) of Chapter 4 of Title 32.1 of the Code of Virginia, the state home for aged and infirm veterans authorized by Chapter 668, 1989 Acts of Assembly, shall be exempt from all certificate of public need review requirements as a medical care facility.

6. The development of a project in an existing nursing facility owned and operated by the governing body of a county when (i) the total number of new beds to be added by construction does not exceed the lesser of 30 beds or 25% of the existing nursing facility beds in the facility; (ii) the facility has demonstrated that the nursing facility beds are needed specifically to serve a specialty heavy care patient population, such as dementia, ventilator dependent, and AIDS patients; and (iii) the facility has executed an agreement with a state-supported medical college to provide training in geriatric nursing.

7. The development of a nursing facility project located in the City of Staunton when (i) the total number of new beds to be constructed does not exceed 30 beds; (ii) the facility is owned by and will be operated as a nonprofit entity; and (iii) the project is proposed as part of a retirement community that is a continuing care provider registered with the State Corporation Commission pursuant to Chapter 49 (§ 38.2-4900 et seq.) of Title 38.2 of the Code of Virginia.

8. The issuance of a certificate of public need for any project for an increase in the number of beds in which nursing home or extended care services are provided, or the creation of new beds in which such services are to be provided, by any continuing care provider registered with the State Corporation Commission pursuant to Chapter 49 (§ 38.2-4900 et seq.) of Title 38.2 of the Code of Virginia if (i) the total number of new or additional nursing home beds plus any existing nursing home beds operated by the provider does not exceed 20% of the continuing care provider's total existing or

planned independent living and adult care residence population when the beds are to be added by new construction, or 25 beds when the beds are to be added by conversion on site of existing beds in an adult care residence licensed pursuant to Chapter 9 (§ 63.1-172 et seq.) of Title 63.1 of the Code of Virginia; (ii) such beds are necessary to meet existing or reasonably anticipated obligations to provide care to present or prospective residents of the continuing care facility pursuant to continuing care contracts meeting the requirements of § 38.2-4905 of the Code of Virginia; (iii) the provider agrees in writing not to seek certification for the use of such new or additional beds by persons eligible to receive medical assistance services pursuant to Title XIX of the United States Social Security Act; (iv) the provider agrees in writing to obtain, prior to admission of every resident of the continuing care facility, the resident's written acknowledgement that the provider does not serve recipients of medical assistance services and that, in the event such resident becomes a medical assistance services recipient who is eligible for nursing facility placement, such resident shall not be eligible for placement in the provider's nursing facility unit; and (v) the provider agrees in writing that only continuing care contract holders will be admitted to the nursing home beds after the first three years of operation.

Further, if a certificate is approved pursuant to this subdivision, admissions to such new or additional beds shall be restricted for the first three years of operation to patients for whose care, pursuant to an agreement between the facility and the individual financially responsible for the patient, private payment will be made or persons who have entered into an agreement with the facility for continuing care contracts meeting the requirements of § 38.2-4905 of the Code of Virginia.

9. The issuance of a certificate of public need for a nursing facility project associated with a continuing care provider which did not operate a nursing home on January 1, 1993, and was registered as of January 1, 1993, with the State Corporation Commission pursuant to Chapter 49 (§ 38.2-4900 et seq.) of Title 38.2 of the Code of Virginia if (i) the total number of new beds to be constructed does not exceed 60 beds; (ii) the facility is owned by and will be operated as a nonprofit entity; (iii) after the first three years of operation, the facility will admit only retired officers of the United States uniformed forces and their surviving spouses; (iv) the provider agrees in writing not to seek certification for the use of such beds by persons eligible to receive medical assistance services pursuant to Title XIX of the United States Social Security Act; and (v) the provider agrees in writing to obtain, prior to admission of every resident of the continuing care facility, the written acknowledgement that the provider does not serve recipients of medical assistance services and that, in the event such resident becomes a medical assistance services recipient who is eligible for nursing facility placement, such resident shall not be eligible for placement in the provider's nursing facility unit. Further, if a certificate is approved, pursuant to this subdivision, admissions to such beds shall be restricted to persons for whose care, pursuant to an

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agreement with the facility, private payment will be made or persons who have entered into an agreement with the facility for continuing care contracts meeting the requirements of § 38.2-4905 of the Code of Virginia.

10. The issuance of a certificate of public need for a nursing facility project located in the city of Norfolk if (i) the total number of beds to be constructed does not exceed 120 beds; (ii) the facility will replace an existing facility in the City of Chesapeake; (iii) the construction of the facility has been delayed by environmental contamination caused by leaking underground storage tanks; and (iv) the total capital costs of the facility will not exceed \$4,387,000.

~~12 VAC 5-220-400. Extension of the schedule of completion for nursing home projects approved prior to January 1, 1991.~~

Notwithstanding the authority of the commissioner to grant an extension of a schedule for completion of the project pursuant to Part VI of this chapter, no extension shall be granted beyond June 30, 1992, for any nursing home project approved prior to January 1, 1991. However, the commissioner may grant an extension of a schedule for completion for an additional nine months upon determining that (i) substantial and continuing progress has been made toward completion of the project; (ii) the project owner had agreed in writing prior to February 13, 1991, to delay the project to facilitate cost savings for the Commonwealth; and (iii) construction of the project was initiated on or before April 15, 1992. The commissioner may also grant an extension of a schedule for completion for an additional six months to project owners who did not agree in writing prior to February 13, 1991, to delay their projects upon determining that (i) substantial and continuing progress has been made toward completion of the project and (ii) construction of the project was initiated on or before April 15, 1992. The certificate for any such nursing home bed project approved prior to January 1, 1991, which has not been completed by June 30, 1992, or by the expiration date of any approved extension, which in no case shall be later than March 31, 1993, shall be revoked. However, the commissioner shall not revoke the certificate of public need for:

1. Any nursing home bed project for 60 beds proposed as part of a retirement community that is not a continuing care provider as defined in § 38.2-4900 of the Code of Virginia if (i) the certificate of public need was issued after May 1, 1988, and was in force on November 1, 1991, (ii) construction of the nursing home bed project is initiated by June 30, 1992, and (iii) the facility is completed by June 30, 1993.

2. Any nursing home bed project to add 40 beds to an existing facility if (i) the project owner had agreed to delay the project to facilitate cost savings for the Commonwealth prior to February 13, 1991, (ii) the owner was seeking funding from the Department of Housing and Urban Development prior to February 13, 1992, (iii) the facility receives a feasibility approval for such funding from the Department of Housing and Urban Development by May 1, 1992, (iv) the facility closes a loan to fund the project by October 30, 1992, and (v) the facility is completed by October 31, 1993.

3. Any nursing home bed project for less than 30 beds proposed as part of a retirement community that is not a continuing care provider as defined in § 38.2-4900 of the Code of Virginia if (i) the certificate of public need was issued after May 1, 1988, and was in force on November 1, 1991, (ii) construction of the nursing home bed project was initiated before December 1, 1991, (iii) the owner of the nursing home bed project agrees in writing prior to July 1, 1992, to restrict use of the nursing home beds to residents of such retirement community, (iv) construction on the nursing home bed project that was not completed by August 27, 1991, is resumed by August 1, 1993, and (v) the nursing home bed project is completed by July 31, 1994.

V.A.R. Doc. No. R96-545; Filed August 26, 1996, 12:28 p.m.

Title of Regulation: 12 VAC 5-360-10 et seq. State Medical Facilities Plan: Nursing Home Services (amending 12 VAC 5-360-10 through 12 VAC 5-360-70).

Statutory Authority: §§ 32.1-12, 32.1-102.2 and 32.1-145 of the Code of Virginia.

Public Hearing Date: October 10, 1996 - 11 a.m.

Public comments may be submitted until November 16, 1996.

(See Calendar of Events section for additional information)

Basis: Section 32.1-12 of the Code of Virginia authorizes the Board of Health to "make, adopt, promulgate and enforce such regulations ... as may be necessary to carry out the provisions of [Title 32.1 of the Code of Virginia] and other laws of the Commonwealth administered by it, the Commissioner or the Department."

Section 32.1-102.1, et seq. of the Code of Virginia is Virginia's Certificate of Public Need (COPN) statute. Section 32.1-102.2 of the Code of Virginia authorizes the Board of Health to "promulgate regulations which are consistent with this article and ... establish procedures for the review of applications for certificates [of public need] consistent with the provisions of this article." Section 32.1-102.1 of the Code of Virginia defines the SMFP as "the planning document adopted by the Board of Health which shall include, but not be limited to, (i) methodologies for projecting need for medical care facility beds and services; (ii) statistical information on the availability of medical care facilities and services; and (iii) procedures, criteria and standards for review of applications for projects for medical care facilities and services."

Purpose: House Bill 1302, signed by the Governor on April 10, 1996, amends § 32.1-102.3:2 of the Code of Virginia so that, effective July 1, 1996, projects that increase the supply of nursing home beds in Virginia, with the exception of certain retirement community projects, may only seek COPN authorization when filed in response to a Request for Applications (RFA) issued by the Commissioner of Health. The department is proposing amendments to the Virginia Medical Care Facilities COPN Rules and Regulations, which govern the review process for COPN applications, that will

implement this new review process for nursing home bed applications.

These proposed amendments to the State Medical Facilities Plan (SMFP) are also a response to House Bill 1302 and are intended to improve its usefulness as a tool for prioritizing the need for nursing home beds among the state's planning districts and competitively reviewing nursing home bed applications which the department has not done since 1988.

Substance: The key provisions of the amended regulation are:

1. Revisions in the bed need forecasting method have been proposed which provide for an average annual occupancy rate threshold based on the past three years of utilization rather than the single most recent year. This will allow planning districts that have a recent history of relatively high bed occupancy to be recognized as potential candidates for identification in a RFA even if average annual occupancy dipped below 95% in the most recent year. Conversely, it will lower the ranking of planning districts that have only reached 95% or higher occupancy in the past year but which have not had consistently high occupancy in the past three years. The occupancy threshold for expansion of existing facilities is proposed to increase from 95% to 97%.
2. In general, the proposed standards have been revised to include more explicit statements of preference, intended to better guide decisions in the review of competing applications. Preferences are indicated in the areas of consumer satisfaction, geographic access and travel time, accessibility to public transportation, financial access, expansion of smaller nursing homes, continuity of care, development costs, development history, operating costs, licensure, accreditation, and quality history.
3. The proposed bed need standard for continuing care retirement communities (CCRCs) has been revised to explicitly apply only to CCRCs, i.e., the term "life care community," which has no official status in Virginia and which first appeared in the SMFP in the late 1980s has been eliminated. Additionally, the standard has been updated to mirror the most recent generic standard developed by the Virginia General Assembly for use by the department during the period of the moratorium. (CCRCs will not be subject to the RFA process.)

Issues: The primary advantage anticipated from the proposed regulatory changes is creation of a better set of SMFP standards which will serve the department's increased level of competitive review activity in the nursing home sector, given the new RFA process established through House Bill 1302. Over time, this should have a positive impact on the quality of nursing home facilities developed in Virginia.

The current standards were written in 1991-1992 and incorporate some aspects of earlier SMFP policies that are now somewhat antiquated or obsolete. There has been little emphasis on the nursing home component of the SMFP since the 1980's because the nursing home projects accepted for review tended to be non-competing and the primary issues for consideration in their review were often

outlined in the legislative exception which allowed their acceptance.

More precise language and more explicit statements of preference will benefit applicants and reviewers, which include regional health planning staff and board directors, Office of Resources Development staff, the department's adjudication officer, and the commissioner. Applicants will have a better idea of the characteristics they need to demonstrate to be successful in obtaining authorization for new or expanded facilities. Reviewers will be better able to discriminate between well-qualified and poorly qualified applicants and draw distinctions among acceptable applicants in order to recommend the best overall choice for authorization. There are no disadvantages associated with updating and improving the standards of the SMFP.

Estimated Impact: Currently, there are 258 nursing homes, located statewide, serving approximately 29,870 patients. The proposed regulation governs the expansion of existing nursing homes or the development of new nursing homes. Current calculations based on need, utilization, and demographic data suggest that seven health districts have a need for 1,020 new nursing home beds over the next three years. Fiscal projections assume that the 1,020 beds will be approved, although on a different schedule related to the implementation of the RFA program. Allowing for design, construction and start up, the department projects that the earliest time all of those beds will be open for an entire year is FY 99.

Both the department and the Department of Medical Assistance Services anticipate that COPNs for those 1,020 beds will be phased in over two years. The first RFA would cover the three or four most needy planning districts. The following year's RFA would cover the next three or four most needy planning districts. These two-stage annual review schedules will delay the point in time when all beds will be operational for a full year. Thus the fully annualized costs of all 1,020 beds will not be experienced until FY 2000 or later, depending on scheduling.

There are currently nine classified FTEs to process 12 new projects which are not already included in the base workload. The new nursing home projects represent a 16% growth in workload. A 16% growth in expenditures, as compared with FY 95, would generate new costs of approximately \$107,000. However, the 12 new projects are expected to generate \$120,000 in new revenue under the current fee schedule. Thus, the expanded workload will generate revenue sufficient to cover increased expenditures.

The long-range fiscal effect of the RFA process will depend on (i) when it would go into effect, (ii) the degree to which the RFA process is structured to restrain anticipated growth, and (iii) private sector decisions which cannot be anticipated. If the new regulations become effective by January 1, 1997, the new RFA cycle should generate sufficient revenue in the second half of the fiscal year to cover annual costs.

Medicaid reform legislation at the federal level could significantly change the context in which the COPN program (and consequently the RFA process) operates and thereby affect fiscal projections. If the legislation takes the form of a block grant, the Commonwealth may be able to develop other

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more direct methods of controlling Medicaid expenditures on nursing home care. However, the regulations can be expected to give the Commonwealth more control over Medicaid expenditures for nursing home care. As long as the RFA process continues to phase beds in more slowly than might otherwise occur and to better target those beds to areas of greatest need, fiscal impact will be less than without the process.

Any projections of the fiscal impact of a new system, like the RFA process, remain subject to significant revision as cost projection methodologies become more refined and more experience is gained with the process.

Small businesses or organizations contracting with COPN applicants would be impacted by the revised regulation, as they could be hired for construction of the expansion or development of the new nursing home. In addition, COPN applicants frequently hire consultants and lawyers to help guide them through the COPN process, which adds to the cost to the applicant for the expansion or new development of nursing homes.

No particular locality is affected more than another by this regulation.

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 revises and expands the project review standards for the evaluation of Nursing Home Certificate of Public Need (COPN) requests. The amendments are intended, by the Department of Health (DOH) to facilitate the competitive review of nursing home bed applications.

Nursing home COPNs have been subject to a moratorium since 1988. This moratorium was lifted by the General Assembly in 1996 by HB 1302. This law requires that any COPN for an increase in the supply of nursing home beds (outside of certain retirement community projects) may only be granted in response to a Request for Application (RFA) issued by the Commissioner. For any area with a demonstrated need for increased nursing home capacity, the Commissioner may issue an RFA. Any bids to fill the need for increased bed capacity will be considered on a competitive basis.

This proposed regulation responds to the changes in the law by (i) revising the bed need forecasting method, (ii) stating explicitly the standards that will be used for judging the relative merits of competing applications, and (iii) revising the

standards for continuing care retirement communities (CCRCs). [CCRCs are not subject to the RFA requirement.]

Estimated Economic Impact. When a RFA is appropriate: The COPN regulation constitutes an explicit restraint on the supply of nursing home beds in Virginia. In a properly functioning market, supply restrictions (or quotas) produce a loss of economic value. Usually, they imply a loss of both business profits and consumer surplus, the two main components of net economic value. If, for some reason, it is expected that the conditions for the efficient functioning of a market are not present, then there may be some justification for considering whether a restriction on the operation of the market is appropriate.

It is important that, in proposing a quota on the supply of some good, there be an examination of what is preventing the smooth function of the market and an evaluation of what the most effective response to that problem would be. Concerns about the oversupply of medical facilities and related concerns about the cost and quality of care lead the Virginia General Assembly to adopt COPN legislation in 1973. Since then, the COPN program has been punctuated by two periods where expansion of nursing home facilities was directly restricted by the General Assembly.

In 1996, the General Assembly passed, and the Governor signed legislation lifting the second of these moratoria on nursing home construction. HB 1302 specifies that restrictions on the supply of nursing home beds continue through the RFA mechanism. The determination of whether and, if so, how nursing home bed supply should be restricted is beyond the scope of this study. However, the increasing flexibility of federal policies in this area and new approaches to Medicaid compensation policies, argue for a periodic evaluation of whether explicit policies of restricting nursing home beds is appropriate.

These proposed regulations are specifically in response to the decision to lift the latest moratorium on the construction of nursing home beds. Once the decision is made to explicitly regulate the supply of nursing facilities, it is critically important that the agency responsible match supply and demand as closely as possible. This matching of supply and demand is one of the principle functions of this proposal. DOH has proposed a revision in its method of estimating the need for new nursing home beds. Based on the assumption that the rate of use of nursing facilities by given age cohorts will remain relatively constant, DOH proposes multiplying age specific use rates by the projected populations in each planning district. This gives a level of usage for each projected cohort in each planning district. Adding up projected usage across age cohorts in a given district gives the projected bed needs in a district.

A planning district may not be considered of an expansion of nursing facilities unless the projected need is greater than the current supply of nursing home beds and the average annual occupancy of all Medicaid-certified beds in the district is at least 95%. The second of these two restrictions could help or hurt the matching of supply and demand depending on the circumstance. If the use rate is falling, but this change is not yet reflected in the use rate data used in the forecast, then the additional restriction may guard against overbuilding. However, if the use rate is increasing, the second restriction

could lead to an under-forecast. Hence, it is a little unclear exactly what function the second criterion serves. If the costs to society of overbuilding are greater per bed than the costs of under-bidding, then such a restriction seems justified. It is not clear, given the information available, why this should be so.

Individual facilities with annual average occupancy under 97% will generally not be approved, even in planning districts that qualify for an increase in bed supply. Given that there are significant fixed costs in the provision of nursing care, this provision may help reduce the costs of care. If one nursing facility is operating at 98% occupancy and another is operating at 94%, then, in the presence of fixed costs, a given expansion at the higher occupancy facility will increase costs by less than the same expansion at the facility operating at a lower capacity.

DPB recommends that DOH periodically review the impact of this three part restriction on facility expansion. It is especially important to evaluate whether the 95% occupancy restriction for the whole planning district improves the performance of the forecast.

Establishing selection criteria: Once the decision is made to regulate the supply and cost of nursing facility care, then it may be the case that the remaining market incentives give rise to quality assurance problems. The market may no longer be able to send the appropriate signals about the quality of care provided. Thus, in evaluating competitive bids for COPNs, DOH has made explicit a set of criteria that it will use in choosing the winning bids. Among these criteria are cost, continuity of care, and quality of care, as measured by consumer satisfaction, the firm's or facility's record of accreditation, and the ability to meet or exceed licensing standards.

These are tricky and subjective evaluations to make. They require a level of information and detachment difficult to arrange in any bureaucracy public or private. The advantage of allowing these issues to be handled in the marketplace (when possible) is that the market provides an automatic corrective when private firms get it wrong but no such corrective is easily designed for public agencies. However, once the decision is made to limit market function, these judgments become a necessary part of agency responsibilities. Again, this argues for a periodic evaluation of whether changes in Medicaid compensation policies may be made that would reduce or eliminate the need for supply constraints on nursing facilities.

Continuing Care Retirement Communities: Nursing home facilities at continuing care retirement communities are not subject to the RFA requirement so long as the facilities are for the purpose of serving only the retirement community and are not licensed to serve recipients of medical assistance services. It is appropriate that these facilities not be subject to the RFA requirement since there is no problem with the perverse incentives introduced by Medicaid compensation.

Costs and benefits of this proposal. This proposed regulation does not lift the moratorium on nursing facilities. That was done in HB 1302. Rather, this proposal implements the RFA process. If the new forecasting formula for bed need is better than the old one (and this should be evaluated periodically),

then some economic benefit will result from the better matching of supply and demand. If the new standards for selecting among competing bids do, as hoped, help better control costs while maintaining certain standards of quality, then there will be an economic benefit.

The old COPN process, apparently failed to effectively match the supply and demand for nursing facilities. This proposal may improve that performance. If it does it will improve economic performance in two ways. First, it will reduce the loss of consumer surplus that would result when beds are in short supply. Second, it will reduce any inflated Medicaid costs that some have argued will occur if beds are overabundant and occupancy rates are low.

The magnitude of this second affect is very hard to determine. It depends on a number of factors that are very poorly understood. First, how many and what type of facilities will be built if the building constraint is relaxed somewhat? Second, what portion of these new beds would be occupied by Medicaid patients? Clearly the pool is not unlimited. Finally, what would the implications be for cost per bed if over-capacity occurs?

In its discussion of the impact of these regulations on DOH costs of administering the new COPN process, the department ascribes the entire cost of increased nursing home beds to this proposal. That is a significant over-estimate. The new nursing home beds are primarily due to the lifting of the moratorium, not to this proposed regulation. Addition of the RFA process to the COPN program may increase DOH costs per new bed somewhat, but it would not be appropriate to charge all of the increased administrative costs of the anticipated 1,020 beds to a regulation that would only have a very marginal impact on the number of new beds approved.

Businesses and entities affected. The primary business entities affected by this regulation are the owners and operators of nursing facilities. Firms that supply construction and supply services to nursing facilities will also be affected. Exactly what part of that effect is due to this regulation and which is due to the lifting of the moratorium on new beds cannot be easily determined. The RFA process will bring some increased predictability to the COPN process and may even introduce a greater element of competition in some areas.

Localities particularly affected. No localities are more affected than others by this regulation. As noted in the discussion accompanying this proposed regulation, in the short run, the new procedure for determining what areas the requirements for an RFA will shift new nursing facilities between planning districts to some extent. However, in the longer run, this affect will be small and should average out across districts.

Projected impact on employment. As already discussed, these regulations are not responsible for the construction of new nursing homes. Rather, they make some small changes in the process for determining where new beds are needed and clarify the standards on which winning bids will be selected. Thus, these regulations are not expected to have any significant affect on employment.

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Affects on the use and value of private property. As this proposal is aimed at controlling and directing new investment rather than regulating the conduct of existing firms, it is not likely to have a significant direct impact on the value of private property. Indirectly, this proposal may affect the value of existing nursing facilities because of the standards that firms must meet if they are to prevail in bids to expand their facilities. For example, the proposal gives preference to firms that demonstrate their willingness to provide indigent care. This and other preferences may induce firms to change their current operations to improve their chances of prevailing in competitive COPN evaluations. However, these are not regulatory requirements.

Summary of Analysis. In the context of the highly regulated business of nursing home care, this proposal will probably result in somewhat improved economic performance. In the longer run, we should look for strategies that would allow us to replace the regulation of nursing facility supply with more flexible, market-like approaches.

Agency's Response to Department of Planning and Budget's Economic Impact Analysis: The Department of Health concurs with the economic impact analysis of the proposed amendment to the Virginia State Medical Facilities Plan (SMFP) - Nursing Home Services as developed by the Department of Planning and Budget.

Summary:

This regulation establishes standards for the review of nursing home facility projects requesting Certificates Of Public Need (COPNs). The proposed changes respond to amendments to the Certificate of Public Need (COPN) Law that became effective on July 1, 1996, through the passage of HB 1302 from the 1996 Session of Virginia's General Assembly. This law eliminates the moratorium on the issuance of nursing home bed COPNs which has existed in Virginia since 1988 and replaces it with a process by which the Department of Health will issue Requests for Applications for nursing home bed projects, at least annually. The proposed regulations modify and expand the project review standards of the current State Medical Facilities Plan (SMFP) and are intended to make the SMFP a better tool for defining the need for nursing home bed applicants.

PART I. DEFINITIONS.

12 VAC 5-360-10. Definitions.

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

"Competing applications" means nursing home bed applications accepted for review in the same review cycle which propose facilities to be located in the same planning district.

"Continuing care ~~contracts~~ contract" means the written agreement, which, in effect, functions as an insurance policy, whereby the individual resident purchases from the a Continuing Care Retirement Community (CCRC), through an

entrance fee and periodic adjustable payments, a package of residential and healthcare services which the CCRC is obligated to provide at the time these residential and health care services are required. The health care services include ~~home~~ for adult care residence services (also known as domiciliary care, assisted living services or personal care) and nursing home services. Continuing care contracts are regulated by the Virginia Bureau of Insurance of the Virginia State Corporation Commission.

"Continuing care retirement community (CCRC)" means those retirement communities for the elderly that provide residential, health care and support services through a continuing care contract. CCRCs can have nursing home services available either on-site, or at licensed facilities off-site.

~~"Demand" or "use rates" means the rate at which an age cohort of the population uses nursing home beds. The rates are determined from periodic patient origin surveys conducted by the department and the regional planning agencies. The nursing facility demand rates are expressed as rate per 1,000 population.~~

"Department" means the Virginia Department of Health.

"Health planning region" means a contiguous geographical area of the Commonwealth with a population base of at least 500,000 persons which is characterized by the availability of multiple levels of medical care services, reasonable travel time for tertiary care, and congruence with planning districts.

~~"Life care community (LCC)" means those retirement communities for the elderly that provide residential and health care services through a life care contract.~~

~~"Life care contract" means a written agreement between the resident of a life care community and the sponsor of the life care community, whereby the resident contract holder is provided at least board, lodging and nursing services as needed, in exchange for payment of fixed periodic charges adjusted, at most, annually, or an entrance fee, or both. Life care contracts are not insurance policies as defined in the Code of Virginia.~~

"Nursing home facility" means those facilities or components thereof licensed by the department to provide long-term nursing care, ~~primarily to the portion of the population 65 years of age and older.~~

~~"Nursing home services" means the provision, on a continuing basis, of nursing services and health-related care for treatment, and inpatient care services provided to inpatients, on a continuing basis, in a licensed nursing home facility.~~

"Planning district" means a contiguous area within the boundaries established by the Department of Planning and Budget as set forth in § 15.1-1402 of the Code of Virginia.

~~"Planning horizon year" means the particular year for which beds are projected to be needed.~~

~~"Relevant reporting period" means the most recent 12 month period, prior to the beginning of the Certificate of~~

~~Public Need application's review cycle, for which data are available and acceptable to the department.~~

~~"Use rate" means the rate at which an age cohort or the population uses nursing home beds. The rates are determined from periodic patient origin surveys conducted by the department and the regional planning agencies.~~

PART II.
CRITERIA AND STANDARDS.

12 VAC 5-360-20. ~~Acceptability; consumer participation.~~

A. ~~Consumer participation.~~ Providers of nursing home services should have written policies and procedures regarding the treatment of patients residents and the management of patient resident care which are available to residents and their families.

B. ~~Consumer satisfaction.~~ Providers of nursing home services should have established mechanisms for evaluating resident and resident family satisfaction with the services they provide. Preference will be given in the review of competing applications to providers who can demonstrate high levels of resident and resident family satisfaction with their services through creditable evaluation methods.

12 VAC 5-360-30. ~~Accessibility; travel time; location; financial considerations.~~

A. ~~Travel time.~~ Nursing home beds should be accessible within a 45 minute driving time, under normal conditions, to 90% of all Virginians. Preference will be given in the review of competing applications to proposed nursing home facilities which substantively improve geographic access and reduce travel time to nursing home services within a planning district or health planning region or both.

B. ~~Access to highway system.~~ Nursing home services facilities should be linked by paved roads to a state or federal highway and should be accessible by public transportation, when such systems exist in an area. Preference will be given in the review of competing applications to proposed nursing facilities which are fully accessible by private and public modes of transportation.

C. ~~Financial.~~ Nursing home services should be accessible to all persons in need of such services without regard to their ability to pay or the payment source. Preference will be given in the review of competing applications to proposed nursing facilities which will be accessible to all persons in need of such services without regard to their ability to pay or the payment source and can demonstrate a record of such accessibility.

D. ~~In the case of competing applications, Distribution of beds.~~ Preference will be given in the review of competing applications to proposals which correct any maldistribution of beds within a planning district.

12 VAC 5-360-40. ~~Availability; need for new service; expanded services.~~

A. ~~Need for additional nursing home beds.~~ No new nursing home beds should be approved in any planning district will be considered to have a need for additional nursing home facility beds unless: (i) the resulting number of

~~licensed and approved bed need forecast for nursing home beds in that planning district does not exceed the projected number of (see subsection C of this section) exceeds the current inventory of licensed and authorized beds projected to be needed in that planning district for the third planning horizon year; and (ii) the aggregate utilization average annual occupancy of all existing Medicaid-certified nursing facility beds in the planning district where the new beds are proposed is was at least 95% for the relevant reporting period most recent three years for which bed utilization has been reported to the department.~~

2. ~~No new nursing home beds should be approved if the approval of such beds will cause excess capacity to occur as a result of such approval, or if there are any approved but uncompleted nursing facility beds in the planning district where the new beds are proposed will be considered to have a need for additional nursing home beds if there are uncompleted nursing facility beds authorized for the planning district that will be Medicaid-certified beds.~~

3. ~~No new free standing nursing homes should be approved which have less than 60 nursing facility beds.~~

B. ~~Expansion of existing nursing facilities.~~ Proposals for the expansion of existing nursing facility services facilities should not be approved unless the utilization facility has operated for at least three years and average annual occupancy of the facility's existing beds operated by the applicant exceeds 95% for the relevant reporting period and the proposed expanded nursing facility services shall comply with all applicable sections of this State Medical Facilities Plan component, as determined by the department was at least 97% in the most recent year for which bed utilization has been reported to the department.

~~Exceptions to this standard will be considered for facilities that have operated at less than 97% average annual occupancy in the most recent year for which bed utilization has been reported to the department when the facility can demonstrate that it has a rehabilitative or other specialized care focus which results in a relatively short average length of stay and, consequently, cannot achieve an average annual occupancy rate of 97%.~~

~~Preference will be given in the review of competing applications to proposals which involve the expansion of freestanding nursing home facilities of less than 60 beds when such facilities can demonstrate substantial compliance with the standards of the State Medical Facilities Plan.~~

~~In a case where no competing applicant is a freestanding nursing home facility with less than 60 beds, preference will be given in the review of competing applications to proposals which involve the expansion of freestanding nursing home facilities of 60 to 90 beds when such facilities can demonstrate substantial compliance with the standards of the State Medical Facilities Plan.~~

C. ~~Bed need forecasting method.~~ The number of nursing home facility beds projected forecast to be needed in a given planning district in a given year will be computed by multiplying that planning district's population, in thousands (for that year, for each specified age group) times its corresponding projected nursing home bed use (demand)

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rates rounding these products to the nearest whole bed, and summing the results. The population for a given year will be that most recently published by the Virginia Employment Commission. Projected nursing home bed demand rates (per 1,000 population) will be made available by the department and will be updated periodically by the department, as follows:

$$PDBN = (UR64 * PP64) + (UR69 * PP69) + (UR74 * PP74) + (UR79 * PP79) + (UR84 * PP84) + (UR85+ * PP85+)$$

where:

PDBN = Planning district bed need.

UR64 = The nursing home bed use rate of the population aged 0 to 64 in the planning district as determined in the most recent nursing home patient origin study authorized by the department.

PP64 = The population aged 0 to 64 projected for the planning district three years from the current year as most recently published by the Virginia Employment Commission.

UR69 = The nursing home bed use rate of the population aged 64 to 69 in the planning district as determined in the most recent nursing home patient origin study authorized by the department.

PP69 = The population aged 64 to 69 projected for the planning district three years from the current year as most recently published by the Virginia Employment Commission.

UR74 = The nursing home bed use rate of the population aged 70 to 74 in the planning district as determined in the most recent nursing home patient origin study authorized by the department.

PP74 = The population aged 70 to 74 projected for the planning district three years from the current year as most recently published by the Virginia Employment Commission.

UR79 = The nursing home bed use rate of the population aged 75 to 79 in the planning district as determined in the most recent nursing home patient origin study authorized by the department.

PP79 = The population aged 75 to 79 projected for the planning district three years from the current year as most recently published by the Virginia Employment Commission.

UR84 = The nursing home bed use rate of the population aged 80 to 84 in the planning district as determined in the most recent nursing home patient origin study authorized by the department.

PP84 = The population aged 80 to 84 projected for the planning district three years from the current year as most recently published by the Virginia Employment Commission.

UR85+ = The nursing home bed use rate of the population aged 85 and older in the planning district as

determined in the most recent nursing home patient origin study authorized by the department.

PP85+ = The population aged 85 and older projected for the planning district three years from the current year as most recently published by the Virginia Employment Commission.

Planning district bed need forecasts will be rounded as follows:

Planning District Bed Need (from above method)	Rounded Bed Need
1 - 29	0
30 - 44	30
45 - 84	60
85 - 104	90
105 - 184	120
185+	240

except in the case of a planning district which has two or more nursing facilities, has had an average annual occupancy rate of nursing home facility beds in excess of 97% for the most recent three years for which bed utilization has been reported to the department, and has a forecasted bed need of 15 to 29 beds. In such a case, the bed need for this planning district will be rounded to 30.

~~D. Minimum size of new nursing home facilities.~~ No new freestanding nursing home facilities of less than 120 beds should be authorized. Consideration will be given to the authorization of new facilities that combine nursing home facility bed components of 60 to 119 beds with adult care residence facilities.

~~D. Notwithstanding the standards~~ ~~E. Continuing Care Retirement Communities.~~ ~~Proposals for approval the development of new nursing home beds provided in subsection C of this section, consideration will be given to the approval of new nursing home beds which will be located in a life care community, even if those beds exceed the bed need projection for a given year, if facilities or the expansion of existing facilities by Continuing Care Retirement Communities will be considered in accordance with the following standards:~~

1. The addition total number of new or additional beds would plus any existing nursing home facility beds operated by the continuing care provider does not result in the life care community's nursing bed capacity exceeding exceed 20% of its nonnursing capacity for life care contract holders the continuing care provider's total existing or planned independent living and adult care residence population;
2. The proposed beds are necessary to meet existing or reasonably anticipated obligations to provide care to present or prospective residents of the continuing care facility pursuant to continuing care contracts meeting the requirements of § 38.2-4905 of the Code of Virginia;
2. 3. The applicant provides written assurances that: (i) all admissions to the nursing home beds that the LCC is requesting which occur after three years from the date of

~~the project's completion shall be restricted to LCC contract holders; (ii) beginning the third year following the date of the project's completion, the LCC will promptly submit all data requested by the department pertaining to the number of contract holders and its policies with respect to admission to its nursing home beds; and (iii) the application contains written acknowledgement that a breach of any of the preceding assurances shall constitute grounds for revocation of the certificate of public need whose issuance was predicated upon those assurances. agrees in writing not to seek certification for the use of such new or additional beds by persons eligible to receive medical assistance services pursuant to Title XIX of the United States Social Security Act;~~

4. *The applicant agrees in writing to obtain, prior to admission of every resident of the Continuing Care Retirement Community, the resident's written acknowledgement that the provider does not serve recipients of medical assistance services and that, in the event such resident becomes a medical assistance services recipient who is eligible for nursing facility placement, such resident shall not be eligible for placement in the provider's nursing facility unit;*

5. *The applicant agrees in writing that only continuing care contract holders who have resided in the Continuing Care Retirement Community as independent living residents or adult care residents and are holders of standard continuing care contracts will be admitted to the nursing home facility beds after the first three years of operation.*

12 VAC 5-360-50. ~~Continuity; coordination of services.~~

A. ~~Any application for new, expanded or replacement Coordination of services. Nursing facility services home facilities should have written agreements with acute care hospitals for the transfer of patients residents in need of acute medical services, and should be located within reasonable access to acute care and other medical facilities.~~

B. *Emergency medical care.* Emergency medical services should be within a 15 minutes driving minute response time from the location of the proposed a nursing home beds facility.

C. *Care continuum.* Preference will be given in the review of competing applications to projects which provide multiple levels of long-term care and can demonstrate that they function effectively as a continuum of care which optimizes the match between resident needs and the facilities and services provided.

D. *Family support.* Nursing home facilities should provide services, such as adult day care services and respite care programs, and engage in activities, such as caregiver education, caregiver support groups, and referral programs, which support the ability of families to provide long-term care to their family members within the home. Preference will be given in the review of competing applications to project applicants who can demonstrate a history or commitment to the provision of services and activities which support the

ability of families to provide long-term care to their family members within the home.

E. *Noninstitutional service support.* Nursing home facilities should facilitate the use of noninstitutional long-term care services whenever such services are an appropriate alternative for persons in need of long-term care. Preference will be given in the review of competing applications to project applicants who can demonstrate a history of or commitment to investing in noninstitutional long-term care services in their communities.

12 VAC 5-360-60. ~~Costs; reasonable construction costs; operating.~~

A. *Development costs.* The construction cost per-square foot of new-construction proposed nursing facilities should be within the construction cost index used as a cap by the Department of Medical Assistance Services or be comparable with or lower than state, regional, and planning district-costs the recently observed cost for similar facilities in the same health planning region. Other development cost of proposed nursing facilities should be comparable with the recently observed cost for similar facilities in the same health planning region. Preference will be given in the review of competing applications to proposals which have lower development costs than their competitors and can demonstrate that their cost estimates are creditable.

B. ~~Proposals for the conversion of underutilized space in an existing facility should include the remaining depreciable value of the space to house the proposed nursing facility beds as part of the calculation of the total capital cost of the project.~~

C. ~~B. Consideration should will be given to the experience of an applicant or developer applicants in completing similar projects on time and within the authorized capital costs. Preference will be given in the review of competing applications to applicants who have a good record of performance in completing projects on time and within the authorized capital costs.~~

D. ~~1. C. Operating costs and charges.~~ The applicant should demonstrate that the projected operating costs and charge structure will charges of nursing home facilities should be comparable or less than similar with those of nursing home facilities operating in the planning district where the beds are to be located same health planning region that provide similar staffing levels and a similar range of services. Preference will be given in the review of competing applications to applicants who can reasonably project lower operating costs and charges than their competitors at staffing levels appropriate to their intended level of care.

2. ~~In the case of projects that involve off-site Proponents of the replacement and relocation of nursing home facility beds, the applicant should, in addition to the above standard, reasonably demonstrate that the replacement and relocation will allow for lower operating costs and charge structure for the beds at the new site will be comparable or less charges over the life of the replacement facility than continued operations at operation of the existing facility.~~

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12 VAC 5-360-70. Quality; accreditation; track record.

~~A. 1. All applicants for nursing facility beds~~ *Licensure and accreditation. Nursing home facilities should provide assurances that the beds will be designed, staffed, be maintained and operated in compliance with all applicable state licensure regulations. Preference will be given in the review of competing applications to applicants who can demonstrate a consistent history of compliance with state licensure regulations.*

~~2. All applications for nursing facility beds~~ *Nursing home facilities should seek accreditation be accredited by the Joint Commission on Accreditation of Health Care Organizations or other another appropriate accrediting body. Preference will be given in the review of competing applications to applicants who are accredited or can demonstrate a history of operating accredited facilities.*

~~B. An applicant's or developer's track record in the development and operation of nursing facilities should be considered~~ *Record in the provision of quality care. Preference will be given in the review of an application for new, expanded or replacement nursing facility beds competing applications to applicants who can demonstrate a consistent pattern of licensure surveys with few deficiencies and a consistent history of complaint-free operation. Applicants with a history of serious deficiencies or substantiated complaints that relate to the quality of care provided in a medical care facility will not be eligible for consideration of certificate of public need authorization for additional nursing home facility beds.*

VA.R. Doc. No. R96-543; Filed August 26, 1996, 1:50 p.m.

DEPARTMENT OF MINES, MINERALS AND ENERGY

Title of Regulation: 4 VAC 25-130-10 et seq. Coal Surface Mining Reclamation Regulations (amending 4 VAC 25-130-784.14 and 4 VAC 25-130-817.41).

Statutory Authority: §§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Public Hearing Date: October 16, 1996 - 10 a.m.

Public comments may be submitted until November 16, 1996.

(See Calendar of Events section for additional information)

Basis: The Department of Mines, Minerals and Energy's authority to promulgate the Virginia Coal Surface Mining Reclamation Regulations is found at §§ 45.1-161.3 and 45.1-230 of the Code of Virginia. Section 45.1-161.3 provides that the department may promulgate regulations necessary or incidental to the performance of duties or execution of powers covered under Title 45.1 of the Code of Virginia. Section 45.1-230 provides that the director of the department has the authority to promulgate such regulations as may be necessary to carry out the provisions of Chapter 19 of Title 45.1 of the Code of Virginia.

Purpose: The proposed amendments to the Virginia Coal Surface Mining Reclamation Regulations address protection of the public safety and welfare against blowouts of water

impounded behind the barrier of coal and rock left when underground coal mine workings come close to the surface outcrop of the coal seam. Without proper protection at the outcrops, there may be sudden blowouts of water through the coal or rock barrier causing injury to people and damage to property in the areas below the outcrop. The proposed amendments are identical to the emergency regulation amendments effective from March 29, 1996, through March 28, 1997 (see 12:16 VA.R. 2193-2198 April 29, 1996).

Substance: The proposed amendments add a requirement that applicants for coal mining permits must include information in their permit applications about the steps to be taken during mining to prevent the sudden release of accumulated water from underground mine workings. The amendments also establish a requirement that a barrier of coal be left in place where the coal seam being mined dips toward the land surface. The amendment provides a formula for calculating the required barrier thickness, or alternately allow for site-specific designs to determine the barrier thickness.

Issues: The proposed amendments are advantageous to the public because they increase the assurance that sudden, dangerous blowouts of accumulated water in underground coal mine workings will be avoided. Such assurance will help avoid incidents that have lead to a fatality and significant property damage. The advantage to coal operators is that they will have less risk of liability for damage from blowouts. The proposal provides coal mine operators with a simple method to calculate needed barrier thicknesses, while providing the flexibility to design a different barrier if conditions warrant such a design. The advantages to the Department of Mines, Minerals and Energy include the assurance that sufficient information regarding use of barriers at coal outcrops will be provided in coal mine permit applications to allow proper evaluation of the application and timely permit decisions.

The primary disadvantage of this proposed amendment is that some coal mine operators may have to provide more information than is currently provided in their permit applications. The Department of Mines, Minerals and Energy does not see any disadvantages to the public or the department.

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 amendments to the regulation add a requirement that

applicants for coal mining permits must include information in their permit applications about the steps to be taken during mining to prevent the sudden release of accumulated water from underground mine workings. The amendments also establish a requirement that a barrier of coal be left in place, or other measures be taken, where the coal seam being mined dips toward the land surface. The amendments provide a formula for calculating the required barrier thickness, or alternately allow for site-specific designs to determine the barrier thickness.

Estimated Economic Impact. Under certain conditions, water will collect in underground coal mines. If the mine gets close enough to the surface and the pressure of the water sufficiently high, a "blowout" may occur, where a sudden release of water from the mine can damage nearby people and property. The presence of this risk could impose some economic costs on nearby individuals and property owners. In May of 1995, a woman was killed when water from a blowout inundated her house. The Department of Mines, Minerals and Energy (DMME) indicates that there are, on average, one to three blowouts per year but that the 1995 incident is the only recorded case of a fatality due to a blowout.

In 1996, the Virginia General Assembly passed House Bill 706, which was subsequently signed by the Governor. This bill directs DMME to require applicants for underground coal mine permits "submit hydrologic reclamation plans that include measures that will be utilized to prevent the sudden release of accumulated water from underground workings."

This proposed change in DMME's reclamation rules provide mine operators three options for satisfying the requirements spelled out in HB 706. An operator may:

- (1) show that the geologic and hydrologic conditions at a given mine, or actions taken by the applicant make it "unreasonable to expect" that water will accumulate in the mine,
- (2) provide a site specific design (certified by a licensed professional engineer) that "considers the overburden and barrier characteristics," or
- (3) meet a minimum vertical overburden or unmined barrier width as specified in the regulation.

Taken together, these requirements provide a significant amount of flexibility to operators in how they meet the legal requirement. DMME indicates that there may be some increased costs at some sites due to the proposed changes. At many sites, there will be no increase in costs. At some sites the costs could range as high as a few thousand dollars. With the limited data available at this time, it is not possible to establish with any precision the average cost per mine or the total incremental cost of the regulation to Virginia coal mine operators. A representative of the coal industry has indicated that mine operators do not appear to have significant objections to this regulation.¹

¹ Personal conversation with Thomas Hudson, President, Virginia Coal Association.

The benefits of the regulation come in the form of reduced damage and reduced risk of loss of life. No estimate is available of the total costs from blowouts that may be expected in a given year. As previously mentioned, there is one fatality due to blowouts recorded in Virginia. There has also been damage to private land and public roads and right-of-ways. In some cases, compensation has been paid by the responsible parties and in other cases no recovery for damages was possible. Based on sketchy, anecdotal evidence, we would estimate that both the costs and benefits of this regulation amount to considerably less than \$500,000 per year.²

Notwithstanding the lack of serious opposition by the regulated community, it is worth asking whether a less regulatory approach to the blowout problem would be possible. Whenever the actions of one property owner have an impact on the value of another's property, it is worth asking whether common law tort liability would produce the appropriate level of care without any direct regulatory intervention by the government. In the case of blowouts, there are two effects of interest to neighboring property owners, the risk of physical damage from flowing water and the disruption of local hydrologic conditions. It should be noted that both of these impacts are regulated by federal and subsequently state law so the option of substituting tort liability for regulation is not available to DMME.³

There are two problems that are likely to be encountered with relying on tort litigation to produce the proper level of care by mine operators. First, once a mine has closed, it may not be possible for an injured party to locate the party responsible for the damage. One alternative approach might be to require a bond of operators. This would be a form of insurance for those potentially damaged by blowouts. The cost of the bond would provide firms with incentive to take future damage to nearby property owners into account even if the firm expects that it will no longer be in business when the damage occurs. However, using bonds in this instance may be somewhat difficult to arrange given the long periods of time involved.

The second problem with relying on tort liability has to do with precautions against damage to local hydrologic conditions. Property values are often highly dependent on the availability of water. A disruption of the local hydrology could leave nearby landowners with a reduced water supply which could have a severe impact on the value of their land. Given the potential problems of proving cause and effect and the possibility that a large number of litigants may be involved, common law litigation may be a very expensive way of resolving the protection of local hydrologic conditions.

² This is an extremely rough estimate. It is possible that the costs to mine operators exceed this amount, but this is, in our opinion, unlikely. It is also unlikely that damage to people and property that goes uncompensated is greater than this amount.

³ As already mentioned, HB 706 requires DMME to include blowout provisions in the permitting process. Even if this were not so, this is required by federal law and not to include these provisions would risk direct federal control replacing regulation by DMME. A similar observation can be made for provisions protecting of hydrologic conditions. These regulations have been mandated by federal and subsequently Virginia law.

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Since the proposed regulations are designed to provide firms with considerable flexibility in how they protect against blowouts, it is unlikely that the regulation would impose significantly greater costs on firms than if the damages were handled by private civil litigation. While it cannot be known at this time whether these regulations have a net economic benefit, there is a significant likelihood that they will.

Businesses and entities affected. Firms operating underground coal mines will be the only firms directly affected by this regulation. DMME indicates that the number of such mines in Virginia has been fairly stable recently at 225 active mines.⁴

Localities particularly affected. Underground coal mining in Virginia is limited to seven counties in southwestern Virginia. These include Buchanan, Dickerson, Wise, Tazewell, Russell, Scott and Lee counties. Any direct economic impact would be felt in these areas.

Projected impact on employment. It is not expected that this regulation will have any significant impact on employment in Virginia.

Affects on the use and value of private property. Since this regulation may change, to some extent, the level of protection against blowouts from underground mines, there could be some change in the market value of adjacent property. If the level of protection against blowouts is greater than that provided by common law tort liability, then adjacent property could benefit by some small amount. However, since the risk of damage from a blowout was already quite small, and the remedy of damage recovery by civil action was already available, the impact of this regulation on property values should be very small.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The Department of Mines, Minerals and Energy (DMME) has reviewed the economic impact analysis for the proposed amendments to 4 VAC 25-130. The amendments provide for protection against the sudden release of accumulated water from underground coal mine workings. These are commonly called mine blowouts.

DMME agrees with the Department of Planning Budget's conclusions that the benefits of this proposal come from the reduced risk of property damage or loss of life from mine blowouts, and that there is a significant likelihood that the regulations will have a net economic benefit. The agency believes that the costs due to the regulation are minimized due to the flexibility mine operators are given to meet the requirements.

Summary:

The proposed amendments govern protection against uncontrolled blowouts of water from underground coal mine workings. The amendments are identical to the emergency regulation amendments effective from March 29, 1996, through March 28, 1997 (see 12:16 VA.R.

2193-2198 April 29, 1996). The amendments add a requirement that applicants for coal mining permits must include information in their permit applications about the steps to be taken during mining to prevent the sudden release of accumulated water from underground mine workings. The amendments also establish a minimum width for the barrier of coal to be left in place where the coal seam being mined dips toward the land surface and where the barrier may impound water. The amendments provide a standard formula for calculating the required barrier thickness, or alternately allows for site-specific designs to determine the needed barrier thickness.

4 VAC 25-130-784.14. Hydrologic information.

(a) Sampling and analysis. All water quality analyses performed to meet the requirements of this section shall be conducted according to the methodology in the current edition of "Standard Methods for the Examination of Water and Wastewater," which is incorporated by reference, or the methodology in 40 CFR Parts 136 and 434. Water quality sampling performed to meet the requirements of this section shall be conducted according to either methodology listed above when feasible.

(b) Baseline information. The application shall include the following baseline hydrologic information, and any additional information required by the division.

(1) Groundwater information. The location and ownership for the permit and adjacent areas of existing wells, springs, and other groundwater resources, seasonal quality and quantity of groundwater, and usage. Water quality descriptions shall include, at a minimum, total dissolved solids or specific conductance corrected to 25°C, pH, total iron, and total manganese. Groundwater quantity descriptions shall include, at a minimum, approximate rates of discharge or usage and elevation of water in the coal seam, and each water-bearing stratum above and potentially impacted stratum below the coal seam.

(2) Surface water information. The name, location, ownership and description of all surface water bodies such as streams, lakes, and impoundments, the location of any discharge into any surface water body in the proposed permit and adjacent areas, and information on surface water quality and quantity sufficient to demonstrate seasonal variation and water usage. Water quality descriptions shall include, at a minimum, baseline information on total suspended solids, total dissolved solids or specific conductance corrected to 25°C, pH, total iron, and total manganese. Baseline acidity and alkalinity information shall be provided if there is a potential for acid drainage from the proposed mining operation. Water quantity descriptions shall include, at a minimum, baseline information on seasonal flow rates.

(3) Supplemental information. If the determination of the probable hydrologic consequences (PHC) required by paragraph (e) of this section indicates that adverse impacts on or off the proposed permit area may occur to the hydrologic balance, or that acid-forming or toxic-forming material is present that may result in the contamination of groundwater or surface water supplies,

⁴ DMME indicates that there has been a significant drop in the number of active underground mines in recent years, but the number of mines has appeared to stabilize more recently.

then information supplemental to that required under paragraph (b)(1) and (b)(2) of this section shall be provided to evaluate such probable hydrologic consequences and to plan remedial and reclamation activities. Such supplemental information may be based upon drilling, aquifer tests, hydrogeologic analysis of the water-bearing strata, flood flows, or analysis of other water quality or quantity characteristics.

(c) Baseline cumulative impact area information.

(1) Hydrologic and geologic information for the cumulative impact area necessary to assess the probable cumulative hydrologic impacts of the proposed operation and all anticipated mining on surface water and groundwater systems as required by paragraph (f) of this section shall be provided to the division if available from appropriate federal or state agencies.

(2) If this information is not available from such agencies, then the applicant may gather and submit this information to the division as part of the permit application.

(3) The permit shall not be approved until the necessary hydrologic and geologic information is available to the division.

(d) Modeling. The use of modeling techniques, interpolation or statistical techniques may be included as part of the permit application, but actual surface water and groundwater information may be required by the division for each site even when such techniques are used.

(e) Probable hydrologic consequences determination.

(1) The application shall contain a determination of the probable hydrologic consequences (PHC) of the proposed operation upon the quality and quantity of surface and ground water under seasonal flow conditions for the proposed permit and adjacent areas.

(2) The PHC determination shall be based on baseline hydrologic, geologic and other information collected for the permit application and may include data statistically representative of the site.

(3) The PHC determination shall include findings on:

(i) Whether adverse impacts may occur to the hydrologic balance;

(ii) Whether acid-forming or toxic-forming materials are present that could result in the contamination of surface water or groundwater supplies; and

(iii) What impact the proposed operation will have on:

(A) Sediment yield from the disturbed area;

(B) Acidity, total suspended and dissolved solids, and other important water quality parameters of local impact;

(C) Flooding or streamflow alteration;

(D) Groundwater and surface water availability; and,

(E) Other characteristics as required by the division.

(4) An application for a permit revision shall be reviewed by the division to determine whether a new or updated PHC determination shall be required.

(f) Cumulative hydrologic impact assessment.

(1) The division shall provide an assessment of the probable cumulative hydrologic impacts (CHIA) of the proposed operation and all anticipated mining upon surface water and groundwater systems in the cumulative impact area. The CHIA shall be sufficient to determine, for purposes of permit approval, whether the proposed operation has been designed to prevent material damage to the hydrologic balance outside the permit area. The division may allow the applicant to submit data and analyses relevant to the CHIA with the permit application.

(2) An application for a permit revision shall be reviewed by the division to determine whether a new or updated CHIA shall be required.

(g) Hydrologic reclamation plan. The application shall include a plan, with maps and descriptions, indicating how the relevant requirements of Part 817, including 4 VAC 25-130-817.41 through 4 VAC 25-130-817.43, will be met. The plan shall be specific to the local hydrologic conditions. It shall contain the steps to be taken during mining and reclamation through bond release to minimize disturbance to the hydrologic balance within the permit and adjacent areas; to prevent material damage outside the permit area; and to meet applicable federal and state water quality laws and regulations. The plan shall include the measures to be taken to: avoid acid or toxic drainage; prevent to the extent possible using the best technology currently available, additional contributions of suspended solids to streamflow; provide and maintain water treatment facilities when needed; control drainage; prevent the sudden release of accumulated water from the underground workings; and restore approximate premining recharge capacity. The plan shall specifically address any potential adverse hydrologic consequences identified in the PHC determination prepared under paragraph (e) of this section and shall include preventive and remedial measures.

(h) Groundwater monitoring plan.

(1) The application shall include a groundwater monitoring plan based upon the PHC determination required under paragraph (e) of this section and the analysis of all baseline hydrologic, geologic and other information in the permit application. The plan shall provide for the monitoring of parameters that relate to the suitability of the groundwater for current and approved postmining land uses, to support the objectives for protection of the hydrologic balance set forth in paragraph (g) of this section, to determine the cause of diminution or contamination of usable ground waters, and to guard against off-site influences and provide representation of the effects of the proposed surface coal mining operation. It shall identify the quantity and quality parameters to be monitored, sampling frequency and site locations. It shall describe how the data may be used to determine the impacts of the operation upon the hydrologic balance. At a minimum, total dissolved solids

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or specific conductance corrected to 25°C, pH, total iron, total manganese, and water levels shall be monitored and data submitted quarterly or as otherwise specified by the division for each monitoring location.

(2) If an applicant can demonstrate by use of the PHC determination and other available information that a particular water-bearing stratum in the proposed permit and adjacent areas is not one which serves as an aquifer which significantly ensures the hydrologic balance within the cumulative impact area, then monitoring of that stratum may be waived by the division.

(3) The monitoring plan shall be designed in accordance with the following subparagraphs. The division may require additional monitoring and the analysis or measurement of other parameters on a site-specific basis. During the mining or postmining phase of activity, the division may require additional monitoring if it is determined that the established monitoring plan is ineffective.

(i) When pH or chemical analysis results indicate no immediate or potential acid-producing or toxic material within the proposed disturbed area, the applicant may submit a plan for representative monitoring. Appropriate monitoring which will indicate changes in subsurface water quality and quantity at sites which provide geological and hydrological representation of the entire proposed permit area shall be established.

(ii) When potential for adverse impacts to ground waters in use exists, then a representative monitoring plan utilizing wells or springs shall be provided.

(iii) When no potential to affect ground waters in use exists, then a plan utilizing piezometers or methods for representative monitoring in the unsaturated zone may be used.

(iv) When structural or stratigraphic variations are present within the proposed permit area, altering the ground water regime and indicating more than one representative area, the applicant shall include within the plan a minimum of one monitoring site for each representative area.

(v) The applicant shall include a plan to source monitor near isolated acid-producing or toxic material using piezometers or equipment for monitoring the unsaturated zone.

(vi) When any portion of a surface mine operation is proposed within a stream floodplain, the applicant shall include a plan for monitoring using wells in alluvial material both upstream and downstream of the proposed area to be disturbed. The plan shall also include adjacent upgradient and adjacent downgradient monitoring wells for any slurry pond with water having a pH of less than 6.0, coal stockpiles, and acid-producing or toxic-producing material disposal site.

(vii) In cases where the alluvium monitored has been determined to be consistently or seasonally unsaturated, the division may require revision of the

monitoring plan to include appropriate monitoring of the unsaturated zone.

(viii) Where potential exists for adverse impacts to the hydrologic regime from a surface mining operation situated in an area of colluvium, the division may require monitoring similar to that required in floodplain areas.

(ix) For each refuse or hollow fill without an underdrain, the applicant shall include a plan to monitor the fill using piezometers which are sufficient in number and design to permit a planar determination of a potential water table within the fill.

(x) When a refuse or hollow fill is designed to contain underdrains, then a plan for monitoring the underdrain may be used, provided that the underdrain discharge indicates changes in water quality resulting from the fill and not from other sources or outside influences. If the underdrain is not representative of the effects of the fill material, then piezometers shall be used.

(xi) The applicant may include a plan to use a spring in lieu of other monitoring methods if:

(A) The spring is located both stratigraphically and geographically so that data representing an area to be disturbed or an acid or toxic spoil isolation area will be obtained.

(B) The spring has been observed and documented satisfactorily to the division to be a permanent spring.

(xii) For the adjacent area, the applicant shall submit a plan to individually monitor each significant aquifer identified with wells, springs, mine discharges or any combination of these. The plan shall include flow measurements for each point under seasonal conditions. The division shall require quality analyses in addition to quantity measurements if it determines that such monitoring is necessary for protection of the hydrologic balance.

(i) Surface water monitoring plan.

(1) The application shall include a surface water monitoring plan based upon the PHC determination required under paragraph (e) of this section and the analysis of all baseline hydrologic, geologic and other information in the permit application. The plan shall provide for the monitoring of parameters that relate to the suitability of the surface water for current and approved postmining land uses and to the objectives for protection of the hydrologic balance as set forth in paragraph (g) of this section as well as the effluent limitations found at 40 CFR Part 434.

(2) The plan shall identify the surface water quantity and quality parameters to be monitored, sampling frequency and site locations. It shall describe how the data may be used to determine the impacts of the operation upon the hydrologic balance.

(i) At all monitoring locations in surface water bodies such as streams, lakes, and impoundments, that are

potentially impacted or into which water will be discharged and at upstream monitoring locations, the total dissolved solids or specific conductance corrected to 25°C, total suspended solids, pH, total iron, total manganese, and flow shall be monitored.

(ii) For point-source discharges, monitoring shall be conducted in accordance with 40 CFR Parts 122, 123, and 434 and as required by the National Pollutant Discharge Elimination System permit.

(3) The monitoring reports shall be submitted to the division quarterly. The division may require additional monitoring.

4 VAC 25-130-817.41. Hydrologic-balance protection.

(a) General. All underground mining and reclamation activities shall be conducted to minimize disturbance of the hydrologic balance within the permit and adjacent areas, to prevent material damage to the hydrologic balance outside the permit area, and to support approved postmining land uses in accordance with the terms and conditions of the approved permit and the performance standards of this Part. The division may require additional preventative, remedial, or monitoring measures to assure that material damage to the hydrologic balance outside the permit area is prevented. Mining and reclamation practices that minimize water pollution and changes in flow shall be used in preference to water treatment.

(b) Groundwater protection. In order to protect the hydrologic balance, underground mining activities shall be conducted according to the plan approved under 4 VAC 25-130-784.14(g) and the following:

(1) Groundwater quality shall be protected by handling earth materials and runoff in a manner that minimizes acidic, toxic, or other harmful infiltration to groundwater systems and by managing excavations and other disturbances to prevent or control the discharge of pollutants into the groundwater.

(2) Groundwater quantity shall be protected by handling earth materials and runoff in a manner that will restore approximate premining recharge capacity of the reclaimed area as a whole, excluding coal mine waste disposal areas and fills, so as to allow the movement of water to the groundwater system.

(c) Groundwater monitoring.

(1) Groundwater monitoring shall be conducted according to the groundwater monitoring plan approved under 4 VAC 25-130-784.14(h). The division may require additional monitoring when necessary.

(2) Representative monitoring.

(i) Representative monitoring points shall be established within 100 feet downgradient from the initial disturbance within each representative area. This distance may be modified by the division if it is demonstrated in the permit application that the 100 feet distance is inappropriate for the monitoring point.

(ii) If degradation, contamination or diminution of water quality or quantity are evident through monitoring, then

additional monitoring and/or remedial action may be required by the division.

(3) Source monitoring.

(i) Source monitoring shall be used near isolated acid-producing or toxic-producing material. Monitoring shall be by piezometers or other equipment suitable for monitoring in the unsaturated zone. Piezometers or alternate equipment shall be installed in backfilled material during or within 45 days after final grading of the area. Installation in fill or temporary storage areas shall be as soon as practicable. Monitoring points shall be of sufficient number and locations so that adverse impacts can be readily detected.

(ii) Representative monitoring may be required by the division in addition to source monitoring when the operation may adversely impact usable ground waters.

(4) Well drilling, construction and completion.

(i) When wells are used, they shall be drilled either to the first water-producing zone or, if no water is encountered, to a depth of 100 feet below each coal seam to be mined. The division may require deeper drilling if site conditions indicate the potential for adverse impacts to a known water-producing zone which is at greater depth.

(ii) Monitoring wells shall be drilled an additional 20 feet into the water-producing zone to aid in pumping.

(iii) Monitoring wells shall:

(A) Accommodate a four inch (4") submersible pump for sample extraction and measurement of field parameters. Other diameters may be approved by the division if sample extraction is allowed.

(B) Be constructed in a manner which isolates the water-producing zone to be monitored and prevents the mixing of ground waters.

(C) Be grouted from the surface to at least one foot into bedrock, with all leakage around the well casing prevented.

(D) Be capped, locked, and labeled with an identification number.

(E) Be properly developed and the final yield reported.

(F) Not be constructed or packed with materials which would adversely affect the monitoring results obtained.

(iv) Existing wells may be used for monitoring provided that:

(A) The well is located at a point where data representative of the permit or adjacent area will be obtained.

(B) The well penetrates the water-producing zone to be monitored.

(C) The well is constructed in a manner which effectively isolates the water-producing zone.

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(D) The well meets the standards of paragraph (c)(4) above.

(E) Filtering systems and water softeners are not present which may alter the quality of the water sample. Filters or softeners may be disconnected or bypassed during sampling.

(5) Groundwater monitoring data shall be submitted within 30 days after the end of the calendar quarter to the division. More frequent reporting may be prescribed by the division. Monitoring reports shall include analytical results from each sample taken during the reporting period. When the analysis of any groundwater sample indicates noncompliance with the permit conditions, then the permittee shall promptly notify the division and immediately take the actions provided for in 4 VAC 25-130-773.17(e) and 4 VAC 25-130-784.14(g).

(6) Groundwater monitoring shall proceed through mining and continue during reclamation until bond release. Consistent with the procedures of 4 VAC 25-130-774.13, the division may modify the monitoring requirements including the parameters covered and the sampling frequency if the permittee demonstrates, using the monitoring data obtained under this paragraph, that:

(i) The operation has minimized disturbance to the prevailing hydrologic balance in the permit and adjacent areas and prevented material damage to the hydrologic balance outside the permit area; water quantity and quality are suitable to support approved postmining land uses; or

(ii) Monitoring is no longer necessary to achieve the purposes set forth in the monitoring plan approved under 4 VAC 25-130-784.14(h).

(7) Equipment, structures, and other devices used in conjunction with monitoring the quality and quantity of groundwater onsite and offsite shall be properly installed, maintained, and operated and shall be removed by the permittee when no longer required by the division.

(d) Surface water protection. In order to protect the hydrologic balance, underground mining activities shall be conducted according to the plan approved under 4 VAC 25-130-784.14(g), and the following:

(1) Surface water quality shall be protected by handling earth materials, groundwater discharges, and runoff in a manner that minimizes the formation of acidic or toxic drainage; prevents, to the extent possible using the best technology currently available, additional contribution of suspended solids to streamflow outside the permit area; and otherwise prevents water pollution. If drainage control, restabilization and revegetation of disturbed areas, diversion of runoff, mulching, or other reclamation and remedial practices are not adequate to meet the requirements of this section and 4 VAC 25-130-817.42, the permittee shall use and maintain the necessary water-treatment facilities or water quality controls.

(2) Surface water quantity and flow rates shall be protected by handling earth materials and runoff in

accordance with the steps outlined in the plan approved under 4 VAC 25-130-784.14(g).

(e) Surface water monitoring.

(1) Surface water monitoring shall be conducted according to the surface water monitoring plan approved under 4 VAC 25-130-784.14(i). The division may require additional monitoring when necessary.

(2) Surface water monitoring data shall be submitted every three months to the division or more frequently as prescribed by the division. Monitoring reports shall include analytical results from each sample taken during the reporting period. When the analysis of any surface water sample indicates noncompliance with the permit conditions, the permittee shall promptly notify the division and immediately take the actions provided for in 4 VAC 25-130-773.17(e) and 4 VAC 25-130-784.14(g). Reporting shall be in accordance with the National Pollutant Discharge Elimination System (NPDES) permit requirements.

(3) Surface water monitoring shall proceed through mining and continue during reclamation until bond release. Consistent with 4 VAC 25-130-774.13, the division may modify the monitoring requirements, in accordance with the NPDES permit, including the parameters covered and sampling frequency, if the permittee demonstrates, using the monitoring data obtained under this paragraph, that-

(i) The operation has minimized disturbance to the hydrologic balance in the permit and adjacent areas and prevented material damage to the hydrologic balance outside the permit area; water quantity and quality are suitable to support approved postmining land uses; and

(ii) Monitoring is no longer necessary to achieve the purposes set forth in the monitoring plan approved under 4 VAC 25-130-784.14(i).

(4) Equipment, structures, and other devices used in conjunction with monitoring the quality and quantity of surface water onsite and offsite shall be properly installed, maintained, and operated and shall be removed by the permittee when no longer required by the division.

(f) Acid- and toxic-forming materials.

(1) Drainage from acid- and toxic-forming materials and underground development waste into surface water and ground water shall be avoided by:

(i) Identifying and burying and/or treating, when necessary, materials which may adversely affect water quality, or be detrimental to vegetation or to public health and safety if not buried and/or treated; and

(ii) Storing materials in a manner that will protect surface water and ground water by preventing erosion, the formation of polluted runoff, and the infiltration of polluted water. Storage shall be limited to the period until burial and/or treatment first become feasible, and

so long as storage will not result in any risk of water pollution or other environmental damage.

(2) Storage, burial or treatment practices shall be consistent with other material handling and disposal provisions of this chapter.

(g) Transfer of wells. Before final release of bond, exploratory or monitoring wells shall be sealed in a safe and environmentally sound manner in accordance with 4 VAC 25-130-817.13 and 4 VAC 25-130-817.15. With the prior approval of the division, wells may be transferred to another party, or retained by the permittee for further use. However, at a minimum, the conditions of such transfer shall comply with State and local laws and the permittee shall remain responsible for the proper management of the well until bond release in accordance with 4 VAC 25-130-817.13 through 4 VAC 25-130-817.15.

(h) Discharges into an underground mine.

(1) Discharges into an underground mine are prohibited, unless specifically approved by the division after a demonstration that the discharge will:

(i) Minimize disturbance to the hydrologic balance on the permit area, prevent material damage outside the permit area and otherwise eliminate public hazards resulting from underground mining activities;

(ii) Not result in a violation of applicable water quality standards or effluent limitations;

(iii) Be at a known rate and quality which shall meet the effluent limitations of 4 VAC 25-130-817.42 for pH and total suspended solids, except that the pH and total suspended solids limitations may be exceeded, if approved by the division; and

(iv) Meet with the approval of the Mine Safety and Health Administration.

(2) Discharges shall be limited to the following:

(i) Water;

(ii) Coal-processing waste;

(iii) Fly ash from a coal-fired facility;

(iv) Sludge from an acid-mine drainage treatment facility;

(v) Flue-gas desulfurization sludge;

(vi) Inert materials used for stabilizing underground mines; and

(vii) Underground mine development wastes.

(3) Water from one underground mine may be diverted into other underground workings according to the requirements of this section.

(i) Gravity discharges from underground mines.

(1) Surface entries and accesses to underground workings shall be located and managed to prevent or control gravity discharge of water from the mine. Gravity discharges of water from an underground mine, other

than a drift mine subject to paragraph (i)(2) of this section, may be allowed by the division if it is demonstrated that the untreated or treated discharge complies with the performance standards of this part and any additional NPDES permit requirements.

(2) Notwithstanding anything to the contrary in paragraph (i)(1) of this section, the surface entries and accesses of drift mines first used after December 15, 1981, or the implementation of a Federal Lands Program in accordance with Part 740, and located in acid-producing or iron-producing coal seams shall be located in such a manner as to prevent any gravity discharge from the mine.

(3) *Except where surface entries and accesses to underground workings are located pursuant to paragraph (i)(1) of this section, an unmined barrier of coal shall be left in place where the coal seam dips toward the land surface. The unmined barrier and associated overburden shall be designed to prevent the sudden release of water that may accumulate in the underground workings.*

(i) *The applicant may demonstrate the appropriate barrier width and overburden height by either:*

(A) *Providing a site specific design, certified by a licensed professional engineer, which considers the overburden and barrier characteristics; or*

(B) *Providing the greater of an unmined horizontal barrier width necessary to leave a minimum of 100 feet of vertical overburden, or an unmined barrier width calculated by the formula: $W=50+H$, when W is the minimum width in feet and H is the calculated hydrostatic head in feet.*

(ii) *An exception to the barrier requirement may be approved provided the division finds, based upon the geologic and hydrologic conditions, an accumulation of water in the underground workings cannot reasonably be expected to occur or other measures taken by the applicant are adequate to prevent the accumulation of water.*

Documents Incorporated by Reference

Standard Methods for the Examination of Water and Wastewater, 17th Edition, 1989, American Public Health Association.

VA.R. Doc. No. R96-553; Filed August 28, 1996, 11:31 a.m.

FINAL REGULATIONS

For information concerning Final Regulations, see Information Page.

Symbol Key

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

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.

Effective Date: January 1, 1997.

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 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. Changes to the proposed regulation are made to incorporate changes in federal regulation. In addition, a clause was added regarding a departmental review of the regulation and subsequent confirmation, repeal or amendment of the regulation by the board.

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

Agency Contact: Copies of the regulation may be obtained from Alma Jenkins, Office of Air Program Development, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4070. There is a cost of 20¢ per page.

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 (PM₁₀), carbon monoxide (CO), nitrogen dioxide (NO₂), or any combination of the preceding, ozone precursors (volatile organic compounds and oxides of nitrogen), that period of time after EPA approves control strategy implementation plan revisions containing strategies for controlling PM₁₀, NO₂, CO, ozone, or any combination of the preceding as appropriate. This period ends when a state submits and EPA approves a request under § 107(d) of the federal Clean Air Act for redesignation to an attainment area.

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

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

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

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

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

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

"Emergency special order" means any order of the board issued under the provisions of § 10.1-1309 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 analytical purposes, it shall be defined sufficiently to:

1. Connect logical termini and be of sufficient length to address environmental matters on a broad scope;
2. Have independent utility or significance, i.e., be usable and be a reasonable expenditure even if no

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additional transportation improvements in the area are made; and

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

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

"Hot-spot analysis" means an estimation of likely future localized CO and PM₁₀ pollutant concentrations and a comparison of those concentrations to the national ambient air quality standards. Pollutant concentrations to be estimated should be based on the total emissions burden which may result from the implementation of a single, specific project, summed together with future background concentrations (which can be estimated using the ratio of future to current traffic multiplied by the ratio of future to current emission factors) expected in the area. The total concentration shall be estimated and analyzed at appropriate receptor locations in the area substantially affected by the project. Hot-spot analysis assesses impacts on a scale smaller than the entire nonattainment or maintenance area, including, for example, congested roadway intersections and highways or transit terminals, and uses an air quality dispersion model to determine the effects of emissions on air quality.

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

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

"ISTEA" means the Intermodal Surface Transportation Efficiency Act of 1991 [(Public Law 102-240)].

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

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

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

years, unless the applicable implementation plan specifies that the maintenance period shall last for more than 20 years.

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

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

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

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

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

"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.

"PM₁₀" means particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers as measured by the applicable reference method or an equivalent method.

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

["Protective finding" means a determination by the EPA that the control strategy contained in a submitted control strategy implementation plan revision would have been considered approvable with respect to requirements for emissions reductions if all committed measures had been submitted in enforceable form as required by § 110(a)(2)(A) of the federal Clean Air Act.]

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

"Recipient of funds designated under Title 23 USC or the Federal Transit Act" means any agency at any level of state, county, city, or regional government that routinely receives Title 23 USC or Federal Transit Act funds to construct FHWA/FTA projects, operate FHWA/FTA projects or equipment, purchase equipment, or undertake other services

or operations via contracts or agreements. This definition does not include private landowners or developers, or contractors or entities that are only paid for services or products created by their own employees.

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

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

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

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

1. Under the provisions of § 10.1-1309 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

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environment that is reasonably likely to occur if the source ceases operations.

"Standard" means a national ambient air quality standard.

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

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

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

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

1. Connect logical termini and be of sufficient length to address environmental matters on a broad scope;
2. Have independent utility or independent significance, i.e., be a reasonable expenditure even if no additional transportation improvements in the area are made; and
3. Not restrict consideration of alternatives for other reasonably foreseeable transportation improvements.

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

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

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

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

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

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

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

"Variance" means the temporary exemption of an owner or other person from this 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 Transportation].

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

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

"Welfare" means that language referring to effects on welfare includes, but is not limited to, effects on soils, water, crops, vegetation, man-made materials, animals, wildlife, weather, visibility and climate, damage to and deterioration of 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 (PM₁₀).

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 PM₁₀ in PM₁₀ 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 PM₁₀ 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.

[D. A grace period for new nonattainment areas is allowed for areas or portions of areas which have been in attainment for either ozone, CO, PM₁₀, or NO_x since 1990 and are subsequently redesignated to nonattainment for any of these pollutants. The provisions of this chapter shall not apply for such pollutant for 12 months following the date of final designation to nonattainment.]

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.

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

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.

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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 preceding 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

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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 PM₁₀ 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 PM₁₀ nonattainment areas which have vehicle and roadway

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emission and dispersion characteristics which are essentially identical to those sites which have violations verified by monitoring, and therefore require quantitative PM₁₀ hot-spot analysis.

2. An interagency consultation 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 initiated 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.

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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 PM₁₀ violations or increase the frequency or severity of any existing CO or PM₁₀ violations in CO and PM₁₀ nonattainment and maintenance areas.

9 VAC 5-150-250 The FHWA/FTA project shall comply with PM₁₀ 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 PM₁₀ and NO₂ nonattainment areas.

9 VAC 5-150-340 The TIP shall contribute to emission reductions or shall not increase emissions in PM₁₀ and NO₂ 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 PM₁₀ and NO₂ 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.

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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 chapter].

[A.] 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.

[B. This criterion is not required to be satisfied at the time of project approval for a TCM specifically included in the applicable implementation plan provided that all other relevant criteria of this chapter are satisfied.]

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. [Special provisions for TCMs in an applicable implementation plan are provided in subsection D 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.

[D. This criterion is not required to be satisfied for TCMS specifically included in an applicable implementation plan.]

9 VAC 5-150-240. Criteria and procedures: localized CO and PM₁₀ violations (hot spots).

A. The FHWA/FTA project shall not cause or contribute to any new localized CO or PM₁₀ violations or increase the frequency or severity of any existing CO or PM₁₀ violations in CO and PM₁₀ 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 PM₁₀ control measures.

The FHWA/FTA project shall comply with PM₁₀ control measures in the applicable implementation plan. This criterion applies during all periods. It is satisfied if control measures (for the purpose of limiting PM₁₀ 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. PM₁₀ (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 PM₁₀ nonattainment problem or establishes a budget for the emissions); or

e. NO_x (in NO₂ 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;

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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;

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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 PM₁₀ and NO₂ areas (transportation plan).

A. A transportation plan shall contribute to emission reductions or shall not increase emissions in PM₁₀ and NO₂ 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 PM₁₀ in a PM₁₀ nonattainment area (and of each transportation-related precursor of PM₁₀ in PM₁₀ 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 PM₁₀ nonattainment problem and has so notified the MPO and USDOT) and of NO_x in an NO₂ 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 NO₂ areas) or four years and six months following the date of designation (for PM₁₀ 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 PM₁₀ emissions in a PM₁₀ nonattainment area (and transportation-related precursors of PM₁₀ in PM₁₀ 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 PM₁₀ nonattainment problem and has so notified the MPO and USDOT) and in NO_x emissions in an NO₂ nonattainment area. The analysis shall be performed for each of the analysis years according to the requirements of 9 VAC 5-150-

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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~~

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~~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(e)(2)(A) or § 182(e)(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 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.~~

A. For areas that submit control strategy implementation plans the following requirements shall be met.

1. The transportation plan and TIP must be demonstrated to conform by 18 months from the date of the state's initial submission to EPA of each control strategy implementation plan establishing a motor vehicle emissions budget. If conformity is not determined by 18 months from the date of submission of such control strategy implementation plan, the conformity status of the transportation plan and TIP will lapse, and

no new project-level conformity determinations may be made until the transportation plan and TIP have been demonstrated to conform.

2. For areas not yet in the control strategy period for a given pollutant, conformity shall be demonstrated using the motor vehicle emissions budget(s) in a submitted control strategy implementation plan revision for that pollutant beginning 90 days after submission unless EPA declares such budget(s) inadequate for transportation conformity purposes. The motor vehicle emissions budget(s) may be used to determine conformity during the first 90 days after its submission if EPA agrees that the budget(s) are adequate for conformity purposes.

B. For areas that submit a plan and the plan is disapproved:

1. If EPA disapproves the submitted control strategy implementation plan revision and so notifies the state, MPO, and USDOT, 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 fulfilling the same federal Clean Air Act requirements is submitted and conformity to this submission is determined.

2. Notwithstanding subdivision 1 of this subsection, if EPA disapproves the submitted control strategy implementation plan revision but makes a protective finding, 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. No new transportation plan, TIP, or project may be found to conform until another control strategy implementation plan revision fulfilling the same federal Clean Air Act requirements is submitted and conformity to this submission is determined.

C. For areas where EPA notifies the state, MPO, and USDOT of the state's failure to submit or submission of an incomplete control strategy implementation plan revision, 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 on the date that highway sanctions are imposed on the nonattainment area for such 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.

D. When EPA promulgates a federal implementation plan that contains motor vehicle emissions budget(s) as a result of a state failure, the conformity lapse imposed by this section because of that state failure is removed.]

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.

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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(e)(2)(A) and 182(e)(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(e)(2)(A) and 182(e)(2)(B) of the federal Clean Air Act are submitted.~~

[H. G.] 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 subsections] B [and C] of this section do not apply to these areas [at any time].

[H. H.] 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 PM₁₀ and NO₂ 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.

[6. 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.]

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

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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 B] of this section shall be used in all areas not subject to subsection [A B] 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

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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 PM₁₀ 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 vehicles¹
 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 fleet¹
 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 PM₁₀ 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 PM₁₀ 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

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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.

[9 VAC 5-150-450 Review and confirmation of this chapter by board.

A. Prior to January 1, 2000, the department shall provide the board with an analysis to include (i) an assessment of the effectiveness of this chapter, (ii) the status of any specific federal requirements and the identification of any provisions more stringent than the federal requirements, (iii) the federal approval status of this chapter and (iv) an assessment of the need for continuation of this chapter.

B. Upon review of the department's analysis, the board shall confirm (i) the continuation of this chapter, (ii) the repeal of this chapter or (iii) the need to amend this chapter. If a decision is made in either of the latter two cases, the board shall authorize the department to initiate the applicable regulatory process to carry out the decision of the board.]

VA.R. Doc. No. R96-539; Filed August 23, 1996, 4:25 p.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.

Effective Date: January 1, 1997.

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) increase the frequency or severity of any existing violation of any standard in any area, or (iii) 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. A clause was added regarding a departmental review of the regulation

and subsequent confirmation, repeal or amendment of the regulation by the board.

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

Agency Contact: Copies of the regulation may be obtained from Karen G. Sabasteanski, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4426.

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

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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.

"PM₁₀" means particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers as measured by the applicable reference method or an equivalent method.

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

"Precursors of a criteria pollutant" means:

1. For ozone,
 - a. Nitrogen oxides, unless an area is exempted from nitrogen oxides requirements under § 182(f) of the federal Clean Air Act, and
 - b. Volatile organic compounds; and
2. For PM₁₀, those pollutants described in the PM₁₀ nonattainment area applicable implementation plan as significant contributors to the particulate matter levels.

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

"Reasonably foreseeable emissions" are projected future indirect emissions that are identified at the time the conformity determination is made; the location of the emissions is known to the extent adequate to determine the impact of the emissions; and the emissions are quantifiable, as described and documented by the federal agency based

on its own information and after reviewing any information presented to the federal agency.

"Regional water or wastewater projects" means construction, operation, and maintenance of water or wastewater conveyances, water or wastewater treatment facilities, and water storage reservoirs which affect a large portion of a nonattainment or maintenance area.

"Regionally significant action" means a federal action for which the direct and indirect emissions of any pollutant represent 10% or more of a nonattainment or maintenance area's emissions inventory for that pollutant.

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

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

1. Under the provisions of § 10.1-1309 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.

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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 (PM₁₀).

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 PM₁₀, those pollutants described in the PM₁₀ 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
PM₁₀:	
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.

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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~~ 9 VAC 5-160-110 and 9 VAC 5-160-130 through 9 VAC 5-160-180] shall apply for the federal action.

M. Where an action presumed to be de minimis under subdivision [~~C-1 or C-2~~ F 1 or F 2] of this section or otherwise presumed to conform under subsection [F 1] of this section is a regionally significant action or where an action otherwise presumed to conform under subsection [F 1] of this section does not in fact meet one of the criteria in subdivision [~~G J~~] 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~~ 9 VAC 5-160-110 and 9 VAC 5-160-130 through 9 VAC 5-160-180] 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

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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.

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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 PM₁₀:
 - 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

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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 PM₁₀-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 [A 1], 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~~ 9 VAC 5-160-130] and the public participation requirements of [~~9 VAC 5-160-150~~ 9 VAC 5-160-140].

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.

[9 VAC 5-160-200. Review and confirmation of this chapter by board.

A. Prior to January 1, 2000, the department shall provide the board with an analysis to include (i) an assessment of the effectiveness of this chapter; (ii) the status of any specific federal requirements and the identification of any provisions more stringent than the federal requirements, (iii) the federal approval status of this chapter and (iv) an assessment of the need for continuation of this chapter.

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B. Upon review of the department's analysis, the board shall confirm (i) the continuation of this chapter, (ii) the repeal of this chapter, or (iii) the need to amend this chapter. If a decision is made in either of the latter two cases, the board shall authorize the department to initiate the applicable regulatory process to carry out the decision of the board.]

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. R96-540; August 23, 1996, 4:25 p.m.

DEPARTMENT OF CONSERVATION AND RECREATION

REGISTRAR'S NOTICE: The following regulation filed by the Department of Conservation and Recreation is exempt from the Administrative Process Act in accordance with § 9-6.14:4.1 C 1 of the Code of Virginia, which excludes orders or regulations fixing rates or prices. The Department of Conservation and Recreation will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: 4 VAC 5-35-10 et seq. **Standard Fees for Use of Department of Conservation and Recreation Facilities, Programs and Services.**

Statutory Authority: § 10.1-104 of the Code of Virginia.

Effective Date: October 17, 1996.

Summary:

This regulation establishes the standard rates for overnight and day use facility rental, and for standard fee programs and services in Virginia state parks, and establishes the criteria for deviating from and waiving fees. It further establishes pricing guidelines for nonstandardized facility rental and fee programs.

Agency Contact: Copies of this regulation may be obtained from the Department of Conservation and Recreation, 203 Governor Street, Suite 302, Richmond, Virginia 23219, telephone (804) 786-6124.

CHAPTER 35.

STANDARD FEES FOR USE OF DEPARTMENT OF CONSERVATION AND RECREATION FACILITIES, PROGRAMS AND SERVICES.

4 VAC 5-35-10. Definitions.

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

"Department" means the Department of Conservation and Recreation.

"Department director" means the Director of the Department of Conservation and Recreation.

"Natural area" means all properties owned or operated by the Department of Conservation and Recreation as natural area preserves or natural areas.

"Off-season" means the days, weeks or months of a year that a particular facility is not in high demand.

"Prime season" means the days, weeks, or months of a year that a particular facility is in high demand.

"Standard fee" is a fee or price charged for facilities, services or products as established on the Department of Conservation and Recreation fees list.

"State park" means all properties owned or operated by the Department of Conservation and Recreation as parks or historic sites.

"Weekly rental" means a seven-night rental period.

4 VAC 5-35-20. Applicability and effective dates.

A. This chapter applies to all state parks and natural areas and facilities, programs and services operated by the Department of Conservation and Recreation.

B. This chapter establishes all fees and prices by setting standard fees for facilities, programs and services or otherwise establishing guidelines for setting fees for nonstandardized facilities, programs and services. All revenues from fees and prices thus established will be deposited in the Conservation Resources Fund.

C. Provisions of this chapter will become effective as provided for by § 9-6.14:9.3 of the Administrative Process Act or as otherwise stated in this chapter.

4 VAC 5-35-30. General conditions and criteria concerning waiving or deviating from established fees for facilities, programs and services.

A. The department director may waive fees for any person, group, or organization whenever such action is deemed to be in the public interest.

B. The department director may allow deviations from established fees in the form of discounts or special promotion prices for the purpose of stimulating visitation and use of departmental facilities, programs and services.

4 VAC 5-35-40. General conditions and criteria concerning the establishment of new fees.

A. The department director may establish fees for new or nonstandardized facility rentals, programs, and services as the need arises according to reasonable and accepted business practices, negotiation with third party and providers, and local market conditions. Such fees and prices shall be in effect immediately upon the reasonable availability of information allowing the public to be aware of the most current fee or price.

B. In the event that newly established or nonstandardized facility rentals, programs or services become a continuing offering, the department director shall standardize them and publish them in accordance with the Virginia Register Act (§ 9-6.15 et seq. of the Code of Virginia).

4 VAC 5-35-50. Standard fees for facilities, programs and services.

PARKING FEES (Nontaxable)

TYPE	WEEKDAYS	WEEKENDS
Main Season Daily Parking (Cars, trucks, vans, motorcycles)		
Price Range A: Natural Area Preserve and Parks under construction. (Belle Isle)	\$1.00	\$1.00
Price Range B: Parks other than below.	\$1.00	\$2.00
Price Range C: Westmoreland	\$1.00	\$3.00
Price Range D: First Landing/Seashore, Lake Anna, Smith Mt. Lake, Claytor Lake, Leesylvania, Kiptopeke (partial season, see note).	\$2.00	\$3.00
Price Range E: Pocahontas, Kiptopeke (partial season, see note).	\$3.00	\$4.00
Off Season Daily Parking (Cars, trucks, vans, motorcycles)		
Standard fee	\$1.00	\$1.00
Annual Parking - Cars, trucks, vans, motorcycles		
Standard fee	ANNUAL \$25.00	
(requires daily price differential surcharge when used at parks below)	\$13.00 after 7/21	
First Landing/Seashore, Lake Anna, Smith Mt. Lake, Claytor Lake Leesylvania, Westmoreland, Pocahontas	\$30.00 \$16.00 after 7/21	
Kiptopeke Annual Parking	\$40.00 \$24.00 after 7/21	
Annual Senior Citizens Parking	\$15.00 \$8.00 after 7/21	
Annual Bus Parking (Seashore)	\$65.00	
Daily Parking - bus		
Parks other than below	\$8.00	
Claytor Lake, Hungry Mother, First Landing/Seashore, Leesylvania, Mason Neck	\$10.00	(First Landing/Seashore- \$8.00 Spring/Fall)
Kiptopeke, Pocahontas, Westmoreland	\$15.00	
Daily Boat Launch Fee		
(For all registered watercraft and trailed boats. Add this fee to daily parking fee is also parking)		
Standard Fee	\$2.00	
First Landing/Seashore	\$4.00	
Leesylvania	\$4.00	\$5.00
Leesylvania : Group Fee (10 or more)	\$3.00	\$4.00
Surcharge for second Boat on same trail (jet ski)	\$2.00	
Overnight parking at boat launch (where available)	\$5.00	
Annual Parking/Boat Launch		
(Price includes parking & launch)	ANNUAL	
Claytor Lake, Kiptopeke, Lake Anna, Occoneechee, Smith Mt. Lake, Staunton River, Westmoreland, York River (requires daily price differential surcharge)	\$65.00 \$35.00 after 7/21	

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when used for boat launch at First Landing/Seashore or Leesylvania)

First Landing/Seashore (requires daily price differential surcharge when used for boat lunch at Leesylvania)	\$80.00 \$45.00 after 7/21
Leesylvania (good for parking & launching at all parks)	\$105 \$55.00 after 7/21

Annual Senior Citizen Parking/Boat Launch

(Price included parking and launch good also for parking only at all parks) Claytor Lake, Kiptopeke, Lake Anna, Occoneechee, Smith Mt. Lake, Staunton River, Westmoreland, York River	\$50.00 \$28.00 after 7/21
(requires daily price differential surcharge when used for boat launch at First Landing/Seashore or Leesylvania)	
First Landing/Seashore (requires daily price deferential surcharge when used for boat launch at Leesylvania)	\$65.00 \$38.00 after 7/21
Leesylvania (good for parking and launching at all parks)	\$90.00 \$48.00 after 7/21

Trailer Parking Fee (add to daily parking fee)

Other than those covered by camping or boat launch fee \$1.00 per trailer

Special Notes:

1. Weekend rates apply on Memorial Day, Fourth of July, and Labor Day holidays.
2. Off season rates apply after the last full weekend in October and up to the first full weekend in April.
3. At Kiptopeke, Price Range D applies to that portion of the main season outside of Memorial Day weekend through Labor Day. Price Range E applies from the Saturday before Memorial Day through Labor Day.

ADMISSION FEES (Nontaxable)

TYPE	WEEKDAYS	WEEKENDS
Park Admission Fee, Main Season		
Westmoreland, Memorial Day Week - Labor Day	Under 3 free \$1.00 (Ages 3-12) \$1.00 (Ages 13 & up)	Under 3 free \$1.00 \$2.00
Historic Areas		
Shot Tower, Chippokes Farm & Forestry Museum, Grist Mill	\$1.00 (Ages 6-12) \$2.00 (Ages 13 & up)	\$1.00 (Ages 6-12) \$1.00 (Ages 6-12)
Chippokes Mansion, Southwest VA Museum	\$1.50 (Ages 6-12) \$3.00 (Ages 13 & up)	\$1.00 (Ages 6-12) \$1.00 (Ages 6-12)
Group Rates (10 or more)	\$1.50 (adult) \$1.00 (child)	\$1.50 (adult) \$1.00 (child)
Group Rate for Children (same as regular rate)		
Annual Pass	\$5.00 (adult) \$2.00 (child) \$10.00 (family)	\$5.00 (adult) \$2.00 (child) \$2.00 (child)
Natural Tunnel Chairlift	\$2.00 (Ages 6 & up)	\$2.00 (child)

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	<i>Round Trip</i>	<i>Round Trip</i>
	\$1.00 (Ages 6 & up)	\$1.00 (Ages 6 & up)
	<i>One Way</i>	<i>One Way</i>
	\$1.50 (Group rate	\$1.50 (Group rate
	10 or more) Round Trip	10 or more) Round Trip
Fishing Pier, Kiptopeke	\$1.00 (Ages 6-12)	\$1.00 (Ages 6-12)
	\$3.00 (Ages 13 & up)	\$1.00 (Ages 6-12)
	\$1.00 (observation)	\$1.00 (observation)
Annual Fishing Pier Pass (includes parking)	\$25.00 (Ages 6-12)	\$25.00 (Ages 6-12)
	\$60.00 (Ages 13 & up)	\$60.00 (Ages 13 & up)
False Cape Seasonal Transportation Fee	\$4.00/day (Ages 3 & up)	\$4.00/day (Ages 3 & up)

CAMPING FEES (Taxable)

Camping fees include free swimming and boat launching for members of the camping party during their stay at the property, when and where available.

TYPE	PRIME SEASON	OFF SEASON
Standard Sites (no hookups)		
Price Range A: Holliday Lake, Bear Creek Lake, Twin Lakes, Natural Tunnel, Staunton River, Grayson Highlands (see primitive off-season), Pocahontas	\$10.53 / Night	\$8.61 / Night
Price Range B: Douthat (except campground A), Hungry Mother, Westmoreland, Occoneechee, Claytor Lake	\$11.48 / Night	\$9.57 / Night
Price Range C: Douthat Campground A	\$16.27 / Night	\$13.40 / Night
Price Range D: Kiptopeke	\$15.31 / Night	\$13.40 / Night
Price Range E: Seashore	\$19.14 / Night	\$13.40 / Night
Water & Electric Sites		
Price Range A: Holliday Lake, Fairy Stone, Bear Creek Lake, Twin Lakes, Natural Tunnel, Staunton River, Grayson Highlands, Chippokes Plantation	\$14.35 / Night	\$12.44 / Night
Price Range B: Douthat, Hungry Mother, Westmoreland, Occoneechee, Claytor Lake, Pocahontas	\$16.27 / Night	\$13.40 / Night
Price Range C: Kiptopeke	\$19.36 / Night	\$17.22 / Night
Water, Electric & Sewage Sites		
Kiptopeke	\$21.05 / Night	\$19.04 / Night
Primitive Camping		
Sky Meadows, Smith Mt. Lake, False Cape	\$7.65 / Night	\$6.70 / Night
Grayson Highlands	Not available	\$7.65 / Night
Group Camping		
<i>Per/Site Pricing</i>		
Price Range A: Twin Lakes, Natural Tunnel, Pocahontas	\$10.53 / Night	\$8.61 / Night
Price Range B: Douthat, Westmoreland,	\$11.48 / Night	\$9.57 / Night
Price Range C: First Landing/Seashore	\$19.14 / Night	\$18.00 / Night

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Total Campground Pricing:

Natural Tunnel	\$45.93 / Night	\$42.10 / Night
Horse Camping (Grayson Highlands only)		
Campsite Fee	\$10.53 / Night	\$8.61 / Night
Horse Stall Fee (all horses must be in stalls) Same price all seasons	\$5.74 / night-outside stall \$7.65 / night-inside stall	\$5.74 / night-outside stall \$7.65 / night-inside stall
Dump Station Fee (where available)	\$2.78	
PET FEES (no maximum, charge for each night of stay)	\$3.00 / pet / night	\$3.00 / pet / night

Special Notes:

Prime Season Camping Rates begin according to the following schedule:

- (Bear Creek Lake, Douthat, Holliday Lake, Occoneechee, Pocahontas, Twin Lakes) Friday night of the first full weekend in April.
- (First Landing/Seashore, Claytor Lake, Grayson Highlands, False Cape) Friday night of the first full weekend in May.
- (Westmoreland, Kiptopeke, Sky Meadows, Smith Mt. Lake, Staunton River, Fairy Stone, Hungry Mother, Natural Tunnel, Chippokes Plantation) from the Friday night of Memorial Day weekend.

The last night for charging Prime Season Camping Rates will be according to the following schedule:

- (Fairy Stone, Natural Tunnel, Holliday Lake, Occoneechee, Sky Meadows, Smith Mt. Lake, Staunton River, Twin Lakes, Kiptopeke, First Landing/Seashore, False Cape, Westmoreland) Sunday night of Labor Day weekend.
- (Bear Creek Lake, Pocahontas, Claytor Lake, Douthat, Grayson Highlands, Hungry Mother) Saturday night of the last full weekend of October.

CABINS (Taxable)

Cabin fee includes free swimming and boat launching for members of party during their stay at the property, when and where available.

TYPE	PRIME SEASON	OFF SEASON
Weekly Rates		
1 room: Douthat, Fairy Stone, Hungry Mother, Staunton River, Westmoreland	\$258.37 / Week	\$232.54 / Week
1 bedroom: Douthat, Fairy Stone, Hungry Mother, Staunton River, Westmoreland	\$287.08 / Week	\$258.37 / Week
Lake front: Fairy Stone, Hungry Mother	\$320.57 / Week	\$288.99 / Week
2 bedrooms		
All parks, except First Landing/Seashore	\$394.26 / Week	\$355.02 / Week
Lakeview (Claytor Lake, Fairy Stone, Hungry Mother, Twin Lakes, Westmoreland)	\$430.62 / Week	\$387.55 / Week
Seashore	\$497.61 / Week	\$355.02 / Week
Creasey Lodge at Douthat	\$669.86 / Week	\$669.86 / Week
Main Lodge at Douthat	\$1100.48 / Week	\$1100.48 / Week
Daily Rates: (Note: 2 night minimum)		
1 room: Douthat, Fairy Stone, Hungry Mother, Staunton River, Westmoreland	\$57.42 / Night	\$51.67 / Night
1 bedroom: Douthat, Fairy Stone, Hungry Mother, Staunton River, Westmoreland	\$62.20 / Night	\$55.50 / Night

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<i>Lake front: Fairy Stone</i>	<i>\$66.98 / Night</i>	<i>\$60.29 / Night</i>
2 bedrooms		
<i>All parks, except First Landing/Seashore</i>	<i>\$76.55 / Night</i>	<i>\$68.90 / Night</i>
<i>Lake front (Claytor Lake, Fairy Stone, Hungry Mother, Twin Lakes, Westmoreland)</i>	<i>\$81.34 / Night</i>	<i>\$73.68 / Night</i>
<i>Seashore</i>	<i>\$81.34 / Night</i>	<i>\$68.90 / Night</i>
Creasey Lodge at Douthat		
	<i>\$275.60 /per night</i>	<i>\$275.60 /per night</i>
	<i>1st - 2 nights</i>	<i>1st - 2 nights</i>
	<i>\$82.30 / per night</i>	<i>\$82.30 / per night</i>
	<i>3rd - 7 nights</i>	<i>3rd - 7 nights</i>
Main Lodge at Douthat		
	<i>\$454.54 / per night</i>	<i>\$454.54 / per night</i>
	<i>1st - 2 nights</i>	<i>1st - 2 nights</i>
	<i>\$129.19 / per night</i>	<i>\$129.19 / per night</i>
	<i>3rd - 7 nights</i>	<i>3rd - 7 nights</i>
Camping cabins (Overnight cabins) at Westmoreland (4 person max. occupancy & 2 night min.)	<i>\$28.71 / night</i>	<i>\$25.84 / night</i>
Extra Bed rentals	<i>\$2.87/Bed / night</i>	<i>\$2.87/Bed / night</i>
Linen (rented only upon request)	<i>\$5.74/Bed / week</i>	<i>\$5.74/Bed / week</i>
PET FEES (no maximum, charge for each night of stay)	<i>\$5.00 / pet / night</i>	<i>\$5.00 / pet / night</i>

Special Notes:

At no time will the weekly rental price be exceeded for all or a portion of a seven continuous night period.

Prime Season Cabins Rates will begin according to the following schedule:

1. Claytor Lake, Douthat, Fairy Stone, Hungry Mother: on May 1, weekly rentals which span this date will be prorated according to the number of prime and off-season days included in the week.
2. Westmoreland, First Landing/Seashore, Staunton River, Twin Lakes: on Friday of Memorial Day weekend; weekly rental which span this date will be prorated according to the number of prime and off-season days included in the week.

Prime Season Cabins Rates will end according to the following schedules.

1. Claytor Lake, Douthat, Fairy Stone, Hungry Mother: when the facility is closed for the winter.
2. First Landing/Seashore, Westmoreland, Twin Lakes, Staunton River; after Sunday night of Labor Day weekend. Weekly rentals which span this date will be prorated according to the number of prime and off-season days included in the week.

RESERVATION CANCELLATION FEES (Nontaxable)

Camping	<i>\$5.00 / reservation</i>
Cabins (including camping cabins at Westmoreland)	<i>\$10.00 / reservation</i>
Horse stalls	<i>\$5.00 / reservation</i>

PICNIC SHELTERS (Taxable)

<i>Small Shelters (Less than 750 sq ft)</i>	<i>\$24.00 / Half day</i>	<i>\$40.00 / Full day</i>
<i>Large Shelters (Greater than 750 sq ft)</i>	<i>\$40.00 / Half day</i>	<i>\$70.00 / Full day</i>
<i>Two reservation periods per day, per shelter</i>		
<i>Large Shelter</i>	<i>\$80.00 / Full day</i>	

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Leesylvania Group Picnic Area	\$40.00 / Full day
Chippokes Plantation Conference Shelter With Kitchen	\$100.00 / Function
Without Kitchen	\$ 60.00 / Function
(The shelter is available on a reservation basis only.)	
Amphitheater	
Natural Tunnel : First Half-day period (8:00 am - 3:00 pm)	\$70.00
Second Half-day period (3:00 pm - 10:00 pm)	\$70.00
All Day	\$135.00
Leesylvania, Hungry Mother Amphitheater	\$15.00 / reservation period
Claytor Lake Gazebo	\$40.00 / full day
	\$24.00 / half day

INTERPRETIVE, RESOURCE, AND ENVIRONMENTAL EDUCATION PROGRAM FEES (Nontaxable)

INTERPRETIVE BROCHURES	\$.50
Interpretive Canoe & other on-water programs:	
Bear Creek Lake, Holliday Lake, Staunton River, Twin Lakes, Smith Mt. Lake	\$2.00 (13 & up) \$1.00 (12 & under)
Hungry Mother	\$3.00 (13 & up) \$2.00 (12 & under)
Belle Isle, Kiptopeke	\$4.00 (13 & up) \$2.00 (12 & under)
Chippokes Plantation, York River	\$5.00 (13 & up) \$2.00 (12 & under) \$4.00 / person, (family/groups. 4 pers. min) \$7.00 / person, extended/moonlight
Mason Neck, Leesylvania	\$6.00 (13 & up) \$4.00 (12 & under) \$5.00 / person, (family/groups. 4 pers. min) \$8.00 / person extended \$6.00 / person, (family/groups. 4 pers. min) \$10.00 / person, moonlight
False Cape Canoe Trips	\$5.00 / person
Lake Anna Pontoon Boat Tours	\$3.00 adult / 2.00 child
False Cape Environmental Education Fees:	
Transportation:	
Transportation from Little Isle (optional)	Bus (round trip) - \$36.00
Additional Park Vehicle (round trip)	\$36.00
Per Hour (within the park)	\$18.00
Tours and Programs:	
Caledon Eagle Tours	\$4.00 per person
Group Rate (10 or more)	\$2.00 per person

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Environmental Education Package Plans	\$75.00 / program
Menu Programs	\$15.00 / program
State Park Hunting Fees	
Hunt Application	\$5.00
Daily Hunting Fee (one-time fee per season per park) (applies to managed hunts only)	\$10.00

Environmental Education Center Fee: (Taxable)

False Cape Environmental Education Center (EEC) (Maximum occupancy 20)	\$191.39 / Night \$ 57.42 / Day use rental
First Landing/Seashore, Caledon, Mason Neck, Sky Meadows, Douthat	\$ 57.42 / Day \$38.28 Half day
Douthat (Bunkhouse)	\$57.42 / Night

Rentals (includes tax)

Personal Flotation Device (P.F.D.) When separate from boat rental	\$.96 / day
Bike Rentals	\$2.87 / hour
Canoe Rentals	\$3.83 / hour \$8.61 / half day \$15.31 / full day
Row Boats	\$3.83 / hour \$8.61 / half day \$15.31 / full day
Paddle Boats	\$4.78 / hour

SWIMMING (Nontaxable)

Nonswimming adults in street clothes admitted free when supervising children

Swimming:	WEEKDAYS	WEEKENDS
<i>All parks EXCEPT: Bear Creek Lake, Chippokes Plantation, Fairy Stone, Holliday Lake, Natural Tunnel, Twin Lakes</i>		
Standard Swimming Fee:	Under 3 -Free	Under 3 -Free
Child	\$2.00 (Ages 3-12)	\$3.00 (Ages 3-12)
Adult	\$3.00 (Ages 13 & up)	\$4.00 (Ages 13 & up)
<i>Bear Creek Lake, Chippokes Plantation, Fairy Stone, Holliday Lake, Natural Tunnel, Twin Lakes</i>		
Swimming Fee:	Under 3 -Free	Under 3 -Free
Child	\$2.00 (Ages 3-12)	\$2.00 (Ages 3-12)

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Adult	\$3.00 (Ages 13 & up)	\$3.00 (Ages 13 & up)
Deposit on all locker keys	\$2.00 each; returned when key is returned	
Coupon Book (Beach or Pool)		
20 coupons, adult or child	\$35.00	
10 coupons, adult or child	\$18.00	
Permits / Package		
Season Permit (Swimming Pools & Beaches)	\$40.00 (Ages 3-12)	\$50.00 (Ages 13 & up)
Family Annual Swimming Package (4 annual pass, any age, & 1 parking pass)	\$190.00	

GROUP CABINS - POCAHONTAS (Taxable)

Algonquian Ecology Camp & Group Camp 3

Dinning Hall (with kitchen facilities) when rented with minimum of 2 units	\$ 76.55 / day \$382.77 / week
One Unit-Capacity: 28	\$47.85 / day \$287.08 / week
Two Units-Capacity: 56	\$86.12 / day \$478.47 / week
Three Units-Capacity: 84	\$114.83 / day \$650.72 / week
Four Units-Capacity: 112	\$133.97 / day \$765.55 / week
Complete AE Camp (with Dining Hall)	\$210.53 / day \$1148.32 / week
Complete GC 3 (with Dining Hall)	\$162.68 / day \$861.24 / week
Dining Hall (with kitchen facilities) Day use 8:00am - 10:00pm	\$143.34 / day

CONFERENCE CENTERS (Taxable)

Hemlock Haven Conference Center at Hungry Mother

-Taxables (add taxes to the fees listed below)

Meeting Rooms: Base charge for 8-hr period.

Additional time by hour:

Main Hall (Capacity 375)	\$225.00 / 8hrs + \$30.00 / add'l hr. Half-day \$150.00 / 4 hrs.
Upper Level (Capacity 50)	\$75.00 / 8hrs + \$10.00 / add'l hr. Half-day \$50.00 / 4 hr.
Split Conference Room (Capacity 35 per room - there are 2 rooms)	\$60.00 / 8hrs + 5.00 / add'l hr. Half-day \$40.00 / 4 hrs.
Single Room (Capacity 20)	\$40.00 / 8hrs + 5.00 / add'l hr. Half-day \$25.00 / 4 hrs.

<i>Entire Complex</i>	\$350.00 /day + \$45.00 / add'l hr. Half-day \$200.00 / 4 hrs.
<i>Exclusive Use (includes all Cabins & meeting rooms)</i>	
<i>1 Day Exclusive Conf.</i>	\$1,045.00
<i>2 Day Exclusive Conf.</i>	\$2,090.00
<i>3 Day Exclusive Conf.</i>	\$2,860.00
<i>5 Day Exclusive Conf.</i>	\$4,400.00
<i>6 Day Exclusive Conf.</i>	\$5,170.00
<i>7 Day Exclusive Conf.</i>	\$5,940.00
<i>Lodging</i>	
<i>Conference Cabins</i>	\$36.00 / Single, \$4.00 add'l person \$65.00 minimum / cabin
<i>Individual Cabins</i>	\$65.00 / night ("Pines")
<i>Hemlock Haven</i>	
<i>Day Use Recreational Package (includes all outside recreational facilities)</i>	
<i>Hours 10:00 am - 8:00 pm</i>	
<i>0 - 250 persons</i>	\$500.00 all day \$250.00 half day
<i>250 - 500 persons</i>	\$750.00 all day \$375.00 half day
<i>500 + persons</i>	\$1,000.00 all day \$500.00 half day
<i>Exclusive Use Recreational Package - (Includes all recreational facilities, Pool, & main floor of Ferrell Hall. Does not include cabins)</i>	\$1,150.00
<i>Pool Use</i>	\$150.00 all day \$ 75.00 half day
<i>Cedar Crest Conference Center at Twin Lakes</i>	
<i>Day-use Fees (8 am - 11 pm)</i>	
<i>Complex (pavilion w/deck, grounds, volleyball, horseshoes)</i>	\$170.00 / 8 hours \$85.00 / 4 hours \$25.00 / each add'l hour
<i>Pavilion (indoor use only)</i>	\$130.00 / 8 hours \$85.00 / 4 hours \$25.00 / each add'l hour
<i>Picnic Shelter or Gazebo</i>	\$68.00 / 8 hours \$34.00 / 4 hours \$10.00 / each add'l hour
<i>Kitchen Cleaning Fee</i>	\$50.00 / event
<i>Beach (10 am - 6 pm w/ guards)</i>	\$130.00 / 8 hours
<i>Less than 175 persons</i>	\$65.00 / 4 hours
<i>More than 175 persons</i>	\$160.00 / 8 hours \$80.00 / 4 hours
<i>Picnic Package (complex, gazebo, beach)</i>	
<i>Less than 175 persons</i>	\$350.00 / 8 hours \$175.00 / 4 hours

Final Regulations

More than 175 persons \$380.00 / 8 hours
\$190.00 / 4 hours

Recreational Package

Boat Package
(4 paddle boats & 2 row boats)
(Only available with Beach or Picnic Package) \$100.00 / 8 hours
\$50.00 / 4 hours

Bike Package (3 mens & 3 ladies bikes) \$72.00 / 8 hours
\$36.00 / 4 hour

OVERNIGHT FEES

Mistletoe Lodge (8 persons max / 2 night min.) \$88.00 / Night for 6 persons (\$10.00 for add'l persons)

Cabins (6 person max. / 2 Cabins - 2 night min.) \$67.00 / Night

Campsites (limit 6 per site; 20 available)
1-5 \$10.50 / Night
every additional over 5 \$7.00 / Night

Total Group Campground \$157.00 / Night

PACKAGE PLANS (includes overnight rental for 24 hour period and complex rental for an 8 hour period between 8:00am and 11:00pm)

A. Cabins & Complex (one night minimum) \$504.00 plus tax

B. Cabin, Campsites, & Complex (one night minimum) \$598.00 plus tax

SPECIAL SERVICES

Fax First 2 pages free, then \$2.00 each add'l page

Copies Single copy free, then \$.15 per copy.

Chippokes Meeting, Conference, & Special Use Facilities:

Chippokes Board Room \$150.00 / 8 hours
\$25.00 / hour

Mansion Grounds (includes parking for renting party) \$300.00 / event

Program Options:

Wagon Tour (24 max) \$48.00
Canoe Trip \$48.00 (first 24 persons)
\$ 4.00 (each add'l person)

Chippokes Conference Shelter

With Kitchen \$100.00 / function
Without Kitchen \$ 60.00 / function

(The shelter is available on a reservation basis only.)

Southwest VA Museum VA Museum Meeting Facilities

	DAY RATE	NIGHT RATE
Option 1: Victorian Parlor - Basic Room Package		
Under 22 person, table seating	\$50.00	\$75.00
23 to 30 person, table seating	\$60.00	\$85.00
31 to 50 persons, theater seating w/ head table	\$50.00	\$75.00
Option 2: Victorian Parlor - Executive Room Package		
Under 22 person, table seating	\$60.00	\$85.00
23 to 30 person, table seating	\$70.00	\$95.00
31 to 50 persons, theater seating w/ head table	\$60.00	\$85.00
Option 3: Additional Meeting Rooms		
A. Hallway (Downstairs)	\$20.00	\$20.00
B. Additional tables (each)	\$10.00	\$10.00
C. Small Parlor	\$30.00	\$30.00

D. Big Stone Gap Development Room

\$40.00

\$40.00

E. Additional Hours

\$10.00

\$10.00

VA.R. Doc. No. R96-548; Filed August 27, 1996, 11:46 a.m.

BOARD OF DENTISTRY

REGISTRAR'S NOTICE: The Board of Dentistry is claiming an exemption from the Administrative Process Act in accordance with § 9-6.14:4.1 C 4 (a) of the Code of Virginia, which excludes regulations that are necessary to conform to changes in Virginia statutory law where no agency discretion is involved. The Board of Dentistry will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: 18 VAC 60-20-10 et seq. Virginia Board of Dentistry Regulations (amending 18 VAC 60-20-30 and 18 VAC 60-20-230).

Statutory Authority: § 54.1-2400 of the Code of Virginia.

Effective Date: October 16, 1996.

Summary:

The amendments delete the requirements and fee for certification of dental assistant to apply Schedule VI topical drugs.

The final regulations are submitted for publication in the Virginia Register of Regulations under an exemption from the Administrative Process Act pursuant to § 9-6.14:4.1 C 4 a of the Code of Virginia as necessary to conform to changes in Virginia statutory law, specifically the amendment to § 54.1-3408 enacted by the 1996 Acts of the Assembly which eliminated the need for certification for dental assistants to administer Schedule VI topical drugs.

Agency Contact: Copies of the regulation may be obtained from Marcia J. Miller, Board of Dentistry, 6606 West Broad Street, 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9906.

18 VAC 60-20-30. Other fees.

A. Dental licensure application fees. The application for a dental license shall be accompanied by a check or money order for \$220, which includes a \$155 application fee and a \$65 initial licensure fee.

B. Dental hygiene licensure application fees. The application for a dental hygiene license shall be accompanied by a check or money order for \$155, which includes a \$130 application fee and a \$25 initial licensure fee.

C. Duplicate wall certificate. Licensees desiring a duplicate wall certificate shall submit a request in writing stating the necessity for such duplicate wall certificate, accompanied by a fee of \$15. A duplicate certificate may be issued for any of the following reasons: replacing certificate that has been lost, stolen, misplaced, destroyed, or is otherwise irretrievable; recording the new name of a

registrant whose name has been changed by court order or by marriage; or for multiple offices.

D. Duplicate license. Licensees desiring duplicate license shall submit a request in writing stating the necessity for such duplicate license, accompanied by a fee of \$10. A duplicate license may be issued for any of the following reasons: maintaining more than one office (notarized photocopy may be used); replacing license that has been lost, stolen, misplaced, destroyed, or is otherwise irretrievable; and recording the new name of a licensee whose name has been changed by court order or by marriage.

E. Licensure certification. Licensees requesting endorsement or certification by this board shall pay a fee of \$25 for each endorsement or certification.

F. Restricted license. Restricted license issued in accordance with § 54.1-2714 of the Code of Virginia shall be at a fee of \$100.

G. Teacher's license. License to teach dentistry and dental hygiene issued in accordance with §§ 54.1-2713 and 54.1-2725 of the Code of Virginia shall be at a fee of \$220 and \$155, respectively. The renewal fee shall be \$65 and \$25, respectively.

H. Temporary permit. Temporary permit for dentists and dental hygienists issued in accordance with §§ 54.1-2715 and 54.1-2726 of the Code of Virginia shall be at a fee of \$220 and \$155, respectively. The renewal fee shall be \$65 and \$25, respectively.

I. Radiology safety examination. Each examination administered in accordance with subdivision 11 of 18 VAC 60-20-190 shall be at a fee of \$25.

J. Jurisprudence examination. Each examination administered by the board outside the scheduled clinical examination site in accordance with 18 VAC 60-20-70 shall be at a fee of \$25.

K. Full-time faculty license. Full-time faculty license for dentists issued in accordance with § 54.1-2714.1 of the Code of Virginia, shall be at a fee of \$220. The renewal fee shall be \$65.

L. Endorsement license. License by endorsement issued in accordance with 18 VAC 60-20-80 for dental hygienists shall be at a fee of \$200 (\$175 application and \$25 initial licensure fee). The renewal fee shall be \$25.

~~M. Schedule VI topical medicinal agents certification. Certifications issued in accordance with subdivision 1 of 18 VAC 60-20-230 shall be at a fee of \$15.~~

18 VAC 60-20-230. Dental hygienists and dental assistants.

Only the following duties may be delegated to dental hygienists and dental assistants under direction:

Final Regulations

~~1. No person not otherwise licensed by the board shall apply *Application of Schedule VI* topical medicinal agents, including topical fluoride, or desensitizing agents (aerosol topical anesthesia excluded), unless the individual has (i) satisfactorily completed a course or examination recognized by the Commission on Dental Accreditation of the American Dental Association and been certified by the board, or (ii) satisfactorily completed a training program approved by the board and been certified by the board. This training program may be implemented by dentists and dental hygienists who are currently licensed to practice dentistry and dental hygiene in Virginia, and by certified dental assistants who are currently certified by the Dental Assisting National Board. Any certificate issued pursuant to satisfying the requirements of this section shall be posted in plain view of the patient;~~

2. Acid etching in those instances where the procedure is reversible;

3. Application of sealants;

4. Serving as a chairside assistant aiding the dentist's treatment by concurrently performing supportive procedures for the dentist, including drawing up and compounding medications for administration by the dentist. The foregoing shall not prohibit the dentist from delegating to another licensed health care professional duties within the scope of their respective practice;

5. Placing and removing matrixes for restorations;

6. Placing and removing rubber dam;

7. Placing and removing periodontal packs;

8. Polishing natural and restored teeth by means of a rotary rubber cup or brush and appropriate polishing agent;

9. Holding and removing impression material for working models after placement in the patient's mouth by the dentist;

10. Taking nonworking impressions for diagnostic study models;

11. Placing of amalgam in prepared cavities with the carrier to be condensed and carved by the dentist;

12. Placing and removing elastic orthodontic separators;

13. Checking for loose orthodontic bands;

14. Removing arch wires and ligature ties;

15. Placing ligatures to tie in orthodontic arch wire that has been fitted and placed by the dentist;

16. Selecting and prefitting of orthodontic bands for cementation by the dentist;

17. Monitoring of nitrous oxide oxygen inhalation analgesia;

18. Placing and exposing dental x-ray film. (No person who is not otherwise licensed by the board shall place or expose dental x-ray film unless the requirements of subdivision 11 of 18 VAC 60-20-190 have been fulfilled.);

19. Removing socket dressings;

20. Instructing patients in placement and removal of retainers and appliances after they have been completely fitted and adjusted in the patient's mouth by the dentist;

21. Removing sutures; and

22. Removing supragingival cement on crowns, bands, and restorations.

Any procedure not listed above is prohibited.

VA.R. Doc. No. R96-535; Filed August 20, 1996; 10:35 a.m.

GOVERNOR

GOVERNOR'S COMMENTS ON PROPOSED REGULATIONS

DEPARTMENT OF CORRECTIONAL EDUCATION

Title of Regulation: 6 VAC 10-10-10 et seq. Public
Participation Guidelines.

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: August 16, 1996

VA.R. Doc. No. R96-538; Filed August 23, 1996, 12:04 p.m.

CRIMINAL JUSTICE SERVICES BOARD

Title of Regulation: 6 VAC 20-170-10 et seq. Regulations
Relating to Private Security Services.

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: August 16, 1996

VA.R. Doc. No. R96-537; Filed August 22, 1996, 11:08 a.m.

GENERAL NOTICES/ERRATA

Symbol Key

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

CHESAPEAKE BAY RESTORATION FUND ADVISORY COMMITTEE

Notice of Acceptance of Grant Proposals Regarding the Chesapeake Bay Restoration Fund

The Chesapeake Bay Advisory Committee will be making recommendations for financial support grants to be awarded in May 1997 for Chesapeake Bay related projects. The advisory committee was given the responsibility of developing guidelines for the use of the moneys collected from the sale of the special Chesapeake Bay license plates. Applications will be accepted from state agencies, local government, and public or private not-for-profit agencies, institutions or organizations. Applications and guidelines may be obtained from Carol Agee or Martin Farber, Division of Legislative Services, General Assembly Building, 910 Capitol Street, Richmond, Virginia 23219, telephone (804) 786-3591. The deadline for submission of grant proposals is October 1, 1996.

DEPARTMENT OF CONSERVATION AND RECREATION

† 1996 Virginia Outdoors Plan

The Draft 1996 Virginia Outdoors Plan will be available in the Planning District Commission offices and libraries on the following list through October 8, 1996. Please provide any comments on the document to the Department of Conservation and Recreation by 5 p.m. on Friday, October 11, 1996. All comments will be considered and may be addressed in the text of the published plan. All questions concerning the location of the review copies of the plan or the procedure for making comments should be made to the Department of Conservation and Recreation, 203 Governor Street, Suite 326, Richmond, VA 23219, telephone (804) 786-5046.

Contact: Richard G. Gibbons, Environmental Program Manager, Department of Conservation and Recreation, Division of Planning and Recreation Resources, 203 Governor Street, Suite 326, Richmond, VA 23219, telephone (804) 786-4132, FAX (804) 371-7899, or (804) 786-2121/TDD



Mr Ronald C. Flanary
Executive Director
LENOWISCO PLANNING DISTRICT
COMMISSION
U.S. 58 & 421 West
Duffield VA 24244

Mr David Rundgren
Executive Director
NEW RIVER VALLEY PLANNING
DISTRICT COMMISSION
1612 Wadsworth Street
Radford VA 24143

Mr Thomas J Christoffel AICP
Executive Director
LORD FAIRFAX PLANNING
DISTRICT COMMISSION
103 East 6th Street
Front Royal VA 22630-3499

Ms Nancy K O'Brien, Exec. Director
THOMAS JEFFERSON PLANNING
DISTRICT COMMISSION
Nations Bank Building
300 E. Main St., First Floor
Charlottesville VA 22902-1505

Ms Joyce I French
Executive Director
SOUTHSIDE PLANNING DISTRICT
COMMISSION
200 S. Mecklenburg Avenue
South Hill VA 23970

Ms Stephen H Manster
Executive Director
RADCO PLANNING DISTRICT
COMMISSION
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Fredericksburg VA 22404

Mr Dennis K Morris
Executive Director
CRATER PLANNING DISTRICT
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Petersburg VA 23805

Mr. Arthur L. Collins
Executive Director
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DISTRICT COMMISSION
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Hampton, VA 23669

Danville Public Library
511 Patton Street
Danville, VA 24540

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Executive Director
CUMBERLAND PLATEAU PLANNING
DISTRICT COMMISSION
950 Clydesway Road
Lebanon VA 24266

Mr Wayne G Strickland
Executive Director
FIFTH PLANNING DISTRICT
COMMISSION
313 Luck Ave., SW
Roanoke VA 24010

Mr G Mark Gibb
Executive Director
NORTHERN VIRGINIA PLANNING
DISTRICT COMMISSION
7535 Little River Tpke #100
Annandale VA 22003

Mr Dennis E. Gragg
Executive Director
CENTRAL VIRGINIA PLANNING
DISTRICT COMMISSION
915 Main St., Ste. 302
Lynchburg VA 24505

Mr Jack E Houghton
Executive Director
PIEDMONT PLANNING DISTRICT
COMMISSION
102 1/2 High Street
Farmville VA 23901

Ms Joyce Bradford
Executive Director
NORTHERN NECK PLANNING
DISTRICT COMMISSION
Corner of 202 and 630
Callao VA 22435

Mr Arthur L. Collins
Executive Director
HAMPTON ROADS PLANNING
DISTRICT COMMISSION
723 Woodlake Dr
Chesapeake VA 23320

Patrick County Branch Library
Blue Ridge Street
Stuart, VA 24171

Blue Ridge Regional Library
310 East Church Street
Martinsville, VA 24112

Mr Thomas Taylor
Executive Director
MOUNT ROGERS PLANNING
DISTRICT COMMISSION
1021 Terrace Dr
Marion VA 24354

Mr William H Strider
Executive Director
CENTRAL SHENANDOAH PLANNING
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633 North Coalter Street
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Mr Richard B Stroemple
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One Starling Avenue
Martinsville VA 24114

Mr James Hassinger
Executive Director
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DISTRICT COMMISSION
2104 West Laburnum Ave #101
Richmond VA 23227

Mr Dan Kavanagh
Executive Director
MIDDLE PENINSULA PLANNING
DISTRICT COMMISSION
Woodleaf Commons, Rt. 17-business
Saluda VA 23149

Mr Paul F Berge
Executive Director
ACCOMACK-NORTHAMPTON
PLANNING DISTRICT COMM
23372 Front St.
Accomac VA 23301

Franklin County Public Library
138 East Court Street
Rocky Mount, VA 24151

General Notices/Errata

STATE WATER CONTROL BOARD

Enforcement Action Proposed Consent Special Order Roanoke Electric Steel Corporation

The State Water Control Board proposes to issue a Consent Special Order and will consider it at a meeting in September 1996.

This order will allow Roanoke Electric Steel approximately 11 months to construct an improved wastewater treatment system and to comply with the final effluent limits in its VPDES Permit No. VA0001589 which was modified effective July 15, 1996. The order also reconciles monitoring and toxicity testing requirements on the existing combined process water - stormwater overflow during this period.

On behalf of the State Water Control Board, the Department of Environmental Quality will receive written comments relating to the proposed amendment until September 18, 1996. Comments should be addressed to James F. Smith, West Central Regional Office, Department of Environmental Quality, P.O. Box 7017, Roanoke, Virginia 24019, and should refer to the Roanoke Electric Steel order.

The proposed order may be examined at the Department of Environmental Quality, Office of Enforcement and Compliance Auditing, 629 E. Main St., P.O. Box 10009, Richmond, VA 23240-0009, or at the Department of Environmental Quality, West Central Regional Office, 3015C Peters Creek Road, Roanoke, VA 24019. A copy of the order may be obtained in person or by mail from these offices.

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

STATE COUNCIL OF HIGHER EDUCATION FOR VIRGINIA

Title of Regulation: 8 VAC 40-130-10 et seq. Virginia Student Financial Assistance Program Regulations.

Publication: 12:24 VA.R. 3233-3237 August 19, 1996.

Correction to Final Regulation:

Page 3233, column 1, 8 VAC 40-130-10, definition of "Applicant," line 1, after "undergraduate" insert "or graduate"

DEPARTMENT OF TRANSPORTATION (COMMONWEALTH TRANSPORTATION BOARD)

Title of Regulation: VR 385-01-13 [24 VAC 30-120-10 et seq.] Rules and Regulations Controlling Outdoor Advertising and Directional and Other Signs and Notices.

Publication: 11:10 VA.R. 1590-1598 February 6, 1995.

Correction to Final Regulation:

Page 1591, column 1, § 1.1 [24 VAC 30-120-10], definition of "unzoned commercial or industrial areas," line 2, after "one or more" insert "permanent"

Page 1592, column 2, § 2.1 [24 VAC 30-120-80], line 3, after "interstate," strike "and" and insert " ,"

Page 1594, column 1, § 2.1 [24 VAC 30-120-80], definition of "Public service signs," subdivision 4, line 2, after "approved by" insert "city, county, or state law, regulation or ordinance, and at places approved by"

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

4917, telephone (804) 367-8590, FAX (804) 367-2474 or (804) 367-9753/TDD ☎

BOARD FOR ACCOUNTANCY

September 21, 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)

The board will meet for a "brainstorming" session on privatization of the Board for Accountancy. Written comments from the public will be accepted prior to and 10 days after the meeting. There will be no public comment period during the meeting since this is a work session only on privatization of accountancy. No other business will be discussed at this 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 ☎

October 17, 1996 - 10 a.m. -- Open Meeting

October 18, 1996 - 9 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, and to receive and discuss committee reports and disciplinary cases. 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-

Privatization Task Force

NOTE: CHANGE IN MEETING DATE

† **October 7, 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 of the Privatization Task Force to further discuss privatization of the Board for Accountancy. This is a work session. No other business will be discussed at this meeting. This task force is a three-member ad hoc committee. Written comments may be submitted prior to the meeting for consideration by the task force. 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 ☎

DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

Board of Agriculture and Consumer Services

October 2, 1996 - 9 a.m. -- Open Meeting
Washington Building, 1100 Bank Street, 2nd Floor Board Room, Richmond, Virginia.♿

A regular meeting to discuss regulations and fiscal matters and to receive reports from the staff of the Department of Agriculture and Consumer Services. The board may consider other matters relating to its responsibilities. At the conclusion of other business the board will entertain public comment for a period not to exceed 30 minutes. Any person who needs any

Calendar of Events

accommodations in order to participate at the meeting should contact Roy E. Seward at least five days before the meeting date so that suitable arrangements can be made.

Contact: Roy E. Seward, Secretary to the Board, Department of Agriculture and Consumer Services, Washington Bldg., 1100 Bank St., Richmond, VA 23219, telephone (804) 786-3535.

Virginia Horse Industry Board

† **November 6, 1996 - 10 a.m.** -- Open Meeting
Virginia Cooperative Extension--Charlottesville/Albemarle Unit, 168 Spotnap Road, Lower Level Meeting Room, Charlottesville, Virginia. ☎

A meeting to review the budget for the current fiscal year and discuss equine health issues as presented by the State Veterinarian's office. The board will also consider marketing efforts and projects, including the economic impact study of the industry. The board will entertain public comment at the conclusion of all other business for a period not to exceed 30 minutes. Any person who needs any accommodations in order to participate at the meeting should contact Andrea S. Heid at least five days before the meeting date so that suitable arrangements can be made.

Contact: Andrea S. Heid, Equine Marketing Specialist, Department of Agriculture and Consumer Services, 1100 Bank St., Room 906, Richmond, VA 23219, telephone (804) 786-5842 or (804) 371-6344/TDD ☎

Pesticide Control Board

October 10, 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 or toll-free 1-800-552-9963.

ALCOHOLIC BEVERAGE CONTROL BOARD

September 23, 1996 - 9:30 a.m. -- Open Meeting
October 7, 1996 - 9:30 a.m. -- Open Meeting
October 21, 1996 - 9:30 a.m. -- Open Meeting
November 4, 1996 - 9:30 a.m. -- Open Meeting
November 18, 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.

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

October 11, 1996 - 2:30 p.m. -- Public Hearing
Department of Professional and Occupational Regulation, 3600 West Broad Street, 4th Floor, Richmond, Virginia.

November 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 Board for Architects, Professional Engineers, Land Surveyors and Landscape Architects intends to amend regulations entitled: **18 VAC 10-20-10 et seq. Board for Architects, Professional Engineers, Land Surveyors and Landscape Architects Rules and Regulations.** The purpose of the proposed amendments is to make the regulations clearer and easier to understand.

Statutory Authority: §§ 54.1-404 and 54.1-411 of the Code of Virginia.

Contact: Mark N. Courtney, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8514.

Board for Landscape Architects

September 26, 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

September 19, 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 ☎

ASSISTIVE TECHNOLOGY LOAN FUND AUTHORITY BOARD

† October 17, 1996 - 1 p.m. -- Open Meeting
Department of Rehabilitative Services, 8004 Franklin Farms Drive, Richmond, Virginia. ☎ (Interpreter for the deaf provided upon request)

A meeting to conduct board business.

Contact: Michael Scione, Assistive Technology Loan Fund Authority Board Staff, Department of Rehabilitative Services, 8004 Franklin Farms Dr., Richmond, VA 23230, telephone (804) 662-7606 toll-free 1-800-552-5019/TDD and Voice, or (804) 662-9040/TDD ☎

VIRGINIA AVIATION BOARD

† October 22, 1996 - 3 p.m. -- Open Meeting
Department of Motor Vehicles, 2300 West Broad Street, Richmond, Virginia. ☎ (Interpreter for the deaf provided upon request)

A workshop for the board. No formal actions will be taken. Individuals with disabilities should contact Cindy Waddell 10 days prior to the meeting if assistance is needed.

Contact: Cindy Waddell, Department of Aviation, 5702 Gulfstream Road, Sandston, VA 23150, telephone (804) 236-3625 or (804) 236-3624/TDD ☎

† October 23, 1996 - 9 a.m. -- Open Meeting
Department of Motor Vehicles, 2300 West Broad Street, Richmond, Virginia. ☎ (Interpreter for the deaf provided upon request)

A regular bimonthly meeting of the board. Applications for state funding will be presented to the board and other matters of interest to the Virginia aviation community will be discussed. Individuals with disabilities should contact

Cindy Waddell 10 days prior to the meeting if assistance is needed.

Contact: Cindy Waddell, Department of Aviation, 5702 Gulfstream Road, Sandston, VA 23150, telephone (804) 236-3625 or (804) 236-3624/TDD ☎

BOARD FOR BARBERS

† October 21, 1996 - 10 a.m. -- Open Meeting
Department of Professional and Occupational Regulation,
3600 West Broad Street, Richmond, Virginia. ☎

A general business meeting and examination workshop. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact the department at least two weeks prior to the meeting so that suitable arrangements can be made. The department fully complies with the Americans with Disabilities Act.

Contact: 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 ☎

CHESAPEAKE BAY LOCAL ASSISTANCE BOARD

† September 26, 1996 - 10 a.m. -- Open Meeting
Department of Social Services, 730 East Broad Street, Conference Room 3, Lower Level, Richmond, Virginia. ☎ (Interpreter for the deaf provided upon request)

A meeting to conduct general business, including review of local Chesapeake Bay Preservation Area programs. Public comment will be taken early in the meeting. A tentative agenda is available from the Chesapeake Bay Local Assistance Department.

Contact: Shawn Smith, Senior Planner, Chesapeake Bay Local Assistance Department, 805 E. Broad St., Suite 701, Richmond, VA 23219, telephone (804) 225-3440, FAX (804) 225-3447 or toll-free 1-800-243-7229/TDD ☎

Northern Area Review Committee

† October 8, 1996 - 10 a.m. -- Open Meeting
† November 12, 1996 - 10 a.m. -- Open Meeting
Chesapeake Bay Local Assistance Department, 805 East Broad Street, Suite 701, Richmond, Virginia. ☎ (Interpreter for the deaf provided upon request)

A meeting to review Chesapeake Bay Preservation Area programs for the Northern Area. Persons interested in observing should call the Chesapeake Bay Local Assistance Department to verify meeting time, location and schedule. No comments from the public will be entertained at the meeting; however, written comments are welcome.

Contact: Shawn Smith, Senior Planner, Chesapeake Bay Local Assistance Department, 805 E. Broad St., Suite 701,

Calendar of Events

Richmond, VA 23219, telephone (804) 225-3440, FAX (804) 225-3447 or toll-free 1-800-243-7229/TDD ☎

Southern Area Review Committee

† **October 8, 1996 - 2 p.m.** -- Open Meeting
† **November 12, 1996 - 2 p.m.** -- Open Meeting
Chesapeake Bay Local Assistance Department, 805 East Broad Street, Suite 701, Richmond, Virginia. ☎ (Interpreter for the deaf provided upon request)

A meeting to review Chesapeake Bay Preservation Area programs for the Southern Area. Persons interested in observing should call the Chesapeake Bay Local Assistance Department to verify meeting time, location and schedule. No comments from the public will be entertained at the meeting; however, written comments are welcome.

Contact: Shawn Smith, Senior Planner, Chesapeake Bay Local Assistance Department, 805 E. Broad St., Suite 701, Richmond, VA 23219, telephone (804) 225-3440, FAX (804) 225-3447 or toll-free 1-800-243-7229/TDD ☎

CHILD DAY-CARE COUNCIL

October 10, 1996 - 9 a.m. -- Open Meeting
November 14, 1996 - 9 a.m. -- Open Meeting
December 12, 1996 - 9 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.

Contact: Rhonda Harrell, Division of Licensing Programs, Department of Social Services, 730 E. Broad St., Richmond, VA 23219, telephone (804) 692-1775.

COMPENSATION BOARD

September 26, 1996 - 11 a.m. -- Open Meeting
October 31, 1996 - 11 a.m. -- Open Meeting
Ninth Street Office Building, 202 North Ninth Street, 9th Floor, Room 913/913A, Richmond, Virginia. ☎ (Interpreter for the deaf provided upon request)

A routine business meeting.

Contact: Bruce W. Haynes, Executive Secretary, P.O. Box 710, Richmond, VA 23218-0710, telephone (804) 786-0786, FAX (804) 371-0235, or (804) 786-0786/TDD ☎

DEPARTMENT OF CONSERVATION AND RECREATION

† **September 18, 1996 - 10 a.m.** -- Open Meeting
Freelance Star, 616 Amelia Street, Community Room, Fredericksburg, Virginia. ☎

A meeting of an ad hoc committee who will provide input to the department about the competitive allocation of \$50,000 to Rappahannock River organizations as follows: (i) planning district commissions; (ii) soil and water conservation districts; and (iii) nonprofit conservation organizations for education, restoration or watershed planning activities affecting the Rappahannock River.

Contact: Leon E. App, Agency Regulatory Coordinator, Department of Conservation and Recreation, 203 Governor St., Suite 302, Richmond, VA 23219, telephone (804) 786-4570, FAX (804) 786-2121, or (804) 786-6141/TDD ☎

Falls of the James Scenic River Advisory Board

October 3, 1996 - Noon -- Open Meeting
City Hall, 900 East Broad Street, 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., Suite 326, Richmond, VA 23219, telephone (804) 786-4132, FAX (804) 371-7899 or (804) 786-2121/TDD ☎

Fall River Renaissance Committee

September 18, 1996 - 10 a.m. -- Open Meeting
† **October 2, 1996 - 10 a.m.** -- Open Meeting
† **October 30, 1996 - 10 a.m.** -- Open Meeting
Department of Conservation and Recreation, 203 Governor Street, Soil and Water Conference Room, Richmond, Virginia. ☎ (Interpreter for the deaf provided upon request)

A meeting to report on progress for plans for the Fall River Renaissance campaign and continue to develop further plans. The Fall River Renaissance is a campaign to further the efforts of citizens and organizations that are engaged in volunteer activities to conserve and enhance Virginia's rivers and public waters. It will be held September 21-October 19, 1996.

Contact: Carol Comstock, Director of Development, Department of Conservation and Recreation, 203 Governor St., Suite 213, Richmond, VA 23219, telephone (804) 786-2294, FAX (804) 371-2072, or (804) 786-2121/TDD ☎

BOARD FOR CONTRACTORS

September 19, 1996 - 9 a.m. -- Open Meeting
September 20, 1996 - 9 a.m. -- Open Meeting
National Assessment Institute, 3813 Gaskins Road,
Richmond, Virginia. ☎

Board members and invited subject matter experts will meet to conduct an examination workshop.

Contact: George O. Bridewell, Examination Administrator, Board for Contractors, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8572 or (804) 367-9753/TDD ☎

Disciplinary Committee

October 2, 1996 - 9 a.m. -- Open Meeting
Department of Professional and Occupational Regulation,
3600 West Broad Street, Richmond, Virginia. ☎

A meeting to review board member reports and summaries from informal fact-finding conferences held pursuant to the Administrative Process Act, and to review consent order offers in lieu of further disciplinary proceedings. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact the department at least two weeks prior to the meeting so that suitable arrangements can be made. The board fully complies with the Americans with Disabilities Act.

Contact: Suzanne E. Bambacus, Assistant Director, Board for Contractors, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-2683.

DEPARTMENT OF CORRECTIONAL EDUCATION

September 16, 1996 - 10 a.m. -- Public Hearing
James Monroe Building, 101 North 14th Street, 7th Floor,
Richmond, Virginia.

October 18, 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 Correctional Education intends to adopt regulations entitled: **6 VAC 10-10-10 et seq. Public Participation Guidelines.** The purpose of the proposed regulation is to provide interested parties with a means to request the development, amendment or repeal of a regulation.

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

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

DEPARTMENT OF CORRECTIONS (STATE BOARD OF)

† **October 16, 1996 - 10 a.m.** -- Public Hearing
Department of Corrections, 6900 Atmore Drive, Board Room,
Richmond, Virginia.

† **November 16, 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 Board of Corrections intends to amend regulations entitled: **6 VAC 15-20-10 et seq. Regulations Governing Certification and Inspection.** The Regulations Governing Certification and Inspection process comply with § 53.1-5 of the Code of Virginia, which requires the Board of Corrections to develop program standards for correctional facilities and services and to monitor the activities of the department and its effectiveness in implementing those standards. These regulations, then, serve to enforce all facility and program standards promulgated by the board. The regulations provide uniform factors for evaluating all programs and establish the proper steps in the certification, appeal and waiver processes. Through a regular board and departmental review, the attached amendments are being proposed to (i) strengthen the regulations by tightening requirements for timeliness and communication of departmental information to the board; (ii) meet specific recommendations made by the Joint Legislative Audit and Review Commission; and (iii) comply with the requirements of § 53.1-68 of the Code of Virginia, which was recently amended to require one unannounced annual inspection and one unannounced annual health inspection of local correctional facilities.

Statutory Authority: §§ 53.1-5 and 53.1-68 of the Code of Virginia.

Contact: Amy Miller, Regulatory Coordinator, Department of Corrections, P.O. Box 26963, Richmond, VA 23261-6963, telephone (804) 674-3119.

† **October 16, 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.

Administration Committee


† **October 16, 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.

Calendar of Events

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

† **October 15, 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.

BOARD FOR COSMETOLOGY

October 7, 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 Karen W. O'Neal. The department fully complies with the Americans with Disabilities Act. Please notify the department of your request at least two weeks in advance.

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


CRIMINAL JUSTICE SERVICES BOARD

October 8, 1996 - 1 p.m. -- Open Meeting
General Assembly Building, 910 Capitol Square, House Room D, 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) 786-0588.

BOARD OF DENTISTRY


September 19, 1996 - 11 a.m. -- Open Meeting
September 20, 1996 - 8 a.m. -- Open Meeting
Williamsburg Lodge, 310 England Street, North Ballroom, Williamsburg, Virginia.  (Interpreter for the deaf provided upon request)

A meeting to conduct formal hearings. This is a public meeting; however, no public comment will be taken.


Contact: Marcia J. Miller, Executive Director, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9906 or (804) 662-7197/TDD 

September 20, 1996 - 1 p.m. -- Open Meeting
Williamsburg Lodge, 310 England Street, North Ballroom, Williamsburg, Virginia.  (Interpreter for the deaf provided upon request)

A business meeting to receive committee reports, and review consent orders, minutes, and general requests made to the board. This is a public meeting; however, no public comment will be taken except for a 20-minute comment period beginning at 1 p.m..

Contact: Marcia J. Miller, Executive Director, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9906 or (804) 662-7197/TDD 

BOARD OF EDUCATION

September 26, 1996 - 9 a.m. -- Open Meeting
John Handley High School, Winchester, Virginia.  (Interpreter for the deaf provided upon request)

The Board of Education and the Board of Vocational Education will hold a regularly scheduled meeting. Business will be conducted according to items listed on the agenda. The agenda is available upon request.

Contact: 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) 225-2924 or toll-free 1-800-292-3820.

LOCAL EMERGENCY PLANNING COMMITTEE - CHESTERFIELD COUNTY


October 3, 1996 - 5:30 p.m. -- Open Meeting
† **November 7, 1996 - 5:30 p.m.** -- Open Meeting
6610 Public Safety Way, Chesterfield, Virginia.

A regular meeting.

Contact: Lynda G. Furr, Assistant Emergency Services Coordinator, Chesterfield Fire Department, P.O. Box 40, Chesterfield, VA 23832, telephone (804) 748-1236.

DEPARTMENT OF ENVIRONMENTAL QUALITY


Work Group on Ammonia, Mercury, Lead and Copper with Respect to Water Quality Standards

October 17, 1996 - 10 a.m. -- Open Meeting
Department of Environmental Quality, 629 East Main Street, Conference Room 5B, Richmond, Virginia. 

The department has established a work group on four topics with respect to the water quality standards program: mercury, ammonia, lead, and copper. The work group will, upon completion, advise the Director of Environmental Quality. Other meetings of the work group have been tentatively scheduled for November 21 and December 19, 1996; January 16, February 20, March 20, April 17, May 15, and June 19, 1997. Persons interested in the meetings should confirm meeting date, time and location with the contact person below.

Contact: Alan J. Anthony, Chairman, Work Group on Ammonia, Mercury, Lead and Copper, 629 E. Main St., P.O. Box 10009, Room 205, Richmond, VA 23240-0009, telephone (804) 698-4114, FAX (804) 698-4522, or toll-free 1-800-592-5482.

Virginia Ground Water Protection Steering Committee

September 17, 1996 - 9 a.m. -- Open Meeting
State Corporation Commission, 1300 East Main Street, 8th Floor Conference Room, Richmond, Virginia. 

A meeting concerning ground water protection issues. All interested persons are welcome to attend. Meeting minutes and agenda are available from Mary Ann Massie.

Contact: Mary Ann Massie, Environmental Program Planner, Department of Environmental Quality, P. O. Box 10009, Richmond, VA 23240-0009, telephone (804) 698-4042 or FAX (804) 698-4032.

VIRGINIA FIRE SERVICES BOARD

† **October 3, 1996 - 7 p.m.** -- Public Hearing
Tidewater Area, HTR School, 927 South Bird Neck Road, Virginia Beach, Virginia.

† **October 11, 1996 - 7 p.m.** -- Public Hearing
Hanover County, Hanover School, Holiday Inn International, 810 England Street, Ashland, Virginia.

† **October 16, 1996 - 7 p.m.** -- Public Hearing
Abingdon Fire Station, 316 Park Street, Abingdon, Virginia.

† **October 17, 1996 - 7 p.m.** -- Public Hearing
Holiday Inn Roanoke Airport, 6626 Thirlane Road, Roanoke, Virginia.

† **November 6, 1996 - 7 p.m.** -- Public Hearing
South Hill Volunteer Fire Department, 114 North Brunswick Avenue, South Hill, Virginia.

† **November 14, 1996 - 7 p.m.** -- Public Hearing
Augusta County Government Complex, 4801 Lee Highway, Verona, Virginia.

† **November 23, 1996 - 7 p.m.** -- Public Hearing
Sheraton National, Columbia Pike and Washington Boulevard, Arlington, Virginia.

The Virginia Fire Services Board and Virginia Department of Fire Programs are holding a series of

public hearings throughout the state in September, October and November regarding revisions to the Fire Programs Fund Policies and Code. If you have any questions or need a copy of the revisions please contact the Department of Fire Programs area office. Comments will be received at the beginning of each session.

Contact: Bobby L. Stanley, Jr., Executive Director, Department of Fire Programs, 2807 N. Parham Rd., Suite 200, Richmond, VA 23294, telephone (804) 527-4236.

† **October 17, 1996 - 7:30 p.m.** -- Public Hearing
Holiday Inn Roanoke Airport, 6626 Thirlane Road, Roanoke, Virginia.

A public hearing to discuss fire training and policies. The meeting is open to the public for comments and input.

Contact: Bobby L. Stanley, Jr., Executive Director, Department of Fire Programs, 2807 N. Parham Rd., Suite 200, Richmond, VA 23294, telephone (804) 527-4236.

† **October 18, 1996 - 9 a.m.** -- Open Meeting
Holiday Inn Roanoke Airport, 6626 Thirlane Road, Roanoke, Virginia.

A business meeting to discuss fire training and policies. The meeting is open to the public for comments and input.

Contact: Bobby L. Stanley, Jr., Executive Director, Department of Fire Programs, 2807 N. Parham Rd., Suite 200, Richmond, VA 23294, telephone (804) 527-4236.

Fire/EMS Education and Training Committee

† **October 17, 1996 - 10:30 a.m.** -- Open Meeting
Holiday Inn Roanoke Airport, 6626 Thirlane Road, Roanoke, Virginia.

A meeting to discuss fire training and policies. The meeting is open to the public for comments and input.

Contact: Bobby L. Stanley, Jr., Executive Director, Department of Fire Programs, 2807 N. Parham Rd., Suite 200, Richmond, VA 23294, telephone (804) 527-4236.

Fire Prevention and Control Committee

† **October 17, 1996 - 8:30 a.m.** -- Open Meeting
Holiday Inn Roanoke Airport, 6626 Thirlane Road, Roanoke, Virginia.

A meeting to discuss fire training and policies. The meeting is open to the public for comments and input.

Contact: Bobby L. Stanley, Jr., Executive Director, Department of Fire Programs, 2807 N. Parham Rd., Suite 200, Richmond, VA 23294, telephone (804) 527-4236.

Legislative/Liaison Committee

† **October 17, 1996 - 2 p.m.** -- Open Meeting
Holiday Inn Roanoke Airport, 6626 Thirlane Road, Roanoke, Virginia.

Calendar of Events

A meeting to discuss fire training and policies. The meeting is open to the public for comments and input.

Contact: Bobby L. Stanley, Jr., Executive Director, Department of Fire Programs, 2807 N. Parham Rd., Suite 200, Richmond, VA 23294, telephone (804) 527-4236.

Residential Sprinkler Committee

† **October 16, 1996 - 1 p.m.** -- Open Meeting
Holiday Inn Roanoke Airport, 6626 Thirlane Road, Roanoke, Virginia.

A meeting to discuss fire training and policies. The meeting is open to the public for comments and input.

Contact: Bobby L. Stanley, Jr., Executive Director, Department of Fire Programs, 2807 N. Parham Rd., Suite 200, Richmond, VA 23294, telephone (804) 527-4236.

BOARD OF FORESTRY

Reforestation of Timberlands Board

September 18, 1996 - 10 a.m. -- Open Meeting
Department of Forestry, Fontaine Research Park, 900 Natural Resources Drive, George W. Dean Board Room, Charlottesville, Virginia. ☎

A meeting to discuss (i) accomplishments of the past year; (ii) RT budget for the 1996-97 program year; and (iii) the possibility of changing the cost-share rate.

Contact: Phil T. Grimm, Forest Development Team, Department of Forestry, P.O. Box 3758, Charlottesville, VA 22903, telephone (804) 977-6555 or FAX (804) 296-2369.

DEPARTMENT OF GENERAL SERVICES

Design/Build Construction Management Review Board

† **September 27, 1996 - 10 a.m.** -- Open Meeting
Department of General Services, 805 East Broad Street, Room 101, Richmond, Virginia. ☎

An organizational meeting.

Contact: Nathan I. Broocke, Director, Division of Engineering and Buildings, Department of General Services, 805 E. Broad St., Room 101, Richmond, VA 23219, telephone (804) 786-3263 or (804) 786-6252/TDD ☎

GEORGE MASON UNIVERSITY

Board of Visitors

September 17, 1996 - 6:30 p.m. -- Open Meeting
George Mason University, Mason Hall, Room D3A/B, Fairfax, Virginia.

A meeting of the Board of Visitors to hear the report of the Student Affairs Committee and to act on recommendations presented by that committee.

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 or FAX (703) 993-8707.

September 18, 1996 - 3:30 p.m. -- Open Meeting
George Mason University, Mason Hall, Room D23, Fairfax, Virginia.

A regular meeting of the board to hear reports of the standing committees of the board 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 and 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 or FAX (703) 993-8707.

STATE HAZARDOUS MATERIALS TRAINING ADVISORY COMMITTEE

September 25, 1996 - 1 p.m. -- Open Meeting
Radisson Hotel, Birdneck Road, Virginia Beach, 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, 805 E. Broad St., Richmond, VA 23219, telephone (804) 786-8001.

DEPARTMENT OF HEALTH (STATE BOARD OF)

September 20, 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 Board of Health intends to **repeal** regulations entitled: **12 VAC 5-370-10 et seq., Rules and Regulations for the Licensure of Nursing Homes**, and **adopt** regulations entitled: **12**

VAC 5-371-10 et seq., Regulations for the Licensure of Nursing Homes. The proposed regulations constitute a comprehensive revision of the Commonwealth's existing regulations addressing nursing homes, which were adopted in 1980. This area of the health care field has changed dramatically since then and the proposed regulations are intended to address current conditions, while assuring safe, adequate, and efficient nursing home operations and promoting health safety and adequate care of nursing home residents.

Statutory Authority: §§ 32.1-12 and 32.1-127 of the Code of Virginia.

Contact: Nancy R. Hofheimer, Director, Office of Health Facilities Regulations, Department of Health, 3600 W. Broad St., Suite 216, Richmond, VA 23230, telephone (804) 367-2102 or FAX (804) 367-2149.

† **October 10, 1996 - 9:30 a.m.** -- Public Hearing
Department of Professional and Occupational Regulation,
3600 West Broad Street, 3rd Floor Conference Room,
Richmond, Virginia.

† **November 16, 1996** -- Public comments may be submitted until 5 p.m. on this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Board of Health intends to amend regulations entitled: **12 VAC 5-220-10 et seq. Virginia Medical Care Facilities Certificate of Public Need Rules and Regulations.** The purpose of the proposed amendment is to establish a distinct process for acceptance and consideration of requests for Certificates of Public Need which involve the establishment of new nursing home facilities or increasing the number of beds at an existing medical care facility, and to implement changes to the Certificate of Public Need law effective July 1, 1996.

Statutory Authority: §§ 32.1-12 and 32.1-102.1 et seq. of the Code of Virginia.

Public comments may be submitted until 5 p.m. on November 16, 1996, to Nancy R. Hofheimer, Director, Office of Health Facilities Regulation, Department of Health, 3600 West Broad Street, Suite 216, Richmond, Virginia 23230.

Contact: Paul E. Parker, Director, Division of Resource Development, Office of Health Facilities Regulation, Department of Health, 3600 W. Broad St., Suite 216, Richmond, VA 23230, telephone (804) 367-2127 or FAX (804) 367-2149.

† **October 10, 1996 - 11 a.m.** -- Public Hearing
Department of Professional and Occupational Regulation,
3600 West Broad Street, 3rd Floor Conference Room,
Richmond, Virginia.

† **November 16, 1996** -- Public comments may be submitted until 5 p.m. on this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Board of Health intends to amend regulations entitled: **12 VAC 5-360-10 et seq. State Medical Facilities Plan: Nursing Home Services.** The purpose of the proposed regulation is to revise and expand project review standards for the evaluation of nursing home Certificate of Public Need requests. The amendments are proposed to prepare the Department of Health for competitive review of nursing home bed applications which has not occurred since 1988.

Statutory Authority: §§ 32.1-12, 32.1-102.2, and 32.1-145 of the Code of Virginia.

Public comments may be submitted until 5 p.m. on November 16, 1996, to Nancy R. Hofheimer, Director, Office of Health Facilities Regulation, Department of Health, 3600 West Broad Street, Suite 216, Richmond, Virginia 23230.

Contact: Paul E. Parker, Director, Division of Resource Development, Office of Health Facilities Regulation, Department of Health, 3600 W. Broad St., Suite 216, Richmond, VA 23230, telephone (804) 367-2127 or FAX (804) 367-2149.

Biosolids Use Information Committee

† **October 17, 1996 - 1 p.m.** -- Open Meeting
UVA Richmond Center, 7740 Shradler Road, Suite E,
Richmond, Virginia. ☎

A meeting to discuss specific concerns relating to the land application and agricultural use of biosolids, including issues related to the final Biosolids Use Regulations recently adopted by the State Board of Health to regulate the land application, marketing, or distribution of biosolids.

Contact: C. M. Sawyer, Director, Division of Wastewater Engineering, Department of Health, Office of Water Programs, P.O. Box 2448, Richmond, VA 23218, telephone (804) 786-1755 or FAX (804) 786-5567.

Biosolids Use Regulations Advisory Committee

† **October 17, 1996 - 10 a.m.** -- Open Meeting
UVA Richmond Center, 7740 Shradler Road, Suite E,
Richmond, Virginia. ☎

A meeting to discuss issues concerning the implementation and proposed revisions of the Biosolids Use Regulations involving land application, distribution, or marketing of biosolids.

Contact: C. M. Sawyer, Director, Division of Wastewater Engineering, Department of Health, Office of Water Programs, P.O. Box 2448, Richmond, VA 23218, telephone (804) 786-1755 or FAX (804) 371-2891.

Calendar of Events

Commissioner's Waterworks Advisory Committee

† September 19, 1996 - 10 a.m. -- Open Meeting
Office of Water Programs, Culpeper Field Office, 400 South Main Street, 2nd Floor, Culpeper, 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 or FAX (804) 786-5567.

VIRGINIA HIGHER EDUCATION TUITION TRUST FUND

September 26, 1996 - 10 a.m. -- Open Meeting
October 24, 1996 - 10 a.m. -- Open Meeting
November 21, 1996 - 10 a.m. -- Open Meeting
James Monroe Building, 101 North 14th Street, 3rd Floor, Richmond, Virginia. ☎

A regular meeting.

Contact: Diana F. Cantor, Executive Director, Virginia Higher Education Tuition Trust Fund, James Monroe Building, 101 N. 14th St., 3rd Floor, Richmond, VA 23219, telephone (804) 786-2060.

DEPARTMENT OF HISTORIC RESOURCES

State Review Board and Board of Historic Resources

September 18, 1996 - 10 a.m. -- Open Meeting
General Assembly Building, 910 Capitol Square, Senate Room A, Richmond, Virginia. ☎

A joint meeting of the State Review Board and Historic Resources Board to accept easement donations, approve highway marker text, and to place the following properties on the Virginia Landmarks Register and the National Register of Historic Places:

1. Church Hill North Historic District, City of Richmond
2. Bear Mountain Indian Mission School, Amherst County
3. Hotel William Byrd, City of Richmond
4. Mountain View, Amherst County
5. Brook Hill Farm, Bedford County
6. Gainsboro Library, City of Roanoke
7. Old Grayson County Courthouse and Clerk's Office, City of Galax
8. Thermo-Con House, Fairfax County
9. Weston, Fauquier County

Contact: M. Catherine Slusser, Director, Resource Information Division, Department of Historic Resources, 221

Governor St., Richmond, VA 23219, telephone (804) 786-3143, FAX (804) 786-2240, or (804) 786-1934/TDD ☎

HOPEWELL INDUSTRIAL SAFETY COUNCIL

October 8, 1996 - 9 a.m. -- Open Meeting
November 5, 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.

DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT

State Building Code Technical Review Board

† September 20, 1996 - 10 a.m. -- Open Meeting
The Jackson Center, 501 North Second Street, 1st Floor Conference Room, Richmond, Virginia. ☎ (Interpreter for the deaf provided upon request)

A meeting to hear administrative appeals concerning building and fire codes and other regulations of the department. The board also issues interpretations and formalizes recommendations to the Board of Housing and Community Development concerning future changes to the regulations.

Contact: Vernon W. Hodge, Building Code Supervisor, State Building Code Office, Department of Housing and Community Development, The Jackson Center, 501 N. 2nd St., Richmond, VA 23219-1321, telephone (804) 371-7170 or (804) 371-7089/TDD ☎

VIRGINIA HOUSING DEVELOPMENT AUTHORITY

September 16, 1996 - 9 a.m. -- Open Meeting
September 17, 1996 - 9 a.m. -- Open Meeting
Cavalier Hotel, Oceanfront at 42nd Street, Virginia Beach, Virginia. ☎

A retreat on September 15 and 16, and the regular meeting on September 17 of the Board of Commissioners. At the retreat, the board will consider and discuss various policies and issues relating to the authority's programs and operations. At the regular meeting, the Board of Commissioners 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 (iv) consider such other matters and take such other actions as it may deem appropriate.

Various committees of the Board of Commissioners may also meet before or after the regular meeting and consider matters within their purview. The planned agenda of the meeting will be available at the offices of the authority one week prior to the date of the retreat.

Contact: J. Judson McKellar, Jr., General Counsel, Virginia Housing Development Authority, 601 S. Belvidere Street, Richmond, VA 23220, telephone (804) 782-1986.

STATEWIDE INDEPENDENT LIVING COUNCIL

† **October 23, 1996 - 10 a.m.** -- Open Meeting
Hampton Public Library, 4207 Victoria Boulevard, Hampton, Virginia. (Interpreter for the deaf provided upon request)

A meeting to conduct regular business.

Contact: Jim Rothrock, Statewide Independent Living Council Staff, 1802 Marroit Rd., Richmond, VA 23229, telephone (804) 673-0119, toll-free 1-800-552-5019/TDD and Voice, or (804) 662-9040/TDD

COUNCIL ON INFORMATION MANAGEMENT

† **September 27, 1996 - 10 a.m.** -- Open Meeting
Council on Information Management, 1100 Bank Street, Suite 901, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A regular bimonthly meeting.

Contact: Linda Hening, Administrative Assistant, Council on Information Management, 1100 Bank St., Suite 901, Richmond, VA 23219, telephone (804) 225-3622 or (800) 828-1120/TDD

DEPARTMENT OF LABOR AND INDUSTRY

Virginia Apprenticeship Council

September 19, 1996 - 10 a.m. -- Open Meeting
New Horizons Regional Education Center, 520 Butler Farm Road, Hampton, Virginia. (Interpreter for the deaf provided upon request)

A regular quarterly meeting of the council.

Contact: Fred T. Yontz, Apprenticeship Program Manager, Department of Labor and Industry, Powers-Taylor Bldg., 13 S. 13th St., Richmond, VA 23219, telephone (804) 371-0295, FAX (804) 786-9877 or (804) 786-2376/TDD

Migrant and Seasonal Farmworkers Board

September 25, 1996 - 10 a.m. -- Open Meeting
Winchester Medical Center, 1840 Amherst Street, Administrative Board Room, Winchester, 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, Powers-Taylor Bldg., 13 S. 13th St.,

Richmond, VA 23219, telephone (804) 225-3083, FAX (804) 371-6524 or (804) 786-2376/TDD

Safety and Health Codes Board

September 30, 1996 - 10 a.m. -- Open Meeting
General Assembly Building, 910 Capitol Square, House Room C, Richmond, Virginia. (Interpreter for the deaf provided upon request)

The tentative agenda items for consideration by the board include; (i) proposed regulation concerning Certified Lead Contractor Notification, Lead Project Permits and Permit Fees (16 VAC 25-35-10 et seq.); (ii) Personal Protective Equipment for Shipyard Employment (16 VAC 25-100-1915.159; corrections); (iii) consolidation of repetitive provisions; technical amendments; and (iv) Incorporation of General Industry Health and Safety Standards Applicable to Construction Work (16 VAC 25-175-1926.416 and 16 VAC 25-175-1926.417); correcting amendment.

Contact: Regina P. Cobb, Agency Management Analyst, Department of Labor and Industry, Powers-Taylor Bldg., 13 S. 13th St., Richmond, VA 23219, telephone (804) 786-0610, FAX (804) 786-8418 or (804) 786-2376/TDD

STATE LAND USE EVALUATION ADVISORY COUNCIL

September 17, 1996 - 10 a.m. -- Open Meeting
Department of Taxation, 2220 West Broad Street, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A meeting to adopt suggested ranges of values for agricultural, horticultural, forest and open-space land use and the use-value assessment program.

Contact: H. Keith Mawyer, Property Tax Manager, Office of Customer Services, Property Tax Unit, Department of Taxation, 2220 W. Broad St., Richmond, VA 23219, telephone (804) 367-8020.

LIBRARY BOARD

September 16, 1996 - Time to be announced -- Open Meeting
The Library of Virginia, 11th Street at Capitol Square, 3rd Floor, Supreme Court Meeting Room, Richmond, Virginia. (Interpreter for the deaf provided upon request)

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.

Calendar of Events

Automation and Networking Committee

September 16, 1996 - Time to be announced -- 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

September 16, 1996 - Time to be announced -- 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

September 16, 1996 - Time to be announced -- 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.

Publications and Cultural Affairs Committee

September 16, 1996 - Time to be announced -- Open Meeting
The Library of Virginia, 11th Street at Capitol Square, 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

September 16, 1996 - Time to be announced -- Open Meeting
The Library of Virginia, 11th Street at Capitol Square, 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

September 16, 1996 - Time to be announced -- 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 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.

Research and Information Services Committee

September 16, 1996 - Time to be announced -- Open Meeting
The Library of Virginia, 11th Street at Capitol Square, Conference Room B, Richmond, Virginia. ☎

A meeting to discuss research and information services 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.

COMMISSION ON LOCAL GOVERNMENT

September 16, 1996 - 10 a.m. -- Open Meeting
Richmond area; site to be determined.

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 Eighth Street Office Bldg., Richmond, VA 23219-1924, telephone (804) 786-6508, FAX (804) 371-7999 or (804) 786-1860/TDD ☎

VIRGINIA MANUFACTURED HOUSING BOARD

† October 9, 1996 - 10 a.m. -- Open Meeting
Department of Housing and Community Development, The Jackson Center, 501 North Second Street, Richmond, Virginia. ☎ (Interpreter for the deaf provided upon request)

A regular monthly 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 ☎

MARINE RESOURCES COMMISSION

† **September 24, 1996 - 9:30 am.** -- Open Meeting
Marine Resources Commission, 2600 Washington Avenue, 4th Floor, Room 403, Newport News, Virginia. ☎ (Interpreter for the deaf provided upon request)

The commission will hear and decide marine environmental matters at 9:30 a.m.; permit applications for projects in wetlands, bottom lands, coastal primary sand dunes and beaches; appeals of local wetland board decisions; policy and regulatory issues. The commission will hear and decide fishery management items at approximately noon. Items to be heard are as follows: regulatory proposals, fishery management plans; fishery conservation issues; licensing; shellfish leasing. Meetings are open to the public. Testimony will be taken under oath from parties addressing agenda items on permits and licensing. Public comments will be taken on resource matters, regulatory issues and items scheduled for public hearing. The commission is empowered to promulgate regulations in the areas of marine environmental management and marine fishery management.

Contact: Renee D. Morris, Secretary to the Commission, Marine Resources Commission, P.O. Box 756, Newport News, VA 23607-0756, telephone (757) 247-2261, toll-free 1-800-541-4646 or (757) 247-2292/TDD ☎

BOARD OF MEDICAL ASSISTANCE SERVICES

September 17, 1996 - 10 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 services and to take action on issues pertinent to the board.

Contact: Cynthia Klisz, Board Liaison, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 786-8099.

Drug Utilization Review Board

† **October 10, 1996 - 2 p.m.** -- Open Meeting
Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Board Room, Richmond, Virginia. ☎

A meeting to conduct routine business.

Contact: Marianne R. Rollings, Registered Pharmacist, Pharmacy Services Unit, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 786-3820 or FAX (804) 786-0414.

Virginia Medicaid Pharmacy Liaison Committee

† **September 26, 1996 - 1 p.m.** -- Open Meeting
† **October 24, 1996 - 1 p.m.** -- Open Meeting
Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Board Room, Richmond, Virginia. ☎

A meeting to conduct routine business.

Contact: Marianne R. Rollings, Registered Pharmacist, Pharmacy Services Unit, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 786-3820 or FAX (804) 786-0414.

Pharmacy Prior Authorization Advisory Committee

October 3, 1996 - 1 p.m. -- Public Hearing
October 4, 1996 - 1 p.m. -- Public Hearing
General Assembly Building, 910 Capitol Square, House Room D, Richmond, Virginia. ☎

A public hearing to receive comments on pharmaceutical products that will be recommended for prior authorization to the Board of Medical Assistance Services.

Contact: Patty Atkins-Smith, Agency Management Analyst, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 371-6391.

October 10, 1996 - 10 a.m. -- Open Meeting
Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Board Room, Richmond, Virginia. ☎

A routine business meeting including a discussion of implementation of a prior authorization program for the department.

Contact: Patty Atkins-Smith, Agency Management Analyst, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 371-6391.

BOARD OF MEDICINE

October 2, 1996 - Public comments may be submitted until this date. The public comment period has been extended.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Medicine intends to amend regulations entitled: **18 VAC 85-20-10 et seq. Regulations Governing the Practice of Medicine, Osteopathy, Podiatry, and Chiropractic.** The proposed amendment to 18 VAC 85-20-90 B permits the use of Schedule III and IV drugs in the treatment of obesity under specified conditions and a treatment plan.

Statutory Authority: § 54.1-2400 of the Code of Virginia.

Contact: Warren W. Koontz, M.D., Executive Director, Board of Medicine, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-7423, FAX (804) 662-9943, or (804) 662-7197/TDD ☎

Calendar of Events

† **October 3, 1996 - 8 a.m.** -- Open Meeting
† **October 4, 1996 - 8 a.m.** -- Open Meeting
† **October 5, 1996 - 8 a.m.** -- Open Meeting
Department of Health Professions, 6606 West Broad Street,
5th Floor, Board Rooms 1-4, Richmond, Virginia. ☎
(Interpreter for the deaf provided upon request)

The board will meet on October 3, 1996, to conduct general board business, receive committee and board reports, and discuss any other items which may come before it. The board will meet on October 3, 4 and 5 to review reports, interview licensees, conduct administrative proceedings, and make decisions on disciplinary matters. The board will review any regulations that may come before it. The board will entertain public comments during the first 15 minutes on agenda items.

Contact: Warren W. Koontz, M.D., Executive Director, Board of Medicine, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9960, FAX (804) 662-9943, or (804) 662-7197/TDD ☎

Credentials Committee

† **October 5, 1996 - 8 a.m.** -- Open Meeting
Department of Health Professions, 6606 West Broad Street,
5th Floor, Board Rooms 3 and 4, Richmond, Virginia. ☎
(Interpreter for the deaf provided upon request)

The committee will meet in open and closed session to conduct general business, interview and review medical credentials of applicants applying for licensure in Virginia, and discuss any other items which may come before the committee. The committee will receive public comments of those persons appearing on behalf of candidates.

Contact: Warren W. Koontz, M.D., Executive Director, Department of Health Professions, 6606 W. Broad St., Richmond, VA 23230-1717, telephone (804) 662-9960, FAX (804) 662-9943 or (804) 662-7197/TDD ☎

Executive Committee

† **October 24, 1996 - 8 a.m.** -- Open Meeting
Department of Health Professions, 6606 West Broad Street,
5th Floor, Board Rooms 2 and 3, Richmond, Virginia. ☎
(Interpreter for the deaf provided upon request)

The committee will meet in open and closed session to:
(i) review disciplinary files requiring administrative action;
(ii) adopt amendments for approval of promulgation of regulations as presented; and (iii) act on other issues that come before the board. The chairman will not entertain public comments.

Contact: Warren W. Koontz, M.D., Executive Director, Department of Health Professions, 6606 W. Broad St., Richmond, VA 23230-1717, telephone (804) 662-9960, FAX (804) 662-9943 or (804) 662-7197/TDD ☎

Informal Conference Committee

September 17, 1996 - 9 a.m. -- Open Meeting
Sheraton Inn, 2801 Flank Road, Fredericksburg, Virginia.

† **September 27, 1996 - 9 a.m.** -- Open Meeting
Fort Magruder Inn and Conference Center, Route 60,
Williamsburg, Virginia.

† **October 24, 1996 - 11 a.m.** -- Open Meeting
Department of Health Professions, 6606 West Broad Street,
5th Floor, Richmond, Virginia.

The Informal Conference Committee, composed of three members of the board, will inquire into allegations that certain practitioners may have violated laws and regulations governing the practice of medicine and other healing arts in Virginia. The committee will meet in open and closed sessions pursuant to § 2.1-344 A 7 and A 15 of the Code of Virginia. Public comment will not be received.

Contact: Karen W. Perrine, Deputy Executive Director, Board of Medicine, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-7693, FAX (804) 662-9943 or (804) 662-7197/TDD ☎

Legislative Committee

September 20, 1996 - 1 p.m. -- Open Meeting
Department of Health Professions, 6606 West Broad Street,
5th Floor, Board Room 2, Richmond, Virginia. ☎ (Interpreter for the deaf provided upon request)

The committee will meet to (i) discuss legislative issues related to board activities and regulation, (ii) review any pending regulations pursuant to regulatory review or legislative action, and (iii) consider any other information that shall come before the committee. There will be a public comment period 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) 662-9908, FAX (804) 662-9943 or (804) 662-7197/TDD ☎

VIRGINIA MILITARY INSTITUTE

Board of Visitors

September 21, 1996 - 8:30 a.m. -- Open Meeting
Virginia Military Institute, Preston Library, Lexington,
Virginia. ☎

A regular meeting to hear committee reports. There will be an opportunity for public comment at approximately 9 a.m. immediately after the Superintendent's comments.

Contact: Colonel Edwin L. Dooley, Jr., Secretary to the Board, Virginia Military Institute, Superintendent's Office, Lexington, VA 24450, telephone (540) 464-7206 or FAX (540) 464-7600.

STATE MILK COMMISSION

† **September 18, 1996 - 10:30 a.m.** -- Open Meeting
900 Natural Resources Drive, 2nd Floor Board Room,
Charlottesville, Virginia.

A regular meeting to (i) discuss industry issues, distributor licensing, Virginia base transfers, Virginia baseholding license amendments, regulations, and fiscal matters, and (ii) to receive reports from staff of the Milk Commission. The commission may consider other matters pertaining to its responsibilities. Any persons who require accommodations in order to participate in the meeting should contact Edward C. Wilson, Jr., so that suitable arrangements can be made.

Contact: Edward C. Wilson, Jr., Deputy Administrator, State Milk Commission, 200 N. 9th St., Suite 1015, Richmond, VA 23219-3414, telephone (804) 786-2013 or (804) 786-2013/TDD

GOVERNOR'S MINED LAND RECLAMATION ADVISORY BOARD

† **October 3, 1996 - 10 a.m.** -- Open Meeting
Department of Mines, Minerals and Energy, Buchanan-Smith Building, Route 23, Big Stone Gap, Virginia. (Interpreter for the deaf provided upon request)

A meeting to review and discuss recent interstate mining compact commission issues associated with the coal industry.

Contact: Danny Brown, Division Director, Department of Mines, Minerals and Energy, Division of Mined Land Reclamation, P.O. Drawer 900, Big Stone Gap, VA 24219, telephone (540) 523-8152, FAX (540) 523-8247 or toll-free 1-800-828-1120 (VA Relay Center).

DEPARTMENT OF MINES, MINERALS AND ENERGY

Division of Mined Land Reclamation

† **September 18, 1996 - 10 a.m.** -- Open Meeting
Greystone Bed and Breakfast, St. Paul, Virginia. (Interpreter for the deaf provided upon request)

A meeting to review federal and state surface mining policies, procedures, regulations and laws, and to identify initiatives and incentives, changes in regulations, laws, policies and procedures needed to enhance and promote additional remaining operations in Virginia.

Contact: Norman Enix, Remaining Coordinator, Department of Mines, Minerals and Energy, Division of Mined Land Reclamation, P.O. Drawer 900, Big Stone Gap, VA 24219, telephone (540) 523-8286, FAX (540) 523-8163 or toll-free 1-800-828-1120 (VA Relay Center).

† **November 14, 1996 - 10 a.m.** -- Public Hearing
Department of Mines, Minerals and Energy, U. S. Route 23 South, Big Stone Gap, Virginia.

† **November 15, 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 Mines, Minerals and Energy intends to amend regulations entitled: **4 VAC 25-130-10 et seq. Coal Surface Mining Reclamation Regulations.** The Department of Mines, Minerals and Energy is proposing amendments to the Virginia Coal Surface Mining Reclamation Regulation governing protection against uncontrolled blowouts of water from underground coal mine workings. The amendments are identical to the emergency regulation amendments effective from March 29, 1996, through March 28, 1997 (see 12:16 VA.R. 2193-2198 April 29, 1996). The amendments add a requirement that applicants for coal mining permits must include information in their permit applications about the steps to be taken during mining to prevent the sudden release of accumulated water from the underground mine workings. The amendments also establish a minimum width for the barrier of coal to be left in place where the coal seam being mined dips toward the land surface and where the barrier may impound water. The amendments provide a standard formula for calculating the required barrier thickness, or alternately allows for site-specific designs to determine the needed barrier thickness.

Statutory Authority: §§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Contact: Danny R. Brown, Division Director, Department of Mines, Minerals and Energy, Division of Mined Land Reclamation, P.O. Drawer 900, Big Stone Gap, VA 24219, telephone (540) 523-8100, FAX (540) 523-8163, or toll-free 1-800-828-1120 (VA Relay Center).

DEPARTMENT OF MOTOR VEHICLES

Medical Advisory Board

† **October 9, 1996 - 1 p.m.** -- Open Meeting
Department of Motor Vehicles, 2300 West Broad Street, Richmond, Virginia.

A regular business meeting.

Contact: Millicent N. Ford, Program Manager, Medical Advisory Board, Department of Motor Vehicles, 2300 W. Broad St., Richmond, VA 23220, telephone (804) 367-0132.

Calendar of Events

MOTOR VEHICLE DEALER BOARD

September 30, 1996 - 2 p.m. -- Public Hearing
Wytheville Community College, 1000 East Main Street,
Grayson Hall, The Commons, Room 113, Wytheville,
Virginia.

October 1, 1996 - 1 p.m. -- Public Hearing
Vinton War Memorial, 814 East Washington Avenue, Dining
Room (on right), Vinton, Virginia.

October 2, 1996 - 10 a.m. -- Public Hearing
Virginia Army National Guard Armory, 340 South Willow
Street, Harrisonburg, Virginia.

October 7, 1996 - 10 a.m. -- Public Hearing
Department of Motor Vehicles, 2300 West Broad Street,
Agriculture Room, Richmond, Virginia.

October 8, 1996 - 11 a.m. -- Public Hearing
Virginia Army National Guard Armory, 208 Marcella Road,
Hampton, Virginia.

October 9, 1996 - 2:30 p.m. -- Public Hearing
Northern Virginia Community College, 8333 Little River
Turnpike, Ernst Cultural Center, Annandale, Virginia.

November 2, 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 Motor Vehicle Dealer Board intends to adopt regulations entitled: **24 VAC 22-20-10 et seq. Motor Vehicle Dealer Fees.** The Motor Vehicle Dealer Board is a self-sustaining entity. All expenses for the board must be paid through fees assessed by the board. At the current fee level the board will not be able to meet its expenses. It is projected that the board will have a negative cash balance by the end of March 1997 if the fees are not adjusted. The proposed regulations will increase certain fees for motor vehicle dealers and salespersons and enable the board to continue its function.

Statutory Authority: §§ 46.2-1506, 46.2-1503.4, 46.2-1519 and 46.2-1546 of the Code of Virginia.

Public comments may be submitted until November 2, 1996, to Barbara Klotz, P.O. Box 27412, Room 724, Richmond, VA 23269-0001.

Contact: Daniel B. Wilkins, Executive Director, Motor Vehicle Dealer Board, 2201 W. Broad St., Suite 104, Richmond, VA 23230, telephone (804) 367-1100, FAX (804) 367-1053, or (804) 272-9278/TDD ☎

September 17, 1996 - 1 p.m. -- Open Meeting
Department of Motor Vehicles, 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

September 17, 1996 - 8:30 a.m. -- Open Meeting
Department of Motor Vehicles, 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

September 16, 1996 - 8:30 a.m. -- Open Meeting
Department of Motor Vehicles, 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.

Finance Committee

September 17, 1996 - Noon -- Open Meeting
 Department of Motor Vehicles, 2300 West Broad Street, Room 702, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A meeting to conduct general board business will immediately follow the conclusion of the Advertising Committee meeting. 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.

Licensing Committee

September 16, 1996 - 1 p.m. -- Open Meeting
 Department of Motor Vehicles, 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

September 16, 1996 - 4:30 p.m. -- Open Meeting
 Department of Motor Vehicles, 2300 West Broad Street, Room 702, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A meeting to conduct general board business will immediately follow the conclusion of the Licensing Committee meeting. 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.

VIRGINIA MUSEUM OF FINE ARTS

Finance Committee

September 19, 1996 - 11 a.m. -- Open Meeting
 Virginia Museum of Fine Arts, 2800 Grove Avenue, Conference Room, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A meeting to review budgets for 1996-1997. Public comment will not be received.

Contact: Emily C. Robertson, Secretary of the Museum, Virginia Museum of Fine Arts, 2800 Grove Ave., Richmond, VA 23221-2466, telephone (804) 367-0553.

Board of Trustees

September 19, 1996 - Noon -- Open Meeting
 Virginia Museum of Fine Arts, 2800 Grove Avenue, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A regularly scheduled meeting of the board to review the budget and receive committee and staff reports. Public comment will not be received at the meeting.

Contact: Emily C. Robertson, Secretary of the Museum, Virginia Museum of Fine Arts, 2800 Grove Ave., Richmond, VA 23221-2466, telephone (804) 367-0553.

BOARD OF NURSING

† **September 24, 1996 - 9 a.m. -- Open Meeting**
 † **September 25, 1996 - 9 a.m. -- Open Meeting**
 Department of Health Professions, 6606 West Broad Street, 5th Floor, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A regular meeting to consider matters relating to education programs, discipline of licensees, licensure by examination and other matters under the jurisdiction of the board. On September 25, 1996, two panels of the board will conduct formal hearings.

Contact: Nancy K. Durrett, R.N., Executive Director, Board of Nursing, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9909, FAX (804) 662-9943 or (804) 662-7197/TDD

Calendar of Events

† **September 26, 1996 - 9 p.m.** -- Open Meeting
Department of Health Professions, 6606 West Broad Street,
5th Floor, Richmond, Virginia. ☎ (Interpreter for the deaf
provided upon request)

A panel of the Board of Nursing will conduct formal
hearings with licensees and certificate holders. Public
comment will not be received.

Contact: Nancy K. Durrett, R.N., Executive Director, Board
of Nursing, 6606 W. Broad St., 4th Floor, Richmond, VA
23230-1717, telephone (804) 662-9909, FAX (804) 662-9943
or (804) 662-7197/TDD ☎

Special Conference Committee

† **September 23, 1996 - 9 a.m.** -- Open Meeting
Department of Health Professions, 6606 West Broad Street,
5th Floor, Richmond, Virginia. ☎ (Interpreter for the deaf
provided upon request)

A Special Conference Committees will conduct informal
conferences with licensees and certificate holders to
determine what, if any, action should be recommended
to the Board of Nursing. The Education Special
Conference Committee will meet to review proposals and
reports and prepare recommendations for the board.
Public comment will not be received.

Contact: Nancy K. Durrett, R.N., Executive Director, Board
of Nursing, 6606 W. Broad St., 4th Floor, Richmond, VA
23230-1717, telephone (804) 662-9909, FAX (804) 662-9943
or (804) 662-7197/TDD ☎

† **September 23, 1996 - 1 p.m.** -- Open Meeting
Department of Health Professions, 6606 West Broad Street,
5th Floor, Richmond, Virginia. ☎ (Interpreter for the deaf
provided upon request)

Two Special Conference Committees will conduct
informal conferences in the morning. A panel of the
Board of Nursing will conduct formal hearings. Public
comment will not be received.

Contact: Nancy K. Durrett, R.N., Executive Director, Board
of Nursing, 6606 W. Broad St., 4th Floor, Richmond, VA
23230-1717, telephone (804) 662-9909, FAX (804) 662-9943
or (804) 662-7197/TDD ☎

BOARDS OF NURSING AND MEDICINE

† **October 22, 1996 - 10:30 a.m.** -- Open Meeting
Department of Health Professions, 6606 West Broad Street,
5th Floor, Richmond, Virginia. ☎ (Interpreter for the deaf
provided upon request)

The Committee of the Joint Boards of Medicine and
Nursing, the Board of Nursing and the Board of Medicine
will conduct informal conferences. Public comment will
not be received.

Contact: Karen W. Perrine, Deputy Executive Director,
Board of Nursing, 6606 W. Broad St., 4th Floor, Richmond,
VA 23230-1717, telephone (804) 662-7693, FAX (804) 662-
9943 or (804) 662-7197/TDD ☎

BOARD OF OPTOMETRY

September 18, 1996 - 8 a.m. -- Open Meeting
Department of Health Professions, 6606 West Broad Street,
Fifth Floor, Conference Room 3, Richmond, Virginia. ☎
(Interpreter for the deaf provided upon request)

A board meeting to adopt amendments to 18 VAC 105-
30-10 et seq., Regulations on Certification of
Optometrists to use therapeutic pharmaceutical agents.
Amendments to the regulations on diseases and
conditions which may be treated and the listing of
therapeutic pharmaceutical agents are being
promulgated as provided for in §§ 54.1-3223 and 9-
6.14:4.1 A 18. The board may consider other items of
business as may be necessary.

Contact: Elizabeth A. Carter, Ph.D., Executive Director,
Department of Health Professions, 6606 W. Broad St., 4th
Floor, Richmond, VA 23230-1717, telephone (804) 662-9910
or (804) 662-7197/TDD ☎

BOARD OF PHARMACY

† **September 17, 1996 - 9 a.m.** -- Open Meeting
Department of Health Professions, 6606 West Broad Street,
5th Floor, Conference Room 4, Richmond, Virginia.

A meeting to conduct informal conferences. Public
comments will not be received.

Contact: Scotti W. Russell, Executive Director, Board of
Pharmacy, 6606 W. Broad St., 4th Floor, Richmond, VA
23230, telephone (804) 662-9911.

POLYGRAPH EXAMINERS ADVISORY BOARD

September 24, 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
interpreter 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 PSYCHOLOGY

September 24, 1996 - 9 a.m. -- Open Meeting
Department of Health Professions, 6606 West Broad Street,
4th Floor, Richmond, Virginia. ☎

A formal administrative hearing held pursuant to § 9-6.14:12 of the Code of Virginia. Public comment will not be heard.

Contact: Evelyn B. Brown, Executive Director, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9967, FAX (804) 662-9943, or (804) 662-7197/TDD ☎

Examination Committee

† **September 20, 1996 - 10 a.m.** -- Open Meeting
Department of Health Professions, 6606 West Broad Street,
5th Floor, Conference Room 4, Richmond, Virginia. ☎
(Interpreter for the deaf provided upon request)

A meeting to conduct general business. Public comment will not be heard.

Contact: M. LaDonna Duncan, Administrative Assistant, Department of Health Professions, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9913, FAX (804) 662-9943, or (804) 662-7197/TDD ☎

REAL ESTATE BOARD

September 19, 1996 -- 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 two weeks 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 ☎

Education Committee

† **September 18, 1996 - 2 p.m.** -- Open Meeting
Department of Professional and Occupational Regulation,
3600 West Broad Street, Richmond, Virginia. ☎

A meeting to conduct regulatory review. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact the board. 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 ☎

Continuing Education Committee

† **September 19, 1996 - 8 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. 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

† **September 19, 1996 - 11:30 a.m.** -- Open Meeting
Holiday Inn Select, 601 Main Street, Lynchburg, Virginia. ☎
(Interpreter for the deaf provided upon request)

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. The meeting will be dependent on a quorum of 10. The meeting will also consider legislation recommendations from subcommittees. Subcommittee meetings will be held prior to or after the general council meeting. Call Paddy Katzen for details, or e-mail pmkatzen@deq.state.va.us.

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) 698-4319.

BOARD OF REHABILITATIVE SERVICES

September 26, 1996 - 9 a.m. -- Open Meeting
Woodrow Wilson Rehabilitation Center, Route 250,
Fishersville, Virginia. ☎ (Interpreter for the deaf provided upon request)

A quarterly business meeting.

Contact: John R. Vaughn, Commissioner, Department of Rehabilitative Services, 8004 Franklin Farms Dr., Richmond, VA 23230, telephone (804) 662-7010, toll-free 1-800-552-5019/TDD and Voice or (804) 662-9040/TDD ☎

Calendar of Events

VIRGINIA RESOURCES AUTHORITY

† **October 8, 1996 - 9:30 a.m.** -- Open Meeting

† **November 12, 1996 - 9:30 a.m.** -- Open Meeting

The Mutual Building, 909 East Main Street, Suite 607, Board Room, Richmond, Virginia.

The board will meet to approve minutes of the meeting of the prior month, to review the authority's operations for the prior months, and to consider other matters and take other actions as it may deem appropriate. The planned agenda of the meeting will be available at the offices of the authority one week prior to the date of the meeting. Public comments will be received at the beginning of the meeting.

Contact: Shockley D. Gardner, Jr., Virginia Resources Authority, 909 E. Main St., Suite 607, Mutual Building, Richmond, VA 23219, telephone (804) 644-3100 or FAX (804) 644-3109.

RICHMOND HOSPITAL AUTHORITY

Board of Commissioners

† **September 26, 1996 - 5 p.m.** -- Open Meeting

Richmond Nursing Home, 1900 Cool Lane, 2nd Floor, Classroom, Richmond, Virginia. ♿

A monthly board meeting to discuss nursing home operations and related matters.

Contact: Marilyn H. West, Chairman, Richmond Hospital Authority, P.O. Box 548, Richmond, VA 23204-0548, telephone (804) 782-1938.

SEWAGE HANDLING AND DISPOSAL APPEALS REVIEW BOARD

September 25, 1996 - 10 a.m. -- Open Meeting

Ramada Inn, 1130 Motel Drive, Allegheny Room, Woodstock, Virginia. ♿

The board will 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 12 VAC 5-610-10, Sewage Handling and Disposal Regulations.

Contact: Robert Hicks, Secretary to the Board, Sewage Handling and Disposal Appeals Review Board, 1500 E. Main St., Suite 11, P.O. Box 2448, Richmond, VA 23218, telephone (804) 786-1750.

VIRGINIA SMALL BUSINESS FINANCING AUTHORITY

Loan Committee

September 24, 1996 - 10 a.m. -- Open Meeting

Department of Business Assistance, 901 East Byrd Street, 19th Floor, Main Board Room, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

A meeting to review applications for loans submitted to the authority for approval.

Contact: Cathleen Surface, Executive Director, Virginia Small Business Financing Authority, 901 E. Byrd St., 19th Floor, Richmond, VA 23219, telephone (804) 371-8256, FAX (804) 225-3384, or (804) 371-0327/TDD ♿

VIRGINIA SOIL AND WATER CONSERVATION BOARD

† **September 19, 1996 - 9 a.m.** -- Open Meeting

Henrico County Human Resources Building, 8600 Dixon Powers Drive, 3rd Floor, Board Room, Richmond, Virginia. ♿

A regular bimonthly business meeting.

Contact: Linda J. Cox, Administrative Assistant, Virginia Soil and Water Conservation Board, 203 Governor St., Suite 206, Richmond, VA 23219, telephone (804) 786-2152 or FAX (804) 786-1798.

VIRGINIA STUDENT ASSISTANCE AUTHORITIES

† **September 26, 1996 - 10 a.m.** -- Open Meeting

411 East Franklin Street, 2nd Floor Board Room, Richmond, Virginia. ♿

A meeting to discuss matters relating to the Virginia Student Assistance Authorities.

Contact: Cheryl B. Farmer, Executive Assistant, 411 E. Franklin St., Suite 300, Richmond, VA 23219, telephone (804) 775-4648, FAX (804) 775-4679 or toll-free 1-800-792-5626.

COMMISSION ON COMPETITIVE AND EQUITABLE TAX POLICY

† **September 24, 1996 - 2 p.m.** -- Open Meeting

General Assembly Building, 910 Capitol Square, House Room D, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

This is the commission's second meeting. Professor Roy Bahl of Georgia State University will be the guest speaker.

Contact: Scott Wilkinson, Governor's Policy Office, State Capitol, 3rd Floor, Richmond, VA 23219, telephone (804) 786-2211, FAX (804) 786-3985, or (804) 371-8015/TDD ♿

COMMONWEALTH TRANSPORTATION BOARD

September 18, 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.

September 19, 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.

TRANSPORTATION SAFETY BOARD

NOTE: CHANGE IN MEETING DATE

† October 9, 1996 - 9 a.m. -- Open Meeting
Department of Motor Vehicles, 2300 West Broad Street,
Richmond, Virginia. (Interpreter for the deaf provided upon
request)

The quarterly meeting of the board to review
transportation safety issues in the Commonwealth.

Contact: Angelisa C. Jennings, Management Analyst,
Department of Motor Vehicles, 2300 W. Broad St.,
Richmond, VA 23220, telephone (804) 367-2026 or FAX
(804) 367-6031.

TREASURY BOARD

September 18, 1996 - 9 a.m. -- Open Meeting
October 16, 1996 - 9 a.m. -- Open Meeting
November 20, 1996 - 9 a.m. -- Open Meeting
December 18, 1996 - 9 a.m. -- Open Meeting
James Monroe Building, 101 North 14th Street, Treasury
Board Room, 3rd Floor, Richmond, Virginia. (Interpreter for the deaf provided upon request)

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 VETERANS CARE CENTER

Board of Trustees

† September 27, 1996 - 2 p.m. -- Open Meeting
Virginia Veterans Care Center, 4550 Shenandoah Avenue,
Roanoke, Virginia. (Interpreter for the deaf provided upon request)

The annual meeting to review the operations of the
Virginia Veterans Care Center.

Contact: Andrew J. Vinson, Executive Director, P.O. Box
6334, Roanoke, VA 24017-0334, telephone (540) 857-6974,
toll-free 1-800-220-8387, or (540) 342-8810/TDD

BOARD OF VETERINARY MEDICINE

Licensed Veterinary Technician Committee

September 16, 1996 - 1 p.m. -- Open Meeting
Department of Health Professions, 6606 West Broad Street,
5th Floor, Conference Room 4, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A meeting to discuss the scope of practice of veterinary
technicians. Brief public comment will be received at the
beginning of the meeting.

Contact: Terri H. Behr, Administrative Assistant, Department
of Health Professions, 6606 W. Broad St., 4th Floor,
Richmond, VA 23230, telephone (804) 662-9915 or (804)
662-7197/TDD

VIRGINIA RACING COMMISSION

† September 18, 1996 - 9:30 a.m. -- Open Meeting
Tyler Building, 1300 East Main Street, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A regular monthly meeting to include a report from
Colonial Downs and to approve racing officials for the
limited license meeting at Morven Park.

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

BOARD FOR THE VISUALLY HANDICAPPED

October 23, 1996 - 1:30 p.m. -- Open Meeting
Department for the Visually Handicapped, Administrative
Headquarters, 397 Azalea Avenue, Richmond, Virginia. (Interpreter for the deaf provided upon request)

The board is responsible for advising the Governor, the
Secretary of Health and Human Resources, the

Calendar of Events

Commissioner, and the General Assembly on the delivery of public services to the blind and the protection of their rights. The board also reviews and comments on policies, budgets and requests for appropriations for the department. At this regular quarterly meeting, the board members will receive information regarding department activities and operations, review expenditures from the board's institutional fund, and discuss other issues raised by board members.

Contact: Katherine C. Proffitt, Executive Secretary Senior, Department for the Visually Handicapped, 397 Azalea Ave., Richmond, VA 23227, telephone (804) 371-3140, toll-free 1-800-622-2155, or (804) 371-3140/TDD ☎

DEPARTMENT FOR THE VISUALLY HANDICAPPED

Vocational Rehabilitation Advisory Council

September 21, 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 vocational rehabilitation services for blind and visually impaired citizens of the Commonwealth.

Contact: James G. Taylor, Vocational Rehabilitation Program Director, Department for the Visually Handicapped, 397 Azalea Ave., Richmond, VA 23227, telephone (804) 371-3140, toll-free 1-800-622-2155, or (804) 371-3140/TDD ☎

VIRGINIA VOLUNTARY FORMULARY BOARD

October 24, 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 drug products pertaining to the Virginia Voluntary Formulary.

Contact: James K. Thomson, Director, Bureau of Pharmacy Services, Virginia Voluntary Formulary, James Monroe Bldg., 101 N. 14th St., Room S-45, Richmond, VA 23219, telephone (804) 786-4326.

BOARD FOR WASTE MANAGEMENT FACILITY OPERATORS

† **October 2, 1996 - 10 a.m. --** Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, Conference Room 3, 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 department fully complies with the Americans with Disabilities Act.

Contact: David E. Dick, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8507, FAX (804) 367-2474 or (804) 367-9753/TDD ☎

BOARD FOR WATERWORKS AND WASTEWATER WORKS OPERATORS

October 3, 1996 - 8:30 a.m. -- Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, 4th Floor, Richmond, Virginia. ☎
(Interpreter for the deaf provided upon request)

A meeting to discuss regulatory review, disciplinary cases, and other matters requiring board action. A public comment period will be held at the beginning of the meeting. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact the board at least 10 days prior to the meeting so that suitable arrangements can be made. The department fully complies with the Americans with Disabilities Act.

Contact: Nancy Taylor Feldman, Assistant Director, Department 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 ☎

GOVERNOR'S ADVISORY COMMISSION ON WELFARE REFORM

† **September 24, 1996 - 9 a.m. --** Open Meeting
Travelodge, Petersburg, Virginia. ☎ (Interpreter for the deaf provided upon request)

† **October 29, 1996 - 9 a.m. --** Open Meeting
General Assembly Building, 910 Capitol Square, House Room 4, Richmond, Virginia. ☎ (Interpreter for the deaf provided upon request)

A business round table from 9 to 11 a.m. Subcommittee meetings will meet from 11 a.m. to noon. From 1 to 4 p.m. the commission will hold its regularly scheduled meeting.

Contact: Fay Lohr, Director, Office of Community Services, Department of Social Services, 730 E. Broad St., 8th Floor, Richmond, VA 23219, telephone (804) 692-1895, FAX (804) 692-1869 or toll-free 1-800-828-1120/TDD ☎

INDEPENDENT

STATE CORPORATION COMMISSION

Special Advisory Commission on Mandated Health Benefits

† **September 19, 1996 - 10 a.m.** -- Open Meeting
General Assembly Building, 910 Capitol Square, House Room D, Richmond, Virginia. ♿

The commission is scheduled to make recommendations on four bills heard by the Advisory Commission this year. These bills were continued to the 1997 Session of the General Assembly by the 1996 Session. The four bills are: House Bill 710 that would mandate coverage of radioisoptic implantation for treatment of prostate cancer; House Bill 813 that would mandate that long-term care insurance policies include coverage for home health care; House Bill 1233 that would require contracts that cover prescription drugs on an outpatient basis to include coverage for prescription contraceptives; and House Bill 1360 that would mandate reimbursement for covered services by a certified nurse midwife.

Contact: Rebecca Shelton, Insurance Analyst, State Corporation Commission, Bureau of Insurance, P.O. Box 1197, Richmond, VA 23218, telephone (804) 371-9537, FAX (804) 371-9944, toll-free 1-800-552-7945, or (804) 371-9206/TDD ♿

LOTTERY BOARD

September 25, 1996 - 9:30 a.m. -- Open Meeting
State Lottery Department, 900 East Main Street, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

A regular meeting of the board. Business will be conducted according to items listed on the agenda which has not yet been determined. One period for public comment is scheduled.

Contact: Barbara L. Robertson, Legislative, Regulatory and Board Administrator, State Lottery Department, 900 E. Main St., Richmond, VA 23219, telephone (804) 692-7774 or FAX (804) 692-7775.

LEGISLATIVE

ADMINISTRATIVE LAW ADVISORY COMMITTEE

October 9, 1996 - 11 a.m. -- Open Meeting
State Capitol, Capitol Square, House Room 2, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

A meeting to discuss the on-going studies of the committee, adopt recommendations to present to the Virginia Code Commission, and conduct any other business.

Contact: Lyn Hammond, Program Coordinator, Administrative Law Advisory Committee, General Assembly Bldg., 910 Capitol St., Richmond, VA 23219, telephone (804) 786-3591 or FAX (804) 371-0169.

VIRGINIA CODE COMMISSION

September 18, 1996 - 10 a.m. -- Open Meeting
General Assembly Building, 910 Capitol Square, House Room C, Richmond, Virginia.

A joint meeting with the task force to finalize the recodification of Title 15.1.

Contact: E. M. Miller, Jr., Director, or Jane D. Chaffin, Deputy Registrar, Division of Legislative Services, General Assembly Bldg., 910 Capitol St., Richmond, VA 23219, telephone (804) 786-3591 or FAX (804) 692-0625.

COMMISSION ON YOUTH

September 24, 1996 - 10 a.m. -- Open Meeting
General Assembly Building, 910 Capitol Square, House Room C, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

A meeting to discuss status offenders.

Contact: Joyce Huey, General Assembly Bldg., 910 Capitol Square, Suite 517B, Richmond, VA 23219-0406, telephone (804) 371-2481.

† **October 21, 1996 - 4 p.m.** -- Public Hearing
Arlington, Virginia - Location to be announced.

HJR 181 Study of Homeless Children in Virginia.

Contact: Joyce Huey, Commission on Youth, General Assembly Building, 910 Capitol Street, Suite 517B, Richmond, VA 23219-0406, telephone (804) 371-2481.

† **October 21, 1996 - 7 p.m.** -- Public Hearing
Arlington, Virginia - Location to be announced.

HJR 92 Study of Youth Gangs in Virginia.

Contact: Joyce Huey, Commission on Youth, General Assembly Building, 910 Capitol Street, Suite 517B, Richmond, VA 23219-0406, telephone (804) 371-2481.

CHRONOLOGICAL LIST

OPEN MEETINGS

September 16

Library Board

- Automation and Networking Committee
- Executive Committee
- Legislative and Finance Committee
- Publications and Cultural Affairs Committee
- Public Library Development
- Records Management Committee
- Research and Information Services Committee

Calendar of Events

Local Government, Commission on
Motor Vehicle Dealer Board
- Dealer Practices Committee
- Licensing Committee
- Transaction Recovery Fund Committee
Veterinary Medicine, Board of
- Licensed Veterinary Technician Committee

September 17

Environmental Quality, Department of
- Virginia Ground Water Protection Steering Committee
George Mason University
- Board of Visitors
Housing Development Authority, Virginia
Land Evaluation Advisory Council, State
Medical Assistance Services, Board of
Medicine, Board of
Motor Vehicle Dealer Board
- Advertising Committee
- Finance Committee
† Pharmacy, Board of

September 18

† Conservation and Recreation, Department of
- Fall River Renaissance Committee
Forestry, Department of
- Reforestation of Timberlands Board
George Mason University
- Board of Visitors
Historic Resources, Department of
- State Review Board and Historic Resources Board
† Milk Commission, State
† Mines, Minerals and Energy, Department of
- Division of Mined Land Reclamation
Optometry, Board of
† Racing Commission, Virginia
† Real Estate Board
- Continuing Education Committee
Transportation Board, Commonwealth
Treasury Board

September 19

Architects, Professional Engineers, Land Surveyors and
Landscape Architects, Board for
- Board for Land Surveyors
Contractors, Board for
† Corporation Commission, State
- Special Advisory Commission on Mandated Health Benefits
Dentistry, Board of
† Health, Department of
- Commissioner's Waterworks Advisory Committee
Labor and Industry, Department of
- Apprenticeship Council
Museum of Fine Arts, Virginia
- Finance Committee
- Board of Trustees
† Real Estate Board
- Continuing Education Committee
† Recycling Markets Development Council, Virginia
† Soil and Water Conservation Board
Transportation Board, Commonwealth

September 20

Contractors, Board for
Dentistry, Board of
† Housing and Community Development, Department of
- State Building Code Technical Review Board
Medicine, Board of
- Legislative Committee
† Psychology, Board of
- Examination Committee

September 21

Accountancy, Board for
Military Institute, Virginia
- Board of Visitors
Visually Handicapped, Department for the
- Vocational Rehabilitation Advisory Council

September 23

Alcoholic Beverage Control Board
† Nursing, Board of

September 24

† Marine Resources Commission
† Nursing, Board of
Polygraph Examiners Advisory Board
Psychology, Board of
Small Business Financing Authority, Virginia
- Loan Committee
† Tax Policy, Commission on Competitive and Equitable
† Welfare Reform, Governor's Advisory Commission on
Youth, Commission on

September 25

Hazardous Materials Training Advisory Committee, State
Labor and Industry, Department of
- Migrant and Seasonal Farmworkers Board
Lottery Board
Sewage Handling and Disposal Appeals Review Board

September 26

Architects, Professional Engineers, Land Surveyors and
Landscape Architects, Board for
- Board for Landscape Architects
† Chesapeake Bay Local Assistance Board
Compensation Board
Education, Board of
† Fire Services Board
Higher Education Tuition Trust Fund, Virginia
† Medical Assistance Services, Department of
- Virginia Medicaid Pharmacy Liaison Committee
† Nursing, Board of
Rehabilitative Services, Board of
† Richmond Hospital Authority
- Board of Commissioners
† Student Assistance Authorities, Virginia
- Board of Directors

September 27

† General Services, Department of
- Design Build/Construction Management Review Board
† Information Management, Council on
† Medicine, Board of
† Veterans Care Center
- Board of Trustees

Calendar of Events

September 30

Labor and Industry, Department of
- Safety and Health Codes Board

October 2

Agriculture and Consumer Services, Department of
- Board of Agriculture and Consumer Services
† Conservation and Recreation, Department of
- Fall River Renaissance
Contractors, Board for
- Disciplinary Committee
† Waste Management Facility Operators, Board for

October 3

Conservation and Recreation, Department of
- Falls of the James Scenic River Advisory Board
Emergency Planning Committee - Local, Chesterfield County
† Mined Land Reclamation Advisory Committee, Governor's
† Medicine, Board of
Waterworks and Wastewater Works Operators, Board for

October 4

Medical Assistance Services, Department of
- Pharmacy Prior Authorization Advisory Committee
† Medicine, Board of

October 5

† Medicine, Board of
- Credentials Committee

October 7

† Accountancy, Board for
- Privatization Task Force
Alcoholic Beverage Control Board
Cosmetology, Board for

October 8

† Chesapeake Bay Local Assistance Board
- Northern Area Review Committee
- Southern Area Review Committee
Criminal Justice Services Board
- Committee on Training
Hopewell Industrial Safety Council
† Resources Authority, Virginia

October 9

Administrative Law Advisory Committee
† Motor Vehicles, Department of
- Medical Advisory Board
† Transportation Safety Board

October 10

Agriculture and Consumer Services, Department of
- Pesticide Control Board
Child Day-Care Council
† Medical Assistance Services, Department of
- Drug Utilization Review Board
- Pharmacy Prior Authorization Advisory Committee

October 15

† Corrections, Board of
- Correctional Services Committee

October 16

† Corrections, Board of
- Administration Committee
† Fire Services Board
- Residential Sprinkler Committee
Treasury Board

October 17

Accountancy, Board for
Environmental Quality, Department of
- Work Group on Ammonia, Mercury, Lead and Copper
† Fire Services Board
- Fire/EMS Education and Training Committee
- Fire Prevention and Control Committee
- Legislative/Liaison Committee
† Health, Department of
- Biosolids Use Information Committee
- Biosolids Use Regulations Advisory Committee
† Rehabilitative Services, Department of
- Assistive Technology Loan Fund Authority Board

October 18

Accountancy, Board for
† Fire Services Board

October 21

Alcoholic Beverage Control Board
† Barbers, Board for

October 22

† Aviation Board, Virginia
† Medicine, Board of

October 23

† Aviation Board, Virginia
† Independent Living Council, Statewide
Visually Handicapped, Board for the

October 24

Higher Education Tuition Trust Fund, Virginia
† Medical Assistance Services, Department of
- Virginia Medicaid Pharmacy Liaison Committee
† Medicine, Board of
- Executive Committee
Voluntary Formulary Board, Virginia

October 29

† Welfare Reform, Governor's Advisory Commission on

October 30

† Conservation and Recreation, Department of
- Fall River Renaissance Committee

October 31

Compensation Board

November 4

Alcoholic Beverage Control Board

November 5

Hopewell Industrial Safety Council

November 6

† Agriculture and Consumer Services, Department of
- Virginia Horse Industry Board

Calendar of Events

November 7

† Emergency Planning Committee, Local - Chesterfield County

November 12

† Chesapeake Bay Local Assistance Board
- Northern Area Review Committee
- Southern Area Review Committee
† Resources Authority, Virginia

November 14

Child Day-Care Council

November 18

Alcoholic Beverage Control Board

November 20

Treasury Board

November 21

Higher Education Tuition Trust Fund, Virginia

December 12

Child Day-Care Council

December 18

Treasury Board

October 11

Architects, Professional Engineers, Land Surveyors and Landscape Architects, Board for
† Fire Services Board, Virginia

October 16

† Corrections, Board of
† Fire Services Board, Virginia

October 17

† Fire Services Board, Virginia

October 21

† Youth, Commission on

November 6

† Fire Services Board, Virginia

November 14

† Fire Services Board, Virginia
† Mines, Minerals and Energy, Department of

November 23

† Fire Services Board, Virginia

PUBLIC HEARINGS

September 16

Correctional Education, Department of

September 18

Optometry, Board of

September 30

Motor Vehicle Dealer Board

October 1

Motor Vehicle Dealer Board

October 2

Motor Vehicle Dealer Board

October 3

† Fire Services Board, Virginia
Medical Assistance Services, Department of
- Pharmacy Prior Authorization Advisory Committee

October 4

Medical Assistance Services, Department of
- Pharmacy Prior Authorization Advisory Committee

October 7

Motor Vehicle Dealer Board

October 8

Motor Vehicle Dealer Board

October 9

Motor Vehicle Dealer Board

October 10

† Health, State Board of