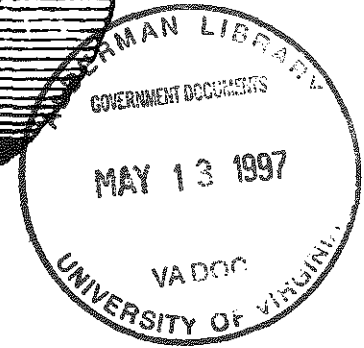


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THE VIRGINIA REGISTER

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APRIL 28, 1997

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THE VIRGINIA REGISTER INFORMATION PAGE

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

ADOPTION, AMENDMENT, AND REPEAL OF REGULATIONS

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

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

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

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

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

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

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

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

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

EMERGENCY REGULATIONS

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

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

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

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Symbol Key

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

BOARD OF FUNERAL DIRECTORS AND EMBALMERS

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 Funeral Directors and Embalmers intends to consider amending regulations entitled: **18 VAC 65-20-10 et seq. Regulations of the Board of Funeral Directors and Embalmers.** The purpose of the proposed action is to reorganize, simplify, and clarify regulations according to the recommendations of the review conducted pursuant to Executive Order 15(94). The agency intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: §§ 54.1-2400 and 54.1-2803 of the Code of Virginia.

Public comments may be submitted until May 14, 1997.

Contact: Elizabeth Young Tisdale, Executive Director, Board of Funeral Directors and Embalmers, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9907 or FAX (804) 662-9943.

VA.R. Doc. No. R97-356; Filed March 25, 1997, 12:20 p.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Funeral Directors and Embalmers intends to consider amending regulations entitled: **18 VAC 65-30-10 et seq. Regulations for Preneed Funeral Planning.** The purpose of the proposed action is to simplify and clarify regulations according to the recommendations of the review conducted pursuant to Executive Order 15(94). The agency intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: §§ 54.1-2400 and 54.1-2803 of the Code of Virginia.

Public comments may be submitted until May 14, 1997.

Contact: Elizabeth Young Tisdale, Executive Director, Board of Funeral Directors and Embalmers, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9907 or FAX (804) 662-9943.

VA.R. Doc. No. R97-355; Filed March 25, 1997, 12:20 p.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Funeral Directors and Embalmers intends to consider amending regulations entitled: **18 VAC 65-40-10 et seq. Resident Trainee**

Program for Funeral Service. The purpose of the proposed action is to reorganize, simplify, and clarify regulations according to the recommendations of the review conducted pursuant to Executive Order 15(94). The agency intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: §§ 54.1-2400 and 54.1-2803 of the Code of Virginia.

Public comments may be submitted until May 14, 1997.

Contact: Elizabeth Young Tisdale, Executive Director, Board of Funeral Directors and Embalmers, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9907 or FAX (804) 662-9943.

VA.R. Doc. No. R97-354; Filed March 25, 1997, 12:20 p.m.

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Medical Assistance Services intends to consider promulgating regulations entitled: **Health Insurance Program for Working Uninsured Individuals.** The purpose of the proposed action is to promulgate regulations for a new program to assist employees in financing health insurance for working uninsured individuals. 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 April 30, 1997.

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. R97-338; Filed March 11, 1997, 12:44 p.m.

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Medical Assistance Services intends to consider amending regulations entitled: **12 VAC 30-30-20 and 12 VAC 30-120-400. Medallion II: Quality Control and Utilization Review; Coverage and Conditions of Eligibility.** The purpose of the proposed action is to promulgate federal requirements regarding monitoring HMOs under contract to Medicaid and conform federal preprinted pages to policies already promulgated. The agency does not intend to hold a public hearing on the proposed regulation after publication.

Notices of Intended Regulatory Action

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

Public comments may be submitted until May 28, 1997.

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. R97-395; Filed April 9, 1997, 9:25 a.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Medical Assistance Services intends to consider amending regulations entitled: **12 VAC 30-130-800 et seq. Amount, Duration and Scope of Selected Services: Client Medical Management.** The purpose of the proposed action is to extend restriction periods because recipients have been found to need more time to change their medical utilization habits, list services which are excluded from the restrictions of client medical management, and add new criteria for restriction. 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 May 14, 1997, to Sharon Long, Division of Program Delivery Systems, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219.

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

VA.R. Doc. No. R97-359; Filed March 26, 1997, 11:14 a.m.

BOARD OF MEDICINE

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Medicine intends to consider amending regulations entitled: **18 VAC 85-110-10 et seq. Licensed Acupuncturists.** The purpose of the proposed action is to simplify and clarify regulations according to the recommendations of Executive Order 15(94). The agency intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: §§ 54.1-2400 and 54.1-2803 of the Code of Virginia.

Public comments may be submitted until May 14, 1997.

Contact: Warren K. Koontz, M.D., Executive Director, Board of Medicine, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9908 or FAX (804) 662-9943.

VA.R. Doc. No. R97-357; Filed March 25, 1997, 12:20 p.m.

BOARD OF PSYCHOLOGY

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Psychology intends to consider amending regulations entitled: **18 VAC 125-20-10 et seq. Regulations Governing the Practice of Psychology.** The purpose of the proposed action is to clarify and simplify the regulations, eliminate duplication, improve the format, simplify the late reinstatement procedure, establish an endorsement/reciprocity procedure for applicants with lengthy experience licensed in other states, update the education requirement for all categories of licensure, consider including temporary licensure provisions as authorized by statute, consider reducing the face-to-face supervision requirement, update diplomate titles for examination waiver, simplify the reexamination requirement, include a requirement for notifying the board of a name or address change, and consider incorporating some of the ethical standards of the American Psychological Association. The agency intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: §§ 54.1-2400 and 54.1-3600 et seq. of the Code of Virginia.

Public comments may be submitted until May 14, 1997.

Contact: Janet D. Delorme, Deputy Executive Director, Board of Psychology, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9575 or FAX (804) 662-9943.

VA.R. Doc. No. R97-358; Filed March 25, 1997, 12:20 p.m.

SOIL AND WATER CONSERVATION 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 Soil and Water Conservation Board intends to consider promulgating regulations entitled: **4 VAC 50-60-10 et seq. Watershed Improvement District Referenda Regulations.** The purpose of the proposed action is to develop regulations which will specify arrangement for the conduct of referenda associated with the formation and operation of a watershed improvement district (WID).

Need: The proposed regulation is needed to make an electoral process efficient, complete, and consistent. Promulgation should make it possible to carry out existing law for the establishment of a watershed improvement district (WID). Unfortunately, the completion of the regulations may automatically make other required resources and expertise unavailable from the State Board of Elections, local boards of elections, and registrars. A WID is a means for local citizens to organize themselves into a self-governing unit capable of accepting moneys and financing needed environmental structures. This enables community determination of needs,

Notices of Intended Regulatory Action

which may serve to prevent state or federal imposition of natural resource requirements.

This is not a new intent of state law. The change merely designates different responsibility for setting referenda procedures. Formerly the responsible entity was the local Soil and Water Conservation District; now it is the Virginia Soil and Water Conservation Board, which already is accountable for land and water management and oversight of Virginia's 46 soil and water conservation districts.

Substance and Purpose: The referendum is the means by which landowners in a particularly defined area can vote to determine if a watershed improvement district should be created, and to determine if taxes and service charges should be levied to support the financial commitments of that WID to make improvements. Through these regulations, citizens will have an ability to address unique natural resource issues in conjunction with their locally elected soil and water conservation district (SWCD).

State law authorizes establishment of a WID within a soil and water conservation district or districts. A referendum that must pass both among the resident landowners and among all the qualified voters has been the mechanism for determining the WID's existence. The passage limit on the landowner portion of the referendum must be by two-thirds in favor who also must own two-thirds of the land. Passage of the referendum portion by all qualified voters is by simple majority.

Recodification of the election laws several years ago inadvertently affected the WID formation process by not addressing the WID references to the election laws. In response, the 1995 General Assembly mandated that the referenda authorized under the WID law be governed by regulations developed by the Virginia Soil and Water Conservation Board. This will ensure that SWCD's across the state employ a consistent process, rather than each SWCD individually having to establish procedures for elections.

Estimated Impact: The regulations enable citizens to form a special assessment district, allowing the natural resource needs of a particular locale to be addressed and treated according to the wishes of the residents. Additional taxes and charges may be approved by referenda and collected to finance needed functions and structures within the district. A WID may incur indebtedness, borrow funds and issue bonds, subject to voter approval and landowner approval by referenda. The economic impact of this regulatory proposal will depend on the needs of each area, and only if the qualified voters and the landowners themselves wish for it to occur.

The regulations will name persons to conduct a referendum and describe associated administrative systems. The placement of perfunctory duties will be determined through expert advice and suggestions received during the public processes of the Administrative Process Act and the board's Regulatory Public Participation Procedures. While many details cannot be predicted at this preliminary stage, the least burdensome option will be selected so as to minimize the procedural steps associated with a referendum. The Department of Conservation and Recreation and the Virginia

Soil and Water Conservation Board are very mindful of the limitation of resources and do not want to afflict themselves, soil and water conservation districts or citizens with minutia and technicalities that go beyond the minimum legal and effective requirements for a secure election.

Alternatives: The agency is not aware of any less burdensome or less intrusive alternatives for achieving the intent of the statute, aside from promulgating a set of uniform regulations for use throughout the Commonwealth. These regulations are not intended to be burdensome, nor intrusive, but, rather to promote essential American freedoms, including that of voting, expressing individual views, and helping to shape the character of one's local community. Electoral processes are a necessary function of government. Taxation is also an essential function of government. In this case, these functions are placed at the local level closest to the people. All alternatives considered are outside the scope of the regulatory process and would require legislative action.

Alternatives considered involve:

1. Rewrite of the Watershed Improvement District Act to require the joint responsibility of the State Board of Elections, local boards of elections, and local registrars; the Virginia Soil and Water Conservation Board, the Director of the Department of Conservation and Recreation, and the local soil and conservation districts. Current law fractures these resources and appears to make the actual functioning of referenda unworkable due to the absence of one or more of the above required parties to carry out the process. Currently either the expertise and support of the State Board of Elections is missing or the specific methodology required by §§ 10.1-617, 10.1-625, 10.1-628, and 10.1-634 of the Code of Virginia to hold referenda is missing. This alternative should be explored, but is beyond the current requirement to produce a set of regulations. Such an alternative would require major statutory changes and is outside of this regulatory process.
2. Amendments to the basic law to ensure the continued involvement of the State Board of Elections, local boards of elections, and local registrars. Under current law, the responsibilities of the State Board of Elections for such WID referenda will end with the effective date of the proposed regulations. The Department of Conservation and Recreation cannot understand how the referenda process would function without these resources. The Virginia Soil and Water Conservation Board and the department would have to duplicate the processes and resources of the state and local boards of elections and local registrars. Such an alternative would require major statutory and budget changes and is outside of this regulatory process.
3. Amendment of the existing law to require the 46 local soil and water conservation districts individually to promulgate regulations. First, they probably would be required to promulgate individual sets of public participation procedures. Second, they would be required to promulgate individual sets of Watershed Improvement District Referenda Regulations. Thus there would be an additional 92 sets of regulations in the Commonwealth, which would surely differ and cause

Notices of Intended Regulatory Action

confusion to the public, particularly when WID proposals overlap jurisdictional boundaries. Further, this scenario would require districts to duplicate, on an individual district basis, the processes and resources of the state and local boards of elections and local registrars. Such an alternative would require major statutory changes and is outside of this regulatory process.

4. Amendment of the existing law to centralize the local soil and water conservation districts' authority under § 10.1-617 of the Code of Virginia to develop individual and separate regulations to conduct a public hearing as permitted by § 10.1-616 of the Code of Virginia under the authority of the Virginia Soil and Water Conservation Board. Current wording is permissive, not mandatory, for the local soil and water conservation districts to develop such regulations. If centralized, the Virginia Soil and Water Conservation Board could be directed to incorporate such requirements into these Watershed Improvement District Referenda Regulations to provide one uniform set of requirements statewide to cover this entire process. Such an alternative would require major statutory changes and is outside of this regulatory process.

5. Amendment to simply repeal the local soil and water conservation districts' authority under § 10.1-617 of the Code of Virginia to develop individual and separate regulations to conduct a public hearing as permitted by § 10.1-616 of the Code of Virginia. If repealed, the local soil and water conservation districts would rely upon the Virginia Freedom of Information Act and any other pertinent laws to conduct the public meeting. Such an alternative would require major statutory changes and is outside of this regulatory process.

Ad hoc Committee: The director intends to form an ad hoc committee to assist the board and department in gathering data and issues and in developing draft, proposed regulations. Meetings of the ad hoc committee will be public and published in The Virginia Register of Regulations.

The department requests comments on the costs and benefits of the stated alternatives or other alternatives.

The director intends to hold at least one public hearing on the proposed regulation after it is formally adopted by the board as a proposed regulation and it is published in The Virginia Register of Regulations.

To be considered, written comments should be directed to Mr. Leon E. App at the address below and must be received by 4 p.m. on Tuesday, July 29, 1997. In addition, the department's staff will hold a public hearing on Thursday, May 15, 1997, at 7 p.m. in House Room C of the Virginia General Assembly Building located at 910 Capitol Street, Richmond, Virginia 23219, to receive views and comments and to receive questions of the public.

Accessibility to Persons with Disabilities: The May 15, 1997, public meeting is being held at a public facility accessible to persons with disabilities. Any person with questions on the accessibility of the facilities should contact Mr. Leon E. App at the address below or by telephone at 804/786-4570. Persons needing interpreter services for the deaf must notify Mr. App no later than Thursday, May 8, 1997, at 4 p.m.

Applicable Laws and Regulations: Chapter 6 (§ 10.1-614 et seq.) of Title 10.1 of the Code of Virginia, especially §§ 10.1-634.1, 10.1-617, 10.1-624, 10.1-628 and 10.1-634.

Chapters 1.1:1 (§ 9-6.14:4.1 et seq.) and 1.2 (§ 9-6.15 et seq.) of Title 9 of the Code of Virginia.

The Virginia Soil and Water Conservation Board's Regulatory Public Participation Procedures found at 4 VAC 50-10-10 et seq. and formerly VR 625-00-00:1 apply.

Governor Allen's Executive Order 13 (94), Review of Regulations Proposed by State Agencies.

Note: It must be assumed at this time that the federal voting rights laws apply to this action. Advice from the Attorney General's Office is to complete the Virginia regulatory actions and then submit the final regulation product to the Attorney General who will forward it to the U. S. Department of Justice for their review and determination of coverage.

Public Hearing Plans: On behalf of the board, the department seeks oral and written comments from interested persons on the intended regulatory action and on the costs and benefits of any alternative actions. In particular, the department requests comments on how the board may best develop these regulations to account for the total referenda process without assistance or resources from the State Board of Elections, local boards of elections and local registrars.

Additional Information: For additional information, review or copies of material or applicable laws and regulations, contact Mr. App at the address below.

Statutory Authority: § 10.1-634.1 of the Code of Virginia.

Public comments may be submitted until 4 p.m. on July 29, 1997.

Contact: Leon E. App, Conservation and Development Programs Supervisor, Department of Conservation and Recreation, 203 Governor St., Suite 302, Richmond, VA 23219, telephone (804) 786-4570, FAX (804) 786-6141, or (804) 786-2121/TDD ☎

VA.R. Doc. No. R97-396; Filed April 9, 1997, 11:32 a.m.

VIRGINIA RACING COMMISSION

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Virginia Racing Commission intends to consider amending regulations entitled: **11 VAC 10-20-190. Regulations Pertaining to Horse Racing with Pari-Mutuel Wagering: Criteria for Unlimited Horse Racing Facilities.** The purpose of the proposed action is to establish standards for the operation of a racetrack including the latest safety standards compiled by Racing Commissioners International. The agency intends to hold a public hearing on the proposed regulation after publication.

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

Public comments may be submitted until May 15, 1997.

Notices of Intended Regulatory Action

Contact: William H. Anderson, Policy Analyst, Virginia Racing Commission, P.O. Box 1123, Richmond, VA 23218, telephone (804) 371-7363 or FAX (804) 371-6127.

VA.R. Doc. No. R97-349; Filed March 19, 1997, 3:43 p.m.

Contact: William H. Anderson, Policy Analyst, Virginia Racing Commission, P.O. Box 1123, Richmond, VA 23218, telephone (804) 371-7363 or FAX (804) 371-6127.

VA.R. Doc. No. R97-348; Filed March 19, 1997, 3:43 p.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Virginia Racing Commission intends to consider amending regulations entitled: **11 VAC 10-50-10 et seq. Regulations Pertaining to Horse Racing with Pari-Mutuel Wagering: Racing Officials.** The purpose of the proposed action is to establish duties and responsibilities of racing officials and establish new categories of officials for satellite facilities. The agency intends to hold a public hearing on the proposed regulation after publication.

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

Public comments may be submitted until May 15, 1997.

Contact: William H. Anderson, Policy Analyst, Virginia Racing Commission, P.O. Box 1123, Richmond, VA 23218, telephone (804) 371-7363 or FAX (804) 371-6127.

VA.R. Doc. No. R97-347; Filed March 19, 1997, 3:43 p.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Virginia Racing Commission intends to consider amending regulations entitled: **11 VAC 10-70-10 et seq. Regulations Pertaining to Horse Racing with Pari-Mutuel Wagering: Stewards.** The purpose of the proposed action is to establish duties and responsibilities of stewards at satellite facilities and set forth procedures for stewards' hearings. The agency intends to hold a public hearing on the proposed regulation after publication.

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

Public comments may be submitted until May 15, 1997.

Contact: William H. Anderson, Policy Analyst, Virginia Racing Commission, P.O. Box 1123, Richmond, VA 23218, telephone (804) 371-7363 or FAX (804) 371-6127.

VA.R. Doc. No. R97-350; Filed March 19, 1997, 3:43 p.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Virginia Racing Commission intends to consider amending regulations entitled: **11 VAC 10-90-10 et seq. Regulations Pertaining to Horse Racing with Pari-Mutuel Wagering: Formal Hearings.** The purpose of the proposed action is to establish procedures for appeals from stewards' hearings to a review by the Virginia Racing Commission. The agency intends to hold a public hearing on the proposed regulation after publication.

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

Public comments may be submitted until May 15, 1997.

PUBLIC COMMENT PERIODS - PROPOSED REGULATIONS



PUBLIC COMMENT PERIODS REGARDING STATE AGENCY REGULATIONS

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

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

STATE AIR POLLUTION CONTROL BOARD

June 11, 1997 - 9 a.m. -- Public Hearing
 Department of Environmental Quality, 629 East Main Street,
 First Floor, Training Room, Richmond, Virginia.

June 27, 1997 - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Air Pollution Control Board intends to amend regulations entitled: (i) 9 VAC 5-10-10 et seq. Regulations for the Control and Abatement of Air Pollution: General Definitions, (ii) 9 VAC 5-20-10 et seq. Regulations for the Control and Abatement of Air Pollution: General Provisions, (iii) 9 VAC 5-91-10 et seq. Regulations for the Control of Motor Vehicle Emissions in the Northern Virginia Area, (iv) 9 VAC 5-120-10 et seq. Regulations for the Control of Emissions from Fleet Vehicles, (v) 9 VAC 5-150-10 et seq. Regulation for Transportation Conformity, and (vi) 9 VAC 5-160-10 et seq. Regulation for General Conformity; and adopt regulations entitled: 9 VAC 5-170-10 et seq. Regulation for General Administration. The proposed regulation contains provisions covering general administration, specifically the applicability, establishment, and enforcement of regulations and orders; the administration of associated hearings and proceedings; the approval of local ordinances; the appeal of board decisions; the right of entry upon public and private property; the approval of items with conditions; the availability of procedural information and guidance; the approval of certain items requiring specific considerations; the availability of information to the public; the delegation of authority; and public participation in regulation development.

Because the provisions of the proposed regulation are intended to replace similar provisions in existing regulations, those similar provisions will be repealed. The affected provisions are as follows:

Regulations for the Control and Abatement of Air Pollution (9 VAC 5 Chapters 10 and 20)

9 VAC 5-10-20.
 definitions:

Terms Defined. The following

Administrative Process Act, confidential information, consent agreement, consent order, emergency special order, formal hearing, order, party, special order, variance, and Virginia Register Act.

Appendix E

Public Participation Procedures

Appendix F

Delegation of Authority

9 VAC 5-20-20.

Establishment of regulations and orders.

9 VAC 5-20-30.

Enforcement of regulations, permits and orders.

9 VAC 5-20-40.

Hearings and proceedings.

9 VAC 5-20-50 A.

Variations (general).

9 VAC 5-20-60.

Local ordinances.

9 VAC 5-20-90.

Appeals.

9 VAC 5-20-100.

Right of entry.

9 VAC 5-20-110.

Conditions on approvals.

9 VAC 5-20-120.

Policy and procedural information and guidance.

9 VAC 5-20-130.

Delegation of authority.

9 VAC 5-20-140.

Considerations for approval actions.

9 VAC 5-20-150.

Availability of information.

Regulation for the Control of Motor Vehicle Emissions in the Northern Virginia Area (9 VAC 5 Chapter 91)

9 VAC 5-91-20.
 definitions:

Terms Defined. The following

Administrative Process Act, confidential information, public

Public Comment Periods - Proposed Regulations

	hearing, variance, and Virginia Register Act.	Administrative Process Act, confidential information, consent agreement, consent order, emergency special order, formal hearing, order, party, public hearing, special order, variance, and Virginia Register Act.
9 VAC 5-91-40.	Establishment of regulations and orders.	
9 VAC 5-91-60.	Hearings and proceedings.	
9 VAC 5-91-80.	Variations.	
9 VAC 5-91-100.	Conditions on approvals.	9 VAC 5-160-50. Establishment of regulations and orders.
9 VAC 5-91-110.	Procedural information and guidance.	9 VAC 5-160-60. Enforcement of regulations and orders.
9 VAC 5-91-150.	Availability of information.	9 VAC 5-160-70. Hearings and proceedings.
Regulation for the Control of Emissions from Fleet Vehicles (9 VAC 5 Chapter 120)		9 VAC 5-160-90. Appeals.
9 VAC 5-120-20.	Terms Defined. The following definitions:	9 VAC 5-160-100. Availability of information.
	Administrative Process Act, confidential information, consent agreement, consent order, formal hearing, order, party, public hearing, variance, and Virginia Register Act.	<u>Request for Comments:</u> The purpose of this notice is to provide the public with the opportunity to comment on the proposed regulation and the costs and benefits of the proposal.
9 VAC 5-120-40.	Hearings and proceedings.	<u>Localities Affected:</u> There is no locality which will bear any identified disproportionate material air quality impact due to the proposed regulation which would not be experienced by other localities.
9 VAC 5-120-50.	Appeal of case decisions.	<u>Location of Proposal:</u> The proposal, an analysis conducted by the department (including a statement of purpose, a statement of estimated impact and benefits of the proposed regulation, an explanation of need for the proposed regulation, an estimate of the impact of the proposed regulation upon small businesses, identification of and comparison with federal requirements, and a discussion of alternative approaches), and any other supporting documents may be examined by the public at the department's Office of Air Program Development (Eighth Floor), 629 East Main Street, Richmond, Virginia, and the department's regional offices (listed below) between 8:30 a.m. and 4:30 p.m. of each business day until the close of the public comment period.
9 VAC 5-120-60.	Variations.	
9 VAC 5-120-90.	Procedural information and guidance.	
9 VAC 5-120-120.	Availability of information.	
Regulation for Transportation Conformity (9 VAC 5 Chapter 150)		
9 VAC 5-150-20.	Terms Defined. The following definitions:	
	Administrative Process Act, confidential information, consent agreement, consent order, emergency special order, formal hearing, order, party, public hearing, special order, variance, and Virginia Register Act.	
9 VAC 5-150-50.	Establishment of regulations and orders.	Southwest Regional Office Department of Environmental Quality 355 Deadmore Street Abingdon, Virginia Ph: (540) 676-4800
9 VAC 5-150-60.	Enforcement of regulations and orders.	West Central Regional Office Department of Environmental Quality Executive Office Park, Suite D 5338 Peters Creek Road Roanoke, Virginia Ph: (540) 561-7000
9 VAC 5-150-70.	Hearings and proceedings.	Lynchburg Satellite Office Department of Environmental Quality 7705 Timberlake Road Lynchburg, Virginia Ph: (804) 582-5120
9 VAC 5-150-90.	Appeals.	
9 VAC 5-150-100.	Availability of information.	
Regulation for General Conformity (9 VAC 5 Chapter 160)		
9 VAC 5-160-20.	Terms Defined. The following definitions:	

Public Comment Periods - Proposed Regulations

Valley Regional Office
Department of Environmental Quality
116 North Main Street
Bridgewater, Virginia 22812
Ph: (540) 828-2595

Fredericksburg Satellite Office
Department of Environmental Quality
300 Central Road, Suite B
Fredericksburg, Virginia
Ph: (540) 899-4600

Piedmont Regional Office
Department of Environmental Quality
4900-A Cox Road
Innsbrook Corporate Center
Glen Allen, Virginia
Ph: (804) 527-5020

Tidewater Regional Office
Department of Environmental Quality
5636 Southern Blvd.
Virginia Beach, VA 23462
Ph: (757) 518-2000

Northern Regional Office
Department of Environmental Quality
13901 Crown Court
Woodbridge, Virginia 22193
Ph: (703) 583-3800

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

Public comments may be submitted until 4:30 p.m., Friday, June 27, 1997, to the Director, Office of Air Program Development, Department of Environmental Quality, P. O. Box 10009, Richmond, Virginia 23240.

Contact: Dr. Kathleen Sands, Policy Analyst, Office of Air Program Development, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4413, FAX (804) 698-4510, toll-free 1-800-592-5482, or (804) 698-4021/TDD ☎

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

REPROPOSED

May 28, 1997-- Public comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Medical Assistance Services intends to amend regulations entitled: **12 VAC 30-120-70 et seq. Part II: Home and Community Based Services for Technology Assisted Individuals.** The purpose of this revised proposal is to amend the Technology Assisted Waiver Program to update the definition of those eligible to receive services and to conform the financial eligibility criteria to correspond to the current HCFA interpretation. Also, this revised package addresses comments made to the prior

proposed regulation as well as addressing problems identified since the initial comment period.

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

Public comments may be submitted until May 28, 1997, to Regina Anderson-Cloud, Division of Policy and Budget, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219.

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

PROPOSED REGULATIONS

For information concerning Proposed Regulations, see Information Page.

Symbol Key

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

STATE AIR POLLUTION CONTROL BOARD

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

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

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

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

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

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

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

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

Public Hearing Date: June 11, 1997 - 9 a.m.

Public comments may be submitted until June 27, 1997.

(See Calendar of Events section for additional information)

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

Purpose: The purpose of the regulation is to specify the procedures for governing the general (not program-specific) administration of the regulatory program of the State Air Pollution Control Board. The regulation is being proposed to consolidate, clarify, and augment the administrative procedures of this program. This regulatory action will benefit the health, safety, and welfare of the citizens of Virginia by significantly reducing the need for future administrative

regulatory actions, thus conserving tax dollars in the form of staff time and resources; and by consolidating and clarifying the rights of citizens under law and regulation.

Substance: The subjects addressed by the major provisions of the proposal are summarized below:

1. Applicability, establishment, and enforcement of regulations (including variances thereto) and orders;
2. Administration of associated hearings and proceedings;
3. Approval of local ordinances;
4. Appeal of board decisions;
5. Right of entry upon public and private property;
6. Approval of items with conditions;¹
7. Availability of procedural information and guidance;
8. Approval of certain items requiring specific considerations;²
9. Availability of information to the public;
10. Delegation of authority; and
11. Public participation in regulation development.

Issues: The primary advantages and disadvantages of implementation and compliance with the regulation by the public and the department are discussed below. The department does not believe there are any disadvantages for the public or the department.

1. Public: This regulation will benefit the public by articulating the board's administrative procedures so that citizens may fully exercise their rights under the law.
2. Department: This regulation will benefit the department by providing a mechanism with which it can respond effectively to the legal mandates of the Code of Virginia which pertain to the administrative obligations and authorities of the board and department.

Localities Affected: There is no locality which will bear any identified disproportionate material impact due to the proposed regulation which would not be experienced by other localities.

¹ Such items may include but are not limited to variances, control programs, and permits.

² Such items are the same as those listed in footnote 1. Specific considerations may include but are not limited to (1) the character and degree of injury to or interference with safety, health or the reasonable use of property which is caused or threatened to be caused; (2) the social and economic value of the activity involved; (3) the suitability of the activity to the area in which it is located; and (4) the scientific and economic practicality of reducing or eliminating the discharge resulting from such activity.

Proposed Regulations

Impact:

A. Entities Affected. Any person or party as defined in the regulation.

B. Fiscal Impact.

1. Costs to Affected Entities. This regulation will not result in any costs to affected entities.
2. Costs to Agency. The regulation amendments will not result in any cost to the Department of Environmental Quality beyond that currently in the budget.
3. Source of Agency Funds. The sources of department funds to carry out this regulation are the general fund and the grant money provided by the U.S. Environmental Protection Agency under § 105 of the federal Clean Air Act.
4. Benefits. The benefit of this regulation will be that all the administrative procedures of the State Air Pollution Control Board will be consolidated into one regulation. This regulation will incorporate pertinent statutory provisions to clarify the source of the board's authority in administrative matters. This regulation will also augment these provisions where necessary by articulating specific procedures by which the provisions may be implemented. Thus, the regulation will serve to assist the State Air Pollution Control Board in responding effectively to the legal mandates of the Code of Virginia. It will also assist affected entities by articulating the board's administrative procedures so that those entities may fully exercise their rights under the law.
5. Small Business Impact. The impact upon facilities that meet the definition of small business provided in § 9-199 of the Code of Virginia is addressed in paragraph B1 above.

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. These regulations make a number of changes to administrative procedures for regulations promulgated under the authority of the Air Pollution Control Board. The intent of the changes is to improve the clarity and consistency of the regulations.

Estimated Economic Impact. As these proposed changes are primarily procedural in nature, they are not expected to have a large economic impact on Virginia. The changes could have the effect of reducing compliance costs for

regulated firms and participation costs for interested parties wishing to participate in the regulatory process. Although such gains would be small, there do not appear to be any costs to Virginians associated with the changes. We can conclude that these regulations will have a small net economic benefit to Virginia.

Businesses and entities affected. Businesses and parties interested in participating in the regulatory process may find their costs reduced by a small amount.

Localities particularly affected. No localities will be particularly affected.

Projected impact on employment. There will be no significant impact on employment.

Effects on the use and value of private property. This proposal will not have any effect on private property.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The Department of Environmental Quality takes no issue with the economic impact analysis prepared by the Department of Planning and Budget.

Summary:

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

Because the provisions of the proposed regulation are intended to replace similar provisions in existing regulations, those similar provisions will be repealed. The affected provisions are as follows:

Regulations for the Control and Abatement of Air Pollution (9 VAC 5 Chapters 10 and 20)

9 VAC 5-10-20. *Terms Defined. The following definitions:*

Administrative Process Act, confidential information, consent agreement, consent order, emergency special order, formal hearing, order, party, special order, variance, and Virginia Register Act.

Appendix E. Public Participation Procedures.

Appendix F. Delegation of Authority.

9 VAC 5-20-20. *Establishment of regulations and orders.*

9 VAC 5-20-30. *Enforcement of regulations, permits and orders.*

9 VAC 5-20-40. *Hearings and proceedings.*

- 9 VAC 5-20-50 A. *Variances (general).*
- 9 VAC 5-20-60. *Local ordinances.*
- 9 VAC 5-20-90. *Appeals.*
- 9 VAC 5-20-100. *Right of entry.*
- 9 VAC 5-20-110. *Conditions on approvals.*
- 9 VAC 5-20-120. *Policy and procedural information and guidance.*
- 9 VAC 5-20-130. *Delegation of authority.*
- 9 VAC 5-20-140. *Considerations for approval actions.*
- 9 VAC 5-20-150. *Availability of information.*

Regulation for the Control of Motor Vehicle Emissions in the Northern Virginia Area (9 VAC 5 Chapter 91)

9 VAC 5-91-20. *Terms Defined. The following definitions:*

Administrative Process Act, confidential information, public hearing, variance, and Virginia Register Act.

9 VAC 5-91-40. *Establishment of regulations and orders.*

9 VAC 5-91-60. *Hearings and proceedings.*

9 VAC 5-91-80. *Variances.*

9 VAC 5-91-100. *Conditions on approvals.*

9 VAC 5-91-110. *Procedural information and guidance.*

9 VAC 5-91-150. *Availability of information.*

Regulation for the Control of Emissions from Fleet Vehicles (9 VAC 5 Chapter 120)

9 VAC 5-120-20. *Terms Defined. The following definitions:*

Administrative Process Act, confidential information, consent agreement, consent order, formal hearing, order, party, public hearing, variance, and Virginia Register Act.

9 VAC 5-120-40. *Hearings and proceedings.*

9 VAC 5-120-50. *Appeal of case decisions.*

9 VAC 5-120-60. *Variances.*

9 VAC 5-120-90. *Procedural information and guidance.*

9 VAC 5-120-120. *Availability of information.*

Regulation for Transportation Conformity (9 VAC 5 Chapter 150)

9 VAC 5-150-20. *Terms Defined. The following definitions:*

Administrative Process Act, confidential information, consent agreement, consent order, emergency special order, formal hearing, order, party, public hearing, special order, variance, and Virginia Register Act.

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

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

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

9 VAC 5-150-90. *Appeals.*

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

Regulation for General Conformity (9 VAC 5 Chapter 160)

9 VAC 5-160-20. *Terms Defined. The following definitions:*

Administrative Process Act, confidential information, consent agreement, consent order, emergency special order, formal hearing, order, party, public hearing, special order, variance, and Virginia Register Act.

9 VAC 5-160-50. *Establishment of regulations and orders.*

9 VAC 5-160-60. *Enforcement of regulations and orders.*

9 VAC 5-160-70. *Hearings and proceedings.*

9 VAC 5-160-90. *Appeals.*

9 VAC 5-160-100. *Availability of information.*

9 VAC 5-10-20. Terms defined.

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

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

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

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

"*Air pollution*" means the presence in the outdoor atmosphere of one or more substances which are or may be harmful or injurious to human health, welfare or safety; to animal or plant life; or to property; or which unreasonably interfere with the enjoyment by the people of life or property.

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

Proposed Regulations

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

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

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

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

~~"Ambient air quality standard" means any primary or secondary standard designated as such in 9 VAC 5-30-10 et seq.~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~"Dispersion technique"~~

- ~~1. Means any technique which attempts to affect the concentration of a pollutant in the ambient air by:~~
 - ~~a. Using that portion of a stack which exceeds good engineering practice stack height;~~
 - ~~b. Varying the rate of emission of a pollutant according to atmospheric conditions or ambient concentrations of that pollutant; or~~
 - ~~c. Increasing final exhaust gas plume rise by manipulating source process parameters, exhaust gas~~

parameters, stack parameters, or combining exhaust gases from several existing stacks into one stack; or other selective handling of exhaust gas streams so as to increase the exhaust gas plume rise.

2. The preceding sentence does not include:

a. The reheating of a gas stream, following use of a pollution control system, for the purpose of returning the gas to the temperature at which it was originally discharged from the facility generating the gas stream;

b. The merging of exhaust gas streams where:

(1) The owner demonstrates that the facility was originally designed and constructed with such merged gas streams;

(2) After July 8, 1985, such merging is part of a change in operation at the facility that includes the installation of pollution controls and is accompanied by a net reduction in the allowable emissions of a pollutant. This exclusion from the definition of "dispersion techniques" shall apply only to the emission limitation for the pollutant affected by such change in operation; or

(3) Before July 8, 1985, such merging was part of a change in operation at the facility that included the installation of emissions control equipment or was carried out for sound economic or engineering reasons. Where there was an increase in the emission limitation or, in the event that no emission limitation was in existence prior to the merging, an increase in the quantity of pollutants actually emitted prior to the merging, the board shall presume that merging was significantly motivated by an intent to gain emissions credit for greater dispersion. Absent a demonstration by the owner that merging was not significantly motivated by such intent, the board shall deny credit for the effects of such merging in calculating the allowable emissions for the source;

c. Smoke management in agricultural or silvicultural prescribed burning programs;

d. Episodic restrictions on residential woodburning and open burning; or

e. Techniques under subdivision 1 c of this definition which increase final exhaust gas plume rise where the resulting allowable emissions of sulfur dioxide from the facility do not exceed 5,000 tons per year.

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

~~*"Emergency special order"* means any order of the board issued under the provisions of § 10.1-1309 B of the Code of Virginia, after declaring a state of emergency and without a hearing, to owners who are permitting or causing air pollution, to cease such pollution. Such orders shall become invalid if~~

~~an appropriate hearing is not held within 10 days after the effective date.~~

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

"Emission standard" means any provision of 9 VAC 5-40-10 et seq., 9 VAC 5-50-10 et seq. or 9 VAC 5-60-10 et seq. which prescribes an emission limitation, or other requirements that control air pollution emissions.

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

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

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

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

1. For sources seeking credit for stack height exceeding that established under subdivision 2 of the GEP definition, a maximum ground-level concentration due to emissions from a stack due in whole or part to downwash, wakes, and eddy effects produced by nearby structures or nearby terrain features which individually is at least 40% in excess of the maximum concentration experienced in the absence of such downwash, wakes, or eddy effects and which contributes to a total concentration due to emissions from all sources that is greater than an ambient air quality standard. For sources subject to the provisions of 9 VAC 5-80-20, an excessive concentration alternatively means a maximum ground-level concentration due to emissions from a stack due in whole or part to downwash, wakes, or eddy effects produced by nearby structures or nearby terrain features which individually is at least 40% in excess of the maximum concentration experienced in the absence of such downwash, wakes, or eddy effects and greater than a prevention of significant deterioration increment. The allowable emission rate to be used in making demonstrations under this provision shall be prescribed by the new source performance standard that is applicable to the source category unless the owner demonstrates that this emission rate is infeasible. Where such demonstrations are approved by the board, an alternative emission rate shall be established in consultation with the owner;

2. For sources seeking credit after October 11, 1983, for increases in existing stack heights up to the heights established under subdivision 2 of the GEP definition,

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either (i) a maximum ground-level concentration due in whole or part to downwash, wakes or eddy effects as provided in subdivision 1 of this definition, except that the emission rate specified by any applicable state implementation plan (or, in the absence of such a limit, the actual emission rate) shall be used, or (ii) the actual presence of a local nuisance caused by the existing stack, as determined by the board; and

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

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

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

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

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

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

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

"Good engineering practice" (GEP) stack height means the greater of:

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

$$H_g = 2.5H,$$

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

- b. For all other stacks,

$$H_g = H + 1.5L,$$

where:

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

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

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

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

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

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

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

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

"Malfunction" means any sudden failure of air pollution control equipment, of process equipment, or of a process to operate in a normal or usual manner, which failure is not due

to intentional misconduct or negligent conduct on the part of the owner or other person.

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

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

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

1. For purposes of applying the formulae provided in subdivision 2 of the GEP definition means that distance up to five times the lesser of the height or the width dimension of a structure, but not greater than 0.8 km (1/2 mile), and

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

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

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

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

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

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

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

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

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

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

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

"*PM₁₀*" means particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers as measured by the applicable reference method or an equivalent method.

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

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

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

"*Pollutant*" means any substance the presence of which in the outdoor atmosphere is or may be harmful or injurious to human health, welfare or safety, to animal or plant life, or to property, or which unreasonably interferes with the enjoyment by the people of life or property.

"*Potential to emit*" means the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment, and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design only if the limitation or its effect on emissions is state and federally enforceable.

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

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

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

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

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1. For ambient air quality standards in 9 VAC 5-30-10 et seq.: The applicable appendix of 40 CFR Part 50 or any method that has been designated as a reference method in accordance with 40 CFR Part 53, except that it does not include a method for which a reference designation has been canceled in accordance with 40 CFR 53.11 or 40 CFR 53.16.

2. For emission standards in 9 VAC 5-40-10 et seq. and 9 VAC 5-50-10 et seq.: Appendix A of 40 CFR Part 60.

3. For emission standards in 9 VAC 5-60-10 et seq.: Appendix B of 40 CFR Part 61.

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

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

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

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

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

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

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

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

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

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

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

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

~~2. Under the provisions of § 10.1-1309.1 of the Code of Virginia requiring that an owner file with the board a plan to abate, control, prevent, remove, or contain any substantial and imminent threat to public health or the environment that is reasonably likely to occur if such source ceases operations.~~

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

"Stack in existence" means that the owner had:

1. Begun, or caused to begin, a continuous program of physical on site construction of the stack; or

2. Entered into binding agreements or contractual obligations, which could not be canceled or modified without substantial loss to the owner, to undertake a program of construction of the stack to be completed in a reasonable time.

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

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

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

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

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

"Stationary source" means any building, structure, facility or installation which emits or may emit any air pollutant. A stationary source shall include all of the pollutant-emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control) except the activities of any vessel. Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same "Major Group" (i.e., which have the same two-digit code) as described in the Standard Industrial Classification Manual (see 9 VAC 5-10-20, Appendix M 9 VAC 5-10-21).

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

"True vapor pressure" means the equilibrium partial pressure exerted by a petroleum liquid as determined in

accordance with methods described in American Petroleum Institute (API) Publication 2517, Evaporation Loss from External Floating-Roof Tanks (see 9 VAC 5-10-20, Appendix M 9 VAC 5-10-21). The API procedure may not be applicable to some high viscosity or high pour crudes. Available estimates of true vapor pressure may be used in special cases such as these.

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

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

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

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

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

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

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

- a. Methane;
- b. Ethane;
- c. Methylene chloride (dichloromethane);
- d. 1,1,1-trichloroethane (methyl chloroform);
- e. 1,1,1-trichloro-2,2,2-trifluoroethane (CFC-113);
- f. Trichlorofluoromethane (CFC-11);
- g. Dichlorodifluoromethane (CFC-12);
- h. Chlorodifluoromethane (CFC-22);
- i. Trifluoromethane (FC-23);
- j. 1,2-dichloro 1,1,2,2,-tetrafluoroethane (CFC-114);
- k. Chloropentafluoroethane (CFC-115);
- l. 1,1,1-trifluoro 2,2-dichloroethane (HCFC-123);
- m. 1,1,1,2-tetrafluoroethane (HFC-134a);
- n. 1,1-dichloro 1-fluoroethane (HCFC-141b);
- o. 1-chloro 1,1-difluoroethane (HCFC-142b);
- p. 2-chloro-1,1,1,2-tetrafluoroethane (HCFC-124);

- q. Pentafluoroethane (HFC-125);
- r. 1,1,2,2-tetrafluoroethane (HFC-134);
- s. 1,1,1-trifluoroethane (HFC-143a);
- t. 1,1-difluoroethane (HFC-152a);
- u. Parachlorobenzotrifluoride (PCBTF);
- v. Cyclic, branched, or linear completely methylated siloxanes;
- w. Acetone; and
- x. Perfluorocarbon compounds which fall into these classes:
 - (1) Cyclic, branched, or linear, completely fluorinated alkanes;
 - (2) Cyclic, branched, or linear, completely fluorinated ethers with no unsaturations;
 - (3) Cyclic, branched, or linear, completely fluorinated tertiary amines with no unsaturations; and
 - (4) Sulfur containing perfluorocarbons with no unsaturations and with sulfur bonds only to carbon and fluorine.

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

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

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

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

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APPENDIX E. PUBLIC PARTICIPATION PROCEDURES.

I. Definitions.

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

B. As used in this appendix, all terms not defined here shall have the meaning given them in this section, unless otherwise required by context.

C. Terms defined.

"*Formal hearing*" means department processes other than those informational or factual inquiries of an informal nature provided in § 9-6.14:7.1 of the Administrative Process Act and includes only opportunity for private parties to submit factual proofs in evidential hearings as provided in § 9-6.14:8 of the Administrative Process Act.

"*Locality particularly affected*" means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.

"*Participatory approach*" means a method for the use of (i) standing advisory committees, (ii) ad hoc advisory groups or panels, (iii) consultation with groups or individuals registering interest in working with the department, or (iv) any combination thereof in the formation and development of regulations for department consideration. When an ad hoc advisory group is formed, the group shall include representatives of the regulated community and the general public. The decisions as to the membership of the group shall be at the discretion of the director.

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

"*Public meeting*" means an informal proceeding conducted by the department in conjunction with the Notice of Intended Regulatory Action to afford persons an opportunity to submit comments relative to intended regulatory actions.

II. General.

A. The procedures in § 3 of this appendix shall be used for soliciting the input of interested persons in the formation and development, amendment or repeal of regulations in accordance with the Administrative Process Act. This appendix does not apply to regulations exempted from the provisions of the Administrative Process Act (§ 9-6.14:4.1 A and B) or excluded from the operation of Article 2 of the Administrative Process Act (§ 9-6.14:4.1 C).

B. The failure of any person to receive any notice or copies of any documents provided under these procedures shall not affect the validity of any regulation.

C. Any person may petition the board for the adoption, amendment or repeal of a regulation. The petition, at a minimum, shall contain the following information:

1. Name of petitioner;
2. Petitioner's mailing address and telephone number;
3. Petitioner's interest in the proposed action;
4. Recommended regulation or addition, deletion or amendment to a specific regulation or regulations;
5. Statement of need and justification for the proposed action;
6. Statement of impact on the petitioner and other affected persons; and
7. Supporting documents, as applicable.

The board shall provide a written response to such petition within 180 days from the date the petition was received.

III. Public participation procedures.

A. The department shall establish and maintain a list consisting of persons expressing an interest in the adoption, amendment or repeal of regulations. Any person wishing to be placed on any list may do so by writing the department. In addition, the department, at its discretion, may add to any list any person, organization or publication it believes will be interested in participating in the promulgation of regulations. Individuals and organizations may be periodically requested to indicate their desire to continue to receive documents or be deleted from a list. Individuals and organizations may be deleted from any list at the request of the individual and organization, or at the discretion of the department when mail is returned as undeliverable.

B. Whenever the board so directs or upon its own initiative, the department may commence the regulation adoption process and proceed to draft a proposal according to these procedures.

C. The department shall use the participatory approach to assist in the development of the proposal or use one of the following alternatives:

1. Proceed without using the participatory approach if the board specifically authorizes the department to proceed without using the participatory approach.
2. Include in the Notice of Intended Regulatory Action a statement inviting comment on whether the department should use the participatory approach to assist the department in the development of the proposal. If the department receives written responses from at least five persons during the associated comment period indicating that the department should use the participatory approach, the department will use the participatory approach requested. Should different approaches be requested, the director shall determine the specific approach to be utilized.

D. The department shall issue a Notice of Intended Regulatory Action whenever it considers the adoption, amendment or repeal of any regulation.

1. The Notice of Intended Regulatory Action shall include at least the following:

a. A description of the subject matter of the planned regulation.

b. A description of the intent of the planned regulation.

c. A brief statement as to the need for regulatory action.

d. A brief description of alternatives available, if any, to meet the need.

e. A request for comments on the intended regulatory action, to include any ideas to assist the department in the development of any proposal.

f. A request for comments on the costs and benefits of the stated alternatives or other alternatives.

g. A statement of the department's intent to hold at least one public hearing on the proposed regulation after it is published in The Virginia Register of Regulations.

h. A statement inviting comment on whether the department should use the participatory approach to assist the department in the development of any proposal. Including this statement shall only be required when the department makes a decision to pursue the alternative provided in subdivision C 2 of this section.

2. The department shall hold at least one public meeting whenever it considers the adoption, amendment or repeal of any regulation unless the board specifically authorizes the department to proceed without holding a public meeting.

In those cases where public meetings will be held, the Notice of Intended Regulatory Action shall also include the date, not to be less than 30 days after publication in The Virginia Register of Regulations, time and place of the public meetings.

3. The public comment period for Notices of Intended Regulatory Action under this section shall be no less than 30 days after publication of the notice of intended regulatory action in The Virginia Register of Regulations.

E. The department shall disseminate the Notice of Intended Regulatory Action to the public via the following:

1. Distribution to the Registrar of Regulations for publication in The Virginia Register of Regulations.

2. Distribution by mail to persons on the list established under subsection A of this section.

F. After consideration of public input, the department may complete the draft proposed regulation and any supporting documentation required for review. If the participatory approach is being used, the draft proposed regulation shall be developed in consultation with the participants. A summary or copies of the comments received in response to the Notice of Intended Regulatory Action shall be distributed to the participants during the development of the draft proposed regulation. This summary or copies of the comments received in response to the Notice of Intended Regulatory Action shall also be distributed to the board.

G. Upon approval of the draft proposed regulation by the board, the department shall publish a Notice of Public Comment and the proposal for public comment.

H. The Notice of Public Comment shall include at least the following:

1. The notice of the opportunity to comment on the proposed regulation, location where copies of the proposal may be obtained, and the name, address, and telephone number of the individual to contact for further information about the proposed regulation.

2. A request for comments on the costs and benefits of the proposal.

3. The identity of any locality particularly affected by the proposed regulation.

4. A statement that an analysis of the following has been conducted by the department and is available to the public upon request:

a. A statement of purpose: the rationale or justification for the new provisions of the regulation, from the standpoint of the public's health, safety or welfare.

b. A statement of estimated impact:

(1) Projected number and types of regulated entities or persons affected.

(2) Projected cost, expressed as a dollar figure or range, to regulated entities (and to the public, if applicable) for implementation and compliance. In those instances where the department is unable to quantify projected costs, it shall offer qualitative data, if possible, to help define the impact of the regulation. Such qualitative data shall include, if possible, an example or examples of the impact of the proposed regulation on a typical member or members of the regulated community.

(3) Projected cost to the department for implementation and enforcement.

(4) Beneficial impact the regulation is designed to produce.

c. An explanation of need for the proposed regulation and potential consequences that may result in the absence of the regulation.

d. An estimate of the impact of the proposed regulation upon small businesses, as defined in § 9-199 of the Code of Virginia, or organizations in Virginia.

e. A description of provisions of the proposed regulation which are more restrictive than applicable federal requirements, together with the reason why the more restrictive provisions are needed.

f. A discussion of alternative approaches that were considered to meet the need the proposed regulation addresses, and a statement as to whether the department believes that the proposed regulation is the least burdensome alternative to the regulated

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entities that fully meets the stated purpose of the proposed regulation.

g. A schedule setting forth when, after the effective date of the regulation, the department will evaluate it for effectiveness and continued need.

5. The date, time and place of at least one public hearing held in accordance with § 9-6.14:7.1 of the Administrative Process Act to receive comments on the proposed regulation. The public hearings may be held at any time during the public comment period and, whenever practicable, no less than 15 days prior to the close of the public comment period. The public hearings may be held in such locations as the department determines will best facilitate input from interested persons. In those cases in which the department elects to conduct a formal hearing, the notice shall indicate that the formal hearing will be held in accordance with § 9-6.14:8 of the Administrative Process Act.

l. The public comment period shall close no less than 60 days after publication of the Notice of Public Comment in The Virginia Register of Regulations.

J. The department shall disseminate the Notice of Public Comment to the public via the following:

1. Distribution to the Registrar of Regulations for:

- a. Publication in The Virginia Register of Regulations.
- b. Publication in a newspaper of general circulation published at the state capital and such other newspapers as the department may deem appropriate.

2. Distribution by mail to persons on the list established under subsection A of this section.

K. The department shall prepare a summary of comments received in response to the Notice of Public Comment and the department's response to the comments received. The department shall send a draft of the summary of comments to all public commenters on the proposed regulation at least five days before final adoption of the regulation. The department shall submit the summary and the department response and, if requested, submit the full comments to the board. The summary, the department response, and the comments shall become a part of the department file and after final action on the regulation by the board, made available, upon request, to interested persons.

L. If the department determines that the process to adopt, amend or repeal any regulation should be terminated after approval of the draft proposed regulation by the board, the department shall present to the board for its consideration a recommendation and rationale for the withdrawal of the proposed regulation.

M. Completion of the remaining steps in the adoption process shall be carried out in accordance with the Administrative Process Act.

IV. Transition.

A. All regulatory actions for which a Notice of Intended Regulatory Action has been published in The Virginia Register of Regulations prior to May 16, 1994, shall be

processed in accordance with Appendix E as revised by the emergency amendments in effect from June 29, 1993, to June 28, 1994, unless sooner modified or superseded by permanent regulations.

B. This appendix shall supersede and repeal Appendix E as revised by the emergency amendments which became effective on June 29, 1993. All regulatory actions for which a Notice of Intended Regulatory Action has not been published in The Virginia Register of Regulations prior to May 16, 1994, shall be processed in accordance with this appendix.

APPENDIX F. DELEGATION OF AUTHORITY.

I. Restrictions upon delegation of authority. The delegation of authority specified within this appendix is subject to the following restrictions.

A. The board reserves the right to exercise its authority in any of the following delegated powers should it choose to do so:

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

C. The submittal of the request by itself shall not constitute a stay of decision. A stay of decision shall be sought through appropriate legal channels.

II. Substance of delegation of authority.

A. The executive director is delegated the authority to act within the scope of the Virginia Air Pollution Control Law and these regulations and for the board when it is not in session except for the authority to:

1. Control and regulate the internal affairs of the board;
2. Approve proposed regulations for the public comment and adopt final regulations;
3. Grant variances to regulations;
4. Issue orders and special orders, except for consent orders and emergency special orders;
5. Determine significant ambient air concentrations under 9 VAC 5-40-190 and 9 VAC 5-50-190;
6. Approve amendments to any policy or procedure approved by the board, except as may be provided in it;
7. Appoint persons to the State Advisory Board on Air Pollution;
8. Create local air pollution control districts and appoint representatives; and
9. Approve local ordinances.

B. The board may exercise its authority for direct consideration of permit applications in cases where one or more of the following issues is involved in the evaluation of the application: (i) the stationary source generates public concern relating to air quality issues; (ii) the stationary source is precedent setting; or (iii) the stationary source is a major

stationary source or major modification expected to impact on any nonattainment area or class I area.

~~C. The executive director shall notify the board chairman of permit applications falling within the categories specified in subsection B of this section and the board chairman shall advise the executive director of those permits the board wishes to consider directly.~~

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

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

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

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

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

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

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

- ~~1. United States Code;~~
- ~~2. Code of Virginia;~~
- ~~3. Code of Federal Regulations;~~
- ~~4. Federal Register; and~~
- ~~5. Technical and scientific reference documents.~~

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

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

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

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

~~1. Administrative proceedings. The executive director or his designated representative may negotiate to obtain compliance through administrative means. Such means may be a variance, control program, consent agreement or any other mechanism that requires compliance by a specific date. The means and the associated date shall be determined on a case by case basis and shall not allow an unreasonable delay in compliance. In cases where the use of an administrative means is expected to result in compliance within 90 days or less, preferential consideration shall be given to the use of a consent agreement. Unless specified otherwise in these regulations, the administrative means shall be approved by the board.~~

~~2. Judicial proceedings. The executive director or his designated representative may obtain compliance through legal means pursuant to § 10.1-1316 or § 10.1-1320 of the Virginia Air Pollution Control Law.~~

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

~~C. Orders, consent orders, delayed compliance orders, special orders and emergency special orders are considered administrative means, and the board reserves the right to use such means in lieu of or to provide a legal basis for the enforcement of any administrative means negotiated or approved by the executive director or his designated representative under subsection A of this section.~~

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

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

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

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

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

2. The public hearing required before considering variances and amendments to and revocation of variances, in accordance with § 10.1-1307 C of the Virginia Air Pollution Control Law. The procedure for a public hearing shall conform to § 10.1-1307 C of the Virginia Air Pollution Control Law and to the provisions of 9 VAC 5-20-50;

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

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

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

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

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

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

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

3. Formal hearings and hearings for the issuance of special orders or emergency special orders will be

recorded by a court reporter, or electronically recorded for transcription to written form.

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

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

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

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

9 VAC 5-20-50. Variances.

A. General.

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

2. The board shall adopt variances and amend or revoke variances if warranted only after conducting a public hearing pursuant to public advertisement in at least one major newspaper of general circulation in the affected air quality control region of the subject, date, time and place of the public hearing at least 30 days prior to the scheduled hearing. The hearing shall be conducted to give the public an opportunity to comment on the variance and the hearing record shall remain open for a minimum of 10 days after the hearing.

B. A. Fuel variance.

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

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

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

- c. The maximum particulate and sulfur dioxide emissions from fuels permitted in the fuel variance would be the lowest that the available fuels will permit;
- d. The need for the requested fuel variance could not have been avoided by the owner; and
- e. The period of the fuel variance will not exceed the reasonably predicted shortage of fuel which would allow compliance with these regulations, or 180 days, whichever is less.

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

- a. The requested commencement and termination dates of the fuel variance;
- b. The type and quantity of fuel to be used under the requested fuel variance, along with the maximum ash and sulfur content, if any;
- c. An affidavit stating why the owner is unable to, or has substantial cause to believe that he will be unable to, obtain fuel which would allow compliance with applicable provisions of these regulations;
- d. An estimate of the amount of fuel to be conserved;
- e. An estimate of the increased air pollutants that might cause violations of the ambient air quality standards;
- f. An estimate, with reasons given, of the duration of the shortage of fuel which would allow compliance with applicable provisions of these regulations; and
- g. Such other information as the executive director may require to make his findings as provided in subdivision B 1 of this section *subsection*.

3. Notice of public hearings on applications for fuel variances shall be advertised at least 10 days prior to the date of the hearing, in at least one major newspaper of general circulation in the air quality control region in which the affected source is located. The notice shall contain the subject, date, time and place of the public hearing. The public hearing shall be conducted to give the public an opportunity to comment on the variance.

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

5. No fuel variance shall be granted for more than 180 days. Any request for a variance for a period beyond 180 days shall be governed by the provisions of *subsection A of this section 9 VAC 5-170-140*, except that the board, where appropriate, may require compliance with any of the conditions and requirements here.

6. Fuel variances may be amended or revoked in the manner provided for in *9 VAC 5-20-50-A 9 VAC 5-170-140* except that only a 10-day notice shall be required.

G. B. Nothing in this section shall be construed to limit, alter or otherwise affect the obligation of any person to

comply with any provision of these regulations not specifically affected by this section.

9 VAC 5-20-60. Local ordinances. (Repealed.)

A. Establishment/approval.

~~1. Any local governing body proposing to adopt or amend an ordinance, relating to air pollution shall first obtain the approval of the board as to the provisions of the ordinance or amendment. The board in approving local ordinances will consider, but will not be limited to, the following criteria:~~

~~a. The local ordinance shall provide for intergovernmental cooperation and exchange of information.~~

~~b. Adequate local resources will be committed to enforcing the proposed local ordinance.~~

~~c. The provisions of the local ordinance shall be as strict as state regulations, except as provided for leaf burning in § 10.1-1308 of the Virginia Air Pollution Control Law.~~

~~2. Approval of any local ordinance shall be withdrawn if the board determines that the local ordinance is less strict than state regulations, or if the locality fails to enforce the ordinance.~~

~~3. If a local ordinance must be amended to conform to an amendment to state regulations, such local amendment will be made within six months.~~

~~B. Reports. Local ordinances shall provide for reporting such information as may be required by the board to fulfill its responsibilities under the Virginia Air Pollution Control Law and the federal Clean Air Act. Such reports shall include, but are not limited to: monitoring data, surveillance programs, procedures for investigation of complaints, variance hearings and status of control programs and permits.~~

~~C. Relationship to state regulations. Local ordinances are a supplement to state regulations. Any provisions of local ordinances which have been approved by the board and are more strict than state regulations shall take precedence over state regulations within the respective locality. It is the intention of the board to coordinate activities among the enforcement officers of the various localities in the enforcement of local ordinances and state regulations. The board will also provide technical and other assistance to local authorities in the development of ambient air quality or emission standards, in the investigation and study of air pollution problems, and in the enforcement of local ordinances and state regulations. The board emphasizes its intention to assist in the local enforcement of local ordinances. If a locality fails to enforce its own ordinance, the board reserves the right to enforce state regulations.~~

~~D. Variances. A local governing body may grant a variance to any provision of its air pollution control ordinances provided that:~~

~~1. A public hearing is held prior to granting the variance;~~

~~2. The public is notified of the application for a variance by advertisement in at least one major newspaper or~~

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~~general circulation in the affected locality at least 30 days prior to the date of the hearing; and~~

~~3. The variance does not permit any owner or other person to take action that would result in a violation of any provision of state regulations unless a variance is granted by the board. The public hearings required for the variances to the local ordinance and state regulations may be conducted jointly as one proceeding.~~

9 VAC 5-20-90. Appeals. (Repealed.)

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

~~B. Prior to any formal hearing, an informal fact finding shall be held pursuant to § 9-6.14:11 of the Administrative Process Act, unless waived by the board.~~

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

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

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

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

9 VAC 5-20-100. Right of entry. (Repealed.)

~~Whenever it is necessary for the purposes of these regulations, the board may at reasonable times enter any establishment or upon any property, public or private, for the purpose of obtaining information or conducting surveys or investigation as authorized by § 10.1-1315 of the Virginia Air Pollution Control Law.~~

9 VAC 5-20-110. Conditions on approvals. (Repealed.)

~~A. The board may impose conditions upon permits and other approvals which may be necessary to carry out the policy of the Virginia Air Pollution Control Law, and which are consistent with these regulations. Except as specified herein, nothing in these regulations shall be understood to limit the power of the board in this regard. If the owner or other person fails to adhere to such conditions, the board may automatically cancel such permit or approvals. Without limiting the generality of this section, this section shall apply to: approval of variances, approval of control programs, granting of new or modified source permits and granting of open burning permits.~~

~~B. An owner may consider any condition imposed by the board as a denial of the requested approval or permit, which~~

~~shall entitle the applicant to appeal the decision of the board pursuant to 9 VAC 5-20-90.~~

9 VAC 5-20-120. Policy and procedural information and guidance. (Repealed.)

~~A. The board may adopt detailed policies and procedures which:~~

~~1. Require data and information in addition to and in amplification of the provisions of these regulations;~~

~~2. Specify the methods and means to determine compliance with applicable provisions of these regulations;~~

~~3. Set forth the format by which all data and information shall be submitted; and~~

~~4. Set forth how the regulatory programs shall be implemented.~~

~~B. In cases where these regulations specify that procedures or methods shall be approved by, acceptable to or determined by the board or other similar phrasing, the owner may request information and guidance concerning the proper procedures and methods and the board shall furnish in writing such information on a case-by-case basis.~~

9 VAC 5-20-130. Delegation of authority. (Repealed.)

~~In accordance with the Virginia Air Pollution Control Law and the Administrative Process Act, the board confers upon the executive director such administrative, enforcement, and decision-making powers as are set forth in Appendix F.~~

9 VAC 5-20-140. Considerations for approval actions. (Repealed.)

~~Pursuant to the provisions of § 10.1-1307 E of the Virginia Air Pollution Control Law, the board, in making regulations and in approving variances, control programs, or permits, shall consider facts and circumstances relevant to the reasonableness of the activity involved and the regulations proposed to control it, including:~~

~~1. The character and degree of injury to, or interference with safety, health or the reasonable use of property which is caused or threatened to be caused;~~

~~2. The social and economic value of the activity involved;~~

~~3. The suitability of the activity to the area in which it is located; and~~

~~4. The scientific and economic practicality of reducing or eliminating the discharge resulting from such activity.~~

9 VAC 5-20-150. Availability of information. (Repealed.)

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

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

~~The board shall consider such records, reports or information, or particular part of them, confidential in~~

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

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

- ~~1. Information for which the owner has been taking and will continue to take measures to protect confidentiality;~~
- ~~2. Information that has not been and is not presently reasonably obtainable without the owner's consent by private citizens or other firms through legitimate means other than discovery based on a showing of special need in a judicial or quasi-judicial proceeding;~~
- ~~3. Information which is not publicly available from sources other than the owner; and~~
- ~~4. Information the disclosure of which would cause substantial harm to the owner.~~

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

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

9 VAC 5-91-20. Terms defined.

"Access code" means the security phrase or number which allows emissions inspectors, the department, and analyzer service technicians to perform specific assigned functions using the certified analyzer system, as determined by the department.

"Actual gross weight" means the weight of a motor vehicle as registered with the Department of Motor Vehicles and which may encompass the empty weight (EW), motorist-declared gross weight (GW), or gross vehicle weight rating (GVWR). For the purpose of determining applicability of emissions test procedures and standards, the GVWR shall be used, if available. If GVWR is unavailable, the GW shall be used. If neither is available, the EW shall be used.

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

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

"Affected motor vehicle" means any motor vehicle which:

1. Was manufactured for the 1968 model year or a more recent model year including the most recent model year;
2. Is designed for the transportation of persons or property;
3. Is powered by an internal combustion engine; and
4. For the Northern Virginia Emissions Inspection Program, has an actual gross weight of 10,000 pounds or less.

The term "affected motor vehicle" does not mean any:

1. Vehicle powered by a clean special fuel as defined in § 58.1-2101 of the Code of Virginia, provided the federal Clean Air Act (42 USC § 4701 et seq.) permits such exemptions for vehicles powered by clean special fuels;
2. Motorcycle;
3. Vehicle which, at the time of its manufacture, was not designed to meet emissions standards set or approved by the federal government;
4. Any antique motor vehicle as defined in § 46.2-100 of the Code of Virginia and licensed pursuant to § 46.2-730 of the Code of Virginia;
5. Firefighting equipment, rescue vehicle, or ambulance; or
6. Vehicle for which no testing standards have been adopted by the board.

"Air intake systems" means those systems which allow for the induction of ambient air (to include preheated air) into the engine combustion chamber for the purpose of mixing with a fuel for combustion.

"Air pollution" means the presence in the outdoor atmosphere of one or more substances which are or may be harmful or injurious to human health, welfare or safety; to animal or plant life; or to property; or which unreasonably interfere with the enjoyment by the people of life or property.

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

"Air system" means a system for providing supplementary air into a vehicle's exhaust system to promote further oxidation of hydrocarbons and carbon monoxide gases and to assist catalytic reaction.

"Alternative fuel" means an internal combustion engine fuel other than (i) gasoline, (ii) diesel, or (iii) fuel mixtures containing more than 15% volume of gasoline.

"Alternative evaporative system purge and pressure test" means a method and equipment, as approved by the administrator or the department, which performs evaporative system purge testing and evaporative system pressure testing by pressurizing and testing the evaporative system by means of introducing gases to the system at the fuel filler

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inlet, and detecting pressure integrity and exhaust gas concentrations, and by testing the integrity of the fuel filler cap.

"ASM" means Acceleration Simulation Mode testing which is a dynamometer-based emissions test performed in one or more, discreet, simulated road speed and engine load modes, and equipment which can be used to perform any such test.

"Basic engine systems" means those parts or assemblies which provide for the efficient conversion of a compressed air and fuel charge into useful power to include but not limited to valve train mechanisms, cylinder head to block integrity, piston-ring-cylinder sealing integrity and post-combustion emissions control device integrity.

"Bi-fuel" means any motor vehicle capable of operating on one of two different fuels, usually gasoline and an alternative fuel, but not a mixture of the fuels. That is, only one fuel at a time.

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

"Calibration" means establishing or verifying the total response curve of a measurement device using several different measurements having precisely known quantities.

"Calibration gases" means gases of precisely known concentrations which are used as references for establishing or verifying the calibration curve of a measurement device.

"Canister" means a mechanical device capable of adsorbing and retaining hydrocarbon vapors.

"Catalytic converter" means a post combustion device which oxidizes hydrocarbons, carbon monoxide gases, and may also reduce oxides of nitrogen.

"Certified enhanced analyzer system" or "analyzer system" means the complete system which samples and reads concentrations of hydrocarbon, carbon dioxide, nitrogen oxides and carbon monoxide gases and which is approved by the department for use in the Enhanced Emissions Inspection Program in accordance with Part X (9 VAC 5-91-640 et seq.). The system includes the exhaust gas handling system, the exhaust gas analyzer, evaporative system pressure and purge test equipment, associated automation hardware and software, data media, the analyzer system cabinet, the dynamometer and appurtenant devices, vehicle identification equipment, and associated cooling and exhaust fans and gas cylinders.

"Certificate of emissions inspection" means a document, device, or symbol, whether recorded in written or electronic form, as prescribed by the director and issued pursuant to this chapter, which indicates that (i) an affected motor vehicle has satisfactorily complied with the emissions standards and passed the emissions inspection provided for in this chapter; (ii) the requirement of compliance with the emissions standards has been waived; or (iii) the affected motor vehicle has failed the emissions inspection.

"Chargeable inspection" means an initial inspection, or a reinspection that occurs 15 days or later after the initial inspection, on an affected motor vehicle, for which the station

owner is entitled to collect an inspection fee. No fee shall be paid for (i) inspections for which a vehicle emissions inspection report has not been issued, (ii) inspections that are conducted by the department for referee purposes, (iii) inspections which were ordered due to on-road test failures but which do not result in a failure at an inspection station, or (iv) the first reinspection done at the same station that performed the initial inspection within 14 days.

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

"Consent order" means a mutual agreement between the department and any owner, operator, emissions inspector, or emissions repair technician that such owner or other person will perform specific actions for the purpose of diminishing or abating the causes of air pollution or for the purpose of coming into compliance with this chapter. A consent order may include agreed upon civil charges. Such orders may be issued without a formal hearing.

"Curb idle" means vehicle operation whereby the transmission is disengaged and the engine is operated with the throttle in the closed or idle stop position with the resultant engine speed between 300 and 1,100 revolutions per minute (rpm), or at another idle speed if so specified by the manufacturer.

"Data handling system" means all the computer hardware, software and peripheral equipment used to conduct emissions inspections and manage the enhanced emissions inspection program.

"Data medium" or "data media" means the medium contained in the certified analyzer system and used to electronically record test data.

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

"Dedicated-fuel vehicle" means a vehicle which was designed and manufactured to operate and operates on one specific fuel.

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

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

"Dual fuel" means a vehicle which operates on a combination of fuels, usually gasoline or diesel and an alternative fuel, at the same time. That is, the mixed fuels are introduced into the combustion chamber of the engine.

"Emissions control systems" means those parts, assemblies or systems originally installed by the manufacturer in or on a vehicle for the sole purpose of reducing emissions.

"Emissions inspection" means an emissions inspection of a motor vehicle performed by an emissions inspector employed by or working at an emissions inspection station or fleet emissions inspection station, using the tests, procedures, and provisions set forth in this chapter.

"Emissions inspection station" means a facility or portion of a facility which has obtained an emissions inspection station permit from the director authorizing the facility to perform emissions inspections in accordance with the provisions of this chapter.

"Emissions inspector" means a person licensed by the department to perform inspections of vehicles required under the Virginia Motor Vehicle Emissions Control Law and is qualified in accordance with this chapter.

"Emissions repair facility" means a facility, or portion of a facility, which has obtained a certification in accordance with Part VII (9 VAC 5-91-500 et seq.) to perform emissions related repairs on motor vehicles.

"Emissions repair technician" or *"emissions repair mechanic"* means a person who has obtained a certification in accordance with Part VIII (9 VAC 5-91-550 et seq.) to perform emissions related repairs on motor vehicles.

"Emissions standard" means any provision of Part III (9 VAC 5-91-160 et seq.) or Part XIV (9 VAC 5-91-790 et seq.) which prescribes an emission limitation, or other emission control requirements for motor vehicle air pollution.

"Empty weight (EW)" means that weight stated as the EW on a Virginia motor vehicle registration or derived from the motor vehicle title or manufacturer's certificate of origin. The EW may be used to determine emissions inspection standards.

"Enhanced emissions inspection program" means a motor vehicle emissions inspection including procedures, emissions standards, and equipment required by 40 CFR Part 51, Subpart S or equivalent and consistent with applicable requirements of the federal Clean Air Act. The director shall administer the enhanced emissions inspection program. Such program shall require biennial inspections at official emissions inspection stations, which may be test and repair facilities, in accordance with this chapter. Nothing in this program shall bar enhanced emissions inspection stations or facilities from also performing vehicle repairs.

"Equivalent test weight (ETW)" means the weight of a motor vehicle as automatically determined by the emissions analyzer system based on vehicle make, model, body, style, model year, engine size, permanently installed equipment, and other manufacturer and aftermarket supplied information, and used for the purpose of assigning dynamometer resistance and exhaust emissions standards for the conduct of an exhaust emissions inspection.

"Evaporative system pressure test" or *"pressure test"* means a physical test of the evaporative emission control system on a motor vehicle to determine whether the

evaporative system vents emissions of volatile organic compounds from the fuel tank and fuel system to an on-board emission control device, and prevents their release to the ambient air under normal vehicle operating conditions.

"Evaporative system purge test" or *"purge test"* means a test which measures the instantaneous purge flow in standard liters per minute from the canister to the motor intake manifold, based upon computation of the total volume of the flow in standard liters over a prescribed driving cycle, or an equivalent procedure approved by the department.

"Exhaust gas analyzer" means an instrument which is capable of measuring the concentrations of certain air pollutants in the exhaust gas from a motor vehicle.

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

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

"Federal employee" means civilian or military personnel employed or stationed at a federal facility, including contractor personnel, for more than 60 days in a calendar year.

"Federal facility" means a facility or complex that is owned, leased, or operated by a United States government agency, including parking areas provided to federal employees at the facility.

"Fleet" means 20 or more motor vehicles which are owned, operated, leased or rented for use by a common owner.

"Fleet emissions inspection station" means any inspection facility operated under a permit issued to a qualified fleet owner or lessee as determined by the director.

"Flexible-fuel vehicle" means any motor vehicle having a single fuel tank and capable of operating on two or more fuels, either one at a time or any mixture of two or more different fuels.

"Formal hearing" means a board or department process which provides for the right of private parties to submit factual proofs as provided in § 9-6.14:12 of the Administrative Process Act in connection with case decisions. Formal hearings do not include the factual inquiries of an informal nature provided in § 9-6.14:11 of the Administrative Process Act.

"Fuel control systems" means those mechanical, electro-mechanical, galvanic or electronic parts or assemblies which regulate the air-to-fuel ratio in an engine for the purpose of providing a combustible charge.

"Fuel filler cap pressure test" or *"fuel filler cap test"* or *"gas cap test"* means a test of the ability of the fuel filler cap to prevent the release of fuel vapors from the fuel tank under normal operating conditions.

"Gas span" means the adjustment of an exhaust gas analyzer to correspond with known concentrations of gases.

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"*Gas span check*" means a procedure using known concentrations of gases to verify the gas span adjustment of an analyzer.

"*Gross vehicle weight rating (GVWR)*" means the maximum recommended combined weight of the motor vehicle and its load as prescribed by the manufacturer and is (i) expressed on a permanent identification label affixed to the motor vehicle; (ii) stated on the manufacturer's certificate of origin; or (iii) coded in the vehicle identification number.

"*Gross weight (GW)*" means the weight stated as GW on a Virginia motor vehicle registration and has been declared by the customer at the time of registration, based on the empty weight and the maximum weight the vehicle may legally carry under such registration.

"*Heavy duty vehicle*" means any affected motor vehicle (i) which is rated at more than 8,500 pounds GVWR or (ii) which has a loaded vehicle weight or GVWR of more than 6,000 pounds and has a basic frontal area in excess of 45 square feet.

"*Idle mode*" means a condition where the vehicle engine is warm and running at the rate specified by the manufacturer's curb idle, where the engine is not propelling the vehicle, and where the throttle is in the closed or idle stop position.

"*Ignition systems*" means those parts or assemblies which are designed to cause and time the ignition of a compressed air and fuel charge.

"*Informal fact finding*" means an informal conference or consultation proceeding used to ascertain the fact basis for case decisions as provided in § 9-6.14:11 of the Administrative Process Act.

"*Inspection area*" means the area that is occupied by the certified analyzer system and the vehicle being inspected.

"*Inspector access code*" means the security phrase or number issued by the department to an emissions inspector.

"*Inspection fee*" means the amount of money that the station owner may collect from the motor vehicle owner for each chargeable inspection.

"*Inspector number*" means the alpha or numeric identifier issued by the department to every emissions inspector at the time of licensing.

"*Light duty truck*" means any affected motor vehicle which (i) has a loaded vehicle weight or GVWR of 6,000 pounds or less and meets any one of the criteria below; or (ii) is rated at more than 6,000 pounds GVWR but less than 8,500 pounds GVWR and has a basic vehicle frontal area of 45 square feet or less; and meets one of the following criteria:

1. Designed primarily for purposes of transportation of property or is a derivation of such a vehicle.
2. Designed primarily for transportation of persons and has a capacity of more than 12 persons.
3. Equipped with special features enabling off-street or off-highway operation and use.

"*Light duty truck 1*" or "*LDT1*" means any affected motor vehicle which meets the criteria above and is rated at 6,000 pounds GVWR or less. LDT1 is a subset of light duty trucks.

"*Light duty truck 2*" or "*LDT2*" means any affected motor vehicle which meets the criteria above and is rated at greater than 6,000 pounds GVWR. LDT2 is a subset of light duty trucks.

"*Light duty vehicle*" means an affected motor vehicle that is a passenger car or passenger car derivative capable of seating 12 passengers or less.

"*Loaded vehicle weight (LVW)*" or "*curb weight*" means the weight of a vehicle and its standard equipment; i.e., the empty weight as recorded on the vehicle's registration or the base shipping weight as recorded in the vehicle identification number, whichever is greater; plus the weight of any permanent attachments, the weight of a nominally filled fuel tank, plus 300 pounds.

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

"*Mobile fleet emissions inspection station*" means a facility or entity which provides emissions inspection equipment or services to a fleet emissions inspection station on a temporary basis. Such equipment is not permanently installed at the fleet facility but is temporarily located at the fleet facility for the sole purpose of testing vehicles owned, operated, leased or rented for use by a common owner.

"*Model year*" means, except as may be otherwise defined in this chapter, the motor vehicle manufacturer's annual production period which includes the time period from January 1 of the calendar year prior to the stated model year to December 31 of the calendar year of the stated model year; provided that, if the manufacturer has no annual production period, the term "model year" shall mean the calendar year of manufacture. For the purpose of this definition, model year is applied to the vehicle chassis, irrespective of the year of manufacture of the vehicle engine.

"*Motor vehicle*" means any motor vehicle as defined in § 46.2-100 of the Code of Virginia as a motor vehicle and which:

1. Was manufactured for the 1968 model year or more recent model year;
2. Is designed for the transportation of persons or property; and
3. Is powered by an internal combustion engine.

"*Motor vehicle dealer*" means a person who is licensed by the Department of Motor Vehicles in accordance with §§ 46.2-1500 and 46.2-1508 of the Code of Virginia.

"*Motor vehicle inspection report*" or "*vehicle inspection report*" means a report of the results of an emissions inspection, indicating whether the motor vehicle has (i) passed, (ii) failed, (iii) been rejected, or (iv) obtained an emissions inspection waiver. The report shall accurately identify the motor vehicle and shall include inspection results, recall information, warranty and repair information, and a unique identification number.

"*Motor vehicle owner*" means any person who owns, leases, operates, or controls a motor vehicle or fleet of motor vehicles.

"*Normal business hours*" for emissions inspection stations, means a daily eight-hour period Monday through Friday, between the hours of 8 a.m. and 6 p.m., with the exception of national holidays, temporary closures noticed to the department and closures due to the inability to meet the requirements of this chapter. Nothing in this chapter shall prevent stations from performing inspections at other times in addition to the "*normal business hours*."

"*Northern Virginia emissions inspection program*" means the emissions inspection program required by this chapter in the Northern Virginia program area.

"*Northern Virginia program area*" or "*program area*" means the territorial area encompassed by the boundaries of the following localities: the counties of Arlington, Fairfax, Fauquier, Loudoun, Prince William, and Stafford; and the cities of Alexandria, Fairfax, Falls Church, Manassas, and Manassas Park.

"*On-road testing*" means tests of motor vehicle emissions or emissions control devices by means of roadside pullovers or remote sensing devices.

"*Operated primarily*" means the area within which the affected motor vehicle is primarily driven. A vehicle is primarily driven in the program area if the vehicle is operated in the program area for an amount of annual mileage equal to or greater than (i) 50% of its annual mileage or (ii) 6,000 miles, whichever is greater, or routinely driven into or within the program area as determined by recordation of travel in the program area more than three times in a two-week period by remote sensing or on-road testing.

"*Order*" means any decision or directive of the board or the director, including orders, consent orders, and orders of all types rendered for the purpose of diminishing or abating the causes of air pollution or enforcement of this chapter. Unless specified otherwise in this chapter, orders shall only be issued after the appropriate administrative proceeding.

"*Original condition*" means the condition of the vehicle, parts, and components as installed by the manufacturer but not necessarily to the original level of effectiveness.

"*Original Equipment Manufacturer (OEM) dedicated fuel vehicle*" means a vehicle which was configured by the vehicle manufacturer to operate only on one specific fuel other than (i) gasoline, (ii) diesel, or (iii) fuel mixtures containing more than 15% by volume of gasoline.

"*Owner*" means any person who owns, leases, operates, controls or supervises a facility or motor vehicle.

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

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

"*Pollutant*" means any substance the presence of which in the outdoor atmosphere is or may be harmful or injurious to human health, welfare or safety, to animal or plant life, or to property, or which unreasonably interferes with the enjoyment by the people of life or property.

~~"*Public hearing*" means unless indicated otherwise an informal proceeding, similar to that provided for in § 9-6-14:7.1 of the Administrative Process Act, held to afford persons an opportunity to submit views and data relative to a matter on which a decision of the board is pending.~~

"*Referee station*" means those facilities operated or used by the department to (i) determine program effectiveness, (ii) resolve emissions inspection conflicts between motor vehicle owners and emissions inspection stations, and (iii) provide such other technical support and information, as appropriate, to emissions inspection stations and motor vehicle owners.

"*Reinspection*" means a type of inspection selected by the department or the emissions inspector when a request for an inspection is accompanied by a completed motor vehicle inspection report indicating a previous failure.

"*Remote sensing*" means the observation, measurement, and recordation of motor vehicle exhaust emissions from motor vehicles while travelling on roadways or in specified areas by equipment which is not connected to the vehicle. Such equipment may use light sensing and electronic stimuli in conjunction with devices, including videographic and digitized images, to detect and record vehicle identification information, such as registration or other identification numbers.

"*Span gas*" means gases of known concentration used as references to adjust or verify the accuracy of an exhaust gas analyzer that are approved by the department and are so labeled.

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

"*Standardized instruments*" means laboratory instruments calibrated with precision gases traceable to the National Institute of Standards and Technology and accepted by the department as the standards to be used for comparison purposes. All candidate instruments are compared in performance to the standardized instruments.

"*State Implementation Plan*" means the plan, including any revision thereof, which has been submitted by the Commonwealth and approved in Subpart VV of 40 CFR Part 52 by the administrator under § 110 of the federal Clean Air Act, or promulgated in Subpart VV of 40 CFR Part 52 by the administrator under § 110(c) of the federal Clean Air Act, or promulgated or approved by the administrator pursuant to regulations promulgated under § 301(d) of the federal Clean Air Act and which implements the relevant requirements of the federal Clean Air Act.

"*Tactical military vehicle*" means any motor vehicle designed to military specifications or a commercially designed motor vehicle modified to military specifications to meet direct transportation support of combat, tactical, or military relief operations, or training of personnel for such operations.

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"Tampering" means to alter, remove or otherwise disable or reduce the effectiveness of emissions control equipment on a motor vehicle.

"Test" means an emissions inspection of a vehicle, or any portion thereof, performed by an emissions inspector at an emissions inspection station, using the procedures and provisions set forth in this chapter.

"Test and repair" means motor vehicle emissions inspection stations which perform emissions inspections and may also perform vehicle repairs. No provision of this chapter shall bar emissions inspection stations from also performing vehicle repairs.

"Thermometer, certified" means a laboratory grade ambient temperature measuring device with a range of at least 20°F through 120°F, and an attested accuracy of at least $\pm 1^\circ\text{F}$ with increments of 1°, with protective shielding.

"Thermostatic air cleaner" means a system that supplies warm air to the air intake during cold engine operation and is active during cold engine warm-up only.

"Tier 1" means new gaseous and particulate tail pipe emission standards for use in certifying new light duty vehicles and light duty trucks which began to be phased in with the 1994 model year and are completely phased-in during the 1996 model year, as promulgated by the U.S. Environmental Protection Agency at 40 CFR Part 86, as amended in the Federal Register, Volume 56, Number 108, page 25724, on June 5, 1991.

"True concentration" means the concentration of the gases of interest as measured by a standardized instrument which has been calibrated with 1.0% precision gases traceable to the National Bureau of Standards.

"Two speed idle test" means a vehicle exhaust emissions test, performed in accordance with paragraph (II) of 40 CFR Part 51, Appendix B to Subpart S, which measures the concentrations of pollutants in the exhaust gases of an engine (i) while the motor vehicle transmission is not propelling the vehicle and (ii) while the engine is operated at both curb idle and at a nominal engine speed of 2,500 rpm.

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

"Virginia Motor Vehicle Emissions Control Program" means the program for the inspection and control of motor vehicle emissions established by Virginia Motor Vehicle Emissions Control Law.

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

"Virginia Motor Vehicle Emissions Control Law" means Article 22 (§ 46.2-1176 et seq.) of Chapter 10 of Title 46.2 of the Code of Virginia.

"Zero gas" means a gas, usually air or nitrogen, which is used as a reference for establishing or verifying the zero point of an exhaust gas analyzer.

9 VAC 5-91-40. Establishment of regulations. (Repealed.)

A. ~~This chapter is established to implement the provisions of the Virginia Motor Vehicle Emissions Control Law and the federal Clean Air Act.~~

B. ~~This chapter shall be adopted, amended or repealed in accordance with the provisions of the Air Pollution Control Law, Virginia Motor Vehicle Emissions Control Law, Articles 1 and 2 of the Administrative Process Act, and the Public Participation Procedures in Appendix E of 9 VAC 5-10-10.~~

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

D. ~~If necessary in an emergency situation, the board may adopt, amend or stay a regulation under § 9-6.14:4.1 of the Administrative Process Act, but such regulation or stay of regulation shall remain effective no longer than one year unless readopted following the requirements of subsection B of this section.~~

E. ~~Within three years after the effective date of this chapter (January 24, 1997), the department shall perform an analysis on this chapter and provide the board with a report on the results. The analysis shall include (i) the purpose and need for the chapter; (ii) alternatives which would achieve the stated purpose of this chapter in a less burdensome and less intrusive manner; (iii) an assessment of the effectiveness of this chapter; (iv) the results of a review of current state and federal statutory and regulatory requirements, including the identification and justification of requirements of this chapter which are more stringent than federal requirements; and (v) the results of a review as to whether this chapter is clearly written and easily understandable by affected entities.~~

F. ~~Upon review of the department's analysis, the board shall confirm the need to (i) continue this chapter without amendment; (ii) repeal this chapter; or (iii) amend this chapter. If the board's decision is to repeal or amend this chapter, the board shall authorize the department to initiate the applicable regulatory process to carry out the decision of the board.~~

9 VAC 5-91-60. Hearings and proceedings. (Repealed.)

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

1. ~~For public hearing and informational proceeding required before considering regulations, authorized under § 46.2-1180 of the Virginia Motor Vehicle Emissions Control Law, the procedure for public hearings or informational proceedings shall conform to (i) § 9-6.14:7.1 of the Administrative Process Act and (ii) the Public Participation Procedures in Appendix E of 9 VAC 5-10-10.~~

2. ~~For the public hearing required before considering variances and amendments to and revocation of variances, the procedure for a public hearing shall conform to the provisions of 9 VAC 5-91-80.~~

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

4. For the formal hearing for the enforcement or review of orders, licenses, permits and certifications and for the enforcement of regulations, the procedure for a formal hearing shall conform to § 9-6.14:12 of the Administrative Process Act and § 10.1-1307 D and F of the Air Pollution Control Law.

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

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

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

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

3. Formal hearings will be recorded by a court reporter, or electronically recorded for transcription to written form.

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

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

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

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

9 VAC 5-91-80. Variances. (Repealed.)

A. The board may in its discretion grant variances to any provision of this chapter after an investigation and public hearing. If a variance is appropriate, the board shall issue an order to this effect. Such order shall be subject to amendment or revocation at any time for reasons specified in the order.

B. The board shall adopt variances and amend or revoke variances if warranted only after conducting a public hearing pursuant to public advertisement in at least one major newspaper of general circulation in the Northern Virginia program area of the subject, date, time and place of the public hearing at least 30 days prior to the scheduled

hearing. The public hearing shall be conducted to give the public an opportunity to comment on the variance and the public hearing record shall remain open for a minimum of 15 days after the hearing for the purpose of receiving additional public comment.

9 VAC 5-91-100. Conditions on approvals. (Repealed.)

A. The director may impose conditions upon permits, licenses, certifications and other approvals issued pursuant to this chapter, (i) which may be necessary to carry out the Virginia Motor Vehicle Emissions Control Law and (ii) which are consistent with this chapter. Except as specified herein, nothing in this chapter shall be understood to limit the power of the department in this regard.

B. A license, permit, or certification applicant may consider any condition imposed by the director as a denial of the requested permit, license, certification or other approval, which shall entitle the applicant to appeal the decision pursuant to 9 VAC 5-91-70.

C. The existence of a permit, license or certification under this chapter shall not constitute a defense to a violation of the Virginia Air Pollution Control Law, the Virginia Motor Vehicle Emissions Control Law or this chapter and shall not relieve any owner of the responsibility to comply with any applicable regulations, laws, ordinances and orders of any governmental entities having jurisdiction.

9 VAC 5-91-110. Procedural information and guidance. (Repealed.)

A. The department may adopt detailed policies and procedures which:

1. Request data and information in addition to and in amplification of the provisions of this chapter;
2. Specify the methods and means to determine compliance with applicable provisions of this chapter;
3. Set forth the format by which all data and information should be submitted; and
4. Set forth how the regulatory programs should be implemented.

B. In cases where this chapter specifies that procedures or methods shall be approved by, acceptable to or determined by the director or the department; the owner, emissions inspector, emissions repair technician, or any other affected person may request information and guidance concerning the proper procedures and methods and the board or the department shall furnish in writing such information on a case by case basis.

9 VAC 5-91-150. Availability of information. (Repealed.)

A. Emissions data in the possession of the department shall be available to the public without exception.

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

The department shall consider such records, reports or information, or particular part thereof, confidential in accordance with the Virginia Uniform Trade Secrets Act, §

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~~59.1-336 et seq. of the Code of Virginia, upon a showing satisfactory to the department by any station owner that such records, reports or information, or particular part thereof, meet the criteria in subsection C of this section and the station owner provides a certification to that effect signed by a responsible person for such owner. Such records, reports or information, or particular part thereof, may be disclosed, however, to other officers, employees or authorized representatives of the Commonwealth of Virginia and the U.S. Environmental Protection Agency concerned with carrying out the provisions of the Motor Vehicle Emissions Control Law and the federal Clean Air Act.~~

~~C. In order to be exempt from disclosure to the public under subsection B of this section, the information must satisfy the following criteria:~~

- ~~1. Information for which the station owner has been taking and will continue to take measures to protect confidentiality;~~
- ~~2. Information that has not been and is not presently reasonably obtainable without the consent of the station owner or motor vehicle owner by private citizens or other firms through legitimate means other than discovery based on a showing of special need in a judicial or quasi-judicial proceeding;~~
- ~~3. Information which is not publicly available from sources other than the station owner; and~~
- ~~4. Information the disclosure of which would cause substantial harm to the station owner.~~

9 VAC 5-120-20. Terms defined.

"Adjusted loaded vehicle weight (ALVW)" means the numerical average of the vehicle curb weight and the gross vehicle weight rating (GVWR).

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

"Administrator" means the administrator of the U.S. Environmental Protection Agency or an authorized representative.

"Available commercially" means that vehicles are available for sale in quantities and appropriate classifications sufficient to meet a fleet operator's program requirements.

"Base of operations" means the area in which a fleet vehicle is primarily garaged.

"Bi-fuel" or "dual-fuel vehicle" means any motor vehicle capable of operating on two different fuels, but not a mixture of the fuels. A bi-fuel or dual-fuel vehicle (i) qualifies as a clean-fuel fleet vehicle when certified as meeting the standards prescribed in Part IV (9 VAC 5-120-140 et seq.) for both fuels and (ii) is eligible to earn credits as provided in Part V (9 VAC 5-120-160 et seq.) when the above requirements are met.

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

"Capable of being centrally fueled" means a fleet, or that part of a fleet, consisting of vehicles that could be refueled

100% of the time at a location that is owned, operated, or controlled by the covered fleet owner, or is under contract with the covered fleet owner. The fact that one or more vehicles in a fleet is not capable of being centrally fueled does not exempt an entire fleet from this regulation. For purposes of this definition, "location" means any building, structure, facility, or installation (i) which is owned or operated by the same person, (ii) which is located on one or more contiguous properties, (iii) which is under the control of the same person, and (iv) which contains a fueling pump or pumps for the use of the vehicles owned or controlled by that person. The determination of "capable of being centrally fueled" shall be in accordance with the procedures in Section III 4 of the preamble to 40 CFR Part 88 (58 FR 64679, December 9, 1993) or other procedures approved by the department.

The term "capable of being centrally fueled" does not include vehicles which are under normal circumstances garaged at a personal residence while not in use and are not centrally fueled.

"Centrally fueled" means a fleet, or that part of a fleet, consisting of vehicles that are fueled 100% of the time at a location that is owned, operated or controlled by the covered fleet owner, or is under contract with the covered fleet owner. Any vehicle that is under normal circumstances garaged at a personal residence at night but that is, in fact, centrally fueled 100% of the time shall be considered to be centrally fueled for the purpose of this definition. The fact that one or more vehicles in a fleet is not centrally fueled does not exempt an entire fleet from this regulation. The fact that a vehicle is not centrally fueled does not mean it could not be centrally fueled in accordance with the definition of "capable of being centrally fueled." For purposes of this definition, "location" means any building, structure, facility, or installation (i) which is owned or operated by the same person, (ii) which is located on one or more contiguous properties, (iii) which is under the control of the same person, and (iv) which contains a fueling pump or pumps for the use of the vehicles owned or controlled by that person.

"Clean alternative fuel" means any fuel, including methanol, ethanol, other alcohols, reformulated gasoline, diesel, natural gases, liquefied petroleum gas, hydrogen, and electricity or other power source used in a clean-fuel vehicle that complies with the standards applicable to such vehicle under the federal Clean Air Act when using such fuel or other power source. In case of a flexible-fuel vehicle or dual-fuel vehicle, "clean alternative fuel" means only a fuel for which the vehicle was certified when operating on clean alternative fuel.

"Clean-fuel fleet vehicle" means a vehicle for which one of the following vehicle emission standards apply:

1. Low-emission vehicle standards.
2. Ultra low-emission vehicle standards.
3. Zero-emission vehicle standards.

For the above standards three weight classes are included: light-duty vehicles and trucks (LDV-LDT) under 6,000 pounds Gross Vehicle Weight Rating (GVWR); LDTs between 6,000 pounds and 8,500 pounds GVWR; and heavy-duty vehicles

(HDVs) over 8500 pounds GVWR but up to and including 26,000 GVWR. The standards apply to dedicated, dual or flexible fuel conversions of LDVs, LDTs and HDVs. Vehicle conversions shall meet the emissions standards of 40 CFR Part 88 and shall also meet the applicable emission standards and provisions of 40 CFR Part 86 to the extent they are not consistent with the requirements of 40 CFR Part 88 in addition to any other requirements imposed on such vehicles by the U.S. Environmental Protection Agency pursuant to the federal Clean Air Act.

"*Clean-fuel vehicle aftermarket conversion certifier*" means the business or entity that obtains a certificate of conformity with the clean-fuel vehicle standards and requirements for a vehicle or engine conversion configuration pursuant to the requirements of 40 CFR Parts 86 and 88.

"*Commerce*" means commerce between any place in the Commonwealth of Virginia and any place outside thereof.

"*Compliance document*" means any document, device, or symbol which contains statistical, quality control, or quality assurance information required by the department under this regulation for the purpose of evaluating the performance of the clean-fuel fleet program against state or federal requirements.

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

~~"*Consent agreement*" means an agreement that the owner or any other person will perform specific actions for the purpose of diminishing or abating the causes of air pollution or for the purpose of coming into compliance with this regulation, by mutual agreement of the owner or any other person and the board. A consent agreement may include agreed upon civil charges.~~

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

"*Control*" means:

1. When used to join all entities under common management, means any one or a combination of the following:
 - a. A third person or firm has equity ownership of 51% or more in each of two or more firms.
 - b. Two or more firms have common corporate officers, in whole or in substantial part, who are responsible for the day-to-day operation of the companies.

- c. One firm leases, operates, supervises, or in 51% or greater part owns equipment, facilities or both used by another person or firm, or has equity ownership of 51% or more of another firm.

2. When used to refer to the management of vehicles, means a person has the authority to decide who may operate a particular vehicle, and the purposes for which the vehicle may be operated.

3. When used to refer to the management of people, means a person has the authority to direct the activities of another person or employee in the precise situation, such as the work place.

"*Conventional fuel*" or "*conventional gasoline*" means any gasoline which has not been certified under 40 CFR 80.40.

"*Conversion configuration*" means any combination of vehicle or engine conversion hardware and a base vehicle of a specific engine family.

"*Covered fleet*" means any fleet of 10 or more motor vehicles which are owned or operated, leased or otherwise controlled by a single person and which can be centrally fueled. For purposes of this definition the term "*can be centrally fueled*" means the sum of those vehicles that are centrally fueled and those vehicles that are capable of being centrally fueled. All motor vehicles owned or operated, leased or otherwise controlled by such person, by any person who controls such person, by any person under common control with such person, and by any person under common control with such person shall be treated as owned by such person. Vehicle types described below as exempt from the program shall not be counted toward the 10-vehicle criterion.

The term "*covered fleet*" does not include:

1. Motor vehicles under normal circumstances garaged at a personal residence at night unless the vehicles are centrally fueled;
2. Motor vehicles held for lease or rental to the general public;
3. Motor vehicles held for sale by motor vehicle dealers (including dealer demonstration vehicles);
4. Vehicles used for motor vehicle manufacturer product evaluations or tests;
5. Law-enforcement and other emergency vehicles; or
6. Nonroad vehicles including farm and construction vehicles.

"*Covered fleet owner*" means a person who owns or operates a fleet of at least 10 covered fleet vehicles and that fleet is operated in a single region of the program area (even if the covered fleet vehicles are garaged outside of the region). For the purpose of determining the 10-vehicle criterion, the program region shall include the geographic area of the entire nonattainment area in areas where the program region is part of a multistate nonattainment area.

"*Covered fleet vehicle*" means only a motor vehicle which is:

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1. In a vehicle class for which emission standards prescribed in Part IV (9 VAC 5-120-140 et seq.) are applicable;
2. In a covered fleet which is centrally fueled or capable of being centrally fueled; and
3. Operated in a single region of the program area. For the purposes of this definition, the program region shall include the geographic area of the entire nonattainment area in areas where the program region is part of a multistate nonattainment area.

"Dealer" means any person who is engaged in the sale or the distribution of new motor vehicles or new motor vehicle engines to the ultimate purchaser.

"Dealer demonstration vehicle" means any vehicle that is operated by a motor vehicle dealer solely for the purpose of promoting motor vehicles sales, either on the sales lot or through other marketing or sales promotions, or for permitting potential purchasers to drive the vehicle for prepurchase or prelease evaluation. The term "dealer demonstration vehicle" does not include vehicles held by dealers for their own business purposes, such as shuttle buses, loaner vehicles, or other repair or business-related vehicles.

"Dedicated-fuel vehicle" means a vehicle which operates on one specific fuel other than gasoline, diesel, or fuel mixtures containing more than 15% by volume of gasoline.

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

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

"Dual-fuel" or "bi-fuel vehicle" means any motor vehicle capable of operating on two different fuels, but not a mixture of the fuels. A dual-fuel or bi-fuel vehicle (i) qualifies as a clean-fuel fleet vehicle when certified as meeting the standards prescribed in Part IV (9 VAC 5-120-140 et seq.) for both fuels and (ii) is eligible to earn credits as provided in Part V (9 VAC 5-120-160 et seq.) when the above requirements are met.

"Emergency vehicle" means any of the following:

1. Law-enforcement vehicles operated by or under the direction of a federal, state, or local law-enforcement officer (i) in the chase or apprehension of violators of the law or persons charged with or suspected of any such violation; or (ii) in response to an emergency call.
2. Regional detention center vehicles operated by or under the direction of a correctional officer responding to an emergency call or operating in an emergency situation.
3. Vehicles used to fight fire, including publicly-owned state forest warden vehicles, when traveling in response to a fire alarm or emergency call.
4. Ambulances, rescue or life-saving vehicles designed or used for the principal purpose of supplying resuscitation or emergency relief where human life is endangered. The term "emergency vehicle" does not

include tow trucks or other utility vehicles that may be authorized to exceed the speed limit in special circumstances.

"Emission standard" means any provision of Part IV (9 VAC 5-120-140 et seq.) which prescribes an emission limitation, or other emission control requirements for motor vehicle air pollution.

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

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

"Federal employee" means civilian or military personnel employed or stationed at a federal facility, including contractor personnel, for more than 60 days in a calendar year.

"Federal facility" means a facility or complex that is owned, leased, or operated by a U.S. government agency, including parking areas provided to federal employees at the facility.

"Federal tier 1" or "tier 1" means new gaseous and particulate tail pipe emission standards for use in certifying new light duty vehicles and light duty trucks, beginning with the 1994 model year and are completely phased-in by the 1996 model year, as promulgated by the U.S. Environmental Protection Agency.

"Financial hardship" means (i) the cost of a clean-fuel fleet vehicle of a type or model that meets the normal requirements and practices of the principal business of the fleet operator exceeds 25% of a nonclean-fuel fleet vehicle or (ii) the covered fleet operator's annual budget to own and operate that portion of the fleet covered by the requirements of this chapter increases by more than 1.0% in a budget year.

"Flexible-fuel vehicle" means any motor vehicle capable of operating on any mixture of two or more different fuels. A flexible-fuel vehicle (i) qualifies as a clean-fuel fleet vehicle when certified on any blend of two fuels as meeting the standards prescribed in Part IV (9 VAC 5-120-140 et seq.) and (ii) is eligible to earn credits as provided in Part V (9 VAC 5-120-160 et seq.) when the above requirements are met. Credits shall be allocated based on the less stringent certification standard.

~~"Formal hearing" means administrative proceedings other than those informational or factual inquiries of an informal nature provided in §§ 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.~~

"Gross vehicle weight rating (GVWR)" means the maximum recommended combined weight of the motor vehicle and its load as prescribed by the manufacturer and

expressed on a permanent identification label affixed to the motor vehicle.

"*Heavy-duty vehicle (HDV)*" means any affected motor vehicle (i) which is rated at more than 8,500 pounds GVWR or (ii) which has a vehicle curb weight of more than 6,000 pounds and has a basic frontal area in excess of 45 square feet.

"*Light HDV*" means any affected motor vehicle weighing more than 8,500 pounds and less than or equal to 19,500 pounds GVWR.

"*Medium HDV*" means any affected motor vehicle weighing more than 19,500 pounds and less than or equal to 26,000 pounds GVWR.

"*Heavy HDV*" means any affected motor vehicle weighing more than 26,000 pounds.

"*Held for lease or rental to the general public*" means, in reference to a motor vehicle, that it is owned or controlled primarily for the purpose of short-term rental or extended-term leasing (with or without maintenance), without a driver, pursuant to a contract.

"*Implementation plan*" means the plan, including any revision thereof, which has been submitted by the Commonwealth and approved in Subpart VV of 40 CFR Part 52 by the administrator under § 110 of the federal Clean Air Act (42 USC § 7410), or promulgated in Subpart VV of 40 CFR Part 52 by the administrator under § 110(c) of the federal Clean Air Act (42 USC § 7410(c)), or promulgated or approved by the administrator pursuant to regulations promulgated under § 301(d) (42 USC § 7601(d)) of the federal Clean Air Act and which implements the relevant requirements of the federal Clean Air Act.

"*Inherently low emissions vehicle (ILEV)*" means a LEV meeting ULEV NOX standards and having negligible evaporative emissions, as defined in 40 CFR 88.311-93. No dual-fuel or flexible-fuel vehicle shall be considered an ILEV unless it is certified to the applicable standard on all fuel types for which it is designed to operate.

"*Law-enforcement vehicle*" means any vehicle (i) which is primarily operated by a civilian or military police officer or sheriff, or by personnel of the Federal Bureau of Investigation, the Drug Enforcement Administration, or other agencies of the federal government, or by state highway patrols, or other similar law-enforcement agencies, and (ii) which is used for the purpose of law-enforcement activities including, but not limited to, chase, apprehension, surveillance, or patrol of people engaged in or potentially engaged in unlawful activities. For federal law-enforcement vehicles, the definition contained in Executive Order 12759, Section 11: Alternative Fueled Vehicle for the Federal Fleet, Guidance Document for Federal Agencies, shall apply.

The term "*law-enforcement vehicle*" does not include law-enforcement agency vehicles used primarily for administrative or staff purposes.

"*Light-duty truck (LDT)*" means any affected motor vehicle (i) which is rated at 6,000 pounds GVWR or less or is rated at 8,500 pounds GVWR or less and has a basic vehicle frontal

area of 45 square feet or less; and (ii) which meets any of the following criteria:

1. Designed primarily for purposes of transportation of property or is a derivation of such a vehicle.
2. Designed primarily for transportation of persons and has a capacity of more than 12 persons.
3. Equipped with special features enabling off-street or off-highway operation and use.

"*Light-duty vehicle (LDV)*" means an affected motor vehicle that is a passenger car or passenger car derivative capable of seating 12 passengers or less.

"*Loaded vehicle weight (LVW)*" means the weight of a vehicle's standard equipment and a nominally filled fuel tank plus 300 pounds.

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

"*Low emission vehicle (LEV)*" means a motor vehicle as defined in 42 USC § 7583.

"*Majority of travel*" means that more than 50% of the annual miles traveled by the vehicle are in one or more localities in a region of the program area. This can be determined by (i) record keeping, by vehicle, for all miles traveled inside and outside of the region which demonstrates that more than half of the annual miles traveled are within the region, or (ii) records of total customer base which show that more than 50% of the customers have a location inside of the region. Other methods may be accepted based on case-by-case determinations. For vehicles garaged within a region having the majority of travel outside the region boundaries, the above methods shall be used to determine whether such vehicles shall be subject to the program requirements.

"*Mobile Emission Reduction Credit*" or "*MERC*" means an air quality credit which is generated according to Part X (9 VAC 5-120-280 et seq.).

"*Model year (MY)*" means, for purposes of fleet purchase requirements, September 1 through August 31.

"*Motor vehicle*" means any vehicle as defined in § 46.2-100 of the Code of Virginia as a motor vehicle.

"*New covered fleet vehicle*" means a vehicle that has not been previously controlled by the current purchaser, regardless of the model year. All vehicles leased or purchased for a fleet are considered in determining the number of new covered fleet vehicles to be purchased by a covered fleet owner for purposes of calculating percentage purchase requirements.

The term "*new covered fleet vehicle*" does not include any:

1. Motor vehicle manufactured before the effective date of this regulation; and
2. Motor vehicle transferred (i) due to the purchase of a company not previously controlled by the purchaser, (ii) as part of an employee transfer, or (iii) for seasonal requirements not to exceed 120 days.

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"*New motor vehicle*" means, except with respect to vehicles or engines imported or offered for importation, a motor vehicle the equitable or legal title to which has never been transferred to an ultimate purchaser; and "new motor vehicle engine" means an engine in a new motor vehicle or a motor vehicle and engine the equitable or legal title to which has never been transferred to the ultimate purchaser; and with respect to imported vehicles or engines, such terms mean a motor vehicle and engine, respectively, manufactured after the effective date of a regulation issued under § 202 of the federal Clean Air Act (42 USC § 7521) which is applicable to such vehicle or engine (or which would be applicable to such vehicle or engine had it been manufactured for importation into the United States).

"*NMHC*" means nonmethane hydrocarbons contained in a gas sample, including all oxygenated organic gases containing five or fewer carbon atoms; aldehydes, ketones, alcohols, ethers, and all known alkanes, alkenes, alkynes and aromatics containing 12 or fewer carbon atoms.

"*NMOG*" means the total mass of nonmethane organic gas in the emissions of a vehicle including oxygenated and nonoxygenated hydrocarbon emissions.

"*Nonattainment area*" means, for any air pollutant, an area which is designated "nonattainment" with respect to that pollutant under the provisions of § 107(d) of the federal Clean Air Act (42 USC § 7407(d)).

"*Noncovered fleet*" means nine or less motor vehicles which are owned, operated, leased or rented for use by a common owner or have been consigned for maintenance to a common facility.

"*Noncovered vehicle*" means any vehicle that is exempt from this regulation.

"*Nonexempt fleet vehicle*" means and motor vehicle which is not specifically exempt under § 241(5) of the federal Clean Air Act (42 USC § 7581(5)).

"*Nonmethane hydrocarbon equivalent*" means the sum of the carbon mass emissions of nonoxygenated nonmethane hydrocarbons plus the carbon mass emissions of alcohols, aldehydes, or other organic compounds which are separately measured in accordance with the applicable test procedures of 40 CFR Part 86, expressed as gasoline-fueled vehicle nonmethane hydrocarbons. In the case of exhaust emissions, the hydrogen-to-carbon ratio of the equivalent hydrocarbon is 1.85:1. In the case of diurnal and hot soak emissions, the hydrogen-to-carbon ratios of the equivalent hydrocarbons are 2.33:1 and 2.2:1 respectively.

"*Original equipment manufacturer (OEM)*" means any person engaged in the manufacturing or assembling of new motor vehicles, new motor vehicle engines, or importing such vehicles or engines for resale, or who acts for and is under the control of any such person in connection with the distribution of new motor vehicles, or new motor vehicle engines, but shall not include any dealer with respect to new motor vehicles or new motor vehicle engines received by him in commerce. "*Original equipment manufacturer*" shall also include any business, individual, or entity that obtains a certificate of conformity with the clean-fuel vehicle standards and requirements for a vehicle or engine configuration

pursuant to the requirements of 40 CFR Parts 86 and 88 prior to placing a vehicle into service.

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

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

"*Owned or operated, leased, or otherwise controlled by such person*" means either of the following:

1. Such person holds the beneficial title to the vehicle.
2. Such person uses the vehicle for transportation purposes pursuant to a contract or similar arrangement, the term of such contract or similar arrangement is for a period of 120 days or more, and such person has control over the vehicle pursuant to the definition of control.

"*Partially covered fleet*" means a vehicle fleet that contains 10 or more covered fleet vehicles and includes noncovered vehicles.

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

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

"*Pollutant*" means any substance the presence of which in the outdoor atmosphere is or may be harmful or injurious to human health, welfare or safety, to animal or plant life, or to property, or which unreasonably interferes with the enjoyment by the people of life or property.

"*Program area*" means the territorial area encompassed by the boundaries of localities in the following designated regions:

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

~~"Public hearing" means an informal proceeding, similar to that provided for in § 9-6-14:7.1 of the Administrative Process Act, held to afford persons an opportunity to submit views and data relative to a matter on which a decision of the board is pending.~~

"Responsible official" means one of the following:

1. For a business entity, such as a corporation, association or cooperative:
 - a. The president, secretary, treasurer, or vice-president of the business entity in charge of a principal business function, or any other person who performs similar policy or decision making functions for the business entity, or
 - b. A duly authorized representative of such business entity if the representative is responsible for the overall operation of one or more operating facilities and has authority to sign documents and such authority has been assigned or delegated to such representative in accordance with procedures of the business entity and the delegation of authority is approved in advance by the board;
2. For a partnership or sole proprietorship: a general partner or the proprietor, respectively; or
3. For a municipality, state, federal, or other public agency: either a principal executive officer or ranking elected official. A principal executive officer of a federal agency includes the chief executive officer having responsibility for the overall operations of a principal geographic or operational unit of the agency.

"Test weight (TW)" means the vehicle curb weight added to the gross vehicle weight rating and divided by two.

"Transitional low emission vehicle (TLEV)" means a motor vehicle which has been certified as not exceeding the applicable standards prescribed in Part IV (9 VAC 5-120-140 et seq.).

"Transportation control measures (TCMs)" means those air pollution control measures which are directed at limiting the location and use of motor vehicles, including, but not limited to, the following: carpools, special bus lanes, rapid transit systems, commuter park and ride lots, bicycle lanes, signal system improvements, and employer commute options. TCMs do not include those control measures which are directed at limiting emissions directly from mobile sources, such as the following: federal motor vehicle emission standards (40 CFR Part 86), fuel volatility limits, air pollution control anti-tampering programs, clean-fuel fleet programs, and motor vehicle emissions inspection programs.

"Ultimate purchaser" means, with respect to any new motor vehicle or new motor vehicle engine, the first person who in good faith purchases such new motor vehicle or new engine for purposes other than resale.

"Ultra-low emissions vehicle (ULEV)" means a motor vehicle as defined in 42 USC § 7583.

"Under normal circumstances garaged at personal residence" means, in reference to a motor vehicle, that, when not in use, it is normally parked at the personal residence of

the individual who usually operates it, rather than at a central refueling, maintenance, or business location or any combination thereof.

"Used for motor vehicle manufacturer product evaluations and tests" means, in reference to a motor vehicle, that it is (i) owned and operated by a motor vehicle manufacturer or a motor vehicle component manufacturer, or (ii) owned or held by a university research department, independent testing laboratory or other such evaluation facility solely for the purpose of evaluating the performance of such vehicle for engineering, research and development, or quality control reasons.

The term "used for motor vehicle manufacturer product evaluations and tests" does not include any vehicles that are held by manufacturers for their own business purposes, such as:

1. Vehicles allocated to sales people for their business use,
2. Delivery vehicles, and
3. Other business related vehicles.

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

"Vehicle conversion" or "conversion" means a nonoriginal equipment manufacturer produced vehicle that is certified by the U.S. Environmental Protection Agency as meeting clean-fuel fleet vehicle standards.

"Vehicle curb weight" means actual manufacturer's estimated weight of the vehicle in operational status with all standard equipment and weight of fuel at normal tank capacity, and the weight of optional equipment computed in accordance with 40 CFR 86.082-24. Incomplete light-duty trucks shall have the curb weight specified by the manufacturer.

"Vehicle miles traveled" means the total miles traveled in one year as supported by records and documentation. Where no such documentation exists, the vehicle miles traveled shall be assumed to be 10,000 miles per year.

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

"Virginia Clean-Fuel Fleets Law" means §§ 46.2-1176, 46.2-1179.1, 46.2-1180 A, 46.2-1187, and 46.2-1187.1 of Title 46.2 of the Code of Virginia.

"Virginia Clean-Fuel Fleet Program" means the program for the regulation and purchase of clean-fuel fleet vehicles to reduce vehicle emissions as established by the Virginia Clean-Fuel Fleets Law.

~~"Virginia Register Act" means Chapter 1.2 (§ 9-6-15 et seq.) of Title 9 of the Code of Virginia.~~

"Virginia Voluntary Mobile Emission Credit Program" means the program in Part X (9 VAC 5-120-280 et seq.) for the generation of voluntary mobile emissions credits to receive early or additional air quality credits.

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"Zero emissions vehicle (ZEV)" means a motor vehicle as defined in 42 USC § 7583.

9 VAC 5-120-40. Hearings and proceedings. (Repealed.)

A. The primary hearings and proceedings associated with this regulation are as follows:

1. For the public hearing required before considering variances and amendments to and revocation of variances, the procedure for a public hearing shall conform to the provisions of 9 VAC 5-120-60.
2. For the informal proceeding used to make case decisions, the procedure for an informal proceeding shall conform to § 9-6.14:11 of the Administrative Process Act.
3. For the formal hearing for the enforcement or review of orders, licenses and permits and for the enforcement of regulations, the procedure for a formal hearing shall conform to § 9-6.14:12 of the Administrative Process Act.

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

1. Oral statements or testimony at any public hearing or informational proceeding will be stenographically or electronically recorded, and may be transcribed to written form.
2. Oral statements or testimony at any informal proceeding will be stenographically or electronically recorded, and may be transcribed to written form.
3. Formal hearings will be recorded by a court reporter, or electronically recorded for transcription to written form.

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

1. A copy of the transcript of a public hearing or informational proceeding, if transcribed, will be provided within a reasonable time to any person upon receipt of a written request and payment of the cost; if not transcribed, the additional cost of preparation will be paid by the person making the request.
2. A copy of the transcript of an informal proceeding, if transcribed, will be provided within a reasonable time to any person upon receipt of a written request and payment of cost; if not transcribed, the additional cost of preparation will be paid by the person making the request.
3. Any person desiring a copy of the transcript of a formal hearing recorded by a court reporter may purchase the copy directly from the court reporter; if not transcribed, the additional cost of preparation will be paid by the person making the request.

9 VAC 5-120-50. Appeal of case decisions. (Repealed.)

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

action is mailed or delivered to such owner or party requesting notification of such action.

B. In cases where the board fails to make a case decision, the fleet owner or other party significantly affected, may provide written notice to the board that a decision is due in accordance with §§ 9-6.14:11 and 9-6.14:12 of the Administrative Process Act. Appeals thereafter shall be in accordance with the Administrative Process Act.

C. Prior to any formal hearing, an informal fact finding shall be held pursuant to § 9-6.14:11 of the Administrative Process Act, unless the named party and the board consent to waive the informal proceeding and go directly to a formal hearing.

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

E. Judicial review of a final decision of the board shall be afforded in accordance with § 9-6.14:16 of the Administrative Process Act.

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

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

9 VAC 5-120-60. Variances. (Repealed.)

A. The board may in its discretion grant variances to any provision of this regulation after an investigation and public hearing. If a variance is appropriate, the board shall issue an order to this effect. Such order shall be subject to amendment or revocation at any time for the reasons specified in the order.

B. The board shall adopt variances and amend or revoke variances if warranted only after conducting a public hearing pursuant to public advertisement in at least one major newspaper of general circulation in the program area of the subject, date, time and place of the public hearing at least 30 days prior to the scheduled hearing. The hearing shall be conducted to give the public an opportunity to comment on the variance and the hearing record shall remain open for a minimum of 15 days after the hearing for the purpose of receiving additional public comment.

9 VAC 5-120-90. Procedural information and guidance. (Repealed.)

A. The department may adopt detailed policies and procedures which:

1. Request data and information in addition to and in amplification of the provisions of this regulation;
2. Specify the methods and means to determine compliance with applicable provisions of this regulation;
3. Set forth the format by which all data and information should be submitted; and
4. Set forth how the regulatory programs should be implemented.

~~B. In cases where this regulation specifies that procedures or methods shall be approved by, acceptable to or determined by the board or department, the fleet owner or any other affected person may request information and guidance concerning the proper procedures and methods and the board or the department shall furnish in writing such information on a case-by-case basis.~~

9 VAC 5-120-120. Availability of information. (Repealed.)

~~A. Fleet vehicle data in the possession of the department shall be available to the public without exception.~~

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

~~The department shall consider such records, reports or information, or particular part thereof, confidential in accordance with the Virginia Uniform Trade Secrets Act (§ 59.1-336 et seq. of the Code of Virginia) upon a showing satisfactory to the department by any fleet owner that such records, reports or information, or particular part thereof, meet the criteria in subsection C of this section and the station owner provides a certification to that effect signed by a responsible person for such owner. Such records, reports or information, or particular part thereof, may be disclosed, however, to other officers, employees or authorized representatives of the Commonwealth of Virginia and the U.S. Environmental Protection Agency concerned with carrying out the provisions of the Virginia Clean-Fuel Fleets Law and the federal Clean Air Act.~~

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

- ~~1. Information for which the fleet owner has been taking and will continue to take measures to protect confidentiality;~~
- ~~2. Information that has not been and is not presently reasonably obtainable without the consent of the fleet owner or motor vehicle owner by private citizens or other firms through legitimate means other than discovery based on a showing of special need in a judicial or quasi-judicial proceeding;~~
- ~~3. Information which is not publicly available from sources other than the fleet owner; and~~
- ~~4. Information the disclosure of which would cause substantial harm to the fleet owner.~~

9 VAC 5-150-20. 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 chapter, by mutual agreement of the owner or any other person and the DEQ.~~

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

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

~~"Control strategy period" means, with respect to particulate matter (PM₁₀), carbon monoxide (CO), nitrogen dioxide (NO₂), or any combination of the preceding, ozone precursors (volatile organic compounds and oxides of nitrogen), that period of time after EPA approves control strategy implementation plan revisions containing strategies for controlling PM₁₀, NO₂, CO, ozone, or any combination of the preceding as appropriate. This period ends when a state~~

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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 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 chapter. Unless specified otherwise in this chapter, orders shall only be issued after the appropriate hearing.~~

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

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

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

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

1. Submission to the U.S. Environmental Protection Agency of the relevant control strategy implementation plan revisions which have been endorsed by the Governor or a designee and have been subject to a public hearing, or
2. The date that the federal Clean Air Act requires relevant control strategy implementation plans to be submitted to the U.S. Environmental Protection Agency, provided the U.S. Environmental Protection Agency has notified the state, MPO, and USDOT of the state's failure to submit any such plans. The precise end of Phase II of the interim period is defined in 9 VAC 5-150-360.

"PM₁₀" means particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers as measured by the applicable reference method or an equivalent method.

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

"Protective finding" means a determination by the EPA that the control strategy contained in a submitted control strategy implementation plan revision would have been considered approvable with respect to requirements for emissions reductions if all committed measures had been submitted in enforceable form as required by § 110(a)(2)(A) of the federal Clean Air Act.

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

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

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

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

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

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

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

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

~~b. To owners who have failed to construct facilities in accordance with or have failed to comply with plans for~~

~~the control of air pollution submitted by them to, and approved by the board, to construct the facilities in accordance with or otherwise comply with the approved plan;~~

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

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

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

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

"Standard" means a national ambient air quality standard.

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

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

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

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

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

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

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

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

"Transitional period" means, with respect to a pollutant or pollutant precursor, that period of time which begins after submission to the U.S. Environmental Protection Agency of

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

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

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

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

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

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

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

"*VDOT*" means the Virginia Department of Transportation.

"*VDRPT*" means the Virginia Department of Rail and Public Transportation.

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

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

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

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

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

B. This chapter shall be adopted, amended, or repealed in accordance with the provisions of § 10.1-1308 of the Virginia

~~Air Pollution Control Law, Articles 1 and 2 of the Administrative Process Act and the Public Participation Procedures in Appendix E of Chapter 10 (9 VAC 5-10-10 et seq.).~~

~~C. Regulations, amendments and repeals shall become effective as provided in § 9-6.14:9.3 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 chapter as an exclusion under § 9-6.14:4.1 of the Administrative Process Act, but the chapter shall remain effective no longer than one year unless readopted following the requirements of subsection B of this section. The provisions of this subsection are not applicable to emergency special orders; the orders are subject to the provisions of subsection F of this section.~~

~~E. The Administrative Process Act and Virginia Register Act provide that state regulations may incorporate documents by reference. Throughout this chapter, documents of the types specified below have been incorporated by reference, and in some cases, they have been cross-referenced.~~

- ~~1. United States Code.~~
- ~~2. Code of Virginia.~~
- ~~3. Code of Federal Regulations.~~
- ~~4. Federal Register.~~
- ~~5. Technical and scientific reference documents.~~

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

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

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

- ~~1. The DEQ may negotiate to obtain compliance through administrative means. The means may be a variance, control program, consent agreement or any other mechanism that requires compliance by a specific date. The means and the associated date shall be determined on a case-by-case basis and shall not allow an unreasonable delay in compliance. In cases where the use of an administrative means is expected to result in compliance within 90 days or less, preferential consideration shall be given to the use of a consent agreement.~~
- ~~2. The DEQ may obtain compliance through legal means pursuant to § 10.1-1316 or § 10.1-1320 of the Virginia Air Pollution Control Law.~~

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

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

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

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

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

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

9 VAC 5-150-70. Hearings and proceedings. (Repealed.)

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

~~1. The public hearing and informational proceeding required before considering regulations, in accordance with § 10.1-1308 of the Virginia Air Pollution Control Law. The procedure for a public hearing and informational proceeding shall conform to § 9-6.14.7.1 of the Administrative Process Act, except as modified by §§ 10.1-1307 F and 10.1-1308 of the Virginia Air Pollution Control Law, and to the Public Participation Procedures in Appendix E of Chapter 10 (9 VAC 5-10-10 et seq.).~~

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

~~3. The informal proceeding used to make case decisions. The procedure for an informal proceeding~~

~~shall conform to § 9-6.14.11 of the Administrative Process Act.~~

~~4. The formal hearing for the enforcement or review of orders and for the enforcement of regulations, in accordance with §§ 10.1-1307 D and 10.1-1322 A of the Virginia Air Pollution Control Law. The procedure for a formal hearing shall conform to § 9-6.14.12 of the Administrative Process Act, except as modified by § 10.1-1307 D and F of the Virginia Air Pollution Control Law.~~

~~5. The special order hearing or emergency special order hearing for the enforcement or review of orders and for the enforcement of regulations, in accordance with § 10.1-1309 of the Virginia Pollution Control Law. The procedures for the special order hearing or emergency special order hearing shall conform to § 9-6.14.12 of the Administrative Process Act, except as modified by §§ 10.1-1307 F and 10.1-1309 of the Virginia Air Pollution Control Law.~~

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

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

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

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

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

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

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

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

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

9 VAC 5-150-90. Appeals. (Repealed.)

A. Any owner or other party significantly affected by any action of the board taken without a formal hearing, or by inaction of the board, may request a formal hearing in accordance with § 9-6.14.12 of the Administrative Process Act, provided a petition requesting the hearing is filed with the board. In cases involving actions of the board, the petition shall be filed within 30 days after notice of the action is mailed or delivered to the owner or party requesting notification of the action.

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

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

D. Judicial review of a final decision of the board shall be afforded in accordance with § 10.1-1318 of the Virginia Air Pollution Control Law and § 9-6.14.16 of the Administrative Process Act.

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

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

9 VAC 5-150-100. Availability of information. (Repealed.)

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

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

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

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

1. Information for which the owner has been taking and shall continue to take measures to protect confidentiality;
2. Information that has not been and is not presently reasonably obtainable without the owner's consent by private citizens or other firms through legitimate means other than discovery based on a showing of special need in a judicial or quasi-judicial proceeding;

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

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

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

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

9 VAC 5-160-20. 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

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nonattainment or maintenance area in a manner that would increase the frequency or severity of the new violation.

"*Caused by*" means, as used in the terms "*direct emissions*" and "*indirect emissions*," emissions that would not otherwise occur in the absence of the federal action.

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

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

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

"*Consultation*" means that one party confers with another identified party, provides all information to that party needed for meaningful input, and, prior to taking any action, considers the views of that party and responds to those views in a timely, substantive, written manner prior to any final decision on the action. The views and written response shall be made part of the record of any decision or action.

"*Control*" means the ability to regulate the emissions from the action. The ability to regulate may be demonstrated directly, such as through the use of emission control equipment, or indirectly, such as through the implementation of regulations or conditions on the nature of the activity that may be established in permits or approvals or by the design of the action. An example of control includes the ability of a federal agency to control the level of vehicle emissions by controlling the size of a parking facility and setting requirements for employee trip reductions.

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

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

"*Direct emissions*" means those emissions of a criteria pollutant or its precursors that are caused or initiated by the federal action and occur at the same time and place as the action.

"*Director*" means the Director of the Virginia Department of Environmental Quality.

"*Emergency*" means, in the context of 9 VAC 5-160-30, a situation where extremely quick action on the part of federal agencies involved is needed and where the timing of the federal activities makes it impractical to meet the requirements of this regulation, such as natural disasters like hurricanes or earthquakes, civil disturbances such as terrorist acts, and military mobilizations.

"*Emergency*" means, in the context of 9 VAC 5-160-40 and 9 VAC 5-160-50, a situation that immediately and unreasonably affects, or has the potential to immediately and unreasonably affect, public health, safety or welfare; the health of animal or plant life; or property, whether used for recreational, commercial, industrial, agricultural or other reasonable use.

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

"*Emissions budgets*" are those portions of the total allowable emissions defined in the applicable implementation plan for a certain date for the purpose of meeting reasonable further progress milestones or attainment or maintenance demonstrations, for any criteria pollutant or its precursors, specifically allocated by the applicable implementation plan to mobile sources, to any stationary source or class of stationary sources, to any federal action or any class of action, to any class of area sources, or to any subcategory of the emissions inventory. The allocation system shall be specific enough to assure meeting the criteria of § 176(c)(1)(B) of the federal Clean Air Act. An emissions budget may be expressed in terms of an annual period, a daily period, or other period established in the applicable implementation plan.

"*Emissions offsets*" means, for the purposes of 9 VAC 5-160-160, emissions reductions which are quantifiable, consistent with the applicable implementation plan attainment and reasonable future progress demonstrations, surplus to reductions required by, and credited to, other applicable implementation plan provisions, enforceable under both state and federal law, and permanent within the timeframe specified by that program. Emissions reductions intended to be achieved as emissions offsets under this regulation shall be monitored and enforced in a manner equivalent to that under the new source review program.

"*Emissions that a federal agency has a continuing program responsibility for*" means emissions that are specifically caused by an agency carrying out its authorities, and does not include emissions that occur due to subsequent activities, unless the activities are required by the federal agency. Where an agency, in performing its normal program responsibilities, takes actions itself or imposes conditions that result in air pollutant emissions by a nonfederal entity taking subsequent actions, the emissions are covered by the meaning of a continuing program responsibility.

"*EPA*" means the United States Environmental Protection Agency.

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

"Federal action" means any activity engaged in by a federal agency, or any activity that a federal agency supports in any way, provides financial assistance for, licenses, permits, or approves, other than activities related to transportation plans, programs, and projects developed, funded, or approved under Title 23 USC or the Federal Transit Act (49 USC § 1601 et seq.). Where the federal action is a permit, license, or other approval for some aspect of a nonfederal undertaking, the relevant action is the part, portion, or phase that the nonfederal undertaking that requires the federal permit, license, or approval.

"Federal agency" means a department, agency, or instrumentality of the federal government.

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

~~"Formal hearing" means board processes other than those informational or factual inquiries of an informal nature provided in §§ 9-6.14:7.1 and 9-6.14:11 of the Administrative Process Act and includes only:~~

- ~~1. Opportunity for private parties to submit factual proofs in formal proceedings as provided in § 9-6.14:8 of the Administrative Process Act in connection with the making of regulations, or~~
- ~~2. A similar right of private parties or requirement of public agencies as provided in § 9-6.14:12 of the Administrative Process Act in connection with case decisions.~~

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

"Indirect emissions" means those emissions of a criteria pollutant or its precursors that:

1. Are caused by the federal action, but may occur later in time, or may be farther removed in distance from the action itself but are still reasonably foreseeable; and
2. The federal agency can practicably control and will maintain control over due to a continuing program responsibility of the federal agency, including, but not limited to:
 - a. Traffic on or to, or stimulated or accommodated by, a proposed facility which is related to increases or other changes in the scale or timing of operations of the facility;
 - b. Emissions related to the activities of employees of contractors or federal employees;
 - c. Emissions related to employee commutation and similar programs to increase average vehicle

occupancy imposed on all employers of a certain size in the locality; and

- d. Emissions related to the activities of contractors or leaseholders that may be addressed by provisions that are usual and customary for contracts or leases or within the scope of contractual protection of the interests of the United States.

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

"Local air quality modeling analysis" means assessment of localized impacts on a scale smaller than the entire nonattainment or maintenance area, including, for example, congested roadway intersections and highways or transit terminals, which uses an air quality dispersion model to determine the effects of emissions on air quality.

"Maintenance area" means any geographic region of the United States previously designated as a nonattainment area and subsequently redesignated to attainment subject to the requirement to develop a maintenance plan.

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

"Metropolitan planning organization" means the organization designated as being responsible, together with the Commonwealth of Virginia, for conducting the continuing, cooperative, and comprehensive planning process under 23 USC 134 and 49 USC 1607.

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

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

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

"New source review program" means a program for the preconstruction review and permitting of new stationary sources or expansions to existing ones in accordance with regulations promulgated to implement the requirements of §§ 110 (a)(2)(C), 165 (relating to permits in prevention of significant deterioration areas) and 173 (relating to permits in nonattainment areas) of the federal Clean Air Act.

"Nonattainment area" means any geographic region of the United States which has been designated as nonattainment

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under § 107 of the federal Clean Air Act for any pollutant for which a national ambient air quality standard exists.

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

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

"PM₁₀" means particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers as measured by the applicable reference method or an equivalent method.

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

"Precursors of a criteria pollutant" means:

1. For ozone,
 - a. Nitrogen oxides, unless an area is exempted from nitrogen oxides requirements under § 182(f) of the federal Clean Air Act, and
 - b. Volatile organic compounds; and
2. For PM₁₀, those pollutants described in the PM₁₀ nonattainment area applicable implementation plan as significant contributors to the particulate matter levels.

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

"Reasonably foreseeable emissions" are projected future indirect emissions that are identified at the time the conformity determination is made; the location of the emissions is known to the extent adequate to determine the impact of the emissions; and the emissions are quantifiable, as described and documented by the federal agency based on its own information and after reviewing any information presented to the federal agency.

"Regional water or wastewater projects" means construction, operation, and maintenance of water or wastewater conveyances, water or wastewater treatment facilities, and water storage reservoirs which affect a large portion of a nonattainment or maintenance area.

"Regionally significant action" means a federal action for which the direct and indirect emissions of any pollutant represent 10% or more of a nonattainment or maintenance area's emissions inventory for that pollutant.

"Source" means any one or combination of the following: buildings, structures, facilities, installations, articles, machines, equipment, landcraft, watercraft, aircraft, or other contrivances which contribute, or may contribute, either

directly or indirectly to air pollution. Any activity by any person that contributes, or may contribute, either directly or indirectly to air pollution, including, but not limited to, open burning, generation of fugitive dust or emissions, and cleaning with abrasives or chemicals.

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

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

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

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

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

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

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

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

"Total of direct and indirect emissions" means the sum of direct and indirect emissions increases and decreases caused by the federal action, that is, the "net" emissions considering all direct and indirect emissions. Any emissions decreases used to reduce the total shall have already occurred or shall be enforceable under state and federal law. The portion of emissions which are exempt or presumed to conform under 9 VAC 5-160-30 are not included in the "total of direct and indirect emissions," except as provided in 9 VAC 5-160-30 M. The "total of direct and indirect emissions" includes emissions of criteria pollutants and emissions of precursors of criteria pollutants. Segmentation of projects for conformity analyses when emissions are reasonably foreseeable is prohibited.

~~"Variance" means the temporary exemption of a federal agency from this chapter, or a temporary change in this chapter as it applies to a federal agency.~~

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

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

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

9 VAC 5-160-50. Establishment of regulations and orders. (Repealed.)

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

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

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

D. If necessary in an emergency situation, the board may adopt, amend, or stay a regulation as an exclusion under § 9-6.14.4.1 of the Administrative Process Act, but the chapter shall remain effective no longer than one year unless readopted following the requirements of subsection B of this section. The provisions of this subsection are not applicable to emergency special orders; the orders are subject to the provisions of subsection F of this section.

E. The Administrative Process Act and Virginia Register Act provide that state regulations may incorporate documents by reference. Throughout this chapter, documents of the types specified below have been incorporated by reference, and in some cases, they have been cross referenced:

1. United States Code.
2. Code of Virginia.
3. Code of Federal Regulations.
4. Federal Register.
5. Technical and scientific reference documents.

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

9 VAC 5-160-60. Enforcement of regulations and orders. (Repealed.)

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

1. The department may negotiate to obtain compliance through administrative means. The means may be a

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

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

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

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

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

E. Case decisions regarding the enforcement of regulations and orders shall be made by the department or board. Case decisions of the department that are made pursuant to a formal hearing may be (i) regarded as a final decision of the board and appealed pursuant to 9 VAC 5-160-90 C; or (ii) may be directly considered by the board as provided in subsection F of this section, with the review being on the record and not de novo with opportunity for oral argument. Case decisions of the department that are made pursuant to an informal proceeding may be (i) appealed to the board pursuant to 9 VAC 5-160-90 A, or (ii) may be directly considered by the board according to subsection F of this section.

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

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

9 VAC 5-160-70. Hearings and proceedings. (Repealed.)

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

1. The public hearing and informational proceeding required before considering regulations, in accordance with § 10.1-1308 of the Virginia Air Pollution Control Law. The procedure for a public hearing and informational proceeding shall conform to § 9-6.14:7.1 of the Administrative Process Act, except as modified by §§ 10.1-1307 F and 10.1-1308 of the Virginia Air Pollution

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~~Control Law, and to the Public Participation Procedures in Appendix E of Chapter 10 (9 VAC 5-10-10 et seq.).~~

~~2. The public hearing required before considering variances and amendments to and revocation of variances, in accordance with § 10.1-1307 C of the Virginia Air Pollution Control Law. The procedure for a public hearing shall conform to § 10.1-1307 C of the Virginia Air Pollution Control Law and to the provisions of 9 VAC 5-160-80.~~

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

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

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

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

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

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

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

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

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

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

~~2. A copy of the transcript of an informal proceeding, if transcribed, will be provided within a reasonable time to~~

~~any person upon receipt of a written request and payment of cost; if not transcribed, the additional cost of preparation will be paid by the person making the request.~~

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

9 VAC 5-160-90. Appeals. (Repealed.)

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

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

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

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

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

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

9 VAC 5-160-100. Availability of information. (Repealed.)

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

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

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

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

- ~~1. Information for which the federal agency has been taking and will continue to take measures to protect confidentiality;~~
- ~~2. Information that has not been and is not presently reasonably obtainable without the federal agency's consent by private citizens or other firms through legitimate means other than discovery based on a showing of special need in a judicial or quasi-judicial proceeding;~~
- ~~3. Information which is not publicly available from sources other than the federal agency; and~~
- ~~4. Information the disclosure of which would cause substantial harm to the federal agency.~~

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

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

CHAPTER 170.
REGULATION FOR GENERAL ADMINISTRATION.

PART I.
DEFINITIONS.

9 VAC 5-170-10. Use of terms.

A. For the purpose of this chapter and subsequent amendments to it, of regulations of the board, or of orders issued by the board, the words or terms shall have the meanings given them in 9 VAC 5-170-20.

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

9 VAC 5-170-20. Terms defined.

"Administrative proceeding" means an informal fact finding or formal hearing.

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

"Air pollution" means the presence in the outdoor atmosphere of one or more substances which are or may be harmful or injurious to human health, welfare or safety; to animal or plant life; or to property; or which unreasonably interfere with the enjoyment by the people of life or property.

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

"Case decision" means any determination that a named party as a matter of past or present fact, or as a matter of threatened or contemplated private action, either is or is not, or may or may not be (i) in violation of any law or regulations, or (ii) in compliance with any existing requirement for obtaining or retaining a permit or other right or benefit. This phrase does not include notices of violations or inspection reports.

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

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

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

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

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

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

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

"Enabling law" or "enabling laws" means provisions of the Constitution and statutes of the Commonwealth of Virginia authorizing the board to make regulations or decide cases or containing procedural requirements therefor, including, but not limited to, the (i) Virginia Air Pollution Control Law and (ii) the Virginia Motor Vehicle Emissions Control Law.

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"Evidentiary hearing" means a formal proceeding which provides 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. Evidentiary hearings do not include the informational inquiries of an informal nature provided in § 9-6.14:7.1 of the Administrative Process Act.

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

"Formal hearing" means a formal proceeding which provides for the right of private parties to submit factual proofs as provided in § 9-6.14:12 of the Administrative Process Act in connection with case decisions. Formal hearings do not include the factual inquiries of an informal nature provided in § 9-6.14:11 of the Administrative Process Act.

"Informal fact finding" means an informal conference or consultation proceeding used to ascertain the fact basis for case decisions as provided in § 9-6.14:11 of the Administrative Process Act.

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

"Locality particularly affected" means a locality which bears an identified disproportionate material impact which would not be experienced by other localities.

"Order" means a decision or directive of the board, including special orders, emergency special orders, and other orders of all types, rendered for the purpose of diminishing or abating the causes of air pollution or enforcement of the regulations of the board. Unless specified otherwise in the Virginia Air Pollution Control Law or in the regulations of the board, orders shall be issued only after the appropriate administrative proceeding.

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

"Participatory approach" means a method for the use of (i) standing advisory committees, (ii) ad hoc advisory groups or panels, (iii) consultation with groups or individuals registering interest in working with the department, or (iv) a combination of these in the formation and development of regulations for department consideration. When an ad hoc advisory group is formed, the group shall include representatives of the regulated community and the general public. The decisions as to the membership of the group shall be at the discretion of the director.

"Party" means, for the purposes of Part VIII (9 VAC 5-170-190 et seq.) of this chapter, a person named in the record who actively participates in the administrative proceeding or offers comments through the public participation process. The term "party" also means the department.

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

"Pollutant" means a substance the presence of which in the outdoor atmosphere is or may be harmful or injurious to human health, welfare or safety, to animal or plant life, or to property, or which unreasonably interferes with the enjoyment by the people of life or property.

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

"Public meeting" means an informal proceeding conducted by the department in conjunction with the notice of intended regulatory action to afford people an opportunity to submit comments relative to intended regulatory actions.

"Public participation process" means any element of a board or department decision making process that involves the use of a public meeting, public hearing or evidentiary hearing.

"Regulations of the board" means regulations adopted by the State Air Pollution Control Board under a provision of the Code of Virginia.

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

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

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

- a. To owners who are permitting or causing air pollution to cease and desist from the pollution;
- b. To owners who have failed to construct facilities in accordance with or have failed to comply with plans for the control of air pollution submitted by them to, and approved by the board, to construct facilities in accordance with or otherwise comply with the approved plan;
- c. To owners who have violated or failed to comply with the terms and provisions of an order or directive issued by the board to comply with the terms and provisions;
- d. To owners who have contravened duly adopted and promulgated air quality standards and policies to cease and desist from the contravention and to comply with the air quality standards and policies; and
- e. To require an owner to comply with the provisions of the Virginia Air Pollution Control Law and a decision of the board; or

2. Under the provisions of § 10.1-1309.1 of the Code of Virginia, which require that an owner file with the board a

plan to abate, control, prevent, remove, or contain a substantial and imminent threat to public health or the environment that is reasonably likely to occur if the source ceases operations.

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

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

"Virginia Motor Vehicle Emissions Control Law" means Article 22 (§ 46.2-1176 et seq.) of Chapter 10 of Title 46.2 of the Code of Virginia.

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

PART II.
GENERAL PROVISIONS.

9 VAC 5-170-30. Applicability.

A. The provisions of this chapter, unless specified otherwise, shall apply throughout the Commonwealth of Virginia.

B. The provisions of this chapter, unless specified otherwise, shall apply in the administration of all regulations of the board to the extent not covered in a specific regulation of the board. In cases where the provisions of this chapter conflict with another regulation of the board, the provisions of the other regulation shall apply.

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

D. By the adoption of this chapter, the board confers upon the department the administrative, enforcement, and decision-making authority articulated in this chapter except as restricted in 9 VAC 5-170-220.

9 VAC 5-170-40. Hearings and proceedings.

A. The primary hearings and proceedings are as follows:

1. The public hearing required before considering regulations in accordance with § 10.1-1308 of the Virginia Air Pollution Control Law. The procedure for a public hearing shall conform to § 9-6.14:7.1 of the Administrative Process Act, except as modified by §§ 10.1-1307 F and 10.1-1308 of the Virginia Air Pollution Control Law, and to Part IV (9 VAC 5-170-90 et seq.) of this chapter.

2. The public hearing required before considering variances and amendments to and revocation of variances in accordance with § 10.1-1307 C of the Virginia Air Pollution Control Law. The procedure for a public hearing shall conform to § 10.1-1307 C of the Virginia Air Pollution Control Law and to the provisions of 9 VAC 5-170-140.

3. The informal fact finding used to negotiate consent agreements and consent orders and to make case

decisions. The procedure for an informal fact finding shall conform to § 9-6.14:11 of the Administrative Process Act.

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

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

6. The evidentiary hearing for the making of regulations. The procedure for this type of hearing shall conform to § 9-6.14:8 of the Administrative Process Act.

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

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

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

2. Oral statements or testimony at an informal fact finding will be stenographically or electronically recorded, and may be transcribed to written form.

3. Formal hearings and evidentiary hearings will be recorded by a court reporter or electronically recorded for transcription to written form.

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

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

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

3. Anyone desiring a copy of the transcript of a formal hearing or evidentiary hearing recorded by a court reporter may purchase the copy directly from the court reporter; if not transcribed, the additional cost of

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preparation will be paid by the person making the request.

9 VAC 5-170-50. Policy and procedural information and guidance.

A. The director may adopt detailed policies and procedures which:

1. Request data and information in addition to and in amplification of the provisions of the regulations of the board;
2. Specify the methods and means that may be used to determine compliance with applicable provisions of the regulations of the board;
3. Set forth the format by which all data and information should be submitted; and
4. Set forth how the regulatory programs should be implemented.

B. In cases where the regulations of the board specify that procedures or methods shall be approved by, acceptable to or determined by the board or other similar phrasing, the owner may request information and guidance concerning the proper procedures and methods, and the director shall furnish in writing such information on a case-by-case basis.

9 VAC 5-170-60. Availability of information.

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

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

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

1. Information for which the owner has been taking and will continue to take measures to protect confidentiality;
2. Information that has not been and is not presently reasonably obtainable without the owner's consent by private citizens or other firms through legitimate means other than discovery based on a showing of special need in a judicial or quasi-judicial proceeding;
3. Information which is not publicly available from sources other than the owner; and

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

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

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

9 VAC 5-170-70. Evaluation of regulation.

A. Prior to [three years after effective date of regulation], the department shall perform an analysis on this chapter and provide the board with a report on the results. The analysis shall include (i) the purpose and need for the chapter, (ii) alternatives which would achieve the stated purpose of this chapter in a less burdensome and less intrusive manner, (iii) an assessment of the effectiveness of this chapter, (iv) the results of a review of current state and federal statutory and regulatory requirements, including identification and justification of requirements of this chapter which are more stringent than federal requirements, and (v) the results of a review as to whether this chapter is clearly written and easily understandable by affected entities.

B. Upon review of the department's analysis, the board shall confirm the need to (i) continue this chapter without amendment, (ii) repeal this chapter, or (iii) amend this chapter. If the board's decision is to repeal or amend this chapter, the board shall authorize the department to initiate the applicable regulatory process to carry out the decision of the board.

PART III. REGULATIONS AND ORDERS.

9 VAC 5-170-80. Establishment of regulations and orders.

A. Regulations of the board shall be adopted, amended or repealed in accordance with the provisions of the enabling laws, Articles 1 (§ 9-6.14:4.1 et seq.) and 2 (§ 9-6.14:7.1 et seq.) of the Administrative Process Act, and Part IV (9 VAC 5-170-90 et seq.) of this chapter.

B. Regulations, amendments, and repeals shall become effective as provided in § 9-6.14:9.3 of the Administrative Process Act.

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

orders are subject to the provisions of subsection E of this section.

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

1. United States Code.
2. Code of Virginia.
3. Code of Federal Regulations.
4. Federal Register.
5. Technical and scientific reference documents.

Additional information on specific documents which have been incorporated by reference and on the availability of these documents may be found in the specific regulations of the board which incorporate the documents.

E. Orders, special orders, and emergency special orders may be issued pursuant to § 10.1-1307 D, § 10.1-1309, or § 10.1-1309.1 of the Virginia Air Pollution Control Law.

PART IV. PUBLIC PARTICIPATION IN REGULATION DEVELOPMENT.

9 VAC 5-170-90. General provisions.

A. The procedures in 9 VAC 5-170-100 shall be used for soliciting the input of interested people in the formation and development, amendment or repeal of regulations in accordance with the Administrative Process Act. This part does not apply to regulations exempted from the provisions of the Administrative Process Act (§ 9-6.14:4.1 A and B) or excluded from the operation of Article 2 of the Administrative Process Act (§ 9-6.14:4.1 C).

B. The failure of a person to receive a notice or copies of a document provided under these procedures shall not affect the validity of a regulation.

C. Anyone may petition the board for the adoption, amendment or repeal of a regulation. The petition, at a minimum, shall contain the following information:

1. Name of petitioner.
2. Petitioner's mailing address and telephone number.
3. Petitioner's interest in the proposed action.
4. Recommended regulation or addition, deletion or amendment to a specific regulation or regulations.
5. Statement of need and justification for the proposed action.
6. Statement of impact on the petitioner and other affected people.
7. Supporting documents, as applicable.

The board shall provide a written response to a petition within 180 days from the date the petition was received.

9 VAC 5-170-100. Public participation procedures.

A. The department shall establish and maintain a list consisting of people expressing an interest in the adoption, amendment or repeal of regulations. Anyone wishing to be placed on the list may do so by writing the department. In addition, the department, at its discretion, may add to the list any person, organization, or publication it believes will be interested in participating in the promulgation of regulations. Individuals and organizations may be periodically requested to indicate their desire to continue to receive documents or be deleted from a list. Individuals and organizations may be deleted from the list at the request of the individual and organization, or at the discretion of the department when mail is returned as undeliverable.

B. Whenever the board so directs or upon its own initiative, the department may commence the regulation adoption process and proceed to draft a proposal according to these procedures.

C. The department shall use the participatory approach to assist in the development of the proposal or use one of the following alternatives:

1. Proceed without using the participatory approach if the board specifically authorizes the department to proceed without using the participatory approach.

2. Include in the notice of intended regulatory action a statement inviting comment on whether the department should use the participatory approach to assist the department in the development of the proposal. If the department receives written responses from at least five people during the associated comment period indicating that the department should use the participatory approach, the department will use the participatory approach requested. Should different approaches be requested, the director shall determine the specific approach to be used.

D. The department shall issue a notice of intended regulatory action whenever it considers the adoption, amendment or repeal of a regulation.

1. The notice of intended regulatory action shall include at least the following:

- a. A description of the subject matter of the planned regulation.
- b. A description of the intent of the planned regulation.
- c. A brief statement as to the need for regulatory action.
- d. A brief description of alternatives available, if any, to meet the need.
- e. A request for comments on the intended regulatory action, to include ideas to assist the department in the development of a proposal.
- f. A request for comments on the costs and benefits of the stated alternatives or other alternatives.
- g. A statement of the department's intent to hold at least one public hearing on the proposed regulation

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after it is published in the Virginia Register of Regulations.

h. A statement inviting comment on whether the department should use the participatory approach to assist the department in the development of a proposal. Including this statement shall be required only when the department makes a decision to pursue the alternative provided in subdivision C 2 of this section.

2. The department shall hold at least one public meeting whenever it considers the adoption, amendment or repeal of a regulation unless the board specifically authorizes the department to proceed without holding a public meeting. In those cases where a public meeting will be held, the notice of intended regulatory action shall also include the date, not to be less than 30 days after publication in the Virginia Register of Regulations, time, and place of the public meeting.

3. The public comment period for notices of intended regulatory action under this section shall be no less than 30 days after publication of the notice of intended regulatory action in the Virginia Register of Regulations.

E. The department shall disseminate the notice of intended regulatory action to the public via the following:

1. Distribution to the Registrar of Regulations for publication in the Virginia Register of Regulations.

2. Distribution by mail to people on the list established under subsection A of this section.

F. After consideration of public input, the department may complete the draft proposed regulation and the supporting documentation required for review. If the participatory approach is being used, the draft proposed regulation shall be developed in consultation with the participants. A summary or copies of the comments received in response to the notice of intended regulatory action shall be distributed to the participants during the development of the draft proposed regulation. This summary or copies of the comments received in response to the notice of intended regulatory action shall also be distributed to the board.

G. Upon approval of the draft proposed regulation by the board, the department shall publish a notice of public comment and the proposal for public comment.

H. The notice of public comment shall include at least the following:

1. The notice of the opportunity to comment on the proposed regulation, the location where copies of the proposal may be obtained, and the name, address, and telephone number of the individual to contact for further information about the proposed regulation.

2. A request for comments on the costs and benefits of the proposal.

3. The identity of a locality particularly affected by the proposed regulation.

4. A statement that an analysis of the following has been conducted by the department and is available to the public upon request:

a. A statement of purpose: the rationale or justification for the new provisions of the regulation, from the standpoint of the public's health, safety or welfare.

b. A statement of estimated impact:

(1) Projected number and types of regulated entities or people affected.

(2) Projected cost, expressed as a dollar figure or range, to regulated entities (and to the public, if applicable) for implementation and compliance. In those instances where the department is unable to quantify projected costs, it shall offer qualitative data, if possible, to help define the impact of the proposed regulation. Qualitative data shall include, if possible, an example or examples of the impact of the proposed regulation on a typical member or members of the regulated community.

(3) Projected cost to the department for implementation and enforcement.

(4) Beneficial impact the regulation is designed to produce.

c. An explanation of need for the proposed regulation and potential consequences that may result in the absence of the regulation.

d. An estimate of the impact of the proposed regulation upon small businesses, as defined in § 9-199 of the Code of Virginia, or organizations in Virginia.

e. A description of provisions of the proposed regulation which are more restrictive than applicable federal requirements together with the reason why the more restrictive provisions are needed.

f. A discussion of alternative approaches that were considered to meet the need the proposed regulation addresses, and a statement as to whether the department believes that the proposed regulation is the least burdensome alternative to the regulated entities that fully meets the stated purpose of the proposed regulation.

g. A schedule setting forth when, after the effective date of the regulation, the department will evaluate it for effectiveness and continued need.

5. The date, time, and place of at least one public hearing held in accordance with § 9-6.14:7.1 of the Administrative Process Act to receive comments on the proposed regulation. The public hearing may be held at any time during the public comment period and, whenever practicable, no less than 15 days prior to the close of the public comment period. The public hearing may be held in the location which the department determines will best facilitate input from interested people. (In those cases in which the department elects

to conduct an evidentiary hearing, the notice shall indicate that the hearing will be held in accordance with § 9-6.14.8 of the Administrative Process Act.)

I. The public comment period shall close no less than 60 days after publication of the notice of public comment in the Virginia Register of Regulations.

J. The department shall disseminate the notice of public comment to the public via the following:

1. Distribution to the Registrar of Regulations for publication in the Virginia Register of Regulations.
2. Distribution by mail to people on the list established under subsection A of this section.

K. The department shall prepare a summary of comments received in response to the notice of public comment and the department's response to the comments received. The department shall send a draft of the summary of comments to public commenters on the proposed regulation at least five days before final adoption of the regulation. The department shall submit the summary and the department response and, if requested, submit the full comments to the board. The summary, the department response, and the comments shall become a part of the department file and after final action on the regulation by the board, made available, upon request, to interested people.

L. If the department determines that the process to adopt, amend or repeal a regulation should be terminated after approval of the draft proposed regulation by the board, the department shall present to the board for its consideration a recommendation and rationale for the withdrawal of the proposed regulation.

M. Completion of the remaining steps in the adoption process shall be carried out in accordance with the Administrative Process Act.

9 VAC 5-170-110. Transition.

A. Regulatory actions for which a notice of intended regulatory action has been published in the Virginia Register of Regulations prior to May 16, 1994, shall be processed in accordance with Appendix E of VR 120-01 as revised by the emergency amendments in effect from June 29, 1993, to June 28, 1994, unless sooner modified or vacated or superseded by permanent regulations.

B. This part when effective shall supersede and repeal Appendix E of VR 120-01 as revised by the emergency amendments which became effective on June 29, 1993. Regulatory actions for which a notice of intended regulatory action has not been published in the Virginia Register of Regulations prior to May 16, 1994, shall be processed in accordance with this part.

**PART V.
ENFORCEMENT.**

9 VAC 5-170-120. Enforcement of regulations, permits, and orders.

A. As provided in § 10.1-1186(10) of the Code of Virginia, the director has independent authority to compel compliance

with the Virginia Air Pollution Control Law, regulations of the board, permits, certifications, and case decisions. However, whenever the director has reason to believe that a violation of any provision of the regulations of the board or a permit or order has occurred, he may serve notice on the suspected violator on behalf of the board, citing the applicable provision of the regulations of the board, permit, or order and the facts on which the suspected violation is based. When acting on behalf of the board, the director may obtain compliance through one of the enforcement proceedings provided in subdivisions 1 and 2 of this subsection. Thus, the director may act on his own independent authority or on the authority of the board as delegated to him by this chapter.

1. The director may obtain compliance through administrative means. These means may be a variance, order, special order, control program, consent agreement, or another mechanism that requires compliance by a specific date. The means and the associated date shall be determined on a case-by-case basis and shall not allow an unreasonable delay in compliance.

2. The director may obtain compliance through legal means pursuant to § 10.1-1307.3, § 10.1-1316, or § 10.1-1320 of the Virginia Air Pollution Control Law.

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

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

D. Case decisions regarding the enforcement of regulations, orders, and permits shall be made by the director or board. Case decisions of the director that are made pursuant to a formal hearing (i) may be regarded as a final decision of the board and appealed pursuant to 9 VAC 5-170-200 D or (ii) may be directly considered by the board as provided in 9 VAC 5-170-200 G, with the review being on the record and not de novo with opportunity for oral argument. Case decisions of the director that are made pursuant to an informal fact finding (i) may be appealed to the board pursuant to 9 VAC 5-170-200 A or (ii) may be directly considered by the board according to 9 VAC 5-170-200 G.

9 VAC 5-170-130. Right of entry.

A. Whenever it is necessary for the purposes of the regulations of the board, the board or an agent authorized by the board may at reasonable times enter an establishment or upon property, public or private, for the purpose of obtaining information or conducting surveys or investigation as authorized by § 10.1-1315 or § 46.2-1187.1 of the Code of Virginia.

B. Upon the procurement of an inspection warrant signed by a judge of the circuit court whose territorial jurisdiction encompasses the property or premises to be inspected or entered, the board or an agent authorized by the board may

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enter any property or premises and conduct any inspection, testing, or collection of samples for testing required or authorized by state law or regulation in connection with the manufacturing, emitting, or presence of a toxic substance, as authorized by § 19.2-393 et seq. of the Code of Virginia.

PART VI. BOARD ACTIONS.

9 VAC 5-170-140. Variances.

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

B. The board shall adopt variances and amend or revoke variances if warranted only after conducting a public hearing pursuant to public advertisement in at least one major newspaper of general circulation in the affected area of the subject, date, time, and place of the public hearing at least 30 days prior to the scheduled hearing.

C. The public participation procedures of § 10.1-1307.01 of the Virginia Air Pollution Control Law shall be followed in the consideration of variances.

9 VAC 5-170-150. Local ordinances.

A. Local ordinances shall be established and approved as follows:

1. The governing body of any locality proposing to adopt an ordinance, or an amendment to an existing ordinance, relating to air pollution shall first obtain the approval of the board as to the provisions of the ordinance or amendment. Except for an ordinance or amendment pertaining solely to open burning, the board shall not approve an ordinance or amendment which regulates an emission source that is required to register with the board or to obtain a permit pursuant to Virginia Air Pollution Control Law and the regulations of the board. The board in approving local ordinances will consider, but will not be limited to, the following criteria:

a. The local ordinance shall provide for intergovernmental cooperation and exchange of information.

b. Adequate local resources will be committed to enforcing the proposed local ordinance.

c. The provisions of the local ordinance shall be as strict as state regulations, except as provided for leaf burning in § 10.1-1308 of the Virginia Air Pollution Control Law.

2. Approval of a local ordinance shall be withdrawn if the board determines that the local ordinance is less strict than state regulations, or if the locality fails to enforce the ordinance.

3. If a local ordinance must be amended to conform to an amendment to state regulations, the local amendment

will be made within six months. If the necessary amendment is not made within six months, the board may rescind its approval of the ordinance.

B. Local ordinances shall provide for reporting information required by the board to fulfill its responsibilities under the Virginia Air Pollution Control Law and the federal Clean Air Act. Reports shall include, but are not limited to monitoring data, surveillance programs, procedures for investigation of complaints, variance hearings, and status of control programs and permits.

C. Local ordinances are a supplement to state regulations. Provisions of local ordinances which have been approved by the board and are more strict than state regulations shall take precedence over state regulations within the respective locality. It is the intention of the board to coordinate activities among the enforcement officers of the various localities in the enforcement of local ordinances and state regulations. The board will also provide technical and other assistance to local authorities in the investigation and study of air pollution problems, and in the enforcement of local ordinances and state regulations. The board emphasizes its intention to assist in the local enforcement of local ordinances. If a locality fails to enforce its own ordinance, the board reserves the right to enforce state regulations.

D. A local governing body may grant a variance to a provision of its air pollution control ordinance provided that:

1. A public hearing is held prior to granting the variance;

2. The public is notified of the application for a variance by advertisement in at least one major newspaper of general circulation and a major newspaper of general circulation in the state capital area in the affected locality at least 30 days prior to the date of the public hearing; and

3. The variance does not permit an owner or other person to take action that would result in a violation of a provision of state regulations unless a variance is granted by the board. The public hearings required for the variances to the local ordinance and state regulations may be conducted jointly as one proceeding.

E. This section shall not apply to the approval of local ordinances concerning open burning established pursuant to 9 VAC 5-40-5640 D.

9 VAC 5-170-160. Conditions on approvals.

A. The board may impose conditions upon permits and other approvals which may be necessary to carry out the policy of the Virginia Air Pollution Control Law, and which are consistent with the regulations of the board. Except as otherwise specified, nothing in this chapter shall be understood to limit the power of the board in this regard. If the owner or other person fails to adhere to the conditions, the board may automatically cancel the permit or approvals. This section shall apply, but not be limited, to approval of variances, approval of control programs, and granting of permits.

B. An owner may consider a condition imposed by the board as a denial of the requested approval or permit, which

shall entitle the applicant to appeal the decision of the board pursuant to 9 VAC 5-170-200.

9 VAC 5-170-170. Considerations for approval actions.

Pursuant to the provisions of § 10.1-1307 E of the Virginia Air Pollution Control Law, the board, in making regulations and in approving variances, control programs, or permits, shall consider facts and circumstances relevant to the reasonableness of the activity involved and the regulations proposed to control it, including:

1. The character and degree of injury to, or interference with safety, health, or the reasonable use of property which is caused or threatened to be caused;
2. The social and economic value of the activity involved;
3. The suitability of the activity to the area in which it is located; and
4. The scientific and economic practicality of reducing or eliminating the discharge resulting from the activity.

**PART VII.
DELEGATION OF AUTHORITY.**

9 VAC 5-170-180. General provisions.

A. In accordance with the Virginia Air Pollution Control Law and the Administrative Process Act, the board confers upon the director the administrative, enforcement, and decision-making powers as are set forth in 9 VAC 5-170-220. The board reserves the right to exercise its authority in any of the following delegated powers should it choose to do so.

B. The director is delegated the authority to act within the scope of the Virginia Air Pollution Control Law and the regulations of the board and for the board when it is not in session except for the authority to:

1. Control and regulate the internal affairs of the board;
2. Approve proposed regulations for public comment and adopt final regulations;
3. Grant variances to regulations;
4. Approve amendments to a policy or procedure approved by the board except as may be otherwise provided;
5. Appoint people to the State Advisory Board on Air Pollution;
6. Create local air pollution control districts and appoint representatives; and
7. Approve local ordinances except those that concern open burning as provided in 9 VAC 5-40-5640 D.

C. The board may exercise its authority for direct consideration of permit applications in cases where one or more of the following issues is involved in the evaluation of the application: (i) the stationary source generates public concern relating to air quality issues; (ii) the stationary source is precedent setting; or (iii) the stationary source is a major

stationary source or major modification expected to impact on a nonattainment area or class I area.

D. The director shall notify the board chairman of permit applications falling within the categories specified in subsection C of this section and the board chairman shall advise the director of those permits the board wishes to consider directly.

**PART VIII.
APPEAL OF BOARD ACTIONS.**

9 VAC 5-170-190. General provisions.

(Reserved.)

9 VAC 5-170-200. Appeal procedures.

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

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

C. A decision of the board resulting from a formal hearing shall constitute the final decision of the board.

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

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

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

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

H. The submittal of the request by itself shall not constitute a stay of decision. A stay of decision shall be sought through appropriate legal channels.

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

VA.R. Doc. Nos. R97-391, R97-389, R97-392, R97-388, R97-390, R97-387, and R97-386; Filed April 8, 1997, 4:01 p.m.

Proposed Regulations

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

REPROPOSED

EDITOR'S NOTICE: The Department of Medical Assistance Services has proposed additional changes to the following regulations from the amendments published in 12:23 VA.R. 3113-3124 August 15, 1996. Differences between the proposed and repropoed regulations are shown in brackets. The initial public comment period ended October 4, 1996; however, the agency is soliciting comments on the repropoed regulations for an additional 30-day period beginning April 28, 1997, and ending May 28, 1997.

Title of Regulation: 12 VAC 30-120-70 et seq. Part II: Home and Community Based Services for Technology Assisted Individuals (amending 12 VAC 30-120-70 through 12 VAC 30-120-120; adding 12 VAC 30-120-115; repealing 12 VAC 30-120-130).

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

Public Hearing Date: N/A -- Public comments may be submitted until May 28, 1997.

(See Calendar of Events section for additional information)

Basis and Authority: Section 32.1-324 of the Code of Virginia grants to the Director of the Department of Medical Assistance Services (DMAS) the authority to administer and amend the Plan for Medical Assistance in lieu of board action pursuant to the board's requirements. Sections 9-6.14:7.1 and 9-6.14:9.1 of the Administrative Process Act provide for this agency's promulgation of proposed regulations subject to the Governor's review.

Purpose: The purpose of this revised proposal is to amend the Technology Assisted Waiver Program to update the definition of those eligible to receive services and to conform the financial eligibility criteria to correspond to the current HCFA interpretation. Also, this revised package addresses comments made to the prior proposed regulation as well as addressing problems identified since the initial comment period.

Summary and Analysis: The previous proposed regulations were filed with the Registrar of Regulations, on July 2, 1996, for publication in the August 5, 1996, Virginia Register of Regulations. These regulations underwent the full Article 2 comment period from August 5 through October 4, 1996. Due to the additional substantive changes which are needed in these regulations, DMAS is repropoing them for an additional period of public comment. In addition, DMAS recognizes the proposal of Senate Bill 1058 in the 1997 General Assembly but intends to await the outcome of legislative and gubernatorial action before initiating any waiver modification proposal to the federal government. In anticipation of receiving gubernatorial approval, DMAS is proposing to remove the requirement from the regulations concerning 90 days of institutionalization (see Chapter 359, 1997 Acts of Assembly).

The Technology Assisted Waiver Program provides home and community-based services (care coordination and private

duty nursing) to recipients who are dependent on a technology as a substitute for a vital function, e.g., ventilators, trachiestomies, and tube feedings. The waiver services allow recipients to remain in their homes rather than being institutionalized at higher costs. The changes to the regulation allow DMAS to ensure that this service is only offered to persons who meet all criteria for service while ensuring, in so far as is appropriate, the physical safety of these medically fragile individuals. This will allow DMAS to focus the available limited dollars to those in need of home nursing and case management who are also physically best suited to receipt of services in the home environment.

A. **Definition of Persons Eligible to Receive Services.** One of the criteria used to determine eligibility for technology-assisted waiver services is the need for substantial and ongoing skilled nursing. When waiver services are requested, it is relatively easy to determine if a child or an adult is dependent on a technology for life support. However, deciding whether the child or adult needs substantial and ongoing nursing care has historically been determined using subjective impressions. The use of an objective scoring tool to determine if a recipient needs substantial and ongoing skilled nursing services will ensure that such requests are consistently evaluated.

The Technology Assisted Waiver Program was originally developed for coverage of children under the age of 21. In 1991, the Technology Assisted Waiver was amended to allow persons who are eligible under the waiver prior to their 21st birthday to remain in the program and continue to receive services even after they turn 21, as long as they meet the medical and target population criteria. HCFA approved this change to the waiver; this regulatory change will bring the regulations into agreement with the waiver as HCFA has approved it.

In August 1995, HCFA approved an additional amendment that allows persons over the age of 21, who are currently residing in specialized care nursing facilities, to be admitted to the Technology Assisted Waiver when the cost of their home care is less than or equal to the cost of their continued care in the nursing facility. These changes will allow disabled adults to transfer to more cost-effective home-based services. For young adults, the opportunity to reside in the community rather than a nursing facility is desirable to maintain maximum function, participate in rehabilitative services, and become a productive adult member of society.

Citizens and advocacy groups expressed their concerns to DMAS about the requirement that persons, over the age of 21, requesting waiver services must have resided in a nursing facility, or a higher level institution, reimbursed by Medicaid, for a minimum of 90 days prior to admission to waiver services. Meeting the 90-day requirement was meant to ensure that the technology dependent patient meets the federal individual cost-effectiveness standard. Due to the concerns raised by the interested parties who commented on this revised regulation, DMAS is proposing to remove this requirement from the proposed regulation.

B. **Financial Eligibility Criteria.** In 1994, HCFA issued revised preprinted waiver form pages to the states. These wording changes have been incorporated into the proposed regulation

package and do not affect the type or number of persons eligible to receive services through the waiver.

C. Changes to the Revised Proposed Regulations. Individuals who are admitted to this waiver service before their 21st birthday have their cost of care compared to inpatient hospital costs because, historically, there has been a limited number of nursing facility specialized care providers which rendered pediatric care. Individuals who are admitted on or after their 21st birthday have their cost of care compared to nursing facility specialized care services. Those individuals who entered service before their 21st birthday (under the hospital cost standard) and remain in this service after their 21st birthday, will be required to meet the fiscally lower, nursing facility specialized care standard.

The revisions to this proposed regulation propose that adults have a choice of two medical need standards to meet in order to qualify for this home based care. These standards reflect the medical criteria for technology dependent services for adults in the specialized care program. Children will have their choice of three ways to qualify. (12 VAC 30-120-80)

This revised proposed regulation proposes to define congregate living arrangements. The adult who lives in such a living arrangement must have a primary caregiver who is expected to provide a minimum of eight hours per 24-hour period of care to the adult. Adults who do not live in congregate arrangements may be required, also due to the cost effectiveness standard, to receive more than eight hours of care from their primary caregiver. A companion policy to this policy also being newly proposed in this revised package is that DMAS will limit its coverage of private duty nursing to a maximum of 16 hours in a 24-hour period, without regard to the number of adults who reside together in the congregate arrangement.

This revised proposed regulation merely adds the existing service limit (360 hours in a 12-month period) for respite care which will be approved for use to the end of the regulation. Also, environmental modifications which may be necessary under this waiver service are proposed to be limited to \$5,000 per year. DMAS uses the same dollar amount cap in other waiver programs and, to date, has found it to be adequate to cover most situations.

The remaining of the modifications address two other issues: personal assistance services (help with activities of daily living or instrumental activities of daily living) will be covered provided that the cost of such care, when added to all the other costs for the individual, do not exceed the cost effectiveness standard; and, additional references to the cost effectiveness standards appear in the revised regulations.

Public Comments Received During Article 2 Comment Period: The Department for the Rights of Virginians with Disabilities supported the regulations as they were initially proposed. The Virginia Poverty Law Center made two points in its comments: (i) Why are these services prohibited in board and care facilities and adult care residences? (ii) Why should adults be required to have live-in caretakers as one requirement to receiving these services?

Adult Care Residences issue: The basis for this exclusionary policy is found in § 63.1-174.001 of the Code of Virginia.

Caretaker requirement: DMAS views the involvement of a consistent caregiver on a daily basis as essential to the success of community-based services for this unique, medically fragile population. In the newly proposed language of the regulation, DMAS seeks to further clarify the caregiver requirement of this waiver but has removed the live-in requirement. The primary caregivers must be available to recipients' needs when waiver support is not feasible.

Public Comments Received on the Revised Proposed Regulations: DMAS circulated its revisions to the proposed regulations to a group of interested parties, including all the adults who use these waiver services, and requested comments. DMAS received comments from three organizations and four individual adults/caretakers. The two issues which were commented on most frequently were the mandatory live-in primary caregiver and the reduction in covered nursing hours. The other individual issues which were raised are discussed below.

Comment: The substance of the comments about the live-in primary caregiver were: (i) there were no guarantees that this individual could deal with emergencies or could render care consistently; (ii) requiring the primary caregiver to be live-in might cause the recipient to have to relocate to a larger dwelling; (iii) other types of waiver recipients are not held to this requirement and this could be discriminatory; (iv) a primary caregiver may impede the independence of the patient, especially in congregate living arrangements; (v) what certification would be required of live-in caretakers and what legal recourse would exist for recipients in the absence of such certification. The suggestion was made that DMAS address the need for paid/unpaid assistance through plans of care and should also obtain assurance of the availability of such a provider.

DMAS response: DMAS strongly disagrees with the assertion that it may be discriminatory to require these technology dependent individuals to have a live-in caregiver while other types of waiver recipients do not. However, DMAS has removed the requirement anyway for the primary caregiver to be live-in in these revised proposed regulations.

Comment: The substance of the next most frequent comment about the revisions to this proposed regulation concerned the reduction in covered private duty nursing hours. The comment was made that such services should not be reduced because such reductions could cause a family, which had been caring for a dependent family member, to have to institutionalize them.

DMAS response: This revised proposed regulation does not directly reduce the amount of private duty nursing hours which will be approved for coverage. DMAS, through a separate regulatory action which modified the reimbursement rates for specialized care services, is implementing lower payment rates for nursing facility specialized care. Because this constitutes the comparison standard for adults receiving waiver services, the effect is to reduce the approved level of private duty nursing care which can be approved while retaining cost effectiveness under this waiver.

Comment: The commenters urged DMAS to eliminate the 90-day institutionalization requirement for adults before their admission to waiver services. The commenters urged DMAS

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to continue to study the issue of the cost effectiveness standards being different for children and adults. The use of the objective scoring tool was viewed positively. If a traumatic injury patient's needs for ventilator support declined over time but they retained very high nursing needs, would they be able to shift over to the agency's elderly and disabled waiver program? Are respite services available to adults who have paid primary caregivers as opposed to a nonpaid family member? Provider qualifications and care standards for providers of assistive technology (which is different from durable medical equipment) should be added to the regulations. Another commenter questioned if personal assistants had to be employed by a provider agency and what their rate of reimbursement should be. DMAS should extend a choice of providers to recipients. Recipients should be able to hire their own nurse instead of having to obtain one through an agency.

DMAS response: DMAS has eliminated the 90-day institutionalization requirement from these revised proposed regulations. DMAS is proceeding with its study of background data necessary to support modification to the different cost-effectiveness standards currently in use for children and adults. Traumatic injury patients whose ventilator dependencies improve are permitted a weaning process and continue to receive private duty nursing until they are determined to be stable and off of the mechanical support. DMAS does not differentiate in its coverage of respite care services between paid caregivers and unpaid family-member caregivers. Without the existence of assistive technology provider standards/qualifications in the federally approved waiver, DMAS lacks the legal authority to add such standards/qualifications to these regulations. The federally approved waiver indicates that personal assistance would be provided by a "provider with a DMAS agreement to provide personal care, home health, and private duty nursing." In so far as the provider community in a particular geographic area permits, DMAS does afford recipients their choice of providers. DMAS cannot, however, compel service providers to accept Medicaid recipients. In some geographic areas insufficient providers elect to enroll to afford recipients a wide choice. The federally approved waiver specified that private duty nursing would be provided by approved "home health agencies or medical day care centers."

Issues: DMAS is not permitted, due to federal funding constraints, to approve individuals for this waiver service whose costs of care in the home exceed their cost of care in an institution.

A. Definition of Persons Eligible to Receive Waiver Services. The use of an objective system for determining eligibility for the waiver program is an advantage for providers and recipients. Based on clear, easily-interpreted criteria, providers and the public will be able to easily determine if a potential recipient meets the criteria for waiver services. This will avoid inappropriate referrals and allow physicians and other health care workers to appropriately plan for discharge. This is also an advantage to DMAS because it saves staff time by reducing the number of unnecessary assessments for services.

The policy to allow persons who were admitted to the waiver prior to their 21st birthday to continue receiving services after

they turn 21 has been in place since 1991. Since that time there have been no issues arising from this programmatic change. However, without regulatory foundation, the six adults who are receiving services under this policy will have to be discharged from the program. Discharge from the program would increase DMAS' costs for coverage of these individuals in institutional care and would result in substantial negative reaction from nursing providers, physicians, hospitals, and advocacy groups.

The proposed changes in the regulation will improve the recipients' and providers' access to Technology Assisted Waiver services. More recipients will be able to access community based services at reduced cost to Medicaid thereby avoiding prolonged institutionalization. This is a primary advantage for young technology dependent adults who otherwise would have to remain in nursing facilities away from educational or vocational opportunities. Several young adults currently in nursing homes are aware that this change has been requested and are anticipating discharge into the community. Failure to change the regulation will result in these recipients having to remain in a nursing facility at higher cost to Medicaid.

B. Financial Eligibility Criteria. The revision of financial eligibility criteria to conform with HCFA's current interpretation does not affect providers or recipients. It is a wording change only and does not affect determination of eligibility.

The agency projects no negative issues involved in implementing these proposed changes.

Fiscal/Budget Impact: There are no localities which are uniquely affected by these regulations as they apply statewide.

A. Definition of Persons Eligible to Receive Services. The adoption of an objective scoring system to determine eligibility for these services will not financially impact providers or recipients. Recipients who are determined to be ineligible for services would have been ineligible using the subjective system. The objective system may generate small, yet undetermined, cost savings for DMAS.

Allowing recipients who began services prior to their 21st birthday to continue receiving services will have no fiscal impact because this change has been in place operationally since 1991. The six adults currently receiving services under this provision are monitored to ensure their home-based care remains no more costly than institutional care. Any increased financial impact for DMAS has been included in budget projections since 1991.

The addition of adults in nursing facilities to the target population for waiver services will be cost effective for DMAS. Adults will not be eligible for the program unless their home-based care services will be no more costly than the cost of their care in a nursing facility at the specialized care level of services. The agency currently estimates that eight adults will be added during the first year. The approximate cost of caring for these individuals in specialized care settings (which their medical needs require) is \$8,675 per month per individual or \$104,120 total funds per year each adult individual. This average rate incorporates the recent changes to the specialized care reimbursement policy, as

specified in 12 VAC 30-90-290, 12 VAC 30-90-350, 12 VAC 30-90-360, 12 VAC 30-90-370, emergency regulation for Specialized Care Services Payment Methodology.

B. Financial Eligibility Criteria. If these changes are not implemented, Virginia's continued receipt of federal matching funds might be jeopardized. The agency's total expenditures for this program in the waiver year December 1, 1994, to November 30, 1995, were \$9,922,619.

Summary:

The purpose of this revised proposal is to amend the Technology Assisted Waiver Program to update the definition of those eligible to receive services and to conform the financial eligibility criteria to correspond to the current HCFA interpretation. Also, this revised package addresses comments made to the prior proposed regulation as well as addressing problems identified since the initial comment period.

12 VAC 30-120-70. Definitions.

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

"Activities of daily living (ADL)" means personal care tasks, i.e., bathing, dressing, toileting, transferring, bowel/bladder control, and eating/feeding. A person's degree of independence in performing these activities is a part of determining appropriate level of care and services.

["Adult" means an individual who either is 21 years of age or is past 21 years of age.

"Child" means an individual who has not yet reached his 21st birthday.

"Congregate living arrangement" means one in which two or more recipients live in the same household and may share receipt of health care services from the same provider or providers.]

"Congregate private duty nursing" means nursing provided to two or more recipients in a group setting.

"DMAS" means the Department of Medical Assistance Services.

["Environmental modifications" means physical adaptations to a house, place of residence or work site, when the modification exceeds reasonable accommodation requirements of the Americans with Disabilities Act (42 USC § 1201 et seq.), necessary to ensure the individual's health or safety, or enable functioning with greater independence when the adaptation is not being used to bring a substandard dwelling up to minimum habitation standards and is of direct medical or remedial benefit to the individual.]

"Health care coordinator" means the health care professional designated by the provider contracted with DMAS to perform health care coordination as registered nurse who is responsible for ensuring that the assessment, care planning, monitoring, and review activities as required by DMAS are accomplished. This individual may be either an employee of DMAS or a DMAS contractor.

"Health care coordination" means a comprehensive needs assessment, determination of cost effectiveness, and the coordination of the service efforts of multiple providers in order to avoid duplication of services and to ensure the individual's access to and receipt of needed services.

"Instrumental activities of daily living (IADL)" means social tasks, i.e., meal preparation, shopping, housekeeping, laundry, money management. A person's degree of independence in performing these activities is a part of determining appropriate level of care and services. Meal preparation is planning, preparing, cooking and serving food. Shopping is getting to and from the store, obtaining/paying for groceries and carrying them home. Housekeeping is dusting, washing dishes, making beds, vacuuming, cleaning floors, and cleaning kitchen/bathroom. Laundry is washing/drying clothes. Money management is paying bills, writing checks, handling cash transactions, and making change.

"Medical equipment and supplies" means those articles prescribed by the attending physician, generally recognized by the medical community as serving a diagnostic or therapeutic purpose and as being a medically necessary element of the home care plan. Items covered are medically necessary equipment and supplies needed to assist the individual in the home environment, without regard to whether those not already available under other services items are covered by the Plan.

"Objective Scoring Criteria" means the evaluative tool to be used to determine the appropriateness for an individual's admission to these services.

"Personal assistance" means care provided by an aide or respiratory therapist trained in the provision of assistance with ADLs or IADLs.

"Plan of care" means the written plan of services and supplies certified by the attending physician needed by the individual to ensure optimal health and safety for an extended period of time.

"Primary caregiver" means either a family member or other person who takes primary responsibility for providing [personal care, assistance with ADLs or IADLs or both, and other care needs the recipient is unable to provide for himself assistance to the recipient or recipients for care they are unable to provide for himself or themselves].

"Private duty nursing" means individual and continuous nursing care provided by a registered nurse or a licensed practical nurse under the supervision of a registered nurse.

"Providers" means those individuals or facilities registered, licensed, or certified, or both, as appropriate, and enrolled by DMAS to render services to Medicaid recipients eligible for services.

"Respite care services" means temporary skilled nursing services designed to relieve the family of the care of the technology assisted individual [(up to age 24)] for a short period or periods of time (a maximum of 15 days per year or 360 hours per 12-month period). [In a congregated living arrangement, this same limit shall apply per household.]

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Respite care shall be provided in the home of the individual's family or caretaker.

"*Routine respiratory therapy*" means services that can be provided on a regularly scheduled basis. Therapy interventions may include: (i) monitoring of oxygen in blood; (ii) evaluation of pulmonary functioning; and (iii) maintenance of respiratory equipment.

"*State Plan for Medical Assistance*" or "*the Plan*" means the document containing the covered groups, covered services and their limitations, and provider reimbursement methodologies as provided for under Title XIX of the Social Security Act.

"*Technology assisted*" means any ~~child, younger than 21 years individual [;]~~ defined as chronically ill or severely impaired whose illness or disability would, in the absence of home care services, precipitate admission to or prolong that child's stay in a hospital, nursing facility, or other long-term care facility. ~~This individual must need who needs both a medical device to compensate for the loss of a vital body function and substantial and ongoing skilled nursing care to avert death or further disability. The technology assisted child shall include one or more of the following categories; and whose illness or disability would, in the absence of services approved under this waiver require admission to or prolonged stay in a hospital, nursing facility, or other medical long-term care facility.~~

~~1. Children dependent at least part of each day on mechanical ventilators.~~

~~2. Children requiring prolonged intravenous administration of nutritional substances or drugs.~~

~~3. Children having daily dependence on other device-based respiratory or nutritional support, including tracheostomy tube care, suctioning, oxygen support, or tube feeding.~~

12 VAC 30-120-80. Coverage statement. General coverage and requirements for technology assisted waiver services.

A. Coverage statement.

1. Coverage shall be provided under the administration of DMAS for certain technology assisted individuals ~~up to the age of 24~~ who would otherwise remain in hospitals (for individuals under 21) or specialized care nursing facilities (for those over 21) for which Medicaid reimbursement would be made.

~~B.~~ 2. The objective of this waiver is to provide for medically appropriate and cost-effective coverage of services necessary to maintain these individuals in the community.

~~C.~~ 3. Coverage shall not be provided for these services [for individuals who reside] in board and care facilities or adult care residences [nor who are inpatients in general acute care hospitals, skilled or intermediate nursing facilities, or intermediate care facilities for the mentally retarded].

~~D. Coverage shall be provided for private duty nursing, respite care, nutritional supplements (nonlegend drugs) and medical supplies and equipment not otherwise available under the State Plan. All such services shall be covered only in the individual's home.~~

B. Patient qualifications. A Medicaid eligible technology assisted individual shall be eligible for services if he meets the following requirements:

1. The technology assisted individual [who is younger than 21 years of age] shall be determined to need a medical device when the individual meets one or more of the following categories:

a. Individuals depending at least part of each day on mechanical ventilators.

b. Individuals requiring prolonged intravenous administration of nutritional substances or drugs [or ongoing peritoneal dialysis].

c. Individuals having daily dependence on other device-based respiratory or nutritional support, including tracheostomy tube care, oxygen support, or tube feeding.

[2. The technology assisted individual who is 21 years of age or older shall be determined to need a medical device when the individual meets one or more of the following categories:

a. Individuals depending at least part of each day on mechanical ventilators.

b. Individuals requiring prolonged intravenous administration of nutritional substances or drugs or ongoing peritoneal dialysis.]

[~~2. 3.] The individual's attending physician must certify the individual's need for this level of care [which must include the need for private duty nursing].~~

[~~3. 4.] In addition to the medical needs identified in subdivision 1 [or 2] of this subsection, the technology assisted individual shall be determined to need substantial and ongoing skilled nursing care. This determination shall be made using an objective tool approved by DMAS. The recipient shall be required to meet a minimum standard on the Objective Scoring Criteria to be eligible to be admitted to technology assisted waiver services.~~

[~~4. 5.] In addition to the medical needs identified in subdivision 1 [or 2] of this subsection, Medicaid eligible individuals younger than 21 shall be admitted to this service only if the anticipated cost to Medicaid of home care will be less than [or equal to] the cost to Medicaid of the individual in a hospital or nursing facility.~~

[~~5. 6.] In addition to the medical needs identified in subdivision 1 [or 2] of this subsection, [Medicaid eligible individuals older than 21 must enter this service from a specialized nursing facility or other comparable or higher level of care Medicaid reimbursed institution when it is determined that the individual will require care from that institution for an extended period of time or would be~~

~~transferred to a specialized nursing facility for that level of care, or both. Such other comparable Medicaid reimbursed institution could be a general acute care hospital, an inpatient rehabilitation hospital, or other subacute setting. Before this individual can be approved for this community-based Medicaid reimbursed service, the individual must have been residing at the facility for a minimum of 90 days. At least a portion of the cost for each of the 90 days must have been reimbursed by Medicaid. If the recipient has been in the facility for more than 90 days at the time of the request for waiver services, at least a portion of the cost for each of these days in the most recent 90 day period must have been paid by Medicaid. An individual older than 21 shall be admitted to this waiver service only if the anticipated cost to Medicaid of his home care will be less than [or equal to] the current average cost of care in a specialized nursing facility.~~

[7. Adult Medicaid eligible individuals who enter this waiver service prior to their 21st birthday shall be required to conform to the same medical needs and individual cost-effectiveness standards as specified for all other adults.]

~~[6. 8.] If a person is over age 21 and already a waiver recipient and requires admission to a nursing facility or rehabilitation hospital for more than 30 days but less than 90 days, the recipient will be discharged from the waiver. To be readmitted to the waiver services, the recipient must be assessed to determine that the recipient currently meets the specialized nursing facility and waiver criteria. If these criteria are met, the recipient shall be readmitted to waiver services [without having to first be admitted to a specialized care bed for 90 days] .~~

~~[7. If a recipient over age 21 is discharged from the waiver for any reason other than admission to a specialized nursing facility or other comparable or higher level of care for more than 90 days, the recipient must be admitted to a specialized care facility level of care for at least 90 days before the recipient can be readmitted to the waiver in order to ensure that community care being provided by other sources is not supplanted by Medicaid reimbursed care.]~~

[8. 9.] The individual shall have a [live-in] primary caregiver who accepts responsibility for the individual's health and welfare [or the individual shall be over the age of 21 and share a home with one or more other waiver recipients] . [The primary caregiver shall be responsible for a minimum of eight hours of the individual's care in a 24-hour period.]

[10. Individuals over the age of 21 years may live in congregate living arrangements and shall have primary caregivers. Two such individuals may share the time and services of one caregiver who shall provide a minimum of eight hours of care in a 24-hour time period.]

[9. 11.] These services shall not be available to individuals while an inpatient in general acute care hospitals, skilled nursing facilities, intermediate care

facilities, [or] intermediate care facilities for the mentally retarded [, board and care facilities, or adult care residences] .

[10. 12.] Any individual, regardless of age, who requires admission to any type of medical care facility for fewer than 30 days shall again be eligible for waiver services upon discharge from the facility so long as all other requirements continue to be met.

C. Patient eligibility requirements.

1. Individuals receiving services under this waiver must be eligible under one of the following eligibility groups: ADC and AFDC-related recipients, SSI and SSI-related recipients, aged, blind or disabled recipients eligible under 42 CFR 435.121, and the special home and community-based waiver group at 42 CFR 435.217 which includes individuals who are eligible under the State Plan if they were institutionalized. The income level used for the special home and community-based waiver group at 42 CFR 435.217 is 300% of the current Supplemental Security Income payment standard for one person. Medically needy individuals are eligible if they meet the medically needy financial requirements for income and resources.

2. Under this waived service, the coverage groups authorized under § 1902(a)(10)(C)(i)(III) of the Social Security Act (42 USC § 1396a(a)(10)) will be considered as if they were institutionalized for the purpose of applying institutional deeming rules. All recipients under the waiver must meet the financial and nonfinancial Medicaid eligibility criteria and be Medicaid eligible in an institution. The deeming rules are applied to waiver eligible individuals as if the individuals were residing in an institution or would require that level of care.

3. Virginia shall reduce its payment for home and community-based services provided for an individual by that amount of the individual's total income (including amounts disregarded in determining eligibility) that remains after allowable deductions for personal maintenance needs, deductions for other dependents and medical needs have been made according to the requirements in 42 CFR 435.726. [DMAS will reduce its payment for home and community-based waiver services by the amount that remains after deducting the amounts as specified in 42 CFR 435.726 in the specified order from the individual's income.]

4. Individuals who are eligible for third-party payment for the alternative institutional services shall not be eligible for these waived services. If an individual or [their an individual's] legally responsible party voluntarily cancels enrollment in any insurance plan which would have provided coverage for institutional services in order to become eligible for waiver services, eligibility for the waiver shall be denied.

12 VAC 30-120-90. Covered services and provider requirements.

A. Private duty nursing service shall be covered for individuals up to the age of 21 qualified for enrolled in the

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technology assisted waiver services. This service shall be provided only through either a home health agency licensed or certified by the Virginia Department of Health for Medicaid participation, and with which DMAS has a contract for private duty nursing or a day care center licensed by the Virginia Department of Social Services which employs registered nurses and is enrolled by DMAS to provide congregate private duty nursing. At a minimum, the private duty nurse shall either be a licensed practical nurse or a registered nurse with a current and valid license issued by the Virginia State Board of Nursing.

1. For individuals under 21 [whether living separately or congregately] , during the first 30 days after the individual's admission to the waiver service, private duty nursing is covered for 24 hours per day if needed and appropriate to assist the family in adjustment to the care associated with technology assistance. After 30 days, private duty nursing shall be reimbursed for a maximum of 16 hours per 24-hour period [per household] . The department may grant individual exceptions, not to exceed 30 total days per annum, to these maximum limits based on documented emergency needs of the individual and ~~continued~~ aggregate the case, without inclusion of additional emergency costs, which continue to meet requirements for cost effectiveness of community services.

[2. For individuals over the age of 21 years whether living separately or congregately, private duty nursing shall be reimbursed for a maximum of 16 hours within a 24-hour period per household provided that the cost-effectiveness standard is not exceeded for the individual's care.

3. In no instance, shall DMAS approve a plan of care or multiple plans of care per household which result in approval of more than 16 hours of private duty nursing in a 24-hour period per household.]

[2. 4.] [If the individual is Individuals] weaned from [no longer dependent upon the technology, reimbursement who no longer meet the patient qualifications for either children or adults cited in 12 VAC 30-120-80] may be [available eligible] for private duty nursing for a maximum of 16 hours the number of hours previously approved in the plan of care [per 24-hour period] not to exceed two weeks [per 24-hour period] from the date the attending physician certifies the cessation of [daily] technology assistance.

[3. 5.] The hours of private duty nursing approved for coverage shall be limited by [either] medical necessity [and or] cost effectiveness [or both] .

[4. 6.] Congregate private duty nursing shall be limited to a maximum ratio of one private duty nurse to two [adult] waiver recipients except when [two three] or more waiver recipients share a home where ratios will be determined by the combined needs of the residents.

B. [Provided that the cost-effectiveness standard shall not be exceeded,] respite care service shall be covered [for a maximum of 360 hours within a 12-month period per household] for individuals up to the age of 24 who are

qualified for technology assisted waiver services and who have a primary caregiver, other than the provider, who requires relief from the burden of caregiving. This service shall be provided by skilled nursing staff (registered nurse or licensed practical nurse licensed to practice in the Commonwealth) under the direct supervision of a home health agency licensed or certified by the Virginia Department of Health for Medicaid participation and with which DMAS has a contract to provide private duty nursing.

C. [Provided that the cost-effectiveness standard shall not be exceeded,] durable medical equipment and supplies ~~not otherwise covered in the State Plan~~ shall be provided for individuals qualified for technology services. [All durable medical equipment and supplies, including nutritional supplements, which are covered under the State Plan and those medical equipment and supplies, including such items which may be defined as assistive technology and environmental modifications which are not covered under the State Plan but are medically necessary and cost effective for the individual's maintenance in the community, shall be covered.] This service shall be provided by persons qualified to render it.

[4.] Durable medical equipment and supplies shall be necessary to maintain the individual in the home environment.

[a. 1.] Medical equipment and supplies shall be prescribed by the attending physician and included in the plan of care, and shall *must* be generally recognized as serving a diagnostic or therapeutic purpose and being medically necessary for the home care of the individual.

[b. 2.] Vendors of durable medical equipment and supplies related to the technology upon which the individual is dependent shall have a contract with DMAS to provide services.

[e. 3.] In addition to providing the ventilator or other respiratory-devised support and associated equipment and supplies, the vendor providing the ventilator shall ensure the following:

[(1) a.] 24 hour on-call for emergency services;

[(2) b.] Technicians to make regularly scheduled maintenance visits at least every 15 30 days and more often if called;

[(3) c.] Replacement or repair of equipment and supplies as required; and

[(4) d.] Respiratory therapist registered or certified with the National Board for Respiratory Care (NBRC) on call 24 hours per day and stationed within two hours of the individual's home to facilitate immediate response. The respiratory therapist shall be available for routine respiratory therapy as well as emergency care. In the event that the Department of Health Professions implements through state law a regulation requiring registration, certification or licensure for respiratory therapists to practice in the Commonwealth, DMAS shall require all respiratory therapists providing services to this technology

assisted population to be duly registered, licensed or certified.

~~[2. Medical equipment and supplies include:~~

~~a. All durable medical equipment and supplies which are covered under the State Plan] See the attachment listing for specific items which are covered. [and those medical equipment and supplies, including such items which may be defined as assistive technology and environmental modifications which are not covered under the State Plan but are medically necessary and cost effective for the individual's maintenance in the community; and~~

~~b.] Apnea monitor [Nutritional supplements.]~~

~~D. Nutritional supplements (nonlegend drugs) shall be covered for those individuals for whom the physician has determined that these are medically necessary and who are receiving other waiver services. [Provided that the cost-effectiveness standard shall not be exceeded,] personal assistance services shall be covered for individuals over the age of 21 who require some assistance with activities of daily living and instrumental activities of daily living but do not require and are able to do without skilled interventions during portions of their day or are able to self perform [a portion of their ADLs or IADLs] or direct their skilled care needs during the period when personal assistance would be provided. [This service shall be provided by durable medical equipment agencies contracted with DMAS.] Personal assistance services shall be rendered by a provider who has a DMAS provider agreement to provide personal care, home health care, and private duty nursing. At a minimum, the staff providing personal assistance must have been certified through coursework as either personal care aides, home health aides, homemakers, personal care attendants, or registered or certified respiratory therapists.]~~

12 VAC 30-120-100. Provider reimbursement.

A. All private duty nursing services shall be reimbursed at an hourly negotiated fee.

B. Respite care shall be reimbursed at an hourly negotiated fee.

C. *Prior approval for durable medical equipment and supplies shall be requested from DMAS by the durable medical equipment provider. The request must be submitted to the health care coordinator.* Prior approval by DMAS shall be required for all durable medical equipment and other medically related supplies furnished under this program before the individual's admission to waiver services and before reimbursement. If additional equipment and supplies are needed following the individual's admission to waiver services, the Health Care Coordinator shall *durable medical equipment provider must obtain DMAS' prior approval.* This prior authorization requirement shall apply to all durable medical equipment and supplies that are covered under the State Plan or the waiver.

D. Prior approval by DMAS shall be required for nutritional supplements furnished under this program before the individual's admission to waiver services and before reimbursement. If nutritional supplements are needed

~~following the individual's admission to waiver services, the health care coordinator must obtain DMAS' approval. Personal assistance shall be reimbursed at an hourly negotiated fee.~~

12 VAC 30-120-110. Patient qualification and eligibility requirements. Assessment and plan of care requirements.

A. Medicaid-eligible individuals, younger than 21, shall be entitled to this service based on the anticipated cost to Medicaid of home care being less than the anticipated cost to Medicaid of the individual remaining in the hospital and based on continued aggregate cost effectiveness of community services.

B. The individual shall have a live-in primary care giver who accepts responsibility for the individual's health and welfare.

C. These services shall not be available to individuals receiving care in general acute care hospitals, skilled nursing facilities, intermediate care facilities, or intermediate care facilities for the mentally retarded.

D. Virginia will apply the financial eligibility criteria contained in the State Plan for the categorically needy and the medically needy. Virginia has elected to cover the optional categorically needy group under 42 CFR 435.211, 435.231 and 435.217. The income level used for 435.211, 435.231 and 435.217 is 300% of the current Supplemental Security Income payment standard for one person.

1. Under this waiver, the coverage groups authorized under § 1902(a)(10)(A)(ii)(VI) of the Social Security Act will be considered as if they were institutionalized for the purpose of applying institutional deeming rules. All recipients under the waiver must meet the financial and nonfinancial Medicaid eligibility criteria and be Medicaid eligible in an institution. The deeming rules are applied to waiver-eligible individuals as if the individuals were residing in an institution or would require that level of care.

2. Virginia shall reduce its payment for home and community-based services provided to an individual who is eligible for Medicaid services under 42 CFR 435.217 by that amount of the individual's total income (including amounts disregarded in determining eligibility) that remains after allowable deductions for personal maintenance needs, deductions for other dependents, and medical needs have been made, according to the guidelines in 42 CFR 435.735 and § 1915(e)(3) of the Social Security Act as amended by the Consolidated Omnibus Budget Reconciliation Act of 1986. DMAS will reduce its payment for home and community-based waiver services by the amount that remains after deducting the following amounts in the following order from the individual's income:

a. For individuals to whom § 1924(d) applies, Virginia intends to waive the requirement for comparability pursuant to § 1920(a)(10)(B), to allow for the following:

(1) An amount for the maintenance needs of the individual which is equal to the categorically needy income standard for a noninstitutionalized individual.

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~~(2) For an individual with only a spouse at home, the community spousal income allowance determined in accordance with § 1924(d) of the Social Security Act.~~

~~(3) For an individual with a family at home, an additional amount for the maintenance needs of the family determined in accordance with § 1924(d) of the Social Security Act.~~

~~(4) Amount for incurred expenses for medical or remedial care that are not subject to payment by a third party including Medicare and other health insurance premiums, deductibles, or coinsurance charges and necessary medical or remedial care recognized under state law but covered under the Plan.~~

b. ~~For all other individuals:~~

~~(1) An amount for the maintenance needs of the individual which is equal to the categorically needy income standard for a noninstitutionalized individual.~~

~~(2) For an individual with a family at home, an additional amount for the maintenance needs of the family which shall be equal to the medically needy income standard for a family of the same size.~~

~~(3) Amounts for incurred expenses for medical or remedial care that are not subject to payment by a third party including Medicare and other health insurance premiums, deductibles, or coinsurance charges and necessary medical or remedial care recognized under state law but covered under the state Medical Assistance Plan.~~

E. ~~Assessment and Plan of Care requirements:~~

4. A. ~~The initial assessment and development of the plan of care shall be conducted by a multidisciplinary team. The team shall include an attending physician, a nurse, and a social worker and a health care coordinator.~~

a. 1. ~~The physician shall be currently certified by the Board of Medicine and have a currently valid license to practice medicine in the Commonwealth. The physician shall have experience in the needs and care of technology assisted persons and the needs of children if the individual being admitted to waiver services is a child.~~

b. 2. ~~The nurse shall health care coordinator must be a registered nurse currently and validly licensed to practice nursing in the Commonwealth. The nurse shall have experience in the needs and care of technology assisted persons and the needs of children if the individual being admitted to waiver services is a child.~~

c. ~~The social worker shall have a master's degree in social work. The social worker shall have experience in the needs and care of technology assisted persons and the needs of children.~~

d. 3. ~~Other specialists who are currently and validly licensed, registered or certified to practice their specialities within the Commonwealth may participate in~~

~~the assessment and care planning process. These other specialists shall have experience in the needs and care of technology assisted persons and the needs of children if the person being admitted to waiver services is a child.~~

e. 4. ~~The health care coordinator is shall be responsible for ensuring that the assessment, care planning, monitoring, and review activities required by DMAS are accomplished and documented consistent with DMAS' requirements. The Health Care Coordinator shall be either a nurse or a social worker meeting the requirements of subdivision b or c above.~~

2. B. ~~Referral for waiver services and assessment.~~

a. 1. ~~For individuals under age 21, a service referral may originate from either the clinical staff in the hospital where the individual is located or from the clinical staff a health care professional in the community where the individual is receiving non-Medicaid funded home and community-based services. For individuals over age 21, the referral may originate from the discharge planning staff in the nursing facility where the individual resides or from persons in the community who are aware of the needs of the individual.~~

b. 2. ~~The health care coordinator shall meet with the family and representatives of the clinical patient care team to preliminarily assess the individual's needs. first determine that Medicaid would be the source of payment for the individual's institutional care if waiver services are not available. An individual for whom third-party payment is available for the alternative institutional care is not eligible for the waiver service nor is an individual whose insurance has been voluntarily dropped in anticipation of waiver application and an assessment for waiver services is not to be completed.~~

c. 3. ~~Upon receiving parental or guardian consent from the adult individual (or a parent or guardian in the case of a child) to explore the possibility of home care, the health care coordinator shall arrange for the assessment process for waiver services. The initial assessment and development of the plan of care for a potential waiver participant will shall be conducted by the health care coordination multidisciplinary team coordinator.~~

d. 4. ~~At the time of assessment, certification from the attending physician that the individual would otherwise require continued acute care or [skilled specialized] nursing facility care will shall be necessary to continue the assessment process.~~

e. ~~If the physician certifies the need for care and if the family desires community based care, the Health Care Coordinator shall continue the assessment process. The Health Care Coordinator shall perform a home visit to ensure suitability of the home environment for the individual's placement. Concurrently, the Health Care Coordinator or social worker of the multidisciplinary team shall conduct a family assessment to ensure the family's willingness and ability to participate in home care. Consideration shall also be given to the extent of family and community~~

~~support available to meet the care needs of the technology-assisted individual.~~

5. Upon the completion of the assessment process the health care coordinator shall make a determination of the need for substantial and ongoing skilled nursing care. This determination will be made using an objective tool approved by DMAS. For admission to or continuation in the technology assisted waiver program, the recipient will be required to meet a score of 50 or more on the Objective Scoring Criteria form.

3. C. Development of the plan of care.

~~a. 1. Upon completion of the medical/nursing/functional assessment and the family and home assessment, required assessments and a determination that the individual needs substantial and ongoing skilled nursing care, the plan of care is developed by the health care coordinator.~~

b. 2. At minimum, the plan of care shall include:

(1) a. A statement of the appropriateness of the home in which the individual is to be placed.

(2) b. Identification of the type, frequency, and amount of nursing care and personal assistance needed. This shall include the name of the provider agency, whether the nurse is an RN or an LPN, and verification that the nurse is licensed to practice in the Commonwealth and the professional qualifications of the personnel required to provide personal assistance. This shall also contain documentation that the health care coordinator has verified that the provider agency is an enrolled provider with DMAS to provide skilled nursing the appropriate waiver services for this population the individual.

(3) c. Identification of all other services that are needed for the individual to be maintained in the home. The statement shall include, as appropriate, speech therapy, occupational therapy, physical therapy, transportation, physician services, the frequency and amount of service needed, the provider of the service, and the payment source.

(4) d. A complete list of equipment and supply needs, and identification of the provider and source of payment.

(5) e. Identification of the type, frequency, and amount of care that the family or other informal care givers shall provide.

~~(6) Identification of the anticipated utilization of respite care during the 12-month period after admission to the waiver services.~~

(7) f. Other referrals for assessment for services (as needed and appropriate) to include but not be limited to the school system; [Special Supplemental Nutrition Program for] Women, Infants, and Children [Program] (WIC); child development clinic services; and Early and Periodic Screening, Diagnosis and Treatment Program (EPSDT) services.

(8) g. Identification of the primary care physician in the community who has agreed to ~~follow manage the medical care of the individual in the community.~~

(9) h. The appropriateness of the medical care, including a statement from the ~~multidisciplinary team as well as~~ the individual's primary care physician, to be signed by the legally responsible adult, attesting that the medical care the individual is to receive in the home is agreed to by the legally responsible adult and is appropriate in the opinion of all involved parties and all others involved in the assessment process referred to in this section.

4. D. Cost effectiveness computations.

~~a. These 1. Cost effectiveness computations shall be completed by the health care coordinator upon completion of the plan of care for any individual entering the waiver.~~

b. 2. For individuals over 21, the health care coordinator shall be required to document the anticipated cost to DMAS for the individual's waiver services for a [~~12 one~~] -month period. The health care coordinator shall then compare ~~DMAS~~ DMAS' costs for the waiver to anticipated the average costs to DMAS for continued hospitalization of specialized nursing facility care for the individual.

3. For individuals under 21, the health care coordinator shall be required to document the anticipated cost to DMAS for the individual's waiver services for a [~~one~~ -month 12-month] period. The health care coordinator shall then compare DMAS' costs for the waiver to the average costs to DMAS for continued hospitalization of the individual.

5. E. Patient selection of waiver services.

a. 1. When the determination that the individual's needs can appropriately and cost-effectively be met in the community with these waiver services, the health care coordinator shall give the ~~legally responsible party and the primary care giver, if separate persons, adult individual or the parent or guardian of a child~~ the choice of waiver services or ~~hospitalization institutionalization.~~

b. 2. If waiver services are chosen, the ~~applicant or his legally responsible party and the primary care giver, if separate persons, adult~~ will also be given the opportunity to choose the providers of service, if more than one provider is available to render the services. *If more than one waiver recipient will reside in the home, one waiver provider shall be chosen to provide all private duty nursing services for all waiver recipients in the home. Only one nurse will be authorized to care for each two waiver recipients in a home, except in the instance when [adult waiver participants share a home more than two waiver participants share a home], where nursing ratios will be determined by the health care coordinator based on the needs of all the recipients living together.*

6. F. DMAS shall review and approve the assessment, plan of care, cost effectiveness, and choice of providers prior to the individual's admission to community waiver services,

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and prior to Medicaid payment for any services related to the waiver services plan of care.

7. 12 VAC 30-120-115. Reevaluation requirements and utilization review.

~~a. A. The need for reevaluations shall be determined by the health care coordinator. Reevaluations shall be conducted by the health care coordinator at least every 30 days during the first three months after admission to waiver services as required by the individual's needs and situation and at any time when a change in the individual's condition indicates the need for reevaluation. After the first three months, the health care coordinator shall conduct a home visit once every three months and more often if necessary.~~

b. B. DMAS is responsible for performing utilization review at least semi-annually every six months and for the maintenance of supporting documentation. DMAS shall also maintain a copy of the plan of care, the initial evaluation, and each reevaluation for a the minimum period of five years required by federal and state law.

e. C. The health care coordinator shall review the plan of care for appropriateness of the level, amount, type, and quality of services provided as well as for monitoring the cost effectiveness of the individual's care in the community.

d. D. Medical necessity of waiver services shall be reviewed by the health care coordinator [and DMAS].

[E. If the health care coordinator or DMAS determines, during utilization review or at any other time, that the waiver individual no longer meets cost-effectiveness standards or medical needs criteria, then the health care coordinator or DMAS, as appropriate, shall deny further payment for such waiver individual with the exception of a child or adult who no longer meets the patient qualifications of 12 VAC 30-120-80 who may be eligible for private duty nursing for the number of hours previously approved in the plan of care per 24-hour period not to exceed two weeks from the date the attending physician certifies the cessation of daily technology assistance.]

~~e. The Health Care Coordinator shall submit this information to DMAS.~~

~~f. During the semi-annual review period, a DMAS utilization review analyst shall review the record and conduct a home visit. The purposes of this record review and home visit are to determine the correctness of the level of care; to ensure that the amount, duration, and scope of the services are appropriate; to ensure that the individual's health and welfare are protected; and to ensure that cost effectiveness is maintained.~~

12 VAC 30-120-120. Appeal of denied coverage.

A. DMAS shall provide the opportunity for a fair hearing under 42 CFR Part 431, Subpart E, to individuals who are not given the choice of home and community-based services as an alternative to remaining in the receiving hospital or entering nursing facility services or who are denied the amount or type of service of their choice or the provider of

their choice. [Persons who are discharged from waiver services shall also have the right to file an appeal.]

B. The individual shall be advised in writing of the denial and of his right to appeal consistent with DMAS client appeals (12 VAC 30-110-10 through 12 VAC 30-110-600).

12 VAC 30-120-130. Documentation requirements. (Repealed.)

~~The Health Care Coordinator shall submit the following documentation to DMAS before the individual's admission to waiver services:~~

- ~~1. All of the required assessment and documentation.~~
- ~~2. Certification of level of care.~~
- ~~3. Plan of care.~~
- ~~4. Cost effectiveness computation.~~
- ~~5. Agreement of legally responsible party and the primary care give, if separate persons, with the plan of care.~~
- ~~6. Choice of home and community based care or hospital care.~~
- ~~7. Choice of waiver service providers, if waiver services are chosen.~~

LIST OF COVERED DURABLE MEDICAL EQUIPMENT

~~Medical Equipment and Supplies Covered Under State Plan.~~

- ~~1. Ventilator and necessary attachment.~~
- ~~2. Back-up portable ventilator and attachments.~~
- ~~3. Suction machine, stationary.~~
- ~~4. Suction machine, portable.~~
- ~~5. Ambu bag.~~
- ~~6. Patient lift.~~
- ~~7. Overbed table.~~
- ~~8. Commode, shower chair, or stretcher.~~
- ~~9. Environmental control unit.~~
- ~~10. Alternative communication devices.~~
- ~~11. Tracheostomy tubes.~~
- ~~12. Tracheostomy care kits or individual supplies normally found in the kit.~~
- ~~13. Gastrostomy, or other feeding, tubes.~~
- ~~14. Feeding pumps.~~
- ~~15. Suction catheters.~~
- ~~16. Sterile water.~~
- ~~17. Sterile saline.~~
- ~~18. Special medical mattresses.~~
- ~~19. Oxygen and oxygen equipment.~~

- ~~20. Foley catheters.~~
- ~~21. Bed pans.~~
- ~~22. Antiseptic solution for cleaning of ventilator and respiratory supplies.~~
- ~~23. Wheelchair, manual or power, including adaptive seating devices to prevent contractures and skin breakdown.~~
- ~~24. Hospital bed.~~
- ~~25. Adaptive mobility transportation device (Mulholland chair).~~
- ~~26. Phrenic pacer (implant, transmitter box, antenna and battery).~~
- ~~27. Pharmacological preparation necessary for life sustaining nutritional management (legend drug only).~~
- ~~28. Pulse oximeter.~~

~~Medical Equipment and Supplies Not Covered Under State Plan.~~

- ~~1. Apnea monitor.~~

FORMS

~~Medical Status Continued DMAS-130, WPPSHBC #560.~~

~~Functional Status DMAS-130, WPPSHBC #560.~~

~~Nursing/Professional Services DMAS-130, WPPSHBC #560.~~

~~Pre-Discharge Family Assessment DMAS-131, WPPSHBC #578.~~

~~Pre-Discharge Home Evaluation DMAS-132, WPPSHBC #578.~~

~~Technology Dependent Services Plan of Care DMAS-133, WPPSHBC #573.~~

~~Health Care Coordination Reassessment DMAS-136, WPPSHBC #581.~~

~~Objective Scoring Criteria, 1996~~

OBJECTIVE SCORING CRITERIA

Individual's Name _____ Principal Diagnosis _____

HCC _____ Admit Date _____

TECHNOLOGY	POINTS	DATE							
Vent Dependent total	50								
intermittent	45								
Trach	43								
C-PAP, BIPAP	25								
Oxygen, continuous	15								
O2, continuous, unstable	35								
G-tube continuous	15								
G-tube, cont. with reflux	35								
NG tube continuous	40								
bolus	25								
IV therapy continuous	40								
SUBTOTAL TECHNOLOGY									
NURSING NEEDS									
Suctioning > q1hr.	5								
q1-4hrs	3								
q4hrs+	2								
NG/GT Feeds continuous	5								
q 2hrs	4								
q3hrs	3								
q4hrs	2								
Medication simple	2								
moderate	4								
complex	8								
Intermittent cath. q4hrs	8								
q8hrs	6								
q12hrs	4								
qd or PRN	2								
Dressings q 8hrs or less	3								
> q8hrs	2								
Trach change and care	5								
IV/typeral continuous	8								
8-16hrs	6								
4-7 hrs	4								
< 4hrs	2								
Special TX BID	8								
TID	6								
BID	4								
QD	2								
Specialized monitor I/O	5								
> 3 hosp. in last yr or 3 mo. cont	5								
Other									
SUBTOTAL NURSING									
TOTAL POINTS									
DAILY NURSING HOURS.									

Signature of person completing form _____ Date _____

DEFINITIONS

Oxygen, continuous- Individual must require oxygen a minimum of 12 hours out of 24.

Oxygen, unstable, - Dependent on oxygen 24 hours per day plus any 2 of the following:

- Diuretics
- Albuterol treatments at least q4hrs around the clock
- Weight is below 15th percentile for age and gain does not follow normal curve for height
- >3 hospitalizations in last 6 months for respiratory problems
- Daily desaturation below doctor ordered parameters and desaturation requires nursing intervention
- Physician ordered restricted fluid intake

G-tube with reflux - Individual has continuous G-tube feeds plus one of the following
 swallow study within the last 6 months that demonstrated reflux
 aspiration pneumonia within the last 12 months
 need for suctioning due to reflux (not oral secretions) on a daily basis

Simple medication - One or two medications not requiring dosage adjustment

Moderate medication - More than two meds that required close monitoring of dosage, side effects etc.

Complex medication - Six or more meds on different frequency schedules OR
 Four or more meds requiring close monitoring of dosage and side effects

Dressings - Sterile dressings only. Trach dressings are not included in this category

Special Treatments - Other treatments that are considered skilled e.g. nebulizer. ROM is not a special treatment.

Specialized I/O monitoring - Monitoring that includes judgment of fluid replacement needs

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.

DEPARTMENT OF HEALTH (STATE BOARD OF)

Summary:

As outlined in Regulations Governing Eligibility Standards and Charges for Health Care Services to Individuals (12 VAC 5-200-10), the Department of Health's (VDH) schedule of charges will be based on the Department of Medical Assistance Services' (DMAS) payment levels. On January 1, 1997, DMAS modified its payment levels for certain services. Accordingly, the charges included in VDH's regulation Charges and Payment Requirements by Income Levels (12 VAC 5-210-10 et seq.) are being modified to reflect the recently revised DMAS payment levels.

REGISTRAR'S NOTICE: The following regulation filed by the Department of Health is exempt from the Administrative Process Act in accordance with § 9-6.14:4.1 C 1 of the Code of Virginia, which excludes agency orders or regulations fixing rates or prices. The Department of Health will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: 12 VAC 5-210-10 et seq. Charges and Payment Requirements.

Statutory Authority: §§ 32.1-11, 32.1-12 and 32.1-77 of the Code of Virginia.

Effective Date: June 1, 1997.

Agency Contact: Copies of the regulation may be obtained from Dave Burkett, Department of Health, P.O. Box 2448, Room 218, Richmond, VA 23218, telephone (804) 786-3571.

12 VAC 5-210-10. Charges and payment requirements except for Northern Virginia.

CHART I

By the provisions of the "Regulations Governing Eligibility Standards and Charges for Medical Care Services" promulgated by the authority of the Board of Health in accordance with §§ 32.1-11 and 32.1-12 of the Code of Virginia, listed below are the charges for medical care services, starting the minimum required payments to be made by patients toward their charges, according to income levels.

CPT CODE	MEDICAL CARE SERVICES	MAXIMUM CHARGE PER VISIT/SERVICE	INCOME LEVEL A (0%)	INCOME LEVEL B (10%)	INCOME LEVEL C (25%)	INCOME LEVEL D (50%)	INCOME LEVEL E (75%)	INCOME LEVEL F (100%)
Z9900	Maternity	\$33.30	\$0.00	\$3.30	\$8.33	\$16.65	\$24.98	\$33.30
59430	Post-Partum Visit	\$65.00	\$0.00	\$6.50	\$16.25	\$32.50	\$48.75	\$65.00
MATERNITY CARE COORDINATION								
Z9001	Risk Screening	\$10.00	\$0.00	\$1.00	\$2.50	\$5.00	\$7.50	\$10.00
Z9104	Maternity Assessment	\$25.00	\$0.00	\$2.50	\$6.25	\$12.50	\$18.75	\$25.00
Z9105	Maternity Follow-up	\$1.35/day x 11 mo.	\$0.00	\$0.14	\$0.34	\$0.68	\$1.02	\$1.35
NUTRITIONAL SERVICES								
Z9310	Original Assessment	\$20.00	\$0.00	\$0.00	\$0.00	\$0.00	\$15.00	\$20.00
Z9311	Follow-up	\$10/Encounter	\$0.00	\$0.00	\$0.00	\$0.00	\$7.50	\$10.00
Z9300, Z9301 OR Z9302	Group Education	\$6.00/Class Session OR \$36.00 Maximum	\$0.00	\$0.60	\$1.50	\$3.00	\$4.50	\$6.00
Z9312	Homemaker Services	\$33.00 OR \$8.25/hr. not to exceed 4 hrs.	\$0.00	\$3.30	\$8.25	\$16.50	\$24.75	\$33.00
CLINICAL VISITS INCLUDES BOTH PEDIATRIC AND ADULT SERVICES								
NEW PATIENTS: TO QUALIFY AS A NEW PATIENT, PATIENT MUST NOT HAVE BEEN SEEN BY ANY PROVIDER IN THAT HEALTH DEPARTMENT FOR AT LEAST THREE YEARS								
99201	Visit Included all Three Components: *problem focused history		\$0.00 \$0.00	\$2.30 \$2.40	\$5.75 \$6.00	\$11.50 \$12.00	\$17.25 \$18.00	\$23.00 \$24.00

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	*problem focused examination *straightforward medical decision making						
99202	Visit Included all Three Components: *expanded problem focused history *expanded problem focused examination *straightforward medical decision making	\$0.00 \$0.00	\$3.30 \$3.50	\$8.25 \$8.75	\$16.50 \$17.50	\$24.75 \$26.25	\$33.00 \$35.00
99203	Visit Included all Three Components: *detailed history *detailed examination *medical decision making of low intensity	\$0.00 \$0.00	\$4.40 \$4.60	\$11.00 \$11.50	\$22.00 \$23.00	\$33.00 \$34.50	\$44.00 \$46.00
99204	Visit Included all Three Components: *comprehensive history *comprehensive examination *medical decision making of moderate complexity	\$0.00 \$0.00	\$6.40 \$6.70	\$16.00 \$16.75	\$32.00 \$33.50	\$48.00 \$50.25	\$64.00 \$67.00
99205	Visit Included all Three Components: *comprehensive history *comprehensive examination *medical decision making of high complexity	\$0.00 \$0.00	\$7.70 \$8.20	\$19.25 \$20.50	\$38.50 \$41.00	\$57.75 \$61.50	\$77.00 \$82.00
ESTABLISHED PATIENT VISITS: ANY PATIENT THAT HAS BEEN SEEN BY A PROVIDER IN THAT HEALTH DEPARTMENT WITHIN THE LAST THREE YEARS							
99211	Visit May or May Not Require Physician Presenting Problems Are Minimal	\$0.00	\$1.10	\$2.75	\$5.50	\$8.25	\$11.00
99212	Visit Included Two of Three Components: *problem focused history *problem focused examination *straightforward medical decision making	\$0.00 \$0.00	\$1.90 \$2.00	\$4.75 \$5.00	\$9.50 \$10.00	\$14.25 \$15.00	\$19.00 \$20.00
99213	Visit Included Two of Three Components: *expanded problem focused history *expanded problem focused examination *medical decision making of low complexity	\$0.00 \$0.00	\$2.70 \$2.90	\$6.75 \$7.25	\$13.50 \$14.50	\$20.25 \$21.75	\$27.00 \$29.00
99214	Visit Included Two of Three Components: *detailed history *detailed examination *medical decision making of moderate complexity	\$0.00 \$0.00	\$4.00 \$4.10	\$10.00 \$10.25	\$20.00 \$20.50	\$30.00 \$30.75	\$40.00 \$41.00
99215	Visit Included Two of Three Components: *comprehensive history *comprehensive examination *medical decision making of high complexity	\$0.00 \$0.00	\$5.90 \$6.20	\$14.75 \$15.50	\$29.50 \$31.00	\$44.25 \$46.50	\$59.00 \$62.00
PREVENTIVE MEDICINE SERVICES THESE CODES ARE TO BE USED PRIMARILY FOR WELL BABY VISITS. THESE ARE THE CODES TO BE USED FOR EPSDT BILLING							
NEW PATIENT							
99381	Age under one year	\$0.00 \$0.00	\$5.90 \$5.70	\$14.75 \$14.25	\$29.50 \$28.50	\$44.25 \$42.75	\$59.00 \$57.00
99382	Age 1 through 4 years	\$0.00 \$0.00	\$6.70 \$6.50	\$16.75 \$16.25	\$33.50 \$32.50	\$50.25 \$48.75	\$67.00 \$65.00
99383	Age 5 through 11 years	\$0.00 \$0.00	\$6.70 \$6.50	\$16.75 \$16.25	\$33.50 \$32.50	\$50.25 \$48.75	\$67.00 \$65.00
99384	Age 12 through 17 years	\$0.00 \$0.00	\$7.20 \$7.00	\$18.00 \$17.50	\$36.00 \$35.00	\$54.00 \$52.50	\$72.00 \$70.00
99385	Age 18 through 39 years	\$0.00 \$0.00	\$6.90 \$6.70	\$17.25 \$16.75	\$34.50 \$33.50	\$51.75 \$50.25	\$69.00 \$67.00
99386	Age 40 through 64	\$0.00	\$7.50	\$18.75	\$37.50	\$56.25	\$75.00
99387	Age 65 and over	\$0.00	\$7.50	\$18.75	\$37.50	\$56.25	\$75.00
ESTABLISHED PATIENT							
99391	Age under one year	\$0.00 \$0.00	\$5.20 \$5.10	\$13.00 \$12.75	\$26.00 \$25.50	\$39.00 \$38.25	\$52.00 \$51.00

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99392	Age 1 through 4 years		\$0.00 \$0.00	\$5.80 \$5.70	\$14.50 \$14.25	\$29.00 \$28.50	\$43.50 \$42.75	\$58.00 \$57.00
99393	Age 5 through 11 years		\$0.00 \$0.00	\$5.90 \$5.70	\$14.75 \$14.25	\$29.50 \$28.50	\$44.25 \$42.75	\$59.00 \$57.00
99394	Age 12 through 17 years		\$0.00 \$0.00	\$6.40 \$6.20	\$16.00 \$15.50	\$32.00 \$31.00	\$48.00 \$46.50	\$64.00 \$62.00
99395	Age 18 through 39 years		\$0.00 \$0.00	\$6.30 \$6.10	\$15.75 \$15.25	\$31.50 \$30.50	\$47.25 \$45.75	\$63.00 \$61.00
99396	Age 40 through 64		\$0.00 \$0.00	\$6.50 \$6.50	\$16.25 \$16.25	\$32.50 \$32.50	\$48.75 \$48.75	\$65.00 \$65.00
99397	Age 65 and over		\$0.00 \$0.00	\$6.50 \$6.50	\$16.25 \$16.25	\$32.50 \$32.50	\$48.75 \$48.75	\$65.00 \$65.00
INFANT CARE COORDINATION								
Z9010	Risk Screening	\$10.00	\$0.00	\$1.00	\$2.50	\$5.00	\$7.50	\$10.00
Z9104	Infant Assessment	\$25.00	\$0.00	\$2.50	\$6.25	\$12.50	\$18.75	\$25.00
Z9106	Follow-up	\$1.35/Day for up to 24 months	\$0.00	\$0.14	\$0.34	\$0.68	\$1.02	\$1.35
CASE MANAGEMENT - SEE CPT BOOK FOR DEFINITIONS								
99361	Medical conference, 30 min.	\$20.20	\$0.00	\$2.02	\$5.05	\$10.10	\$15.15	\$20.20
99362	Medical conference, 60 min.	\$40.45	\$0.00	\$4.05	\$10.11	\$20.23	\$30.34	\$40.45
99371	Phone call, brief	\$10.00	\$0.00	\$1.00	\$2.50	\$5.00	\$7.50	\$10.00
99372	Phone call, intermediate	\$45.50	\$0.00	\$4.55	\$11.38	\$22.75	\$34.13	\$45.50
99373	Phone call, complex	\$70.80	\$0.00	\$7.08	\$17.70	\$35.40	\$53.10	\$70.80
FAMILY PLANNING								
09007	Initial/Yearly	\$50.00	\$0.00	\$5.00	\$12.50	\$25.00	\$37.50	\$50.00
09009	Follow-up/Problem	\$20.00	\$0.00	\$2.00	\$5.00	\$10.00	\$15.00	\$20.00
COLPOSCOPY SERVICES								
57452	Colposcopy	\$75.00 \$74.00	\$0.00 \$0.00	\$7.50 \$7.40	\$18.75 \$18.50	\$37.50 \$37.00	\$56.25 \$55.50	\$75.00 \$74.00
57454	Colposcopy with Biopsy	\$118.00 \$115.00	\$0.00 \$0.00	\$11.80 \$11.50	\$29.50 \$28.75	\$59.00 \$57.50	\$88.50 \$86.25	\$118.00 \$115.00
57511	Cryosurgery, Initial or Repeat	\$104.00 \$101.00	\$0.00 \$0.00	\$10.40 \$10.10	\$27.00 \$25.25	\$52.00 \$50.50	\$79.00 \$75.75	\$104.00 \$101.00
DENTAL SERVICES BASED ON MEDIAN PRIVATE PRACTICE PROFESSIONAL FEES								
Adult Dental \$10.00 Flat Fee Plus Sliding Fee Amount								
90782	Therapeutic Injection	\$6.00	\$0.00	\$0.60	\$1.50	\$3.00	\$4.50	\$6.00
90788	Intramuscular Injection of Antibiotic	\$8.00 \$6.00	\$0.00 \$0.00	\$0.80 \$0.60	\$2.00 \$1.50	\$4.00 \$3.00	\$6.00 \$4.50	\$8.00 \$6.00
36415	Venipuncture	\$7.00 Flat Rate When Provided to Walk-ins and Nonroutine Patients						
	Blood Pressure Check	No Charge --- Services Provided Free Statewide ---						
86580	PPD/Tuberculin Testing	\$6.00 Flat Rate Only When Provided Alone as a Screening						
71010	Radiological Exam: Chest	\$21.00 Flat Rate Charge						
	Activities of Daily Living	\$9.50 Flat Rate Charge						
	Cholesterol Screening and Counseling	\$7.00 Flat Rate Only When Provided as a Screening Test						
	Medical Record Copying	\$0.50/Page -- Flat Rate Charge						
	Pharmacy Professional Fee (only for districts with pharmacies)	\$4.25	\$0.00	\$0.43	\$1.06	\$2.12	\$3.18	\$4.25

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	Drugs and Medications	BASED ON COST: District Choice on Using Sliding Fee						
	Other X-Ray Services	--- Based on DMAS Maximum Payment Levels ---						
	Other Lab. Services	--- Based on DMAS Maximum Payment Levels ---						
	OTHER SERVICES							
	Child Specialty Services Annual Fee	\$120.00	\$0.00	\$12.00	\$30.00	\$60.00	\$90.00	\$120.00
	Home Health Services Skilled Nursing	\$110.00	\$0.00	\$11.00	\$27.50	\$55.00	\$82.50	\$110.00
	Comprehensive	\$180.00	\$0.00	\$18.00	\$45.00	\$90.00	\$135.00	\$180.00
	Physical Therapy	\$100.00 \$110.00	\$0.00 \$0.00	\$40.00 \$11.00	\$25.00 \$27.50	\$50.00 \$55.00	\$75.00 \$82.50	\$100.00 \$110.00
	Occupational Therapy	\$110.00	\$0.00	\$11.00	\$27.50	\$55.00	\$82.50	\$110.00
	Speech Therapy	\$110.00	\$0.00	\$11.00	\$27.50	\$55.00	\$82.50	\$110.00
	Home Health Aide	\$50.00	\$0.00	\$5.00	\$12.50	\$25.00	\$37.50	\$50.00
	Medical Social Worker	\$130.00	\$0.00	\$13.00	\$32.50	\$65.00	\$97.50	\$130.00
	CHILD DEVELOPMENT SERVICES PROGRAM							
	MEDICAL SERVICES							
99241	Problem Focused Consultation	\$44.00 \$39.00	\$0.00 \$0.00	\$4.40 \$3.90	\$11.00 \$9.75	\$22.00 \$19.50	\$33.00 \$29.25	\$44.00 \$39.00
99242	Expanded Consultation	\$55.00 \$57.00	\$0.00 \$0.00	\$5.50 \$5.70	\$13.75 \$14.25	\$27.50 \$28.50	\$41.25 \$42.75	\$55.00 \$57.00
99243	Detailed Consultation	\$72.00 \$73.00	\$0.00 \$0.00	\$7.20 \$7.30	\$18.00 \$18.25	\$36.00 \$36.50	\$54.00 \$54.75	\$72.00 \$73.00
99244	Comprehensive Consultation	\$99.00 \$100.00	\$0.00 \$0.00	\$9.90 \$10.00	\$24.75 \$25.00	\$49.50 \$50.00	\$74.25 \$75.00	\$99.00 \$100.00
90862	Pharmacological Management	\$33.00 \$34.00	\$0.00 \$0.00	\$3.30 \$3.40	\$8.25 \$8.50	\$16.50 \$17.00	\$24.75 \$25.50	\$33.00 \$34.00
	Training in Activities of Daily Living	\$25.00	\$0.00	\$2.50	\$6.25	\$12.50	\$18.75	\$25.00
96100	Developmental Testing-Limited Psychological Testing	\$53.00 \$61.00	\$0.00 \$0.00	\$5.30 \$6.10	\$13.25 \$15.25	\$26.50 \$30.50	\$39.75 \$45.75	\$53.00 \$61.00
	MENTAL HEALTH SERVICES							
90855	Interactive Psych. Exam	\$84.00 \$69.00	\$0.00 \$0.00	\$8.40 \$6.90	\$20.25 \$17.25	\$40.50 \$34.50	\$60.75 \$51.75	\$84.00 \$69.00
90843	Individual Psychotherapy 20-30 Minute Session	\$41.00	\$0.00	\$4.10	\$10.25	\$20.50	\$30.75	\$41.00
90844	45-60 Minute Session	\$67.00	\$0.00	\$6.70	\$16.75	\$33.50	\$50.25	\$67.00
90847	Family Psychotherapy	\$74.00 \$71.00	\$0.00 \$0.00	\$7.40 \$7.10	\$18.50 \$17.75	\$37.00 \$35.50	\$55.50 \$53.25	\$74.00 \$71.00
90853	Group Psychotherapy	\$24.00 \$26.00	\$0.00 \$0.00	\$2.40 \$2.60	\$6.00 \$6.50	\$12.00 \$13.00	\$18.00 \$19.50	\$24.00 \$26.00
90849	Multifamily Psychotherapy	\$21.00 \$20.00	\$0.00 \$0.00	\$2.10 \$2.00	\$5.25 \$5.00	\$10.50 \$10.00	\$15.75 \$15.00	\$21.00 \$20.00
	EDUCATIONAL SERVICES							
	Educational Diagnostic Evaluation	NO COST..... Service Provided Free Statewide						
	School Visit/Consultation	NO COST..... Service Provided Free Statewide						
	Classroom Observation	NO COST..... Service Provided Free Statewide						

CASE MANAGEMENT SERVICES								
99362	Interdisciplinary Medical Conference	\$40.45	\$0.00	\$4.05	\$10.11	\$20.23	\$30.34	\$40.45
	Other Case Mgt. Activity	NO COST.....Service Provided Free Statewide						
	Progress Review	NO COST.....Service Provided Free Statewide						

12 VAC 5-210-20. Charges and payment requirements for Northern Virginia.

CHART 2.

By the provisions of the "Regulations Governing Eligibility Standards and Charges for Medical Care Services" promulgated by the authority of the Board of Health in accordance with §§ 32.1-11 and 32.1-12 of the Code of Virginia, listed below are the charges for medical care services, stating the minimum required payments to be made by patients toward their charges, according to income levels.

CPT CODE	MEDICAL CARE SERVICES	MAXIMUM CHARGE PER VISIT/SERVICE	INCOME LEVEL A (0%)	INCOME LEVEL B (10%)	INCOME LEVEL C (25%)	INCOME LEVEL D (50%)	INCOME LEVEL E (75%)	INCOME LEVEL F (100%)
Z9900	MATERNITY	\$37.00	\$0.00	\$3.70	\$9.25	\$18.50	\$27.75	\$37.00
59430	Post-Partum Visit	\$65.00 \$72.00	\$0.00 \$0.00	\$6.50 \$7.20	\$16.25 \$18.00	\$32.50 \$36.00	\$48.75 \$54.00	\$65.00 \$72.00
MATERNITY CARE COORDINATION								
Z9001	Risk Screening	\$11.50	\$0.00	\$1.15	\$3.00	\$5.75	\$8.75	\$11.50
Z9104	Maternity Assessment	\$28.50	\$0.00	\$2.85	\$7.25	\$14.25	\$21.25	\$28.50
Z9105	Maternity Follow-up	\$1.52/day x 11 mo.	\$0.00	\$0.15	\$0.38	\$0.76	\$1.14	\$1.52
NUTRITIONAL SERVICES								
Z9310	Original Assessment	\$22.75	\$0.00	\$0.00	\$0.00	\$11.50	\$17.50	\$22.75
Z9311	Follow-up	\$11.50/Encounter	\$0.00	\$0.00	\$0.00	\$5.75	\$8.75	\$11.50
Z9300, Z9301 OR Z9302	Group Education	\$7.00/class session OR \$41.00 maximum	\$0.00	\$0.70	\$1.75	\$3.50	\$5.25	\$7.00
Z9312	Homemaker Services	\$37.50 OR \$9.00/hr not to exceed 4 hours	\$0.00 \$0.00	\$3.75 \$0.90	\$9.40 \$2.25	\$18.75 \$4.50	\$28.00 \$6.75	\$37.50 \$9.00
CLINICAL VISITS - INCLUDES BOTH PEDIATRIC AND ADULT SERVICES								
NEW PATIENTS: TO QUALIFY AS A NEW PATIENT, PATIENT MUST NOT HAVE BEEN SEEN BY ANY PROVIDER IN THAT HEALTH DEPARTMENT FOR AT LEAST THREE YEARS								
99201	Visit Included All Three Components: *problem focused history *problem focused examination *straightforward medical decision making		\$0.00 \$0.00	\$2.00 \$2.70	\$6.50 \$6.75	\$13.00 \$13.50	\$19.50 \$20.25	\$26.00 \$27.00
99202	Visit Included All Three Components: *expanded problem focused history *expanded problem focused examination *straightforward medical decision making		\$0.00 \$0.00	\$3.70 \$3.90	\$9.25 \$9.75	\$18.50 \$19.50	\$27.75 \$29.25	\$37.00 \$39.00
99203	Visit Included All Three Components: *detailed history *detailed examination *medical decision making of low intensity		\$0.00 \$0.00	\$4.90 \$5.10	\$12.25 \$12.75	\$24.50 \$25.50	\$36.75 \$38.25	\$49.00 \$51.00
99204	Visit Included All Three Components: *comprehensive history *comprehensive exam *medical decision making of moderate complexity		\$0.00 \$0.00	\$7.10 \$7.40	\$17.75 \$18.50	\$35.50 \$37.00	\$53.25 \$55.50	\$71.00 \$74.00

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99205	Visit Included All Three Components: *comprehensive history *comprehensive exam *medical decision making of high complexity	\$0.00 \$0.00	\$8.50 \$9.10	\$21.25 \$22.75	\$42.50 \$45.50	\$63.75 \$68.25	\$85.00 \$91.00
ESTABLISHED PATIENT VISITS: ANY PATIENT THAT HAS BEEN SEEN BY A PROVIDER IN THAT HEALTH DEPARTMENT WITHIN THE LAST THREE YEARS							
99211	Visit May or May Not Require Physician Presenting Problems are Minimal	\$0.00	\$1.30	\$3.25	\$6.50	\$9.75	\$13.00
99212	Visit Included Two of Three Components: *problem focused history *problem focused examination *straightforward medical decision making	\$0.00	\$2.20	\$5.50	\$11.00	\$16.50	\$22.00
99213	Visit Included Two of Three Components: *expanded problem focused history *expanded problem focused examination *medical decision making of low complexity	\$0.00 \$0.00	\$3.10 \$3.20	\$7.75 \$8.00	\$15.50 \$16.00	\$23.25 \$24.00	\$31.00 \$32.00
99214	Visit Included Two of Three Components: *detailed history *detailed examination *medical decision making of moderate complexity	\$0.00 \$0.00	\$4.40 \$4.60	\$11.00 \$11.50	\$22.00 \$23.00	\$33.00 \$34.50	\$44.00 \$46.00
99215	Visit Included Two of Three Components: *comprehensive history *comprehensive examination *medical decision making of high complexity	\$0.00 \$0.00	\$6.50 \$6.90	\$16.25 \$17.25	\$32.50 \$34.50	\$48.75 \$51.75	\$65.00 \$69.00
PREVENTIVE MEDICINE SERVICES THESE CODES ARE TO BE USED PRIMARILY FOR WELL BABY VISITS. THESE ARE THE CODES TO BE USED FOR EPSDT BILLING							
NEW PATIENT							
99381	Age Under One Year	\$0.00 \$0.00	\$6.50 \$6.30	\$16.25 \$15.75	\$32.50 \$31.50	\$48.75 \$47.25	\$65.00 \$63.00
99382	Age 1 through 4 Years	\$0.00 \$0.00	\$7.40 \$7.20	\$18.50 \$18.00	\$37.00 \$36.00	\$55.50 \$54.00	\$74.00 \$72.00
99383	Age 5 through 11 Years	\$0.00 \$0.00	\$7.40 \$7.20	\$18.50 \$18.00	\$37.00 \$36.00	\$55.50 \$54.00	\$74.00 \$72.00
99384	Age 12 through 17 Years	\$0.00 \$0.00	\$8.00 \$7.70	\$20.00 \$19.25	\$40.00 \$38.50	\$60.00 \$57.75	\$80.00 \$77.00
99385	Age 18 through 39 Years	\$0.00 \$0.00	\$7.60 \$7.40	\$19.00 \$18.50	\$38.00 \$37.00	\$57.00 \$55.50	\$76.00 \$74.00
99386	Age 40 through 64	\$0.00	\$8.30	\$20.75	\$41.50	\$62.25	\$83.00
99387	Age 65 and over	\$0.00	\$8.30	\$20.75	\$41.50	\$62.25	\$83.00
ESTABLISHED PATIENT							
99391	Age Under One Year	\$0.00 \$0.00	\$5.80 \$5.70	\$14.50 \$14.25	\$29.00 \$28.50	\$43.50 \$42.75	\$58.00 \$57.00
99392	Age 1 through 4 Years	\$0.00 \$0.00	\$6.40 \$6.30	\$16.00 \$15.75	\$32.00 \$31.50	\$48.00 \$47.25	\$64.00 \$63.00
99393	Age 5 through 11 Years	\$0.00 \$0.00	\$6.50 \$6.30	\$16.25 \$15.75	\$32.50 \$31.50	\$48.75 \$47.25	\$65.00 \$63.00
99394	Age 12 through 17 Years	\$0.00 \$0.00	\$7.10 \$6.90	\$17.75 \$17.25	\$35.50 \$34.50	\$53.25 \$51.75	\$71.00 \$69.00
99395	Age 18 through 39 Years	\$0.00 \$0.00	\$7.00 \$6.80	\$17.50 \$17.00	\$35.00 \$34.00	\$52.50 \$51.00	\$70.00 \$68.00
99396	Age 40 through 64	\$0.00	\$7.20	\$18.00	\$36.00	\$54.00	\$72.00
99397	Age 65 and over	\$0.00	\$7.20	\$18.00	\$36.00	\$54.00	\$72.00

INFANT CARE COORDINATION								
Z9010	Risk Screening	\$11.50	\$0.00	\$1.15	\$2.88	\$5.75	\$8.63	\$11.50
Z9104	Infant Assessment	\$28.50	\$0.00	\$2.85	\$7.25	\$14.25	\$21.50	\$28.50
Z9106	Follow-up	\$1.52/Day for up to 24 Months	\$0.00	\$0.15	\$0.38	\$0.76	\$1.14	\$1.52
CASE MANAGEMENT - SEE CPT BOOK FOR DEFINITIONS								
99361	Medical Conference, 30 min.	\$22.50	\$0.00	\$2.25	\$5.63	\$11.25	\$16.88	\$22.50
99362	Medical Conference, 60 min.	\$45.00	\$0.00	\$4.50	\$11.25	\$22.50	\$33.75	\$45.00
99371	Phone Call, Brief	\$11.00	\$0.00	\$1.10	\$2.75	\$5.50	\$8.25	\$11.00
99372	Phone Call, Intermediate	\$50.00	\$0.00	\$5.00	\$12.50	\$25.00	\$37.50	\$50.00
99373	Phone Call, Complex	\$77.00	\$0.00	\$7.70	\$19.25	\$38.50	\$57.75	\$77.00
FAMILY PLANNING								
09007	Initial/Yearly	\$56.00	\$0.00	\$5.60	\$14.00	\$28.00	\$42.00	\$56.00
09009	Follow-up/Problem	\$22.75	\$0.00	\$2.28	\$5.75	\$11.25	\$17.00	\$22.75
COLPOSCOPY SERVICES								
57452	Colposcopy	\$83.00	\$0.00	\$8.30	\$20.75	\$41.50	\$62.25	\$83.00
		\$82.00	\$0.00	\$8.20	\$20.50	\$41.00	\$61.50	\$82.00
57454	Colposcopy with Biopsy	\$130.00	\$0.00	\$13.00	\$32.50	\$65.00	\$97.50	\$130.00
		\$127.00	\$0.00	\$12.70	\$31.75	\$63.50	\$95.25	\$127.00
57511	Cryosurgery, Initial or Repeat	\$115.00	\$0.00	\$11.50	\$28.75	\$57.50	\$86.25	\$115.00
		\$112.00	\$0.00	\$11.20	\$28.00	\$56.00	\$84.00	\$112.00
DENTAL SERVICES -- BASED ON MEDIAN PRIVATE PRACTICE PROFESSIONAL FEES								
Adult Dental -- \$10.00 Flat Fee Plus Sliding Fee Amount								
90782	Therapeutic Injection	\$7.00	\$0.00	\$0.70	\$1.75	\$3.50	\$5.25	\$7.00
90788	Intramuscular Injection of Antibiotic	\$9.00	\$0.00	\$0.90	\$2.25	\$4.50	\$6.75	\$9.00
		\$7.00	\$0.00	\$0.70	\$1.75	\$3.50	\$5.25	\$7.00
36415	Venipuncture	\$8.00 Flat Rate Only When Provided to Walk-Ins & Nonroutine Patients						
	Blood Pressure Check	NO CHARGE Service Provided Free Statewide						
86580	PPD/Tuberculin Testing	\$6.00 Flat Rate Only When Provided Alone as a Screening						
71010	Radiological Exam: Chest	\$25.00 Flat Rate Charge						
	Activities of Daily Living	\$12.00/hr. Flat Rate Charge						
	Cholesterol Screening and Counseling	\$7.00 Flat Rate Only When Provided as a Screening Test						
	Medical Record Copying	\$0.50/page Flat Rate Charge						
	Pharmacy Professional Fee (only districts with pharmacies)	\$4.25	\$0.00	\$0.43	\$1.06	\$2.12	\$3.18	\$4.25
	Drugs and Medications	BASED ON COST: District Choice on Using Sliding Fee						
	Other X-Ray Services	BASED ON THE DMAS MAXIMUM PAYMENT LEVELS						
	Other Laboratory Services	BASED ON THE DMAS MAXIMUM PAYMENT LEVELS						
OTHER SERVICES								
	Child Specialty Services Annual Fee	\$136.00	\$0.00	\$13.50	\$34.00	\$68.00	\$102.00	\$136.00
	Home Health Services Skilled Nursing	\$110.00	\$0.00	\$11.00	\$27.50	\$55.00	\$82.50	\$110.00
	Comprehensive	\$180.00	\$0.00	\$18.00	\$45.00	\$90.00	\$135.00	\$180.00

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	Physical Therapy	\$100.00 \$110.00	\$0.00 \$0.00	\$40.00 \$11.00	\$25.00 \$27.50	\$50.00 \$55.00	\$75.00 \$82.50	\$100.00 \$110.00
	Occupational Therapy	\$110.00	\$0.00	\$11.00	\$27.50	\$55.00	\$82.50	\$110.00
	Speech Therapy	\$110.00	\$0.00	\$11.00	\$27.50	\$55.00	\$82.50	\$110.00
	Home Health Aide	\$50.00	\$0.00	\$5.00	\$12.50	\$25.00	\$37.50	\$50.00
	Medical Social Worker	\$130.00	\$0.00	\$13.00	\$32.50	\$65.00	\$97.50	\$130.00
CHILD DEVELOPMENT SERVICES PROGRAM								
MEDICAL SERVICES								
99241	Problem Focused Consultation	\$40.00 \$43.00	\$0.00 \$0.00	\$4.90 \$4.30	\$12.25 \$10.75	\$24.50 \$21.50	\$36.75 \$32.25	\$40.00 \$43.00
99242	Expanded Consultation	\$64.00 \$63.00	\$0.00 \$0.00	\$6.10 \$6.30	\$16.25 \$15.75	\$30.50 \$31.50	\$45.75 \$47.25	\$64.00 \$63.00
99243	Detailed Consultation	\$80.00 \$81.00	\$0.00 \$0.00	\$8.00 \$8.10	\$20.00 \$20.25	\$40.00 \$40.50	\$60.00 \$60.75	\$80.00 \$81.00
99244	Comprehensive Consultation	\$109.00 \$110.00	\$0.00 \$0.00	\$10.90 \$11.00	\$27.25 \$27.50	\$54.50 \$55.00	\$81.75 \$82.50	\$109.00 \$110.00
90862	Pharmacological Management	\$37.00 \$38.00	\$0.00 \$0.00	\$3.70 \$3.80	\$9.25 \$9.50	\$18.50 \$19.00	\$27.75 \$28.50	\$37.00 \$38.00
	Training in Activities of Daily Living	\$28.50 \$28.58	\$0.00	\$2.86	\$7.15	\$14.29	\$21.44	\$28.58
	Developmental Testing-Limited	\$50.00	\$0.00	\$5.00	\$14.75	\$29.50	\$44.25	\$50.00
96100	Psychological Testing	\$68.00	\$0.00	\$6.80	\$17.00	\$34.00	\$51.00	\$68.00
MENTAL HEALTH SERVICES								
90855	Interactive Psych Examination	\$90.00 \$76.00	\$0.00 \$0.00	\$9.00 \$7.60	\$22.50 \$19.00	\$45.00 \$38.00	\$67.50 \$57.00	\$90.00 \$76.00
90843	Individual Psychotherapy: 20-30 Minute Session	\$46.00	\$0.00	\$4.60	\$11.50	\$23.00	\$34.50	\$46.00
90844	45-60 Minute Session	\$74.00 \$74.00	\$0.00	\$7.40	\$18.50	\$37.00	\$55.50	\$74.00
90847	Family Psychotherapy	\$82.00 \$79.00	\$0.00 \$0.00	\$8.20 \$7.90	\$20.50 \$19.75	\$41.00 \$39.50	\$61.50 \$59.25	\$82.00 \$79.00
90853	Group Psychotherapy	\$27.00 \$29.00	\$0.00 \$0.00	\$2.70 \$2.90	\$6.75 \$7.25	\$13.50 \$14.50	\$20.25 \$21.75	\$27.00 \$29.00
90849	Multifamily Psychotherapy	\$24.00 \$22.00	\$0.00 \$0.00	\$2.40 \$2.20	\$6.00 \$5.50	\$12.00 \$11.00	\$18.00 \$16.50	\$24.00 \$22.00
EDUCATIONAL SERVICES								
	Educational Diag. Evaluation	NO COST Service Provided Free Statewide						
	School Visit/Consultation	NO COST Service Provided Free Statewide						
	Classroom Observation	NO COST Service Provided Free Statewide						
CASE MANAGEMENT SERVICES								
99362	Interdisciplinary Medical Conference	\$46.23	\$0.00	\$4.62	\$11.56	\$23.12	\$34.67	\$46.23
	Other Case Mgt. Activity	NO COST Service Provided Free Statewide						
	Progress Review	NO COST Service Provided Free Statewide						

VA.R. Doc. No. R97-394; Filed April 9, 1997, 9:34 a.m.

FORMS

DEPARTMENT OF MINES, MINERALS AND ENERGY

EDITOR'S NOTICE: The following forms have been issued by the Department of Mines, Minerals and Energy. Copies of the forms may be obtained from Cheryl Cashman, Department of Mines, Minerals and Energy, Ninth Street Office Building, 202 North 9th Street, Richmond, VA 23219, telephone (804) 692-3213.

Forms Implementing Chapters 14.2 through 14.4 of Title 45.1 of the Code of Virginia Regarding Coal Mine Safety

Underground Mine Risk Assessment, DM-RAU-1, 8/95

Surface Mine, Auger, Highwall Miner Risk Assessment, DM-RAS-1, 8/95



COMMONWEALTH OF VIRGINIA
DEPARTMENT OF MINES, MINERALS AND ENERGY
DIVISION OF MINES

P.O. Drawer 900 • Big Stone Gap, VA 24219

UNDERGROUND MINE RISK ASSESSMENT

COMPANY _____ INSP. TYPE: _____
 MINE NAME/NO. _____ MINE INDEX NO. _____
 EVALUATION DATE _____ EVALUATION PERIOD _____

HEALTH & SAFETY FACTORS	LOW RISK (0)	(1)	HIGH RISK (2)	TOTAL REGULAR	TOTAL SPOT
General Mine Conditions	()	()	()	_____	_____
Roof Conditions	()	()	()	_____	_____
Roof Falls	()	()	()	_____	_____
Ventilation	()	()	()	_____	_____
Methane Liberation	()	()	()	_____	_____
Methane Problems	()	()	()	_____	_____
Ignitions	()	()	()	_____	_____
Fires	()	()	()	_____	_____
Bleeder System	()	()	()	_____	_____
Seals	()	()	()	_____	_____
Abandoned Works	()	()	()	_____	_____
Inundation Gas/Water	()	()	()	_____	_____
Gas Well/VVH's	()	()	()	_____	_____
Moving Section/Longwall	()	()	()	_____	_____
Conveyor/Haulage Conditions	()	()	()	_____	_____
Pillaring	()	()	()	_____	_____
Operating Supplies	()	()	()	_____	_____
Equipment Condition	()	()	()	_____	_____
Electrical/Permissibility	()	()	()	_____	_____
Failure to Report	()	()	()	_____	_____
Correction of Conditions	()	()	()	_____	_____
Personal Protective Equipment	()	()	()	_____	_____
Communication Facilities	()	()	()	_____	_____
TOTAL MAXIMUM FACTORS (23) -	_____	_____	_____	_____	_____

Comments: _____

INSPECTOR: _____ SUPERVISOR: _____

DM-RAU-1 8/95



COMMONWEALTH OF VIRGINIA
DEPARTMENT OF MINES, MINERALS AND ENERGY
DIVISION OF MINES

P.O. Drawer 900 • Big Stone Gap, VA 24219

SURFACE MINE, AUGER, HIGHWALL MINER RISK ASSESSMENT

COMPANY _____ INSP. TYPE: _____
MINE NAME/NO. _____ MINE INDEX NO. _____
EVALUATION DATE _____ EVALUATION PERIOD _____

HEALTH & SAFETY FACTORS	LOW RISK (0)	(1)	HIGH RISK (2)	TOTAL REGULAR	TOTAL SPOT
Blasting Practices	()	()	()	_____	_____
Storage of Blasting Material	()	()	()	_____	_____
General Mine Conditions	()	()	()	_____	_____
Highwalls, Berms, Benches, Roads, etc.	()	()	()	_____	_____
Gas Wells/VVH's	()	()	()	_____	_____
Fire Protection	()	()	()	_____	_____
Intersecting Old Works, etc.	()	()	()	_____	_____
Haulage Conditions	()	()	()	_____	_____
Operating Supplies	()	()	()	_____	_____
Equipment Conditions	()	()	()	_____	_____
Electrical Installations	()	()	()	_____	_____
Dust/Noise Control	()	()	()	_____	_____
Reporting of Occurrences	()	()	()	_____	_____
Correction of Conditions	()	()	()	_____	_____
Personal Protective Equipment	()	()	()	_____	_____
Communications Systems	()	()	()	_____	_____

TOTAL MAXIMUM FACTORS (16) - _____

Comments: _____

INSPECTOR: _____ SUPERVISOR: _____

DM-RAS-1 5/95

GOVERNOR

GOVERNOR'S COMMENTS ON PROPOSED REGULATIONS

BOARD OF MEDICINE

Title of Regulation: 18 VAC 85-30-10 et seq. Regulations Governing the Practice of Physical Therapy (REPEALING).

Title of Regulation: 18 VAC 85-31-10 et seq. Regulations Governing the Practice of Physical Therapy.

Governor's Comment:

I have reviewed this proposed regulation on a preliminary basis. While I reserve the right to take action authorized by the Administrative Process Act during the final adoption period, I have no objection to the proposed regulation based on the information and public comment currently available.

/s/ George Allen
Governor
Date: January 31, 1997

VA.R. Doc. No. R97-382; Filed March 28, 1997, 1:16 p.m.

Title of Regulation: 18 VAC 85-50-10 et seq. Regulations Governing the Practice of Physicians' Assistants.

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: March 26, 1997

VA.R. Doc. No. R97-381; Filed March 28, 1997, 1:16 p.m.

DEPARTMENT OF MINES, MINERALS AND ENERGY

Board of Coal Mining Examiners

Title of Regulation: 4 VAC 25-20-10 et seq. Board of Coal Mining Examiners Certification Requirements.

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: February 7, 1997

VA.R. Doc. No. R97-383; Filed March 28, 1997, 1:16 p.m.

Virginia Gas and Oil Board

Title of Regulation: 4 VAC 25-160-10 et seq. Virginia Gas and Oil Board Regulations.

Governor's Comment:

I have reviewed this proposed regulation on a preliminary basis. While I reserve the right to take action authorized by the Administrative Process Act during the final adoption period, I have no objection to the proposed regulation based on the information and public comment currently available.

/s/ George Allen
Governor
Date: January 28, 1997

VA.R. Doc. No. R97-384; Filed March 28, 1997, 1:16 p.m.

DEPARTMENT OF MOTOR VEHICLES

Title of Regulation: 24 VAC 20-20-10 et seq. Privacy Protection Act Rules and Regulations (REPEALING).

Governor's Comment:

I have reviewed the proposed repeal of this 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 this repeal based on the information and public comment currently available.

/s/ George Allen
Governor
Date: January 3, 1997

VA.R. Doc. No. R97-379; Filed March 28, 1997, 1:16 p.m.

Title of Regulation: 24 VAC 20-30-10 et seq. Virginia Driver Improvement Act Rules and Regulations (REPEALING).

Governor's Comment:

I have reviewed the proposed repeal of this 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 this repeal based on the information and public comment currently available.

/s/ George Allen
Governor
Date: January 3, 1997

VA.R. Doc. No. R97-377; Filed March 28, 1997, 1:17 p.m.

Title of Regulation: 24 VAC 20-130-10 et seq. International Registration Plan Virginia Rules and Regulations (REPEALING).

Governor's Comment:

I have reviewed the proposed repeal of this 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 this repeal based on the information and public comment currently available.

/s/ George Allen

Governor

Date: January 3, 1997

VA.R. Doc. No. R97-378; Filed March 28, 1997, 1:17 p.m.

BOARD OF PSYCHOLOGY

Title of Regulation: 18 VAC 125-30-10 et seq. Regulations Governing the Certification of Sex Offender Treatment Providers.

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: March 26, 1997

VA.R. Doc. No. R97-380; Filed March 28, 1997, 1:16 p.m.

GENERAL NOTICES/ERRATA

Symbol Key

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

STATE AIR POLLUTION CONTROL BOARD

Notice of Extended Public Comment Period

The State Air Pollution Control Board has extended the previously advertised public comment period relating to the issuance of a general variance to Merck & Co., Inc. for the operation of Merck's Stonewall plant. The general variance would be issued in compliance with a Project XL agreement standing in lieu of applicable state air pollution control regulations, and in relation to the intent to issue a Prevention of Significant Deterioration (PSD) permit to the facility.

The deadline for comments on the proposal is 5 p.m. on May 30, 1997. Written comments should be addressed to Larry Simmons, Department of Environmental Quality, Valley Regional Office, P.O. Box 1129, Harrisonburg, VA 22801.

SECRETARY OF THE COMMONWEALTH

† Notice to Counties, Cities, Towns, Authorities, Commission, Districts and Political Subdivisions of the Commonwealth--Filing of Bond Obligations

Notice is hereby given that pursuant to § 2.1-71 of the Code of Virginia, each county, city and town and each authority, commission, district or other political subdivision of the Commonwealth to which any money is appropriated by the Commonwealth or any of the above which levies any taxes or collects any fees or charges for the performance of public services or issues bonds, notes or other obligations, shall annually file with the Secretary of the Commonwealth a list of all bond obligations, the date and amount of the obligation and the outstanding balance therein, on or before June 30 of each year. The following form for use herein described may be obtained from the contact person identified below.

Contact: Tanya Stevens, Conflict of Interest and Appointments Specialist, P.O. Box 2454, Richmond, VA 23218, Old Finance Building, Capitol Square, Richmond, VA 23219, telephone (804) 786-2441.

Filing form per §2.1-71 of the *Code of Virginia-1997*
Office of the Secretary of the Commonwealth

OFFICIAL TITLE OF POLITICAL SUBDIVISION: _____

ADDRESS: _____

<u>Type of Obligation</u>	<u>Date Issued</u>	<u>Amount of Issue</u>	<u>Balance Outstanding</u>	<u>Type of Project Financed</u>
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General Notices/Errata

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

† Notice Regarding Proposed Regulations Concerning Methods and Standards for Establishing Payment Rates--Inpatient Hospital Care (Diagnosis Related Groupings (DRGs))

The Department of Medical Assistance Services published its proposed regulations for Methods and Standards for Establishing Payment Rates--Inpatient Hospital Care (Diagnosis Related Groupings (DRGs)) in the Virginia Register on December 23, 1996 (Volume 13, Issue 7). In several Virginia Administrative Code (VAC) sections, reference was made in the filed regulations to "DME." In publishing the agency's proposed regulations for Article 2 comment period, this reference to "DME" was inadvertently spelled out to mean "durable medical equipment." In the context of this particular reimbursement regulation, DMAS intended for "DME" to mean "direct medical education." DMAS regrets any confusion this oversight may have caused.

STATE WATER CONTROL BOARD

Notice of Additional Comment Period on Proposed Amendments to Virginia's Water Quality Standards

Notice is hereby given that the State Water Control Board is seeking additional comment on the proposed amendment to 9 VAC 25-260-00 et seq., Water Quality Standards. A notice for public hearing and comment period on proposed amendments to this regulation was last published in the Virginia Register on February 5, 1996. Staff have completed their review of comments received from that comment period and have revised the proposed amendments. This revised proposal is the subject of this additional comment period. Information on the proposal as well as copies of the revised regulation and the staff response to comments are available from the contact listed below.

As part of this comment period, public meetings are being held to receive additional oral and written comments which the State Water Control Board will consider before final adoption of these standards. In order to be considered, comments must be received by June 14, 1997.

The board will hold two public meetings to receive oral and written comments and to answer questions of the public. The meeting will be held at the following dates and location:

May 20, 1997 - 7 p.m.
Brookneal Elementary School, 133 Charlotte Street,
Brookneal, Virginia 24528.

May 22, 1997 - 7 p.m.
Virginia War Memorial, 621 South Belvidere Street,
Richmond, Virginia 23220.

Written comments should be submitted to Dr. Alan J. Anthony, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240-0009.

For information on the proposal, contact Eleanore Daub at the Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240-0009, or call (804) 698-4111, toll-free 1-800-592-5482, or via e-mail at emdaub@deq.state.va.us.

The meetings are being held at public facilities believed to be accessible to persons with disabilities. Any person with questions on the accessibility of the facilities should contact Ms. Daub. Persons needing interpreter services for the deaf must notify Ms. Daub no later than May 9, 1997.

Enforcement Action Proposed Amendments to Consent Special Orders Erath Veneer Corporation of Virginia Ronile, Incorporated Montgomery County Public Service Authority

The State Water Control Board and the Department of Environmental Quality propose to amend Consent Special Orders for:

1. Erath Veneer Corporation of Virginia for its Rocky Mount plant, VPA Permit No. VPA02064. The amendment revises the schedule to close a wastewater treatment lagoon and the requirements for monitoring groundwater.
2. Ronile, Incorporated, for its Rocky Mount plant, VPDES Permit No. VA0079015. The amendment revises the construction completion and final compliance dates for upgrading Ronile's wastewater treatment plant. It also adjusts the toxicity management program biological and chemical test schedule to allow for plant reconstruction.
3. Montgomery County Public Service Authority for its Shawsville sewage treatment plant, VPDES Permit No. VA0024031. The amendment extends the construction schedule and interim limits for a plant expansion.

On behalf of the State Water Control Board, the Department of Environmental Quality will receive written comments relating to the proposed action until May 14, 1997. Comments should be addressed to James F. Smith, West Central Regional Office, Department of Environmental Quality, 3019 Peters Creek Road, N.W., Roanoke, VA 24019, or FAX 540-562-6725, and refer to Erath, Ronile, or Shawsville Special Consent Order.

The proposed order may be examined at the Department of Environmental Quality, Office of Enforcement, 629 East Main Street, P.O. Box 10009, Richmond, VA 23240-0009 or at the Department of Environmental Quality, West Central Regional Office, 3019 Peters Creek Road, N.W., Roanoke, VA 24019. Copies of the orders and amendments may be obtained in person or by mail from these offices.

VIRGINIA CODE COMMISSION

Notice to State Agencies

Mailing Address: Virginia Code Commission, 910 Capitol Street, General Assembly Building, 2nd Floor, Richmond, VA 23219. You may FAX in your notice; however, we ask that you FAX two copies and do not follow up with a mailed copy. Our FAX number is: (804) 692-0625.

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

All agencies are required to use the appropriate forms when furnishing material and dates for publication in *The Virginia Register of Regulations*. The forms 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 CORPORATION COMMISSION

BUREAU OF FINANCIAL INSTITUTIONS

Title: Administrative Ruling 0213 - "Membership by FDIC-Insured Banks in a Federal Home Loan Bank"

Publication: 13:13 VA.R. 1484 March 17, 1997.

Correction to Text:

Page 1484, line 2, change "supplemented" to "supplanted"

**DEPARTMENT OF HOUSING AND COMMUNITY
DEVELOPMENT**

Title of Regulation: 13 VAC 5-51-10 et seq. Virginia Statewide Fire Prevention Code.

Publication: 13:12 VA.R. 1338-1344 March 3, 1997.

Correction to Final Regulation:

Page 1339, column 1, 13 VAC 5-51-20 A, Note, line 1, change "This code" to "The Virginia Statewide Fire Prevention Code"

Title of Regulation: 13 VAC 5-61-10 et seq. Virginia Uniform Statewide Building Code.

Publication: 13:12 VA.R. 1344-1363 March 3, 1997.

Correction to Final Regulation:

Page 1352, column 2, 13 VAC 5-61-210, Exception, line 3, change "and" to "or"

**DEPARTMENT OF TRANSPORTATION
(COMMONWEALTH TRANSPORTATION BOARD)**

Title of Regulation: 24 VAC 30-170-10 et seq. Rules and Rules Governing the Use, Operation and Maintenance of State-Owned Fleet Vehicles.

Publication: 13:14 VA.R. 1567 March 31, 1997.

Correction to Final Regulation:

Page 1567, incorrect reference is printed in the title, change "24 VAC 30-180-10 et seq." to "24 VAC 30-170-10 et seq."

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

DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

Board of Agriculture and Consumer Services

May 14, 1997 - 9 a.m. -- Open Meeting
Department of Agriculture and Consumer Services,
Washington Building, 1100 Bank Street, 2nd Floor Board
Room, Richmond, Virginia.♿

The board will hold an orientation for new members.

Contact: Roy E. Seward, Secretary to the Board,
Department of Agriculture and Consumer Services,
Washington Bldg., 1100 Bank St., Suite 211, P.O. Box 1163,
Richmond, VA 23218, telephone (804) 786-3535.

May 15, 1997 - 9 a.m. -- Open Meeting
Department of Agriculture and Consumer Services,
Washington Building, 1100 Bank Street, 2nd Floor Board
Room, Richmond, Virginia.♿

A regular meeting of the board. The board will entertain public comment for a period not to exceed 30 minutes. Any person who needs any accommodations in order to participate at the meeting should contact Roy E. Seward at least five days before the meeting date so that suitable arrangements can be made.

Contact: Roy E. Seward, Secretary to the Board,
Department of Agriculture and Consumer Services,
Washington Bldg., 1100 Bank St., Suite 211, P.O. Box 1163,
Richmond, VA 23218, telephone (804) 786-3535.

Virginia Aquaculture Advisory Board

May 8, 1997 - 9 a.m. -- Open Meeting
Virginia Institute of Marine Science, Waterman's Hall,
Director's Conference Room, Gloucester Point, Virginia.♿

A regular meeting of the board. The board will entertain public comment for a period not to exceed 30 minutes.

Any person who needs any accommodations in order to participate at the meeting should contact T. Robins Buck at least five days before the meeting date so that suitable arrangements can be made.

Contact: T. Robins Buck, Secretary to the Board, Virginia Aquaculture Advisory Board, Washington Bldg., 1100 Bank St., Suite 211, Richmond, VA 23219, telephone (804) 371-6094.

Virginia Seed Potato Board

† **May 8, 1997 - 7:30 p.m.** -- Open Meeting
Eastern Shore Agricultural Research and Extension Center,
Research Drive, Painter, Virginia.♿

A meeting to review the 1997 seed season and discuss other business that may come before the board. The board will entertain public comment at the conclusion of all other business for a period not to exceed 30 minutes. Any person who needs any accommodations in order to participate at the meeting should contact J. William Mapp at least five days before the meeting date so that suitable arrangements can be made.

Contact: J. William Mapp, Program Director, P.O. Box 26,
Onley, VA 23418, telephone (757) 787-5867 or FAX (757) 787-1041.

Virginia Small Grains Board

† **July 22, 1997 - 8 a.m.** -- Open Meeting
Richmond Airport Hilton, 5501 Eubank Road, Sandston,
Virginia.♿

A meeting to hear FY 1996-97 project reports and receive 1997-98 project proposals. The board will allocate funding for FY 1997-98 projects. Additionally, action will be taken on any other new business that comes before the board. The board will entertain public comment at the conclusion of all other business for a period not to exceed 30 minutes. Any person who needs any accommodations in order to participate at the meeting should contact Philip T. Hickman at least five days before the meeting date so that suitable arrangements can be made.

Contact: Philip T. Hickman, Program Director, Virginia Small Grains Board, Washington Bldg., 1100 Bank St., Room 1005, Richmond, VA 23219, telephone (804) 371-6157 or FAX (804) 371-7786.

Virginia Sweet Potato Board

† **June 3, 1997 - 8 p.m.** -- Open Meeting
Eastern Shore Agricultural Research and Extension Center, Research Drive, Painter, Virginia.

A meeting to discuss (i) programs regarding promotion, research and education, (ii) the annual budget, and (iii) other business that may come before the board. The board will entertain public comment at the conclusion of all other business for a period not to exceed 30 minutes. Any person who needs any accommodations in order to participate at the meeting should contact J. William Mapp at least five days before the meeting date so that suitable arrangements can be made.

Contact: J. William Mapp, Program Director, Virginia Sweet Potato Board, P.O. Box 26, Onley, VA 23418, telephone (757) 787-5867 or FAX (757) 787-1041.

STATE AIR POLLUTION CONTROL BOARD

† **June 11, 1997 - 9 a.m.** -- Public Hearing
Department of Environmental Quality, 629 East Main Street, First Floor, Training Room, Richmond, Virginia.

† **June 27, 1997** - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Air Pollution Control Board intends to amend regulations entitled: (i) **9 VAC 5-10-10 et seq. Regulations for the Control and Abatement of Air Pollution: General Definitions**, (ii) **9 VAC 5-20-10 et seq. Regulations for the Control and Abatement of Air Pollution: General Provisions**, (iii) **9 VAC 5-91-10 et seq. Regulations for the Control of Motor Vehicle Emissions in the Northern Virginia Area**, (iv) **9 VAC 5-120-10 et seq. Regulations for the Control of Emissions from Fleet Vehicles**, (v) **9 VAC 5-150-10 et seq. Regulation for Transportation Conformity**, and (vi) **9 VAC 5-160-10 et seq. Regulation for General Conformity**; and adopt regulations entitled: **9 VAC 5-170-10 et seq. Regulation for General Administration**. The proposed regulation contains provisions covering general administration, specifically the applicability, establishment, and enforcement of regulations and orders; the administration of associated hearings and proceedings; the approval of local ordinances; the appeal of board decisions; the right of entry upon public and private property; the approval of items with conditions; the availability of procedural information and guidance; the approval of certain items requiring specific considerations; the availability of information to the public; the delegation of authority; and public participation in regulation development.

Because the provisions of the proposed regulation are intended to replace similar provisions in existing regulations, those similar provisions will be repealed. The affected provisions are as follows:

Regulations for the Control and Abatement of Air Pollution (9 VAC 5 Chapters 10 and 20)

9 VAC 5-10-20. Terms Defined. The following definitions:

Administrative Process Act, confidential information, consent agreement, consent order, emergency special order, formal hearing, order, party, special order, variance, and Virginia Register Act.

Appendix E Public Participation Procedures

Appendix F Delegation of Authority

9 VAC 5-20-20. Establishment of regulations and orders.

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

9 VAC 5-20-40. Hearings and proceedings.

9 VAC 5-20-50 A. Variances (general).

9 VAC 5-20-60. Local ordinances.

9 VAC 5-20-90. Appeals.

9 VAC 5-20-100. Right of entry.

9 VAC 5-20-110. Conditions on approvals.

9 VAC 5-20-120. Policy and procedural information and guidance.

9 VAC 5-20-130. Delegation of authority.

9 VAC 5-20-140. Considerations for approval actions.

9 VAC 5-20-150. Availability of information.

Regulation for the Control of Motor Vehicle Emissions in the Northern Virginia Area (9 VAC 5 Chapter 91)

9 VAC 5-91-20. Terms Defined. The following definitions:

Administrative Process Act, confidential information, public hearing, variance, and Virginia Register Act.

9 VAC 5-91-40. Establishment of regulations and orders.

9 VAC 5-91-60. Hearings and proceedings.

9 VAC 5-91-80. Variances.

9 VAC 5-91-100. Conditions on approvals.

Calendar of Events

- 9 VAC 5-91-110. Procedural information and guidance.
- 9 VAC 5-91-150. Availability of information.
- Regulation for the Control of Emissions from Fleet Vehicles (9 VAC 5 Chapter 120)
- 9 VAC 5-120-20. Terms Defined. The following definitions:
- Administrative Process Act, confidential information, consent agreement, consent order, formal hearing, order, party, public hearing, variance, and Virginia Register Act.
- 9 VAC 5-120-40. Hearings and proceedings.
- 9 VAC 5-120-50. Appeal of case decisions.
- 9 VAC 5-120-60. Variances.
- 9 VAC 5-120-90. Procedural information and guidance.
- 9 VAC 5-120-120. Availability of information.
- Regulation for Transportation Conformity (9 VAC 5 Chapter 150)
- 9 VAC 5-150-20. Terms Defined. The following definitions:
- Administrative Process Act, confidential information, consent agreement, consent order, emergency special order, formal hearing, order, party, public hearing, special order, variance, and Virginia Register Act.
- 9 VAC 5-150-50. Establishment of regulations and orders.
- 9 VAC 5-150-60. Enforcement of regulations and orders.
- 9 VAC 5-150-70. Hearings and proceedings.
- 9 VAC 5-150-90. Appeals.
- 9 VAC 5-150-100. Availability of information.
- Regulation for General Conformity (9 VAC 5 Chapter 160)
- 9 VAC 5-160-20. Terms Defined. The following definitions:
- Administrative Process Act, confidential information, consent agreement, consent order, emergency special order, formal hearing, order, party, public hearing, special order, variance, and Virginia Register Act.
- 9 VAC 5-160-50. Establishment of regulations and orders.

- 9 VAC 5-160-60. Enforcement of regulations and orders.
- 9 VAC 5-160-70. Hearings and proceedings.
- 9 VAC 5-160-90. Appeals.
- 9 VAC 5-160-100. Availability of information.

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

Localities Affected: There is no locality which will bear any identified disproportionate material air quality impact due to the proposed regulation which would not be experienced by other localities.

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

Southwest Regional Office
 Department of Environmental Quality
 355 Deadmore Street
 Abingdon, Virginia
 Ph: (540) 676-4800

West Central Regional Office
 Department of Environmental Quality
 Executive Office Park, Suite D
 5338 Peters Creek Road
 Roanoke, Virginia
 Ph: (540) 561-7000

Lynchburg Satellite Office
 Department of Environmental Quality
 7705 Timberlake Road
 Lynchburg, Virginia
 Ph: (804) 582-5120

Valley Regional Office
 Department of Environmental Quality
 116 North Main Street
 Bridgewater, Virginia 22812
 Ph: (540) 828-2595

Fredericksburg Satellite Office
 Department of Environmental Quality
 300 Central Road, Suite B
 Fredericksburg, Virginia
 Ph: (540) 899-4600

Piedmont Regional Office
Department of Environmental Quality
4900-A Cox Road
Innsbrook Corporate Center
Glen Allen, Virginia
Ph: (804) 527-5020

Tidewater Regional Office
Department of Environmental Quality
5636 Southern Blvd.
Virginia Beach, VA 23462
Ph: (757) 518-2000

Northern Regional Office
Department of Environmental Quality
13901 Crown Court
Woodbridge, Virginia 22193
Ph: (703) 583-3800

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

Public comments may be submitted until 4:30 p.m., Friday, June 27, 1997, to the Director, Office of Air Program Development, Department of Environmental Quality, P. O. Box 10009, Richmond, Virginia 23240.

Contact: Dr. Kathleen Sands, Policy Analyst, Office of Air Program Development, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4413, FAX (804) 698-4510, toll-free 1-800-592-5482, or (804) 698-4021/TDD ☎

State Advisory Board on Air Pollution

† **May 14, 1997 - 9 a.m.** -- Open Meeting
State Capitol, Capitol Square, House Room 4, Richmond, Virginia.

A regular meeting.

Contact: Kathy Frahm, Senior Policy Analyst, Department of Environmental Quality, 629 E. Main St., Richmond, VA 23219, telephone (804) 698-4376.

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

Board for Architects

† **May 7, 1997 - 9 a.m.** -- Open Meeting
Department of Professional and Occupational Regulation,
3600 West Broad Street, Richmond, Virginia. ☎

A meeting to conduct board business. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact the board at least 10 days prior to the meeting so that suitable arrangements can be made. The board fully complies with the Americans with Disabilities Act.

Contact: Mark N. Courtney, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8514 or (804) 367-9753/TDD ☎

Board for Interior Designers

† **May 23, 1997 - 9 a.m.** -- Open Meeting
Department of Professional and Occupational Regulation,
3600 West Broad Street, Richmond, Virginia. ☎

A meeting to conduct board business. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact the board at least 10 days prior to the meeting so that suitable arrangements can be made. The board fully complies with the Americans with Disabilities Act.

Contact: Mark N. Courtney, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8514 or (804) 367-9753/TDD ☎

Board for Landscape Architects

† **May 9, 1997 - 9 a.m.** -- Open Meeting
Department of Professional and Occupational Regulation,
3600 West Broad Street, Richmond, Virginia. ☎

A meeting to conduct board business. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact the board at least 10 days prior to the meeting so that suitable arrangements can be made. The board fully complies with the Americans with Disabilities Act.

Contact: Mark N. Courtney, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8514 or (804) 367-9753/TDD ☎

Board for Land Surveyors

† **May 15, 1997 - 9 a.m.** -- Open Meeting
Department of Professional and Occupational Regulation,
3600 West Broad Street, Richmond, Virginia. ☎

A meeting to conduct board business. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact the board at least 10 days prior to the meeting so that suitable arrangements can be made. The board fully complies with the Americans with Disabilities Act.

Contact: Mark N. Courtney, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8514 or (804) 367-9753/TDD ☎

Calendar of Events

Board for Professional Engineers

† **May 1, 1997 - 9 a.m.** -- Open Meeting
Department of Professional and Occupational Regulation,
3600 West Broad Street, Richmond, Virginia. ☎

A meeting to conduct board business. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact the board at least 10 days prior to the meeting so that suitable arrangements can be made. The board fully complies with the Americans with Disabilities Act.

Contact: Mark N. Courtney, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8514 or (804) 367-9753/TDD ☎

VIRGINIA BOARD FOR ASBESTOS LICENSING AND LEAD CERTIFICATION

May 6, 1997 - 10 a.m. -- Open Meeting
Department of Professional and Occupational Regulation,
3600 West Broad Street, Conference Room 2, Richmond,
Virginia. ☎

A meeting to (i) conduct routine business, (ii) receive a committee report recommending regulation revisions, and (iii) consider proposing amendments to the Lead-Based Paint Activities Regulations. The board will also hear a report from the Department of Professional and Occupational Regulation staff concerning the comment received on the Virginia Asbestos Licensing Program Regulations in response to a Notice of Intended Regulatory Action published in the Virginia Register on February 3, 1997. At this meeting the board will provide the opportunity for public hearing and receive public comment on its intent to seek authorization from the U. S. Environmental Protection Agency (EPA) to administer and enforce the existing Virginia Lead-Based Paint Activities Regulations. If this approval is not received from EPA by August 31, 1998, EPA's final regulations (40 CFR Part 745) will become effective in Virginia; EPA will administer and enforce said regulations, thereby preempting the board's Lead-Based Paint Activities Regulations. Written comments concerning this intent to seek authorization, received on or before the close of business on May 2, 1997, will be presented and read during the board meeting. A public comment period will be held at the beginning of the meeting. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact the board at least 10 days prior to the meeting so that suitable arrangements can be made. The board fully complies with the Americans with Disabilities Act.

Contact: David E. Dick, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8595 or (804) 367-9753/TDD ☎

BOARD OF AUDIOLOGY AND SPEECH-LANGUAGE PATHOLOGY

† **May 15, 1997 - 9:30 a.m.** -- Open Meeting
Department of Health Professions, 6606 West Broad Street,
5th Floor, Richmond, Virginia. ☎

A general board meeting. Public comment will be received prior to the beginning of the meeting for 15 minutes.

Contact: Senita Booker, Program Support Technician Senior, Board of Audiology and Speech-Language Pathology, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-7390, FAX (804) 662-9943 or (804) 662-7197/TDD ☎

BOARD FOR BRANCH PILOTS

† **May 5, 1997 - 9:30 a.m.** -- Open Meeting
† **May 6, 1997 - 9:30 a.m.** -- Open Meeting
Virginia Port Authority, 600 World Trade Center, Norfolk,
Virginia. ☎

A meeting to conduct board business. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact the board at least 10 days prior to the meeting so that suitable arrangements can be made. The board fully complies with the Americans with Disabilities Act.

Contact: Mark N. Courtney, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8514 or (804) 367-9753/TDD ☎

CHESAPEAKE BAY LOCAL ASSISTANCE BOARD

Regulatory Committee and Regulation Advisory Committee

May 21, 1997 - 10 a.m. -- Open Meeting
Department of Social Services, 730 East Broad Street, Lower Level, Conference Room 3, Richmond, Virginia. ☎ (Interpreter for the deaf provided upon request)

A joint meeting of the board's Regulatory Committee and Regulation Advisory Committee, composed of stakeholders, to discuss amendments to the Chesapeake Bay Preservation Area Designation and Management Regulations (9 VAC 10-20-10 et seq.).

Contact: Scott Crafton, Regulatory Coordinator, Chesapeake Bay Local Assistance Department, 805 E. Broad St., Suite 701, Richmond, VA 23219-1924, telephone (804) 225-3440, FAX (804) 225-3447 or toll-free 1-800-243-7229/TDD ☎

CHILD DAY-CARE COUNCIL

† **May 8, 1997 - 10 a.m.** -- Open Meeting
Koger Center, 1604 Santa Rosa Road, Wythe Building, Suite 130, 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.

DEPARTMENT OF CONSERVATION AND RECREATION

Virginia Cave Board

† **May 3, 1997 - 1 p.m.** -- Open Meeting
Main Street Station, 1500 East Main Street, Virginia Racing Commission Conference Room, Room 312, Richmond, Virginia.

A regularly scheduled meeting. A variety of issues relating to cave and karst conservation will be discussed. No public comment period has been set aside on the agenda.

Contact: Lawrence R. Smith, Natural Area Protection Manager, Department of Conservation and Recreation, Division of Natural Heritage, 1500 E. Main St., Suite 312, Richmond, VA 23219, telephone (804) 786-7951, FAX (804) 371-2674, or (804) 786-2121/TDD ☎

Falls of the James Scenic River Advisory Board

May 1, 1997 - Noon -- Open Meeting
June 5, 1997 - Noon -- Open Meeting
City Hall, 900 East Broad Street, 5th Floor, Planning Commission Conference Room, 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 ☎

Rappahannock Scenic River Advisory Board

May 21, 1997 - 7 p.m. -- Open Meeting
Virginia Deli, 101 William Street, Fredericksburg, Virginia.

A meeting to review river issues.

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 ☎

Virginia State Parks Foundation

† **May 1, 1997 - 10 a.m.** -- Open Meeting
† **May 29, 1997 - 10 a.m.** -- Open Meeting
† **June 5, 1997 - 10 a.m.** -- Open Meeting
Department of Conservation and Recreation, 203 Governor Street, Suite 200, Richmond, Virginia.

A regular business meeting of the foundation's Board of Directors.

Contact: Leon E. App, Regulatory Coordinator, Department of Conservation and Recreation, 203 Governor St., Suite 302, Richmond, VA 23219, telephone (804) 786-4570 or FAX (804) 786-6141.

BOARD FOR CONTRACTORS

† **May 19, 1997 - 8:30 a.m.** -- Open Meeting
National Assessment Institute, 3813 Gaskins Road, Richmond, Virginia. ☎

A meeting of several board members and invited subject matter experts to conduct an examination workshop. A public comment period will be held at the beginning of the workshop. After the public comment period, the workshop will be conducted in executive session under authority of § 2.1-342 A 11 of the Code of Virginia due to the confidential nature of the examination. The public will not be admitted to the executive session.

Contact: George O. Bridewell, Examination Administrator, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8572 or (804) 367-9753/TDD ☎

Recovery Fund Committee

† **June 18, 1997 - 9 a.m.** -- Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia. ☎

A meeting to consider claims against the Virginia Contractor Transaction Recovery Fund. This meeting will be open to the public; however, a portion of the discussion may be conducted in executive session. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact Holly Erickson at least two weeks prior to the meeting so that suitable arrangements can be made. The board fully complies with the Americans with Disabilities Act.

Contact: Holly Erickson, Assistant Administrator, Board for Contractors, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8561.

Calendar of Events

BOARD FOR COSMETOLOGY

† April 28, 1997 - 10 a.m. -- Open Meeting
Department of Professional and Occupational Regulation,
3600 West Broad Street, Richmond, Virginia. ☎

A general business meeting. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact Karen W. O'Neal. The department fully complies with the Americans with Disabilities Act. Please notify the department of your request for accommodation 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) 367-8509, FAX (804) 367-2475 or (804) 367-9753/TDD ☎

CRIMINAL JUSTICE SERVICES BOARD

† May 6, 1997 - 11 a.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.

DEPARTMENT FOR THE DEAF AND HARD-OF-HEARING

Advisory Board

May 7, 1997 - 10 a.m. -- Open Meeting
Koger Center, 1602 Rolling Hills Drive, Ratcliffe Building,
Suite 203, Richmond, Virginia. ☎ (Interpreter for the deaf
provided upon request)

A regular quarterly meeting of the advisory board. Public comment will be received with advance notice.

Contact: Gloria Cathcart, Human Services Program Specialist, Department for the Deaf and Hard-of-Hearing, Washington Bldg., 1100 Bank St., 11th Floor, Richmond, VA 23219, telephone (804) 371-7892 (V/TTY), toll-free 1-800-552-7917 (V/TTY) or FAX (804) 371-7882.

BOARD OF DENTISTRY

† May 2, 1997 - 9 a.m. -- Open Meeting
Department of Health Professions, 6606 West Broad Street,
5th Floor, Richmond, Virginia. ☎ (Interpreter for the deaf
provided upon request)

A business meeting to receive committee reports, discuss emergency regulations, review consent orders, and review minutes and general requests made to the board. Public comment will be received at the beginning of the meeting.

Contact: Marcia J. Miller, Executive Director, Board of Dentistry, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9906 or (804) 662-7197/TDD ☎

DISABILITY SERVICES COUNCIL

May 6, 1997 - 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 review the FY 1998 Rehabilitative Services Incentive Fund proposals for approval.

Contact: Kathryn Hayfield, Chief of Staff, Department of Rehabilitative Services, 8004 Franklin Farms Dr., Richmond, VA 23288, telephone (804) 662-7134 (Voice/TTY), toll-free 1-800-552-5019 or 1-800-464-9950/TDD ☎

DEPARTMENT OF EDUCATION (STATE BOARD OF)

April 30, 1997 - 7 p.m. -- Public Hearing
Abingdon High School, 705 Thompson Drive, Abingdon,
Virginia.

May 17, 1997 -- Public comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Board of Education intends to repeal regulations entitled: **8 VAC 20-130-10 et seq. Regulations Establishing Standards for Accrediting Public Schools in Virginia** and adopt regulations entitled: **8 VAC 20-131-10 et seq. Regulations Establishing Standards for Accrediting Public Schools in Virginia**. The proposed regulations establish standards for accreditation of public schools to ensure an effective educational program is maintained in Virginia's public schools. Registration for those wishing to speak at a public hearing begins at 6:30 p.m. Speakers are requested to limit their remarks to three minutes each. In the event of a large number of persons signing up to speak, the hearing chairman may request that the time limit for each speaker be shortened to less than three minutes. A written copy of remarks is requested, but not required.

Statutory Authority: §§ 22.1-16, 22.1-19 and 22.1-353.13:3 of the Code of Virginia.

Contact: Charles W. Finley, Policy Analyst, Department of Education, P.O. Box 2120, Richmond, VA 23218-2120, telephone (804) 225-2092, toll-free 1-800-292-3820, or e-mail cfinley@pen.k12.va.us

To obtain a meeting agenda contact Mary Ann Massie at (804) 698-4042.

Contact: Mary Ann Massie, Environmental Program Planner, Department of Environmental Quality, P. O. Box 10009, Richmond, VA 23240-0009, telephone (804) 698-4042 or FAX (804) 698-4032.

LOCAL EMERGENCY PLANNING COMMITTEE - GLOUCESTER COUNTY

† **May 28, 1997 - 6:30 p.m.** -- Open Meeting
Gloucester County Administration Building, Conference Room, Gloucester, Virginia. (Interpreter for the deaf provided upon request)

A meeting to discuss the annual exercise, receive a briefing on the updated County Emergency Operations Plan, and receive a status report on the Public Information campaign.

Contact: Tracy A. Proctor, Executive Lieutenant, P.O. Box 597, Gloucester, VA 23061, telephone (804) 693-1411 or (804) 693-3890/TDD

DEPARTMENT OF ENVIRONMENTAL QUALITY

Work Group on Ammonia, Mercury, Lead and Copper with Respect to Water Quality Standards

† **June 19, 1997 - 10 a.m.** -- Open Meeting
Department of Environmental Quality, 629 East Main Street, Conference Room 505, Richmond, Virginia. (Interpreter for the deaf provided upon request)

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 July 17, August 21, September 18, and October 16, 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

May 20, 1997 - 9 a.m. -- Open Meeting
State Corporation Commission, 1300 East Main Street, 8th Floor Conference Room, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A regularly scheduled meeting. Anyone interested in ground water protection issues is encouraged to attend.

GOVERNOR'S EMPLOYMENT AND TRAINING DEPARTMENT

† **May 5, 1997 - 3 p.m.** -- Public Hearing
Theater Row Building, 730 East Broad Street, Lower Level Training Room 1, Richmond, Virginia. (Interpreter for the deaf provided upon request)

† **May 7, 1997 - 1 p.m.** -- Public Hearing
Cora Kelly Center, 25 West Reed Avenue, Adult Meeting Room, Alexandria, Virginia. (Interpreter for the deaf provided upon request)

† **May 8, 1997 - 10 a.m.** -- Public Hearing
Department of Rehabilitative Services, 3433 Brambleton Avenue, S.W., 1st Floor Conference Room, Roanoke, Virginia. (Interpreter for the deaf provided upon request)

Public hearings to provide the public the opportunity to comment on the Governor's Employment and Training Department's request to the Secretary of Labor for waivers of the Job Training Partnership Act (JTPA). The U. S. Department of Labor (DOL) Appropriations Act of 1997 (Public Law 104-208) provides the Secretary of Labor with authority to grant both statutory and regulatory waivers of certain provisions of the JTPA. This first time authority provides states with increased flexibility in implementing reforms to their workforce development systems. The DOL has delineated five guiding principles for granting waivers to states. Those principles are: individual opportunity and customer choice, leaner government, greater accountability, state and local flexibility, and strong private sector involvement. The Commonwealth of Virginia plans to request waivers of certain provisions of the JTPA statute to support the following state priorities: regional economic development and jobs, welfare reform, program accountability and efficiencies, customer service and satisfaction, and strategic planning. The waiver request is specifically designed to accomplish the following: development of one-stop career systems throughout the state; provide incentives for small businesses to hire JTPA participants; support the job training, placement and retention of VIEW participants; customize and tailor services to meet the needs of the JTPA participant; effect cost efficiencies in administration and service delivery; and foster statewide strategic planning for local and regional goals that have common outcomes for workforce training and economic development. Public comments will be considered on the waiver requests. Copies of the waiver package are available upon request. Presenters will have 10 minutes to speak. Written copies of comments must be provided.

Contact: Dr. William L. Carlson, Director of Program Operations, Governor's Employment and Training

Calendar of Events

Department, Theater Row Bldg., 730 E. Broad St., 9th Floor, Richmond, VA 23219, telephone (804) 786-2270, FAX (804) 786-2310, or (804) 786-2315/TDD ☎

BOARD OF FUNERAL DIRECTORS AND EMBALMERS

† **May 6, 1997 - 9 a.m.** -- Open Meeting
Department of Health Professions, 6606 West Broad Street, Richmond, Virginia. ☎

A regular business meeting of the Regulatory and Bylaw Committee. Public comments will be received at the beginning of the meeting for 15 minutes.

Contact: Elizabeth Young Tisdale, Executive Director, Board of Funeral Directors and Embalmers, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9907, FAX (804) 662-9943 or (804) 662-7197/TDD ☎

† **May 28, 1997 - 9 a.m.** -- Open Meeting
Department of Health Professions, 6606 West Broad Street, Richmond, Virginia. ☎

An informal conference hearing. No public comment will be received.

Contact: Elizabeth Young Tisdale, Executive Director, Board of Funeral Directors and Embalmers, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9907, FAX (804) 662-9943 or (804) 662-7197/TDD ☎

† **June 12, 1997 - 9 a.m.** -- Open Meeting
Department of Health Professions, 6606 West Broad Street, Richmond, Virginia. ☎

A general board meeting. Public comments will be received at the beginning of the meeting for 15 minutes.

Contact: Elizabeth Young Tisdale, Executive Director, Board of Funeral Directors and Embalmers, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9907, FAX (804) 662-9943 or (804) 662-7197/TDD ☎

Legislative Committee

April 28, 1997 - 9 a.m. -- Open Meeting
Department of Health Professions, 6606 West Broad Street, Richmond, Virginia. ☎

A regular business meeting. Public comments will be received at the beginning of the meeting for 15 minutes.

Contact: Elizabeth Young Tisdale, Executive Director, Board of Funeral Directors and Embalmers, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9907, FAX (804) 662-9943 or (804) 662-7197/TDD ☎

BOARD OF GAME AND INLAND FISHERIES

May 5, 1997 - 9 a.m. -- Open Meeting
May 6, 1997 - 8 a.m. -- Open Meeting
3200 West Broad Street, Richmond, Virginia. ☎ (Interpreter for the deaf provided upon request)

The board will consider for final adoption wildlife regulations to be effective from July 1997 through June 1999. Under board procedures, regulatory actions occur over two sequential board meetings. At the May 5-6, 1997 meeting, the board will determine whether the amendments to regulations for game, nonreptilian terrestrial and avian nongame wildlife, hunting and trapping, including the length of seasons, bag limits and methods of take for game, which were proposed at its March 20-21, 1997, board meeting, will be adopted as final regulations. The board will solicit comments from the public during the public hearing portion of the board meeting; the board's procedure is to solicit public comment on the first day of the board meeting (Monday, May 5, 1997), at which time any interested citizen present shall be heard. The board reserves the right to adopt final amendments which may be more liberal than, or more stringent than the regulations currently in effect, or the regulation amendments proposed at the March 20-21, 1997, board meeting, as necessary for the proper management of wildlife resources.

The board also intends to reexamine the regulation restricting a certain portion of the Jackson River to a catch and release, artificial lure only trout stream (4 VAC 15-330-150 and 4 VAC 15-330-170) which was amended at the October 24 and 25, 1996, board meeting and which went into effect January 1, 1997. The board will solicit and hear comments from the public in a public hearing after which it may propose changes to this regulation. Any amendment which the board proposes for this regulation (or an informative summary) will subsequently be published in the Virginia Register and advertised in newspapers. Adoption of any amendment of this regulation as final will take place at the subsequent board meeting to be held July 17 and 18, 1997.

General and administrative issues may be discussed by the board at the May 5-6 meeting. The board may hold an executive session before the public session begins on May 5. If the board completes its entire agenda on May 5, it may not convene on May 6.

Contact: Phil Smith, Policy Analyst, Department of Game and Inland Fisheries, 4010 West Broad St., Richmond, VA 23230, telephone (804) 367-8341 or FAX (804) 367-2427.

DEPARTMENT OF GENERAL SERVICES

Design/Build Construction Management Review Board

May 16, 1997 - 10 a.m. -- Open Meeting
Department of General Services, 805 East Broad Street, Room 116, Richmond, Virginia. ☎ (Interpreter for the deaf provided upon request)

A meeting of the board to continue development of guidelines/procedures and review any requests which may have been submitted. The board meets the third Friday of each month.

Contact: Nathan I. Broocke, Director, Division of Engineering and Buildings, Department of General Services, 805 E. Broad St., Room 101, Richmond, VA 23219, telephone (804) 786-3263 or (804) 786-6152/TDD ☎

GEORGE MASON UNIVERSITY

Board of Visitors

May 14, 1997 - 4:30 p.m. -- Open Meeting
George Mason University, Mason Hall, Room D23, Fairfax, Virginia. ☎

A regular meeting to hear reports of the standing committees, and to act on those recommendations presented by the standing committees. An agenda will be available seven days prior to the board meeting for those individuals or organizations who request it.

Contact: Ann Wingblade, Administrative Assistant, or Carole Richardson, 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

† **May 13, 1997 - 10 a.m.** -- Open Meeting
Department of Emergency Services, 310 Turner Road, Training Room, Richmond, Virginia. ☎

A meeting to discuss curriculum course development and to review existing hazardous materials courses. Individuals with a disability, as defined in the Americans with Disabilities Act, desiring to attend should contact the Department of Emergency Services at (804) 674-2489 10 days prior to the meeting so appropriate accommodations can be provided.

Contact: George B. Gotschalk, Jr., Department of Criminal Justice Services, 805 E. Broad St., Richmond, VA 23219, telephone (804) 786-6001.

BOARD OF HEALTH PROFESSIONS

Ad Hoc Committee on Criteria

May 2, 1997 - 1 p.m. -- Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 1, Richmond, Virginia. ☎
(Interpreter for the deaf provided upon request)

June 2, 1997 - 1 p.m. -- Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 3, Richmond, Virginia. ☎
(Interpreter for the deaf provided upon request)

A meeting to review the material gathered to date pursuant to § 54.1-2409.2 of the Code of Virginia and to formulate recommendations regarding criteria for the

regulation of health care providers. Brief public comment will be received at the beginning of the meeting.

Contact: Carol Stamey, Administrative Assistant, Board of Health Professions, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9910, FAX (804) 662-9943 or (804) 662-7197/TDD ☎

BOARD FOR HEARING AID SPECIALISTS

May 12, 1997 - 8:30 a.m. -- Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, Conference Room 2, Richmond, Virginia. ☎

A routine business meeting. 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 David Dick 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, telephone (804) 367-8595 or (804) 367-9753/TDD ☎

STATE COUNCIL OF HIGHER EDUCATION FOR VIRGINIA

Executive Committee

May 12, 1997 - 9 a.m. -- Open Meeting
State Council of Higher Education, James Monroe Building, 101 North 14th Street, Council Conference Room, Richmond, Virginia. ☎ (Interpreter for the deaf provided upon request)

A general business meeting. For more information contact the council.

Contact: Michael McDowell, Director of Public Information, State Council of Higher Education, James Monroe Bldg., 101 N. 14th St., 9th Floor, Richmond, VA 23219, telephone (804) 225-2637 or FAX (804) 786-0572.

HOPEWELL INDUSTRIAL SAFETY COUNCIL

May 6, 1997 - 9 a.m. -- Open Meeting
June 3, 1997 - 9 a.m. -- Open Meeting
Hopewell Community Center, Second and City Point Road, Hopewell, Virginia. ☎ (Interpreter for the deaf provided upon request)

Local Emergency Preparedness Committee meeting on emergency preparedness as required by SARA Title III.

Contact: Robert Brown, Emergency Services Coordinator, 300 N. Main St., Hopewell, VA 23860, telephone (804) 541-2298.

Calendar of Events

BOARD OF HOUSING AND COMMUNITY DEVELOPMENT

April 28, 1997 - 10 a.m. -- Public Hearing
General Assembly Building, 910 Capitol Square, House Room D, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A public hearing to receive additional public comment regarding the following: 13 VAC 5-61-80 A, 13 VAC 5-61-140 B, 13 VAC 5-61-190 A, and 13 VAC 5-61-220 C 12 of the Virginia Uniform Statewide Building Code (13 VAC 5-61-10 et seq.) as published on March 3, 1997, in the Virginia Register of Regulations.

Contact: Norman R. Crumpton, Associate Director, Department of Housing and Community Development, The Jackson Center, 501 N. 2nd St., Richmond, VA 23219, telephone (804) 371-7170, FAX (804) 371-7092, or (804) 371-7089.

April 28, 1997 - Immediately following 10 a.m. public hearing -- Open Meeting
General Assembly Building, 910 Capitol Square, House Room D, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A regular monthly business meeting of the Board of Housing and Community Development. Public comment will be received on amendments to the Virginia Enterprise Zone Regulation amendments, the Uniform Statewide Building Code and on other topics.

Contact: Stephen W. Calhoun, CPA, Manager, Department of Housing and Community Development, The Jackson Center, 501 N. 2nd St., Richmond, VA 23219, telephone (804) 371-7015, FAX (804) 371-7092, or (804) 371-7089/TDD

COUNCIL ON INFORMATION MANAGEMENT

† May 16, 1997 - 10 a.m. -- Open Meeting
Council on Information Management, 1100 Bank Street, Suite 901, Richmond, Virginia.

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 1-800-828-1120/TDD

ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS

† May 5, 1997 - 1 p.m. -- Open Meeting
The Library of Virginia, 800 East Broad Street, First Floor, Conference Room A, Richmond, Virginia.

A regular meeting to discuss such matters as may be presented.

Contact: Adele MacLean, Secretary, Advisory Commission on Intergovernmental Relations, 805 E. Broad St., Room 702,

Richmond, VA 23219-1924, telephone (804) 786-6508, FAX (804) 371-7999, or (804) 786-6508/TDD

STATE BOARD OF JUVENILE JUSTICE

May 14, 1997 - 10 a.m. -- Public Hearing
June 11, 1997 - 10 a.m. -- Public Hearing
Department of Juvenile Justice, 700 East Franklin Street, Board Room, Richmond, Virginia.

June 13, 1997 -- Public comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Juvenile Justice intends to **repeal** regulations entitled: **6 VAC 35-40-10 et seq. Pre-Dispositional and Post-Dispositional Group Home Standards; 6 VAC 35-70-10 et seq. Standards for Juvenile Correctional Centers; 6 VAC 35-90-10 et seq. Standards for Post-Dispositional Confinement for Secure Detention and Court Service Units; 6 VAC 35-100-10 et seq. Standards for Secure Detention; and 6 VAC 35-120-10 et seq. Standards for Family Group Homes; and adopt** regulations entitled: **6 VAC 35-140-10 et seq. Standards for Juvenile Residential Facilities.** The proposed regulation revises and replaces existing regulations governing secure detention homes, post-dispositional confinement in secure detention, pre-dispositional and post-dispositional group home, family group homes and juvenile correctional centers. Additional new standards in the proposed regulation address juvenile boot camps, work camps, independent living programs and juvenile industries projects.

Statutory Authority: §§ 16.1-309.9 and 66-10 of the Code of Virginia.

Contact: Donald Carignan, Regulatory Coordinator, Department of Juvenile Justice, 700 Centre Building, P.O. Box 1110, Richmond, VA 23218-1110, telephone (804) 371-0743 or FAX (804) 371-0773.

June 13, 1997 -- Public comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Juvenile Justice intends to **amend** regulations entitled: **6 VAC 35-60-10 et seq. Minimum Standards for Virginia Delinquency Prevention and Youth Development Act Grant Programs.** The proposed amendments will simplify and streamline operating requirements for Virginia's offices on youth, reducing mandates to encourage local autonomy and flexibility, and defining a closer working relationship between offices on youth and court service units.

Statutory Authority: §§ 66-10, 66-27 and 66.28 of the Code of Virginia.

Contact: Donald Carignan, Regulatory Coordinator, Department of Juvenile Justice, 700 Centre Building, P.O. Box 1110, Richmond, VA 23218-1110, telephone (804) 371-0743 or FAX (804) 371-0773.

May 14, 1997 - 10 a.m. -- Public Hearing

June 11, 1997 - 10 a.m. -- Public Hearing

Department of Juvenile Justice, 700 East Franklin Street, Board Room, Richmond, Virginia.

June 13, 1997 -- Public comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Juvenile Justice intends to repeal regulations entitled: 6 VAC 35-80-10 et seq. Holdover Standards; 6 VAC 35-110-10 et seq. Standards for Court Services in Juvenile and Domestic Relations Courts; and 6 VAC 35-130-10 et seq. Standards for Outreach Detention; and adopt regulations entitled: 6 VAC 35-150-10 et seq. Standards for Nonresidential Services Available to Juvenile and Domestic Relations District Courts. The proposed regulation replaces existing standards for court service units, standards for outreach detention, and holdover standards. In addition, this regulation and the proposed Consolidated Standards for Juvenile Residential Facilities will replace standards for post-dispositional confinement for secure detention and court service units.

Statutory Authority: §§ 16.1-233, 16.1-309.9 and 66-10 of the Code of Virginia.

Contact: Donald Carignan, Regulatory Coordinator, Department of Juvenile Justice, 700 Centre Building, P.O. Box 1110, Richmond, VA 23218-1110, telephone (804) 371-0743 or FAX (804) 371-0773.

May 14, 1997 - 9 a.m. -- Open Meeting

June 11, 1997 - 9 a.m. -- Open Meeting

700 Centre Building, 700 East Franklin Street, 4th Floor, Richmond, Virginia. ☎

Board committees meet at 9 a.m. to hear reports on secure and nonsecure programs. The full board meets at 10 a.m. to approve certifications of residential programs and nonresidential services, receive public comments on proposed regulations, and take up such other matters as are brought before it.

Contact: Donald R. Carignan, Policy Coordinator, Department of Juvenile Justice, P.O. Box 1110, Richmond, VA 23218-1110, telephone (804) 371-0743 or FAX (804) 371-0773.

DEPARTMENT OF LABOR AND INDUSTRY

Virginia Apprenticeship Council

† **May 22, 1997 - 9 a.m.** -- Open Meeting

Virginia Highlands Community College, Building #2, Instruction Room 220, Abingdon, Virginia. ☎ (Interpreter for the deaf provided upon request)

A quarterly meeting of the council.

Contact: Fred T. Yontz, 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 ☎

THE LIBRARY OF VIRGINIA

State Networking Users Advisory Board

May 8, 1997 - 10 a.m. -- Open Meeting

Jefferson-Madison Regional Library, Main Branch, 201 East Market Street, Charlottesville, Virginia. ☎

A meeting to discuss administrative matters.

Contact: Jean Taylor, Secretary to the State Librarian, The Library of Virginia, 800 E. Broad St., Richmond, VA 23219-1905, telephone (804) 692-3535.

LITTER CONTROL AND RECYCLING FUND ADVISORY BOARD

† **May 29, 1997 - 10 a.m.** -- Open Meeting

Strawberry Hill, 600 East Laburnum Avenue, Administration Building, Richmond, Virginia. ☎ (Interpreter for the deaf provided upon request)

A work session of the board to review and make recommendations on the competitive applications for litter prevention and recycling educational programs. For details, call Mike Murphy.

Contact: Michael P. Murphy, Director, Intergovernmental Affairs, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240-0009, telephone (804) 698-4003, FAX (804) 698-4319, or (804) 698-4021/TDD ☎

COMMISSION ON LOCAL GOVERNMENT

May 5, 1997 - 10 a.m. -- Open Meeting

702 Eighth Street Office Building, 805 East Broad Street, Richmond, Virginia.

A regular meeting to consider such matters as may be presented. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact the commission.

Calendar of Events

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 ☎

June 2, 1997 - 10:30 a.m. -- Open Meeting
Pearisburg Town Hall, 112 Tazewell Street, Pearisburg, Virginia.

Oral presentations regarding the Town of Pearisburg - Giles County amended Voluntary Settlement Agreement. 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 ☎

June 2, 1997 - 7 p.m. -- Public Hearing
Giles County High School, Route 460, Auditorium, Pearisburg, Virginia.

A public hearing regarding the Town of Pearisburg - Giles County amended Voluntary Settlement Agreement. Persons desiring to participate in the proceedings 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

May 21, 1997 - 10 a.m. -- Open Meeting
Department of Housing and Community Development, The Jackson Center, 501 North 2nd 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, The Jackson Center, 501 N. 2nd St., Richmond, VA 23219, telephone (804) 371-7160 or (804) 371-7089/TDD ☎

MATERNAL AND CHILD HEALTH COUNCIL

Perinatal/Early Childhood Subcommittee

† April 30, 1997 - 9:30 a.m. -- Open Meeting
† May 21, 1997 - 9:30 a.m. -- Open Meeting
General Assembly Building, 910 Capitol Square, 6th Floor, Senate Room 6B, Richmond, Virginia

A meeting to address issues regarding the health care of pregnant women and their young children. Topics to be discussed relate to access to obstetrical care in underserved rural areas of Virginia, provider availability,

and the development of a statewide plan to improve access to perinatal care.

Contact: Joan Corder-Mabe, Nurse Consultant, Department of Health, 1500 E. Main St., Room 135, Richmond, VA 23219, telephone (804) 371-4103 or FAX (804) 371-6032.

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES (BOARD OF)

REPROPOSED

† May 28, 1997-- Public comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Medical Assistance Services intends to amend regulations entitled: **12 VAC 30-120-70 et seq. Part II: Home and Community Based Services for Technology Assisted Individuals.** The purpose of this revised proposal is to amend the Technology Assisted Waiver Program to update the definition of those eligible to receive services and to conform the financial eligibility criteria to correspond to the current HCFA interpretation. Also, this revised package addresses comments made to the prior proposed regulation as well as addressing problems identified since the initial comment period.

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

Public comments may be submitted until May 28, 1997, to Regina Anderson-Cloud, Division of Policy and Budget, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219.

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

May 30, 1997 -- Public comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Medical Assistance Services intends to amend regulations entitled **12 VAC 30-70-10 et seq. Methods and Standards for Establishing Payment Rates for Inpatient Hospital Care, and 12 VAC 30-90-10 et seq. Methods and Standards for Establishing Payment Rates for Long-Term Care,** relating to specialized care services payment methodology. The purpose of this proposal is to implement the reimbursement changes recommended in the study of specialized care services as directed by the 1996 General Assembly. The remainder of the recommendations of the study will be implemented through a separate regulatory package. The purpose of the proposed changes in cost report filing requirements is to conform the Department of Medical Assistance Services' filing time frames to those recently instituted by the Health Care Financing Administration for Medicare cost reports. Some additional technical

changes are being made to correct the names of specific divisions within the department.

Statutory Authority: § 32.1-325 of the Code of Virginia and Item 322(D)(2) of Chapter 912 of the 1996 Acts of Assembly.

Public comments may be submitted until May 30, 1997, to Scott Crawford, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219.

Contact: Victoria P. Simmons or Roberta J. Jonas, Regulatory Coordinators, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 371-8854 or FAX (804) 371-4981.

June 17, 1997 - 10 a.m. -- Open Meeting
Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Board Room, Richmond, Virginia.

A meeting of the board to discuss medical assistance services policy 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 or FAX (804) 371-4981.

Virginia Medicaid Drug Utilization Review Board

May 15, 1997 - 2 p.m. -- Open Meeting
Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Board Room, Richmond, Virginia.

A meeting to conduct routine business including the amendment of bylaws.

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) 786-8057 or FAX (804) 786-0414.

Virginia Medicaid Pharmacy Liaison Committee

† May 5, 1997 - 1 p.m. -- Open Meeting
Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Board Room, Richmond, Virginia.

A meeting to (i) finalize the report from 1996 legislation concerning pro-DUR, Disease State Management, and Long-Term Care initiatives and (ii) initiate the study of 1997 legislative issues.

Contact: David Shepherd, R.Ph., Supervisor, Pharmacy Services Unit, Division of Program Operations, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 225-2773.

Virginia Medicaid Prior Authorization Advisory Committee

May 15, 1997 - 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 including the adoption of bylaws.

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) 786-8057 or FAX (804) 786-0414.

BOARD OF MEDICINE

May 2, 1997 -- Public comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Medicine intends to repeal regulations entitled: **18 VAC 85-30-10 et seq. Regulations for Practice of Physical Therapy**, and adopt regulations entitled: **18 VAC 85-31-10 et seq. Regulations for Practice of Physical Therapy**. Since revisions recommended as a result of the Executive Order 15(94) review were extensive, 18 VAC 85-30-10 et seq. is being repealed and replaced by new regulations which establish the criteria for licensure, a process for applicants to follow, requirements for renewal and fees, and practice standards appropriate to the type of licensure and statutory mandates for these professions. Regulations are clarified and simplified and the application fee has been reduced.

Statutory Authority: §§ 54.1-2400 and 54.1-2943 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) 662-9908 or FAX (804) 662-9943.

May 2, 1997 -- Public comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Medicine intends to amend regulations entitled: **18 VAC 85-50-10 et seq. Regulations for Practice of Physicians' Assistants**. The purpose of the proposed amendments is to clarify and simplify regulations; to reduce the burdensome requirements of reporting recordkeeping of invasive procedures; and to reduce the application and renewal fee for physicians' assistants who work in more than one setting.

Statutory Authority: §§ 54.1-2400 and 54.1-2949 through 54.1-2953 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) 662-9908 or FAX (804) 662-9943.

Calendar of Events

EMG Task Force Subcommittee

† **May 9, 1997 - 1 p.m.** -- Open Meeting
Department of Health Professions, 6606 West Broad Street,
5th Floor, Board Room 3, Richmond, Virginia. (Interpreter
for the deaf provided upon request)

A meeting of the subcommittee in open session to discuss the qualifications for performing EMGs on patients. The chairman will entertain public comments on agenda items for 15 minutes following adoption of the agenda.

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

Informal Conference Committee

May 13, 1997 - 9 a.m. -- Open Meeting
Sheraton Inn, 2801 Plank Road, Fredericksburg, Virginia.

The Informal Conference Committee, composed of three members of the board, will inquire into allegations that certain practitioners may have violated laws and regulations governing the practice of medicine and other healing arts in Virginia. The committee will meet in open and closed sessions pursuant to § 2.1-344 A 7 and A 15 of the Code of Virginia. Public comment will not be received.

Contact: Karen W. Perrine, Deputy Executive Director, Board of Medicine, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-7693, FAX (804) 662-9943 or (804) 662-7197/TDD

Advisory Board on Occupational Therapy

† **May 1, 1997 - 9 a.m.** -- Open Meeting
Department of Health Professions, 6606 West Broad Street,
5th Floor, Board Room 4, Richmond, Virginia. (Interpreter
for the deaf provided upon request)

A meeting to review public comments and make recommendations to the board regarding the regulatory review of 18 VAC 85-80-10 et seq., Regulations for Certification of Occupational Therapists, and such other issues which may be presented. The board will entertain public comment during the first 15 minutes on agenda items.

Contact: Warren W. Koontz, M.D., Executive Director, Board of Medicine, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9960, FAX (804) 662-9943 or (804) 662-7197/TDD

Advisory Board on Physical Therapy

† **May 2, 1997 - 9 a.m.** -- Open Meeting
Department of Health Professions, 6606 West Broad Street,
5th Floor, Board Room 4, Richmond, Virginia. (Interpreter
for the deaf provided upon request)

A meeting to review public comments and make recommendations to the board regarding the regulatory review of 18 VAC 85-30-10 et seq., Regulations Governing the Practice of Physical Therapy, and such other issues which may be presented. The board will entertain public comment during the first 15 minutes on agenda items.

Contact: Warren W. Koontz, M.D., Executive Director, Board of Medicine, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9960, FAX (804) 662-9943 or (804) 662-7197/TDD

Advisory Board on Physician's Assistants

† **May 2, 1997 - 1 p.m.** -- Open Meeting
Department of Health Professions, 6606 West Broad Street,
5th Floor, Board Room 4, Richmond, Virginia. (Interpreter
for the deaf provided upon request)

A meeting to review public comments and make recommendations to the board regarding the regulatory review of 18 VAC 85-50-10 et seq. Regulations Governing the Practice of Physician's Assistants, and such other issues which may be presented. The committee will entertain public comment during the first 15 minutes on agenda items.

Contact: Warren W. Koontz, M.D., Executive Director, Board of Medicine, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9960, FAX (804) 662-9943 or (804) 662-7197/TDD

Advisory Committee on Radiologic Technologists

† **April 30, 1997 - 9 a.m.** -- Open Meeting
Department of Health Professions, 6606 West Broad Street,
5th Floor, Board Room 3, Richmond, Virginia. (Interpreter
for the deaf provided upon request)

A meeting to review public comments and make recommendations to the board regarding the regulatory review of 18 VAC 85-101-10 et seq., Regulations Governing the Practice of Radiologic Technologist Practitioners and Radiologic Technologist-Limited, and such other issues which may be presented. The board will entertain public comment during the first 15 minutes on agenda items.

Contact: Warren W. Koontz, M.D., Executive Director, Board of Medicine, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9960, FAX (804) 662-9943 or (804) 662-7197/TDD

Advisory Board on Respiratory Therapy

† **May 1, 1997 - 1 p.m.** -- Open Meeting
Department of Health Professions, 6606 West Broad Street,
5th Floor, Board Room 4, Richmond, Virginia. (Interpreter
for the deaf provided upon request)

A meeting to review public comments and make recommendations to the board regarding the regulatory review of 18 VAC 85-40-10 et seq., Regulations Governing the Practice of Respiratory Therapy Practitioners, and such other issues which may be presented. The board will entertain public comment during the first 15 minutes on agenda items.

Contact: Warren W. Koontz, M.D., Executive Director, Board of Medicine, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9960, FAX (804) 662-9943 or (804) 662-7197/TDD ☎

DEPARTMENT OF MENTAL HEALTH, MENTAL RETARDATION AND SUBSTANCE ABUSE SERVICES

State Human Rights Committee

April 29, 1997 - 9 a.m. - Open Meeting
Southside Community Services Board, South Boston, Virginia.

A regular meeting of the committee to discuss business and conduct hearings relating to human rights issues. Agenda items are listed for the meeting.

Contact: Kli Kinzie, State Human Rights Secretary, Department of Mental Health, Mental Retardation and Substance Abuse Services, 109 Governor St., Richmond, VA 23219, telephone (804) 786-3988, FAX (804) 371-2308, toll-free 1-800-451-5544 or (804) 371-8977/TDD ☎

Pilot Leadership Team

May 22, 1997 - 10:30 a.m. -- Open Meeting
Department for the Visually Handicapped, 397 Azalea Avenue, Library, Richmond, Virginia.

A meeting to continue the development of plans for mental health, mental retardation and substance abuse system reform pilot projects. The team will hear the reports of the Priority Populations/Case Rate Funding Subcommittee; the Consumer and Family Involvement Subcommittee; and the POMS Subcommittee.

Contact: Cheryl Crawford, Administrative Staff Specialist, Department of Mental Health, Mental Retardation and Substance Abuse Services, P.O. Box 1797, Richmond, VA 23214, telephone (804) 786-5682 or FAX (804) 371-6638.

VIRGINIA MILITARY INSTITUTE

Board of Visitors

May 14, 1997 - 8:30 a.m. -- Open Meeting
Virginia Military Institute, Smith Hall Board Room, Lexington, Virginia. ☎

The finals meeting of the Board of Visitors to (i) hear committee reports; (ii) approve the budget; (iii) approve awards, distinctions, and diplomas; (iv) discuss personnel changes; and (v) elect president pro tem. There will not be an opportunity for public comment at this meeting.

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.

DEPARTMENT OF MINES, MINERALS AND ENERGY

Board of Coal Mining Examiners

May 2, 1997 -- Public comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Coal Mining Examiners intends to amend regulations entitled: **4 VAC 25-20-10 et seq. Board of Coal Mining Examiners Certification Requirements.** The Board of Coal Mining Examiners is promulgating amendments to its certification requirements to ensure that miners are certified to perform specialized tasks required to mine coal. The amendments incorporate new requirements under the Mine Safety Act, revise and clarify requirements for individual certifications, and add several certifications needed by industry.

Statutory Authority: §§ 45.1-161.28, 45.1-161.29, 45.1-161.34 and 45.1-161.35 of the Code of Virginia.

Contact: Frank Linkous, Chair, Board of Coal Mining Examiners, Buchanan-Smith Bldg., Big Stone Gap, VA, telephone (540) 523-8100, FAX (540) 523-8239, or 1-800-828-1120 (VA Relay Center).

Virginia Gas and Oil Board

May 2, 1997 -- Public comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Virginia Gas and Oil Board intends to amend regulations entitled: **4 VAC 25-160-10 et seq. Virginia Gas and Oil Board Regulations.** The purpose of the proposed amendments is to enhance the conservation and use of the Commonwealth's gas and oil resources and protect the correlative rights of gas and oil resource owners.

Statutory Authority: § 45.1-361.15 of the Code of Virginia.

Contact: B. Thomas Fulmer, Division Director, Department of Mines, Minerals and Energy, P.O. Box 1416, Abingdon, VA 24212, telephone (540) 676-5423, FAX (540) 676-5459, or 1-800-828-1120 (VA Relay Center).

Calendar of Events

MOTOR VEHICLE DEALER BOARD

† **May 20, 1997 - 10 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.

Advertising Committee

† **May 19, 1997 - 3 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 business of the committee. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact the Motor Vehicle Dealer Board at (804) 367-1100 at least 10 days prior to the meeting so that suitable arrangements can be made. The board fully complies with the Americans with Disabilities Act. A tentative agenda will be provided upon request by contacting the Motor Vehicle Dealer Board. A public comment period will be provided at the beginning of the meeting. Public comment will be subject to the board's guidelines for public comment.

Contact: Mary Beth Blevins, Administrative Assistant, Motor Vehicle Dealer Board, 2201 W. Broad St., Suite 104, Richmond, VA 23220, telephone (804) 367-1100 or FAX (804) 367-1053.

Dealer Licensing Committee

† **May 19, 1997 - 10 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 business of the committee. 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

† **May 19, 1997 - 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 business of the committee. 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

† **May 20, 1997 - 9 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 business of the committee. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact the Motor Vehicle Dealer Board at (804) 367-1100 at least 10 days prior to the meeting so that suitable arrangements can be made. The board fully complies with the Americans with Disabilities Act. A tentative agenda will be provided upon request by contacting the Motor Vehicle Dealer Board. A public comment period will be provided at the beginning of the meeting. Public comment will be subject to the board's guidelines for public comment.

Contact: Mary Beth Blevins, Administrative Assistant, Motor Vehicle Dealer Board, 2201 W. Broad St., Suite 104, Richmond, VA 23220, telephone (804) 367-1100 or FAX (804) 367-1053.

Franchise Review and Advisory Committee

† May 20, 1997 - 9 a.m. -- Open Meeting

Department of Motor Vehicles, 2300 West Broad Street, 7th Floor, Executive Conference Room, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A meeting to conduct general business of the committee. 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

† May 19, 1997 - 9:15 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 business of the committee. 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.

DEPARTMENT OF MOTOR VEHICLES

May 19, 1997 -- Public comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Motor Vehicles intends to repeal regulations entitled: **24 VAC 20-20-10 et seq. Privacy Protection Act Rules and Regulations**. The purpose of the proposed action is to repeal the existing regulation, which was originally promulgated in 1977 and last amended in 1984. Changes adopted by the 1994 Session of the General

Assembly to §§ 46.2-204 through 46.2-210 have made these regulations obsolete. The Department of Motor Vehicles does not intend to hold a public hearing on the proposed repeal of these regulations. The purpose of this notice is to solicit input and comments from the public and any other interested parties. The Department of Motor Vehicles encourages you to share this information with others you feel may have an interest in this action. Any industry or professional association or other group receiving this notice is requested to publish this information in newsletters or journals or use any other means available to them to disseminate this notice to their memberships.

Statutory Authority: §§ 46.2-203 and 46.2-208 of the Code of Virginia.

Public comments may be submitted until May 19, 1997, to Marc Copeland, Legislative Analyst, Department of Motor Vehicles, Room 724, P. O. Box 34712, Richmond, Virginia 23269-0001.

Contact: Karen Chappell, Administrator, Motorist Record Services, Department of Motor Vehicles, Room 311, P.O. Box 24712, Richmond, VA 23269-0001, telephone (804) 367-0146, FAX (804) 367-6631, or toll-free 1-800-272-9268/TDD

May 19, 1997 -- Public comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Motor Vehicles intends to repeal regulations entitled: **24 VAC 20-130-10 et seq. International Registration Plan Virginia Rules and Regulations**. The purpose of the proposed action is to repeal the regulation. This regulation was first published in 1975 when Virginia and 13 other jurisdictions were members of the International Registration Plan (Plan). The regulation was used by Virginia primarily as a tool to educate the motor carrier industry to the workings of the plan. Today, there are 49 jurisdictions that are members of the International Registration Plan. The plan has been changed many times in the intervening years, making the regulation published in 1975 obsolete. The current plan, along with various other related national policies and procedures, provides the necessary guidance to the member jurisdictions and the motor carrier industry alike. The agency does not intend to hold a public hearing on the proposed regulation after publication. The purpose of this notice is to solicit input and comments from the public and any other interested parties. The Department of Motor Vehicles encourages you to share this information with others you feel may have an interest in this action. Any industry or professional association or other group receiving this notice is requested to publish this information in newsletters or journals or use any other means available to them to disseminate this notice to their memberships.

Calendar of Events

Statutory Authority: §§ 46.2-203 and 46.2-703 of the Code of Virginia.

Public comments may be submitted until May 19, 1997, to Marc Copeland, Legislative Analyst, Department of Motor Vehicles, Room 724, P. O. Box 34712, Richmond, Virginia 23269-0001.

Contact: Jerry Fern, Manager, IRP and Tax Licensing, Department of Motor Vehicles, Room 607, P.O. Box 24712, Richmond, VA 23269-0001, telephone (804) 367-8487, FAX (804) 367-6631, or toll-free 1-800-272-9268/TDD ☎

May 19, 1997 -- Public comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Motor Vehicles intends to repeal regulations entitled: **24 VAC 20-30-10 et seq. Virginia Driver Improvement Rules and Regulations.** The purpose of the proposed action is to repeal the existing regulation, which was originally promulgated in 1975 and last amended in 1978. As such, the regulation has no substantive relationship to either the current statute or program. The Department of Motor Vehicles does not intend to hold a public hearing on the proposed repeal of these regulations. The purpose of this notice is to solicit input and comments from the public and any other interested parties. The Department of Motor Vehicles encourages you to share this information with others you feel may have an interest in this action. Any industry or professional association or other group receiving this notice is requested to publish this information in newsletters or journals or use any other means available to them to disseminate this notice to their memberships.

Statutory Authority: §§ 46.2-203 and 46.2-489 of the Code of Virginia.

Contact: Marc Copeland, Legislative Analyst, Department of Motor Vehicles, Room 724, P.O. Box 24712, Richmond, VA 23269-0001, telephone (804) 367-1875, FAX (804) 367-6631, or toll-free 1-800-272-9268.

VIRGINIA MUSEUM OF FINE ARTS

Buildings and Grounds Committee

May 1, 1997 - Noon -- Open Meeting
Virginia Museum of Fine Arts, 2800 Grove Avenue, Conference Room, Richmond, Virginia ☎

A meeting to receive an update on the renovation of the Center for Education and Outreach. 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.

Collections Committee

May 13, 1997 - 11 a.m. -- Open Meeting
Virginia Museum of Fine Arts, 2800 Grove Avenue, Auditorium, Richmond, Virginia ☎

A meeting to consider gift offers, purchase consideration and loans of art works. 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.

Education and Programs Committee

May 6, 1997 - 3:30 p.m. -- Open Meeting
Virginia Museum of Fine Arts, 2800 Grove Avenue, Richmond, Virginia ☎

A meeting to review educational activities and programs for the 1996-1997 year. Public comment will not be received at the meeting.

Contact: Emily C. Robertson, Secretary of the Museum, Virginia Museum of Fine Arts, 2800 Grove Ave., Richmond, VA 23221-2466, telephone (804) 367-0553.

Executive Committee

June 19, 1997 - Noon -- Open Meeting
Virginia Museum of Fine Arts, 2800 Grove Avenue, Auditorium, Richmond, Virginia ☎

A meeting to ratify the 1997-1998 budget recommended by the Finance Committee. Public comment will not be received.

Contact: Emily C. Robertson, Secretary of the Museum, Virginia Museum of Fine Arts, 2800 Grove Ave., Richmond, VA 23221-2466, telephone (804) 367-0553.

Exhibitions Committee

April 30, 1997 - 3 p.m. -- Open Meeting
Virginia Museum of Fine Arts, 2800 Grove Avenue, Conference Room, Richmond, Virginia ☎

A meeting to review the current exhibition schedule and budget and to consider proposed exhibitions. Public comment will not be received.

Contact: Emily C. Robertson, Secretary of the Museum, Virginia Museum of Fine Arts, 2800 Grove Ave., Richmond, VA 23221-2466, telephone (804) 367-0553.

Finance Committee

May 15, 1997 - 11 a.m. -- Open Meeting
Virginia Museum of Fine Arts, 2800 Grove Avenue, Conference Room, Richmond, Virginia ☎

A meeting to review the budget. Public comment will not be received.

Contact: Emily C. Robertson, Secretary of the Museum, Virginia Museum of Fine Arts, 2800 Grove Ave., Richmond, VA 23221-2466, telephone (804) 367-0553.

June 19, 1997 - 11 a.m. -- Open Meeting
Virginia Museum of Fine Arts, 2800 Grove Avenue, Conference Room, Richmond, Virginia. ☎

A meeting to consider and approve the 1997-1998 budget. Public comment will not be received.

Contact: Emily C. Robertson, Secretary of the Museum, Virginia Museum of Fine Arts, 2800 Grove Ave., Richmond, VA 23221-2466, telephone (804) 367-0553.

Board of Trustees

May 6, 1997 - 8 a.m. -- Open Meeting
Virginia Museum of Fine Arts, 2800 Grove Avenue, Conference Room, Richmond, Virginia. ☎

A briefing with the director and deputy director on current and upcoming museum activities. Public comment will not be received at the meeting.

Contact: Emily C. Robertson, Secretary of the Museum, Virginia Museum of Fine Arts, 2800 Grove Ave., Richmond, VA 23221-2466, telephone (804) 367-0553.

May 15, 1997 - Noon -- Open Meeting
Virginia Museum of Fine Arts, 2800 Grove Avenue, Auditorium, Richmond, Virginia. ☎

A meeting to review staff activities and to receive committee reports and a budget update. 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.

June 3, 1997 - 8 a.m. -- Open Meeting
Virginia Museum of Fine Arts, 2800 Grove Avenue, Conference Room, Richmond, Virginia. ☎

A briefing of the president and vice president of the Board of Trustees by the director and deputy director. Public comment will not be received.

Contact: Emily C. Robertson, Secretary of the Museum, Virginia Museum of Fine Arts, 2800 Grove Ave., Richmond, VA 23221-2466, telephone (804) 367-0553.

BOARD OF NURSING

May 20, 1997 - 1 p.m. -- Public Hearing
Department of Health Professions, 6606 West Broad Street, 5th Floor, Richmond, Virginia.

June 13, 1997 - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Nursing intends to adopt regulations entitled: **18 VAC 90-50-10 et seq. Regulations Governing the Certification of Massage**

Therapists. The proposed regulations establish an application process and requirements for certification in accordance with provisions of § 54.1-3029 of the Code of Virginia, fees for administration of the regulatory program, a schedule of renewal and reinstatement, and standards of conduct, which will protect the health, welfare and safety of the citizens of the Commonwealth.

Statutory Authority: §§ 54.1-2400 and 54.1-3005 of the Code of Virginia.

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 or FAX (804) 662-9943.

Special Conference Committee

April 29, 1997 - 9 a.m. -- Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Richmond, Virginia. ☎ (Interpreter for the deaf provided upon request)

A Special Conference Committee will conduct informal conferences with licensees or certificate holders or both. Public comment will not be received.

Contact: Nancy K. Durrett, R.N., Executive Director, Board of Nursing, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9909, FAX (804) 662-9943 or (804) 662-7197/TDD ☎

JOINT BOARDS OF NURSING AND MEDICINE

† **May 7, 1997 - 9 a.m.** -- Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Richmond, Virginia. ☎ (Interpreter for the deaf provided upon request)

A Special Conference Committee comprised of members of the Joint Board of Nursing and Medicine will conduct an informal conference with a licensee. At 10:30 a.m., the full committee will consider the adoption of a notice of intended regulatory action to amend the regulations governing the licensure of nurse practitioners. Other business related to the regulation of nurse practitioners will be considered. Public comment will be received at 10:30 a.m..

Contact: Nancy K. Durrett, R.N., Executive Director, Board of Nursing, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9909, FAX (804) 662-9943 or (804) 662-7197/TDD ☎

BOARD FOR OPTICIANS

† **June 7, 1997 - 9 a.m.** -- Open Meeting
Location to be announced.

A meeting of the Ad Hoc Committee to discuss a legislative proposal to be presented to the board for the 1998 General Assembly Session. A public comment period will be held at the beginning of the meeting.

Calendar of Events

Persons desiring to participate in the meeting and requiring special accommodations or interpretive services should contact the board at least 10 days prior to the meeting so that suitable arrangements can be made for appropriate accommodations. The department fully complies with the Americans with Disabilities Act.

Contact: Nancy Taylor Feldman, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8590, FAX (804) 367-2474 or (804) 367-9753/TDD ☎

BOARD OF OPTOMETRY

† **May 15, 1997 - 8 a.m.** -- Open Meeting
The Holiday Inn 1776, 725 Bypass Road, Williamsburg, Virginia ☎ (Interpreter for the deaf provided upon request)

A meeting of the board to consider amendments to its general regulations pursuant to Executive Order 15(94). The board will also continue its discussion of needed legislative changes and will be reviewing requests for licensure reinstatement, licensure by endorsement, and continuing education waiver or extension. In addition, the board will consider the need to update the current listing of CPT codes approved for use by Virginia licensed optometrists. Committee reports will be given to include an update for the board on NERCOATS' transition. Brief public comment will be received at the beginning of the meeting.

Contact: Carol Stamey, Administrative Assistant, Department of Health Professions, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9910 or (804) 662-7197/TDD ☎

† **May 15, 1997 - 1 p.m.** -- Open Meeting
The Holiday Inn 1776, 725 Bypass Road, Williamsburg, Virginia ☎ (Interpreter for the deaf provided upon request)

A meeting to conduct informal conferences. This is a public meeting; however, public comment will not be received.

Contact: Carol Stamey, Administrative Assistant, 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

† **April 30, 1997 - 9 a.m.** -- Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 4, Richmond, Virginia.

A working meeting of the Regulation Committee to begin development of proposed regulations pursuant to the Notice of Intended Regulatory Action published in the Virginia Register on March 17, 1997, and to discuss 1998 legislative proposals. No public comment will be received.

Contact: Elizabeth Scott Russell, Executive Director, Board of Pharmacy, 6606 W. Broad St., 4th Floor, Richmond, VA 23230, telephone (804) 662-9911 or FAX (804) 662-9313.

BOARD OF PROFESSIONAL COUNSELORS AND MARRIAGE AND FAMILY THERAPISTS

May 15, 1997 - 1 p.m. -- Open Meeting
The Hotel Roanoke, 110 Shenandoah Avenue, Roanoke, Virginia ☎

A meeting to plan and set goals and objectives for future activities of the board. Public comments will be received at the beginning of the meeting.

Contact: Evelyn Brown, Executive Director, or Joyce Williams, Administrative Assistant, Department of Health Professions, 6606 W. Broad St., 4th Floor, Richmond, VA 23230, telephone (804) 662-9912 or FAX (804) 662-9943.

May 16, 1997 - 9 a.m. -- Open Meeting
The Hotel Roanoke, 110 Shenandoah Avenue, Roanoke, Virginia ☎

A continuation of the May 15 meeting. The board will conduct general business, consider committee reports and correspondence, conduct regulatory review, and discuss any other matters under the jurisdiction of the board. The board will adopt the final Regulations Governing the Practice of Marriage and Family Therapists. Public comments will be received at the beginning of the meeting.

Contact: Evelyn Brown, Executive Director, or Joyce Williams, Administrative Assistant, Department of Health Professions, 6606 W. Broad St., 4th Floor, Richmond, VA 23230, telephone (804) 662-9912 or FAX (804) 662-9943

BOARD OF PROFESSIONAL AND OCCUPATIONAL REGULATION

May 19, 1997 - 10 a.m. -- Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia ☎

A general business meeting. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact the board at least 10 days prior to the meeting so that suitable arrangements can be made. The department fully complies with the Americans with Disabilities Act.

Contact: Debra L. Vought, Agency Management Analyst, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8514 or (804) 367-9753/TDD ☎

BOARD OF PSYCHOLOGY

† **May 9, 1997 - 10 a.m.** -- Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 1, Richmond, Virginia.

A meeting of the Examination Committee to review examinations administered on April 16, 1997. Public comment will be received at the beginning of the meeting.

Contact: LaDonna Duncan, Administrative Assistant, Board of Psychology, 6606 W. Broad St., 4th Floor, Richmond, VA 23230, telephone (804) 662-9913 or FAX (804) 662-9943.

June 10, 1997 - 10 a.m. -- Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 3, Richmond, Virginia.

A meeting to conduct general board business. Public comment will be received.

Contact: LaDonna Duncan, Administrative Assistant, Board of Psychology, 6606 W. Broad St., 4th Floor, Richmond, VA 23230, telephone (804) 662-9913 or FAX (804) 662-9943.

May 12, 1997-- Public comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Psychology intends to amend regulations entitled: **18 VAC 125-20-10 et seq. Regulations Governing the Practice of Psychology.** The purpose of the proposed amendments is to replace emergency regulations which were necessary to conform regulations to 1996 statutory changes requiring the transfer of licensure of clinical psychologists to the Board of Psychology and establishment of three types of psychology licensure. Fees and renewal schedules have been amended to be less burdensome for licensees.

Statutory Authority: §§ 54.1-2400 and 54.1-3600 et seq. of the Code of Virginia.

Contact: Janet Delorme, Deputy Executive Director, Board of Psychology, 6606 W. Broad St., 4th Floor, Richmond, VA 23230, telephone (804) 662-9575 or FAX (804) 662-9943.

May 2, 1997-- Public comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Psychology intends to adopt regulations entitled: **18 VAC 125-30-10 et seq. Regulations Governing the Certification of Sex Offender Treatment Providers.** The purpose of the proposed regulations is to establish requirements for education and supervised training, endorsement, renewal of certification, standards of practice, and fees for the certification of sex offender treatment providers.

Statutory Authority: §§ 54.1-2400 and 54.1-3605 of the Code of Virginia.

Contact: Janet Delorme, Deputy Executive Director, Board of Psychology, 6606 W. Broad St., 4th Floor, Richmond, VA

23230, telephone (804) 662-9575, FAX (804) 662-9943, or (804) 662-7197/TDD ☎

REAL ESTATE APPRAISER BOARD

May 13, 1997 - 10 a.m. -- Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia. ☎

A general business meeting. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact the board at least 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) 367-2039, FAX (804) 367-2475, or (804) 367-9753/TDD ☎

REAL ESTATE BOARD

May 1, 1997 - 9 a.m. -- Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia. ☎

A general business meeting. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact the 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

May 1, 1997 - 8 a.m. -- Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia. ☎

A general business meeting of the committee. 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 ☎

Calendar of Events

Fair Housing Subcommittee

May 1, 1997 - 8 a.m. -- Open Meeting

Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia. ☎

A general business meeting of the subcommittee. 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 ☎

STATE REHABILITATION ADVISORY COUNCIL

† **May 19, 1997 - 10 a.m.** -- Open Meeting

Department of Rehabilitative Services, 8004 Franklin Farms Drive, Richmond, Virginia. ☎ (Interpreter for the deaf provided upon request)

A regular business meeting.

Contact: Kay Magill, SRAC Liaison, Department of Rehabilitative Services, 8004 Franklin Farms Dr., Richmond, VA 23230, telephone (804) 662-7527, FAX (804) 662-7696, toll-free 1-800-552-5019/TDD and Voice, or (800) 464-9950/TDD ☎

BOARD OF REHABILITATIVE SERVICES

† **May 22, 1997 - 10 a.m.** -- Open Meeting

Department of Rehabilitative Services, 8004 Franklin Farms Drive, Richmond, 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 ☎

VIRGINIA RESOURCES AUTHORITY

May 13, 1997 - 9:30 a.m. -- Open Meeting

The Mutual Building, 909 East Main Street, Suite 607, 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 month, 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, Executive Director, Virginia Resources Authority, P.O. Box 1300, Richmond, VA 23218, telephone (804) 644-3100 or FAX (804) 644-3109.

VIRGINIA SMALL BUSINESS ADVISORY BOARD

April 28, 1997 - 10 a.m. -- Open Meeting

Department of Business Assistance, 901 East Byrd Street, 19th Floor, Main Board Room, Richmond, Virginia. ☎ (Interpreter for the deaf provided upon request)

A meeting to advise the Department of Business Assistance, the Secretary of Commerce and Trade, and the Governor on small business issues. Members will discuss current concerns of small businesses in their districts; the board develops clear statements of these concerns and makes recommendations for resolving them.

Contact: Anne Godfrey, Administrative Assistant, Virginia Small Business Advisory Board, 901 E. Byrd St., 19th Floor, Richmond, VA 23219, telephone (804) 371-8253, FAX (804) 225-3384, or (804) 371-0327/TDD ☎

VIRGINIA SMALL BUSINESS FINANCING AUTHORITY

Loan Committee

May 27, 1997 - 10 a.m. -- Open Meeting

Department of Business Assistance, 901 East Byrd Street, 19th Floor, Main Board Room, Richmond, Virginia. ☎ (Interpreter for the deaf provided upon request)

A meeting to review applications for loans submitted to the authority for approval. Contact the authority for possible change in meeting time.

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 ☎

BOARD OF SOCIAL WORK

April 30, 1997 - 8:30 a.m. -- Open Meeting

Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 3, Richmond, Virginia. ☎

A meeting to conduct informal conferences pursuant to § 9-6.14:11 of the Code of Virginia. Public comment will not be received.

Contact: Arnice N. Covington, Administrative Assistant, Board of Social Work, 6606 W. Broad St., Richmond, VA 23230-1717, telephone (804) 662-7328 or FAX (804) 662-9943.

VIRGINIA SOIL AND WATER CONSERVATION BOARD

† **May 8, 1997 - 1 p.m.** -- Open Meeting
Natural Resources Conservation Service, 1606 Santa Rosa Road, Suite 209, Richmond, Virginia. ☎

A meeting to review and begin revising board policies and bylaws.

Contact: Leon App, Agency Regulatory Coordinator, Department of Conservation and Recreation, 203 Governor St., Suite 302, Richmond, VA 23219, telephone (804) 786-4570.

† **May 15, 1997 - 9 a.m.** -- Open Meeting
Colonial Farm Credit, 6526 Mechanicsville Turnpike, Mechanicsville, Virginia.

A regular bimonthly business meeting.

Contact: Linda J. Cox, Administrative Staff Assistant, Virginia Soil and Water Conservation Board, 203 Governor St., Suite 302, Richmond, VA 23219, telephone (804) 786-2123 or FAX (804) 786-6141.

† **May 15, 1997 - 7 p.m.** -- Open Meeting
General Assembly Building, 910 Capitol Square, House Room C, Richmond, Virginia. ☎ (Interpreter for the deaf provided upon request)

A public meeting to receive comments on the Watershed Improvement District Referenda Regulations (see Notices of Intended Regulatory Action section for additional information). For interpreter services for the deaf, please notify Leon App by 4 p.m. on May 8, 1997.

Contact: Leon App, Agency Regulatory Coordinator, Department of Conservation and Recreation, 203 Governor St., Suite 302, Richmond, VA 23219, telephone (804) 786-4570, FAX (804) 786-6141, or (804) 786-2121/TDD ☎

† **May 29, 1997 - 1 p.m.** -- Open Meeting
Natural Resources Conservation Service, 1606 Santa Rosa Road, Suite 209, Richmond, Virginia. ☎

A meeting to continue review and revision of board policies.

Contact: Leon App, Agency Regulatory Coordinator, Department of Conservation and Recreation, 203 Governor St., Suite 302, Richmond, VA 23219, telephone (804) 786-4570 or (804) 786-2121/TDD ☎

COMMONWEALTH TRANSPORTATION BOARD

† **May 14, 1997 - 2 p.m.** -- Open Meeting
Augusta County Government Center, Route 11, Verona, 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.

† **May 15, 1997 - 10 a.m.** -- Open Meeting
Augusta County Government Center, Route 11, Verona, Virginia. ☎ (Interpreter for the deaf provided upon request)

A monthly meeting of the board to vote on proposals presented regarding bids, permits, additions and deletions to the highway system, and any other matters requiring board approval. Public comment will be received at the outset of the meeting on items on the meeting agenda for which the opportunity for public comment has not been afforded the public in another forum. Remarks will be limited to five minutes. Large groups are asked to select one individual to speak for the group. The board reserves the right to amend these conditions. Separate committee meetings may be held on call of the chairman. Contact Department of Transportation Public Affairs at (804) 786-2715 for schedule.

Contact: Robert E. Martinez, Secretary of Transportation, 1401 E. Broad St., Richmond, VA 23219, telephone (804) 786-8032.

TREASURY BOARD

May 21, 1997 - 9 a.m. -- Open Meeting
James Monroe Building, 101 North 14th Street, Treasury Board Room, 3rd Floor, Richmond, Virginia. ☎

A regular business meeting.

Contact: Gloria J. Hatchel, Administrative Assistant, Department of the Treasury, James Monroe Bldg., 101 N. 14th St., Richmond, VA 23219, telephone (804) 371-6011.

DEPARTMENT FOR THE VISUALLY HANDICAPPED (BOARD FOR THE)

Vocational Rehabilitation Advisory Council

May 17, 1997 - 10 a.m. -- Open Meeting
Department for the Visually Handicapped, Administrative Headquarters, 397 Azalea Avenue, Richmond, Virginia. ☎ (Interpreter for the deaf provided upon request)

The council meets quarterly to advise the Department for the Visually Handicapped on matters related to vocational rehabilitation services for blind and visually impaired citizens of the Commonwealth.

Contact: James G. Taylor, Vocational Rehabilitation Program Director, Department for the Visually Handicapped, 397 Azalea Ave., Richmond, VA 23227, telephone (804) 371-3140, toll-free 1-800-622-2155, or (804) 371-3140/TDD ☎

VIRGINIA VOLUNTARY FORMULARY BOARD

May 29, 1997 - 10:30 a.m. -- Open Meeting
Washington Building, 1100 Bank Street, 2nd Floor, Board Room, Richmond, Virginia.

Calendar of Events

A meeting to review the public hearing record and product data for products being considered for inclusion in the Virginia Voluntary Formulary.

Contact: James K. Thomson, Director, Bureau of Pharmacy Services, Virginia Voluntary Formulary, James Monroe Bldg., 101 N. 14th St., Room S-45, Richmond, VA 23219, telephone (804) 786-4326.

VIRGINIA WASTE MANAGEMENT BOARD

May 5, 1997 - 10 a.m. -- Open Meeting
General Assembly Building, 910 Capitol Square, House Room C, Richmond, Virginia.

A regular meeting of the board.

Contact: Cindy M. Berndt, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4378.

May 19, 1997 - 10 a.m. -- Public Hearing
State Capitol, Capitol Square, House Room 4, Richmond, Virginia.

May 22, 1997 - 1 p.m. -- Public Hearing
Roanoke County Administration Center, 5204 Bernard Drive, Board Meeting Room, Roanoke, Virginia.

June 16, 1997 - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Virginia Waste Management Board intends to amend regulations entitled: **9 VAC 20-70-10 et seq. Financial Assurance Regulations for Solid Waste Facilities.** The proposed amendment incorporates new regulatory requirements for financial assurance by the solid waste facilities owned or operated by the local governments as required by the 1993 amendment to § 10.1-1410 of the Code of Virginia. Extensive changes are also proposed to conform the Virginia requirements to the federal requirements of 40 CFR Part 258. These changes include elimination of the third-party liability requirements.

Statutory Authority: § 10.1-1400 et seq. of the Code of Virginia.

Contact: Wladimir Gulevich, Assistant Division Director, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4218, FAX (804) 698-4327, toll-free 1-800-592-5482, or (804) 698-4021/TDD ☎

STATE WATER CONTROL BOARD

April 29, 1997 - 10 a.m. -- Open Meeting
General Assembly Building, 910 Capitol Square, House Room C, Richmond, Virginia.

A regular meeting of the board.

Contact: Cindy M. Berndt, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4378.

BOARD FOR WATERWORKS AND WASTEWATER WORKS OPERATORS

† **June 18, 1997 - 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 of the Ad Hoc Committee to discuss a legislative proposal to be presented to the board for the 1998 General Assembly Session. A public comment period will be held at the beginning of the meeting. Persons desiring to participate in the meeting and requiring special accommodations or interpretive services should contact the board at least 10 days prior to the meeting so that suitable arrangements can be made for appropriate accommodations. The department fully complies with the Americans with Disabilities Act.

Contact: Nancy Taylor Feldman, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8590, FAX (804) 367-2474 or (804) 367-9753/TDD ☎

LEGISLATIVE

VIRGINIA CODE COMMISSION

May 16, 1997 - 10 a.m. -- Open Meeting
General Assembly Building, 910 Capitol Square, Speaker's Conference Room, 6th Floor, Richmond, Virginia. ☎

A regular meeting.

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.

JOINT LEGISLATIVE AUDIT AND REVIEW COMMISSION

† **May 12, 1997 - 9:30 a.m.** -- Open Meeting
General Assembly Building, 910 Capitol Square, Senate Room A, Richmond, Virginia. ☎

Staff briefing on VRS oversight and staff status report on information technology.

Contact: Phillip A. Leone, Director, Joint Legislative Audit and Review Commission, General Assembly Building, 910 Capitol St., Suite 1100, Richmond, VA 23219, telephone (804) 786-1258.

CHRONOLOGICAL LIST

OPEN MEETINGS

April 28

† Cosmetology, Board for
 Funeral Directors and Embalmers, Board of
 Housing and Community Development, Board of
 Small Business Advisory Board, Virginia

April 29

Mental Health, Mental Retardation and Substance Abuse
 Services, Department of
 - State Human Rights Committee
 Nursing, Board of
 Water Control Board, State

April 30

† Maternal and Child Health Council
 - Perinatal/Early Childhood Subcommittee
 † Medicine, Board of
 - Advisory Committee on Radiologic Technologists
 Museum of Fine Arts, Virginia
 - Exhibitions Committee
 † Pharmacy, Board of
 Social Work, Board of

May 1

† Architects, Professional Engineers, Land Surveyors,
 and Landscape Architects, Board for
 - Board for Professional Engineers
 † Conservation and Recreation, Department of
 - Falls of the James Scenic River Advisory Board
 - State Parks Foundation, Virginia
 † Medicine, Board of
 - Advisory Board on Occupational Therapy
 - Advisory Board on Respiratory Therapy
 Museum of Fine Arts, Virginia
 - Buildings and Grounds Committee
 Real Estate Board
 - Education Committee
 - Fair Housing Subcommittee

May 2

† Dentistry, Board of
 Health Professions, Board of
 - Ad Hoc Committee on Criteria
 † Medicine, Board of
 - Advisory Board on Physical Therapy
 - Advisory Committee on Physician's Assistants

May 3

† Conservation and Recreation, Department of
 - Virginia Cave Board

May 5

† Branch Pilots, Board for
 Game and Inland Fisheries, Board of
 † Intergovernmental Relations, Advisory Commission on
 Local Government, Commission on
 † Medical Assistance Services, Department of
 - Virginia Medicaid Pharmacy Liaison Committee
 Waste Management Board, Virginia

May 6

Asbestos Licensing and Lead Certification, Board for
 † Branch Pilots, Board for
 † Criminal Justice Services Board
 - Committee on Training
 Disability Services Council
 † Funeral Directors and Embalmers, Board of
 Game and Inland Fisheries, Board of
 Hopewell Industrial Safety Council
 Museum of Fine Arts, Virginia
 - Education and Programs Committee
 - Board of Trustees

May 7

† Architects, Professional Engineers, Land Surveyors,
 and Landscape Architects, Board for
 - Board for Architects
 Deaf and Hard-of-Hearing, Department for the
 - Advisory Board
 † Nursing and Medicine, Joint Boards of

May 8

† Agriculture and Consumer Services, Department of
 - Virginia Aquaculture Advisory Board
 - Virginia Seed Potato Board
 † Child Day-Care Council
 The Library of Virginia
 - State Networking Users Advisory Board
 † Soil and Water Conservation Board, Virginia

May 9

† Architects, Professional Engineers, Land Surveyors,
 and Landscape Architects, Board for
 - Board for Landscape Architects
 † Medicine, Board of
 - EMG Task Force Subcommittee
 † Psychology, Board of

May 12

Hearing Aid Specialists, Board for
 Higher Education, State Council of
 - Executive Committee
 † Legislative Audit and Review Commission, Joint

May 13

† Hazardous Materials Training Advisory Committee,
 State
 Medicine, Board of
 - Informal Conference Committee
 Museum of Fine Arts, Virginia
 - Collections Committee
 Real Estate Appraiser Board
 Resources Authority, Virginia

May 14

Agriculture and Consumer Services, Board of
 † Air Pollution, State Advisory Board on
 George Mason University
 - Board of Visitors
 Juvenile Justice, State Board of
 Military Institute, Virginia
 - Board of Visitors
 † Transportation Board, Commonwealth

Calendar of Events

May 15

Agriculture and Consumer Services, Board of
† Architects, Professional Engineers, Land Surveyors,
and Landscape Architects, Board for
- Board for Land Surveyors
† Audiology and Speech-Language Pathology, Board of
† Soil and Water Conservation Board, Virginia
Medical Assistance Services, Department of
- Virginia Medicaid Drug Utilization Review Board
- Virginia Medicaid Prior Authorization Advisory
Committee
Museum of Fine Arts, Virginia
- Finance Committee
- Board of Trustees
† Optometry, Board of
Professional Counselors and Marriage and Family
Therapists, Board of
† Soil and Water Conservation Board, Virginia
† Transportation Board, Commonwealth

May 16

Code Commission, Virginia
General Services, Department of
- Design Build/Construction Management Review
Board
† Information Management, Council on
Professional Counselors and Marriage and Family
Therapists, Board of

May 17

Visually Handicapped (Board for the), Department for the
- Vocational Rehabilitation Advisory Council

May 19

† Contractors, Board for
† Motor Vehicle Dealer Board
- Advertising Committee
- Dealer Licensing Committee
- Dealer Practices Committee
- Transaction Recovery Fund Committee
Professional and Occupational Regulation, Board for
† Rehabilitation Advisory Council, State

May 20

Environmental Quality, Department of
- Virginia Groundwater Protection Steering Committee
† Motor Vehicle Dealer Board
- Finance Committee
- Franchise Review and Advisory Committee

May 21

Chesapeake Bay Local Assistance Board
- Regulatory and Regulation Committees
Conservation and Recreation, Department of
- Rappahannock Scenic River Advisory Board
Manufactured Housing Board, Virginia
† Maternal and Child Health Council
- Perinatal/Early Childhood Subcommittee
Treasury Board

May 22

† Labor and Industry, Department of
- Apprenticeship Council

Mental Health, Mental Retardation and Substance Abuse
Services, Department of
- Pilot Leadership Team
† Rehabilitative Services, Board of

May 23

† Architects, Professional Engineers, Land Surveyors,
and Landscape Architects, Board for
- Board for Interior Designers

May 27

Small Business Financing Authority, Virginia
- Loan Committee

May 28

† Emergency Planning Committee, Local - Gloucester
County
† Funeral Directors and Embalmers, Board of

May 29

† Conservation and Recreation, Department of
- Virginia State Parks Foundation
† Litter Control and Recycling Fund Advisory Board
† Soil and Water Conservation Board, Virginia
Voluntary Formulary Board, Virginia

June 2

Health Professions, Board of
- Ad Hoc Committee on Criteria
Local Government, Commission on

June 3

† Agriculture and Consumer Services, Department of
- Virginia Sweet Potato Board
Hopewell Industrial Safety Council
Museum of Fine Arts, Virginia
- Board of Trustees

June 5

† Conservation and Recreation, Department of
- Falls of the James Scenic River Advisory Board
- Virginia State Parks Foundation

June 7

† Opticians, Board for

June 10

Psychology, Board of

June 11

Juvenile Justice, State Board of

June 12

† Funeral Directors and Embalmers, Board of

June 17

Medical Assistance Services, Board of

June 18

† Contractors, Board for
† Waterworks and Wastewater Works Operators

June 19

† Environmental Quality, Department of
- Work Group on Ammonia, Mercury, Lead and
Copper

Museum of Fine Arts, Virginia
- Executive Committee
- Finance Committee

July 22

† Agriculture and Consumer Services, Department of
- Virginia Small Grains Board

PUBLIC HEARINGS

April 28

Housing and Community Development, Board of

April 30

Education, Board of

May 5

† Employment and Training Department, Governor's

May 7

† Employment and Training Department, Governor's

May 8

† Employment and Training Department, Governor's

May 14

Juvenile Justice, Board of

May 19

Waste Management Board, Virginia

May 20

Nursing, Board of

May 22

Waste Management Board, Virginia

June 2

Local Government, Commission on

June 11

Juvenile Justice, Board of
