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CUMULATIVE TABLE OF VIRGINIA ADMINISTRATIVE CODE SECTIONS ADOPTED, AMENDED, OR REPEALED

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CUMULATIVE TABLE OF VIRGINIA ADMINISTRATIVE CODE SECTIONS ADOPTED, AMENDED, OR REPEALED

The table printed below lists regulation sections, by Virginia Administrative Code (VAC) title, that have been amended, added or repealed in the *Virginia Register* since the regulations were originally published or last supplemented in VAC (the Spring 2001 VAC Supplement includes final regulations published through *Virginia Register* Volume 17, Issue 11, dated February 12, 2001). Emergency regulations, if any, are listed, followed by the designation "emer," and errata pertaining to final regulations are listed. Proposed regulations are not listed here. The table lists the sections in numerical order and shows action taken, the volume, issue and page number where the section appeared, and the effective date of the section.

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
Title 1. Administration			
1 VAC 30-60-10 et seq.	Repealed	17:19 VA.R. 2731	7/4/01
1 VAC 30-70-10 et seq.	Repealed	17:19 VA.R. 2731	7/4/01
Title 2. Agriculture			
2 VAC 15-20-81	Amended	17:14 VA.R. 2179	3/1/01
Title 4. Conservation and Natural Resources			
4 VAC 15-20-80	Amended	17:19 VA.R. 2729	7/4/01
4 VAC 15-20-160	Amended	17:19 VA.R. 2729	7/4/01
4 VAC 15-40-20	Amended	17:19 VA.R. 2729	7/4/01
4 VAC 15-40-150	Repealed	17:19 VA.R. 2729	7/4/01
4 VAC 15-40-280	Amended	17:19 VA.R. 2729	7/4/01
4 VAC 15-50-90	Amended	17:19 VA.R. 2729	7/4/01
4 VAC 15-90-20	Amended	17:19 VA.R. 2729	7/4/01
4 VAC 15-90-21	Added	17:19 VA.R. 2729	7/4/01
4 VAC 15-90-70	Amended	17:19 VA.R. 2729	7/4/01
4 VAC 15-90-80	Amended	17:19 VA.R. 2730	7/4/01
4 VAC 15-90-85	Added	17:19 VA.R. 2730	7/4/01
4 VAC 15-90-100	Amended	17:19 VA.R. 2730	7/4/01
4 VAC 15-90-110	Amended	17:19 VA.R. 2730	7/4/01
4 VAC 15-90-141	Amended	17:19 VA.R. 2730	7/4/01
4 VAC 15-90-160	Amended	17:19 VA.R. 2730	7/4/01
4 VAC 15-90-170	Amended	17:19 VA.R. 2730	7/4/01
4 VAC 15-90-190	Amended	17:19 VA.R. 2730	7/4/01
4 VAC 15-90-195	Amended	17:19 VA.R. 2730	7/4/01
4 VAC 15-90-200	Amended	17:19 VA.R. 2730	7/4/01
4 VAC 15-90-210	Amended	17:19 VA.R. 2730	7/4/01
4 VAC 15-90-220	Amended	17:19 VA.R. 2730	7/4/01
4 VAC 15-90-240	Amended	17:19 VA.R. 2730	7/4/01
4 VAC 15-110-75	Amended	17:19 VA.R. 2730	7/4/01
4 VAC 15-190-60	Added	17:19 VA.R. 2729	7/4/01
4 VAC 15-240-20	Amended	17:19 VA.R. 2730	7/4/01
4 VAC 15-240-31	Amended	17:19 VA.R. 2730	7/4/01
4 VAC 15-240-90	Amended	17:19 VA.R. 2730	7/4/01
4 VAC 15-270-20	Amended	17:19 VA.R. 2729	7/4/01
4 VAC 15-290-140	Amended	17:19 VA.R. 2729	7/4/01
4 VAC 15-320-100	Amended	17:19 VA.R. 2729	7/4/01
4 VAC 20-40-20	Amended	17:18 VA.R. 2576	5/1/01
4 VAC 20-252-70	Amended	17:12 VA.R. 2024	1/26/01
4 VAC 20-252-90	Amended	17:12 VA.R. 2024	1/26/01
4 VAC 20-252-100	Amended	17:12 VA.R. 2024	1/26/01
4 VAC 20-252-110	Amended	17:12 VA.R. 2025	1/26/01
4 VAC 20-252-140	Amended	17:12 VA.R. 2025	1/26/01
4 VAC 20-270-40	Amended	17:14 VA.R. 2179	3/1/01
4 VAC 20-270-40	Amended	17:18 VA.R. 2576	5/1/01
4 VAC 20-450-30	Amended	17:18 VA.R. 2576	5/1/01

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
4 VAC 20-561-10 through 4 VAC 20-561-50	Added	17:16 VA.R. 2332	8/16/01
4 VAC 20-620-30	Amended	17:14 VA.R. 2180	3/1/01
4 VAC 20-620-50	Amended	17:14 VA.R. 2180	3/1/01
4 VAC 20-620-70	Amended	17:14 VA.R. 2180	3/1/01
4 VAC 20-620-70	Amended	17:20 VA.R. 2880	6/1/01
4 VAC 20-670-25	Added	17:18 VA.R. 2577	5/1/01
4 VAC 20-751-10	Amended	17:16 VA.R. 2333	4/1/01
4 VAC 20-751-20	Amended	17:16 VA.R. 2333	4/1/01
4 VAC 20-890-10 emer	Amended	17:20 VA.R. 2932	5/25/01-6/24/01
4 VAC 20-890-20 emer	Amended	17:20 VA.R. 2932	5/25/01-6/24/01
4 VAC 20-890-25 emer	Amended	17:20 VA.R. 2932	5/25/01-6/24/01
4 VAC 20-890-30	Amended	17:16 VA.R. 2333	4/1/01
4 VAC 20-890-40 emer	Amended	17:20 VA.R. 2933	5/25/01-6/24/01
4 VAC 20-910-30	Amended	17:14 VA.R. 2181	3/1/01
4 VAC 20-910-45	Amended	17:18 VA.R. 2577	5/1/01
4 VAC 20-950-30	Amended	17:14 VA.R. 2181	3/1/01
4 VAC 20-950-45	Amended	17:14 VA.R. 2181	3/1/01
4 VAC 20-950-45	Amended	17:16 VA.R. 2334	4/1/01
4 VAC 20-950-45 emer	Amended	17:18 VA.R. 2673	4/24/01-5/23/01
4 VAC 20-950-45	Amended	17:20 VA.R. 2880	5/25/01
4 VAC 20-995-20	Amended	17:12 VA.R. 2025	1/26/01
4 VAC 20-995-20	Amended	17:14 VA.R. 2182	3/1/01
4 VAC 20-1040-20	Amended	17:20 VA.R. 2881	5/26/01
4 VAC 25-90-10 through 4 VAC 25-90-100	Amended	17:20 VA.R. 2882-2885	7/18/01
4 VAC 25-90-120	Repealed	17:20 VA.R. 2885	7/18/01
4 VAC 25-90-270	Repealed	17:20 VA.R. 2885	7/18/01
4 VAC 25-90-300	Repealed	17:20 VA.R. 2885	7/18/01
4 VAC 25-90-340	Repealed	17:20 VA.R. 2885	7/18/01
4 VAC 25-90-360	Repealed	17:20 VA.R. 2885	7/18/01
4 VAC 25-90 (Forms)	Added	17:21 VA.R. 3119	--
4 VAC 25-100-10 et seq.	Repealed	17:20 VA.R. 2885	7/18/01
4 VAC 25-101-10 through 4 VAC 25-101-220	Added	17:20 VA.R. 2886	7/18/01
4 VAC 25-101 (Forms)	Added	17:21 VA.R. 3119	--
Title 5. Corporations			
5 VAC 5-10-10 et seq.	Repealed	17:18 VA.R. 2577	6/1/01
5 VAC 5-20-10 through 5 VAC 5-20-280	Amended	17:18 VA.R. 2581-2587	6/1/01
Title 6. Criminal Justice and Corrections			
6 VAC 20-200-10 through 6 VAC 20-200-180	Amended	17:19 VA.R. 2731-2735	7/4/01
Title 8. Education			
8 VAC 20-110-10	Amended	17:12 VA.R. 2026	3/28/01
8 VAC 20-110-20	Repealed	17:12 VA.R. 2026	3/28/01
8 VAC 20-110-40	Amended	17:12 VA.R. 2026	3/28/01
8 VAC 20-110-50	Amended	17:12 VA.R. 2026	3/28/01
8 VAC 20-110-60	Repealed	17:12 VA.R. 2026	3/28/01
8 VAC 20-110-70	Repealed	17:12 VA.R. 2026	3/28/01
8 VAC 20-110-140	Repealed	17:12 VA.R. 2026	3/28/01
8 VAC 20-540-10 et seq.	Repealed	17:16 VA.R. 2334	5/23/01
8 VAC 20-541-10 through 8 VAC 20-541-60	Added	17:16 VA.R. 2335-2342	5/23/01
8 VAC 20-650-10 through 8 VAC 20-650-20 emer	Added	17:14 VA.R. 2202	3/7/01-3/6/02
Title 9. Environment			
9 VAC 5-50-400	Amended	17:15 VA.R. 2248	6/1/01
9 VAC 5-60-60	Amended	17:15 VA.R. 2248	6/1/01
9 VAC 5-60-90	Amended	17:15 VA.R. 2248	6/1/01
9 VAC 5-60-100	Amended	17:15 VA.R. 2249	6/1/01
9 VAC 5-80-310 through 9 VAC 5-80-350	Amended	17:20 VA.R. 2887-2890	7/18/01
9 VAC 5-80-355	Repealed	17:20 VA.R. 2891	7/18/01

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
9 VAC 5-210-10 through 9 VAC 5-210-160	Added	17:16 VA.R. 2342-2344	7/1/01
9 VAC 15-30-20	Amended	17:21 VA.R. 3029	8/1/01
9 VAC 15-30-40 through 9 VAC 15-30-110	Amended	17:21 VA.R. 3030-3031	8/1/01
9 VAC 15-30-130	Amended	17:21 VA.R. 3031	8/1/01
9 VAC 15-30-150	Repealed	17:21 VA.R. 3031	8/1/01
9 VAC 15-30-160	Amended	17:21 VA.R. 3031	8/1/01
9 VAC 15-30-170	Amended	17:21 VA.R. 3031	8/1/01
9 VAC 20-15-10 through 9 VAC 20-15-160	Added	17:16 VA.R. 2344-2346	7/1/01
9 VAC 20-80-10	Amended	17:16 VA.R. 2349	5/23/01
9 VAC 20-80-40	Amended	17:16 VA.R. 2349	5/23/01
9 VAC 20-80-60	Amended	17:16 VA.R. 2349	5/23/01
9 VAC 20-80-80	Amended	17:16 VA.R. 2349	5/23/01
9 VAC 20-80-100	Amended	17:16 VA.R. 2349	5/23/01
9 VAC 20-80-110	Amended	17:16 VA.R. 2349	5/23/01
9 VAC 20-80-113	Added	17:16 VA.R. 2349	5/23/01
9 VAC 20-80-115	Added	17:16 VA.R. 2349	5/23/01
9 VAC 20-80-120	Amended	17:16 VA.R. 2349	5/23/01
9 VAC 20-80-140 through 9 VAC 20-80-290	Amended	17:16 VA.R. 2349	5/23/01
9 VAC 20-80-310 through 9 VAC 20-80-340	Amended	17:16 VA.R. 2349	5/23/01
9 VAC 20-80-360 through 9 VAC 20-80-380	Amended	17:16 VA.R. 2349	5/23/01
9 VAC 20-80-400	Amended	17:16 VA.R. 2349	5/23/01
9 VAC 20-80-450	Added	17:16 VA.R. 2349	5/23/01
9 VAC 20-80-460	Added	17:16 VA.R. 2349	5/23/01
9 VAC 20-80-470	Amended	17:16 VA.R. 2349	5/23/01
9 VAC 20-80-480	Amended	17:16 VA.R. 2349	5/23/01
9 VAC 20-80-485	Added	17:16 VA.R. 2349	5/23/01
9 VAC 20-80-500 through 9 VAC 20-80-560	Amended	17:16 VA.R. 2349	5/23/01
9 VAC 20-80-620 through 9 VAC 20-80-650	Amended	17:16 VA.R. 2349	5/23/01
9 VAC 20-80-670	Amended	17:16 VA.R. 2349	5/23/01
9 VAC 20-80-700	Amended	17:16 VA.R. 2349	5/23/01
9 VAC 20-80-730	Amended	17:16 VA.R. 2349	5/23/01
9 VAC 20-80-750 through 9 VAC 20-80-790	Amended	17:16 VA.R. 2349	5/23/01
Appendices 2.1 and 2.2	Added	17:16 VA.R. 2349	5/23/01
Appendix 4.1	Repealed	17:16 VA.R. 2349	5/23/01
Appendix 5.1	Amended	17:16 VA.R. 2349	5/23/01
Appendices 5.2 and 5.3	Repealed	17:16 VA.R. 2349	5/23/01
Appendix 5.5	Amended	17:16 VA.R. 2349	5/23/01
Appendix 5.6	Added	17:16 VA.R. 2349	5/23/01
Appendices 7.4 and 9.1	Amended	17:16 VA.R. 2349	5/23/01
9 VAC 20-130-10 through 9 VAC 20-130-70	Amended	17:21 VA.R. 3033-3037	8/1/01
9 VAC 20-130-80	Repealed	17:21 VA.R. 3037	8/1/01
9 VAC 20-130-90	Amended	17:21 VA.R. 3037	8/1/01
9 VAC 20-130-110 through 9 VAC 20-130-150	Amended	17:21 VA.R. 3037-3040	8/1/01
9 VAC 20-130-160	Repealed	17:21 VA.R. 3040	8/1/01
9 VAC 20-130-165	Added	17:21 VA.R. 3040	8/1/01
9 VAC 20-130-170	Repealed	17:21 VA.R. 3040	8/1/01
9 VAC 20-130-175	Added	17:21 VA.R. 3040	8/1/01
9 VAC 20-130-180	Amended	17:21 VA.R. 3041	8/1/01
9 VAC 20-130-190	Amended	17:21 VA.R. 3041	8/1/01
9 VAC 20-130-220	Amended	17:21 VA.R. 3041	8/1/01
9 VAC 20-130-230	Amended	17:21 VA.R. 3041	8/1/01
9 VAC 20-130-240	Repealed	17:21 VA.R. 3041	8/1/01
9 VAC 25-15-10 through 9 VAC 25-15-160	Added	17:16 VA.R. 2347-2349	7/1/01
9 VAC 25-31-10	Amended	17:13 VA.R. 2076	4/11/01
9 VAC 25-31-30	Amended	17:13 VA.R. 2076	4/11/01
9 VAC 25-31-50	Amended	17:13 VA.R. 2076	4/11/01

Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
9 VAC 25-31-100	Amended	17:13 VA.R. 2076	4/11/01
9 VAC 25-31-110	Amended	17:13 VA.R. 2076	4/11/01
9 VAC 25-31-120	Amended	17:13 VA.R. 2076	4/11/01
9 VAC 25-31-170	Amended	17:13 VA.R. 2076	4/11/01
9 VAC 25-31-220	Amended	17:13 VA.R. 2076	4/11/01
9 VAC 25-31-280	Amended	17:13 VA.R. 2076	4/11/01
9 VAC 25-31-370	Amended	17:13 VA.R. 2076	4/11/01
9 VAC 25-31-390	Amended	17:13 VA.R. 2076	4/11/01
9 VAC 25-31-410	Amended	17:13 VA.R. 2076	4/11/01
9 VAC 25-110-10	Amended	17:16 VA.R. 2350	8/1/01
9 VAC 25-110-20	Amended	17:16 VA.R. 2351	8/1/01
9 VAC 25-110-40	Repealed	17:16 VA.R. 2351	8/1/01
9 VAC 25-110-50	Repealed	17:16 VA.R. 2351	8/1/01
9 VAC 25-110-60	Amended	17:16 VA.R. 2351	8/1/01
9 VAC 25-110-70	Amended	17:16 VA.R. 2351	8/1/01
9 VAC 25-110-70	Amended	17:21 VA.R. 3044	8/1/01
9 VAC 25-110-80	Amended	17:16 VA.R. 2353	8/1/01
9 VAC 25-115-10 through 9 VAC 25-115-50	Amended	17:16 VA.R. 2367-2380	7/24/01
9 VAC 25-192-50	Amended	17:21 VA.R. 3044	8/1/01
9 VAC 25-192-60	Amended	17:21 VA.R. 3045	8/1/01
9 VAC 25-210-10	Amended	17:21 VA.R. 3049	8/1/01
9 VAC 25-210-20	Repealed	17:21 VA.R. 3052	8/1/01
9 VAC 25-210-30	Repealed	17:21 VA.R. 3052	8/1/01
9 VAC 25-210-40	Repealed	17:21 VA.R. 3052	8/1/01
9 VAC 25-210-45	Added	17:21 VA.R. 3052	8/1/01
9 VAC 25-210-50 through 9 VAC 25-210-110	Amended	17:21 VA.R. 3052-3063	8/1/01
9 VAC 25-210-115	Added	17:21 VA.R. 3063	8/1/01
9 VAC 25-210-120 through 9 VAC 25-210-180	Amended	17:21 VA.R. 3064-3067	8/1/01
9 VAC 25-210-185	Added	17:21 VA.R. 3067	8/1/01
9 VAC 25-210-190 through 9 VAC 25-210-260	Amended	17:21 VA.R. 3067-3069	8/1/01
9 VAC 25-260-50	Amended	17:16 VA.R. 2381	*
9 VAC 25-260-55	Added	17:16 VA.R. 2381	*
9 VAC 25-680-10 through 9 VAC 25-680-100	Added	17:21 VA.R. 3070-3087	8/1/01
9 VAC 25-690-10 through 9 VAC 25-690-100	Added	17:21 VA.R. 3088-3107	8/1/01
Title 11. Gaming			
11 VAC 10-60 (Forms)	Amended	17:15 VA.R. 2259	--
11 VAC 10-130-10	Amended	17:19 VA.R. 2736	5/7/01
11 VAC 10-130-60	Amended	17:19 VA.R. 2736	5/7/01
11 VAC 10-130-70	Amended	17:19 VA.R. 2737	5/7/01
Title 12. Health			
12 VAC 30-10-20	Amended	17:19 VA.R. 2737	8/2/01
12 VAC 30-10-160	Amended	17:13 VA.R. 2077	4/11/01
12 VAC 30-10-1000	Added	17:19 VA.R. 2741	7/4/01
12 VAC 30-20-80	Amended	17:13 VA.R. 2077	4/11/01
12 VAC 30-20-290 through 12 VAC 30-20-490	Added	17:19 VA.R. 2741	7/4/01
12 VAC 30-20-500 through 12 VAC 30-20-560	Added	17:19 VA.R. 2741	7/4/01
12 VAC 30-30-10	Amended	17:13 VA.R. 2077	4/11/01
12 VAC 30-30-10	Amended	17:19 VA.R. 2737	8/2/01
12 VAC 30-30-20	Amended	17:13 VA.R. 2081	4/11/01
12 VAC 30-30-20	Amended	17:18 VA.R. 2588	7/1/01
12 VAC 30-30-20	Amended	17:18 VA.R. 2589	7/1/01
12 VAC 30-30-40	Amended	17:13 VA.R. 2082	4/11/01
12 VAC 30-30-50	Amended	17:13 VA.R. 2082	4/11/01

* 30 days after notice in *Virginia Register* of EPA approval

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
12 VAC 30-40-80	Amended	17:13 VA.R. 2087	4/11/01
12 VAC 30-40-100	Amended	17:13 VA.R. 2083	4/11/01
12 VAC 30-40-220	Amended	17:18 VA.R. 2590	7/1/01
12 VAC 30-40-220	Amended	17:18 VA.R. 2593	7/1/01
12 VAC 30-40-220	Erratum	17:21 VA.R. 3124	--
12 VAC 30-40-240	Amended	17:13 VA.R. 2083	4/11/01
12 VAC 30-40-250	Amended	17:13 VA.R. 2085	4/11/01
12 VAC 30-40-280	Amended	17:13 VA.R. 2085	4/11/01
12 VAC 30-40-290	Amended	17:13 VA.R. 2085	4/11/01
12 VAC 30-40-350	Amended	17:13 VA.R. 2087	4/11/01
12 VAC 30-50-300	Amended	17:12 VA.R. 2026	6/1/01**
12 VAC 30-50-490	Added	17:18 VA.R. 2595	7/1/01
12 VAC 30-50-530	Amended	17:12 VA.R. 2026	6/1/01**
12 VAC 30-70-140	Repealed	17:19 VA.R. 2741	7/4/01
12 VAC 30-70-141	Repealed	17:19 VA.R. 2741	7/4/01
12 VAC 30-70-142	Repealed	17:19 VA.R. 2741	7/4/01
12 VAC 30-70-143	Repealed	17:19 VA.R. 2741	7/4/01
12 VAC 30-70-144	Repealed	17:19 VA.R. 2741	7/4/01
12 VAC 30-70-145	Repealed	17:19 VA.R. 2741	7/4/01
12 VAC 30-80-110	Amended	17:18 VA.R. 2597	7/1/01
12 VAC 30-90-19	Added	17:18 VA.R. 2623	7/1/01
12 VAC 30-90-20	Amended	17:18 VA.R. 2624	7/1/01
12 VAC 30-90-29	Added	17:18 VA.R. 2624	7/1/01
12 VAC 30-90-30	Amended	17:18 VA.R. 2625	7/1/01
12 VAC 30-90-31	Amended	17:18 VA.R. 2626	7/1/01
12 VAC 30-90-33	Amended	17:18 VA.R. 2626	7/1/01
12 VAC 30-90-34	Amended	17:18 VA.R. 2628	7/1/01
12 VAC 30-90-35	Amended	17:18 VA.R. 2630	7/1/01
12 VAC 30-90-36	Amended	17:18 VA.R. 2630	7/1/01
12 VAC 30-90-37	Amended	17:18 VA.R. 2632	7/1/01
12 VAC 30-90-38	Amended	17:18 VA.R. 2632	7/1/01
12 VAC 30-90-39	Amended	17:18 VA.R. 2633	7/1/01
12 VAC 30-90-40	Amended	17:18 VA.R. 2633	7/1/01
12 VAC 30-90-41	Amended	17:18 VA.R. 2633	7/1/01
12 VAC 30-90-42	Repealed	17:18 VA.R. 2635	7/1/01
12 VAC 30-90-43	Repealed	17:18 VA.R. 2636	7/1/01
12 VAC 30-90-50	Amended	17:18 VA.R. 2636	7/1/01
12 VAC 30-90-51	Amended	17:18 VA.R. 2636	7/1/01
12 VAC 30-90-55	Amended	17:18 VA.R. 2637	7/1/01
12 VAC 30-90-60	Amended	17:18 VA.R. 2638	7/1/01
12 VAC 30-90-65	Amended	17:18 VA.R. 2638	7/1/01
12 VAC 30-90-70	Amended	17:18 VA.R. 2638	7/1/01
12 VAC 30-90-80	Amended	17:18 VA.R. 2639	7/1/01
12 VAC 30-90-110	Amended	17:18 VA.R. 2639	7/1/01
12 VAC 30-90-120	Amended	17:18 VA.R. 2639	7/1/01
12 VAC 30-90-123	Amended	17:18 VA.R. 2640	7/1/01
12 VAC 30-90-130	Repealed	17:18 VA.R. 2640	7/1/01
12 VAC 30-90-130	Repealed	17:19 VA.R. 2741	7/4/01
12 VAC 30-90-131	Repealed	17:18 VA.R. 2640	7/1/01
12 VAC 30-90-131	Repealed	17:19 VA.R. 2741	7/4/01
12 VAC 30-90-132	Repealed	17:18 VA.R. 2640	7/1/01
12 VAC 30-90-132	Repealed	17:19 VA.R. 2741	7/4/01
12 VAC 30-90-133	Repealed	17:18 VA.R. 2641	7/1/01

** Effective date changed in 17:17 VA.R. 2443.

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
12 VAC 30-90-133	Repealed	17:19 VA.R. 2741	7/4/01
12 VAC 30-90-135	Repealed	17:18 VA.R. 2641	7/1/01
12 VAC 30-90-135	Repealed	17:19 VA.R. 2741	7/4/01
12 VAC 30-90-136	Added	17:18 VA.R. 2641	7/1/01
12 VAC 30-90-160	Amended	17:18 VA.R. 2641	7/1/01
12 VAC 30-90-165	Added	17:18 VA.R. 2641	7/1/01
12 VAC 30-90-170	Amended	17:18 VA.R. 2642	7/1/01
12 VAC 30-90-221	Amended	17:18 VA.R. 2642	7/1/01
12 VAC 30-90-240	Amended	17:18 VA.R. 2642	7/1/01
12 VAC 30-90-250	Amended	17:18 VA.R. 2643	7/1/01
12 VAC 30-90-253	Amended	17:18 VA.R. 2643	7/1/01
12 VAC 30-90-260	Repealed	17:18 VA.R. 2643	7/1/01
12 VAC 30-90-264	Amended	17:18 VA.R. 2643	7/1/01
12 VAC 30-90-266	Amended	17:18 VA.R. 2646	7/1/01
12 VAC 30-90-270	Amended	17:18 VA.R. 2646	7/1/01
12 VAC 30-90-272	Amended	17:18 VA.R. 2646	7/1/01
12 VAC 30-90-280	Amended	17:18 VA.R. 2648	7/1/01
12 VAC 30-110-630	Amended	17:13 VA.R. 2096	4/11/01
12 VAC 30-110-650	Amended	17:13 VA.R. 2096	4/11/01
12 VAC 30-110-660	Amended	17:13 VA.R. 2096	4/11/01
12 VAC 30-110-670	Amended	17:13 VA.R. 2096	4/11/01
12 VAC 30-110-700	Amended	17:13 VA.R. 2097	4/11/01
12 VAC 30-110-710	Amended	17:13 VA.R. 2097	4/11/01
12 VAC 30-110-720	Amended	17:13 VA.R. 2088	4/11/01
12 VAC 30-110-730	Amended	17:13 VA.R. 2090	4/11/01
12 VAC 30-110-740	Repealed	17:13 VA.R. 2091	4/11/01
12 VAC 30-110-741	Added	17:13 VA.R. 2091	4/11/01
12 VAC 30-110-744	Added	17:13 VA.R. 2091	4/11/01
12 VAC 30-110-747	Added	17:13 VA.R. 2091	4/11/01
12 VAC 30-110-751	Added	17:13 VA.R. 2091	4/11/01
12 VAC 30-110-760	Amended	17:13 VA.R. 2091	4/11/01
12 VAC 30-110-780	Amended	17:13 VA.R. 2091	4/11/01
12 VAC 30-110-790	Amended	17:13 VA.R. 2091	4/11/01
12 VAC 30-110-800	Amended	17:13 VA.R. 2091	4/11/01
12 VAC 30-110-810	Amended	17:13 VA.R. 2091	4/11/01
12 VAC 30-110-813	Added	17:13 VA.R. 2092	4/11/01
12 VAC 30-110-815	Added	17:13 VA.R. 2092	4/11/01
12 VAC 30-110-820	Repealed	17:13 VA.R. 2092	4/11/01
12 VAC 30-110-830	Amended	17:13 VA.R. 2092	4/11/01
12 VAC 30-110-840	Amended	17:13 VA.R. 2092	4/11/01
12 VAC 30-110-850	Amended	17:13 VA.R. 2092	4/11/01
12 VAC 30-110-853	Added	17:13 VA.R. 2092	4/11/01
12 VAC 30-110-856	Added	17:13 VA.R. 2093	4/11/01
12 VAC 30-110-860	Amended	17:13 VA.R. 2093	4/11/01
12 VAC 30-110-870	Amended	17:13 VA.R. 2093	4/11/01
12 VAC 30-110-880	Amended	17:13 VA.R. 2093	4/11/01
12 VAC 30-110-890	Repealed	17:13 VA.R. 2093	4/11/01
12 VAC 30-110-900	Amended	17:13 VA.R. 2093	4/11/01
12 VAC 30-110-910	Amended	17:13 VA.R. 2094	4/11/01
12 VAC 30-110-920	Amended	17:13 VA.R. 2094	4/11/01
12 VAC 30-110-921	Added	17:13 VA.R. 2094	4/11/01
12 VAC 30-110-930	Amended	17:13 VA.R. 2094	4/11/01
12 VAC 30-110-940	Amended	17:13 VA.R. 2094	4/11/01
12 VAC 30-110-950	Amended	17:13 VA.R. 2094	4/11/01
12 VAC 30-110-960	Amended	17:13 VA.R. 2095	4/11/01
12 VAC 30-110-970	Amended	17:13 VA.R. 2095	4/11/01

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
12 VAC 30-110-980	Amended	17:13 VA.R. 2095	4/11/01
12 VAC 30-110-990	Amended	17:13 VA.R. 2095	4/11/01
12 VAC 30-110-1010	Amended	17:13 VA.R. 2095	4/11/01
12 VAC 30-110-1011	Added	17:13 VA.R. 2095	4/11/01
12 VAC 35-110-10 et seq.	Repealed	17:20 VA.R. 2891	7/18/01
12 VAC 35-115-10 through 12 VAC 35-115-250	Added	17:20 VA.R. 2892-2920	7/18/01
12 VAC 35-120-10 et seq.	Repealed	17:20 VA.R. 2920	7/18/01
12 VAC 30-120-700 through 12 VAC 30-120-790	Added	17:18 VA.R. 2597-2622	7/1/01
12 VAC 30-120-770	Erratum	17:21 VA.R. 3124	--
12 VAC 35-130-10 et seq.	Repealed	17:20 VA.R. 2920	7/18/01
Title 13. Housing			
13 VAC 10-180-10	Amended	17:17 VA.R. 2444	4/9/01
13 VAC 10-180-40	Amended	17:17 VA.R. 2444	4/9/01
13 VAC 10-180-60	Amended	17:17 VA.R. 2444	4/9/01
13 VAC 10-180-70	Amended	17:17 VA.R. 2452	4/9/01
13 VAC 10-180-90	Amended	17:17 VA.R. 2452	4/9/01
13 VAC 10-180-100	Amended	17:17 VA.R. 2452	4/9/01
Title 14. Insurance			
14 VAC 5-215 (Forms)	Amended	17:19 VA.R. 2753-2758	7/4/01
14 VAC 5-300-130	Amended	17:16 VA.R. 2382	5/1/01
Title 17. Libraries and Cultural Resources			
17 VAC 15-20-20 through 17 VAC 15-20-50	Amended	17:14 VA.R. 2183	5/1/01
17 VAC 15-20-70 through 17 VAC 15-20-120	Amended	17:14 VA.R. 2183	5/1/01
17 VAC 15-20-150 through 17 VAC 15-20-170	Amended	17:14 VA.R. 2183	5/1/01
17 VAC 15-30-10 et seq.	Repealed	17:14 VA.R. 2183	5/1/01
17 VAC 15-40-10 et seq.	Repealed	17:14 VA.R. 2183	5/1/01
17 VAC 15-50-20 through 17 VAC 15-50-50	Amended	17:14 VA.R. 2184	5/1/01
17 VAC 15-50-70	Amended	17:14 VA.R. 2184	5/1/01
17 VAC 15-50-90 through 17 VAC 15-50-110	Amended	17:14 VA.R. 2184	5/1/01
17 VAC 15-50-130	Amended	17:14 VA.R. 2184	5/1/01
17 VAC 15-50-140	Repealed	17:14 VA.R. 2184	5/1/01
17 VAC 15-50-150	Amended	17:14 VA.R. 2184	5/1/01
17 VAC 15-50-160	Amended	17:14 VA.R. 2184	5/1/01
Title 18. Professional and Occupational Licensing			
18 VAC 5-20-10 et seq.	Repealed	17:14 VA.R. 2184	4/25/01
18 VAC 5-21-10 through 18 VAC 5-21-170	Amended	17:14 VA.R. 2184-2198	4/25/01
18 VAC 30-10-10	Amended	17:20 VA.R. 2921	7/18/01
18 VAC 30-10-20	Amended	17:20 VA.R. 2921	7/18/01
18 VAC 30-10-30	Amended	17:20 VA.R. 2921	7/18/01
18 VAC 30-10-40	Amended	17:20 VA.R. 2921	7/18/01
18 VAC 30-10-60	Amended	17:20 VA.R. 2921	7/18/01
18 VAC 30-10-70	Amended	17:20 VA.R. 2921	7/18/01
18 VAC 30-10-80	Amended	17:20 VA.R. 2921	7/18/01
18 VAC 30-10-100	Amended	17:20 VA.R. 2921	7/18/01
18 VAC 30-20-10	Amended	17:16 VA.R. 2383	5/23/01
18 VAC 30-20-80	Amended	17:16 VA.R. 2383	5/23/01
18 VAC 30-20-160	Amended	17:16 VA.R. 2383	5/23/01
18 VAC 30-20-300	Added	17:16 VA.R. 2384	5/23/01
18 VAC 30-20-310	Added	17:16 VA.R. 2384	5/23/01
18 VAC 30-20-320	Added	17:16 VA.R. 2384	5/23/01
18 VAC 50-22-10 through 18 VAC 50-22-60	Amended	17:21 VA.R. 3108-3113	9/1/01
18 VAC 50-22-80	Amended	17:21 VA.R. 3113	9/1/01
18 VAC 50-22-100 through 18 VAC 50-22-270	Amended	17:21 VA.R. 3113-3115	9/1/01
18 VAC 65-10-10	Amended	17:21 VA.R. 3116	8/1/01
18 VAC 65-10-20	Amended	17:21 VA.R. 3116	8/1/01
18 VAC 65-10-30	Amended	17:21 VA.R. 3116	8/1/01

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18 VAC 65-10-40	Amended	17:21 VA.R. 3116	8/1/01
18 VAC 65-10-60	Amended	17:21 VA.R. 3116	8/1/01
18 VAC 65-10-70	Amended	17:21 VA.R. 3116	8/1/01
18 VAC 65-10-80	Amended	17:21 VA.R. 3116	8/1/01
18 VAC 65-10-100	Amended	17:21 VA.R. 3116	8/1/01
18 VAC 85-10-10	Amended	17:21 VA.R. 3116	8/1/01
18 VAC 85-10-20	Amended	17:21 VA.R. 3116	8/1/01
18 VAC 85-10-30	Amended	17:21 VA.R. 3116	8/1/01
18 VAC 85-10-40	Amended	17:21 VA.R. 3116	8/1/01
18 VAC 85-10-60	Amended	17:21 VA.R. 3116	8/1/01
18 VAC 85-10-70	Amended	17:21 VA.R. 3116	8/1/01
18 VAC 85-10-80	Amended	17:21 VA.R. 3116	8/1/01
18 VAC 85-10-100	Amended	17:21 VA.R. 3116	8/1/01
18 VAC 85-40-61	Added	17:13 VA.R. 2097	4/11/01
18 VAC 85-50-10	Amended	17:21 VA.R. 3116	8/1/01
18 VAC 85-50-58	Added	17:13 VA.R. 2098	4/11/01
18 VAC 85-50-101	Amended	17:21 VA.R. 3117	8/1/01
18 VAC 85-50-130	Amended	17:21 VA.R. 3117	8/1/01
18 VAC 85-50-140	Amended	17:21 VA.R. 3117	8/1/01
18 VAC 85-50-150	Amended	17:21 VA.R. 3117	8/1/01
18 VAC 85-80-10	Amended	17:17 VA.R. 2452	6/6/01
18 VAC 85-80-70	Amended	17:17 VA.R. 2452	6/6/01
18 VAC 85-80-71	Added	17:17 VA.R. 2452	6/6/01
18 VAC 85-80-72	Added	17:17 VA.R. 2452	6/6/01
18 VAC 85-80-80	Amended	17:17 VA.R. 2452	6/6/01
18 VAC 85-101-150	Amended	17:17 VA.R. 2452	6/6/01
18 VAC 85-101-151	Added	17:17 VA.R. 2452	6/6/01
18 VAC 85-101-152	Added	17:17 VA.R. 2452	6/6/01
18 VAC 85-110-150	Amended	17:17 VA.R. 2452	6/6/01
18 VAC 85-110-155	Added	17:17 VA.R. 2452	6/6/01
18 VAC 85-110-160	Amended	17:17 VA.R. 2452	6/6/01
18 VAC 85-120-10 et seq.	Added	17:17 VA.R. 2453	6/6/01
18 VAC 90-10-10	Amended	17:20 VA.R. 2921	7/18/01
18 VAC 90-10-20	Amended	17:20 VA.R. 2921	7/18/01
18 VAC 90-10-30	Amended	17:20 VA.R. 2921	7/18/01
18 VAC 90-10-40	Amended	17:20 VA.R. 2921	7/18/01
18 VAC 90-10-60	Amended	17:20 VA.R. 2921	7/18/01
18 VAC 90-10-70	Amended	17:20 VA.R. 2921	7/18/01
18 VAC 90-10-80	Amended	17:20 VA.R. 2921	7/18/01
18 VAC 90-10-100	Amended	17:20 VA.R. 2921	7/18/01
18 VAC 90-20-210	Amended	17:20 VA.R. 2921	7/18/01
18 VAC 90-30-50	Amended	17:13 VA.R. 2098	4/11/01
18 VAC 90-30-110	Amended	17:13 VA.R. 2098	4/11/01
18 VAC 90-40-60	Amended	17:13 VA.R. 2098	4/11/01
18 VAC 90-40-70	Amended	17:13 VA.R. 2098	4/11/01
18 VAC 105-20-60	Amended	17:17 VA.R. 2453	6/6/01
18 VAC 110-10-10	Amended	17:21 VA.R. 3118	8/1/01
18 VAC 110-10-20	Amended	17:21 VA.R. 3118	8/1/01
18 VAC 110-10-30	Amended	17:21 VA.R. 3118	8/1/01
18 VAC 110-10-40	Amended	17:21 VA.R. 3118	8/1/01
18 VAC 110-10-60	Amended	17:21 VA.R. 3118	8/1/01
18 VAC 110-10-70	Amended	17:21 VA.R. 3118	8/1/01
18 VAC 110-10-80	Amended	17:21 VA.R. 3118	8/1/01
18 VAC 110-10-100	Amended	17:21 VA.R. 3118	8/1/01
18 VAC 115-60-20	Amended	17:18 VA.R. 2651	6/20/01
18 VAC 115-60-40	Amended	17:18 VA.R. 2651	6/20/01

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18 VAC 115-60-50	Amended	17:18 VA.R. 2651	6/20/01
18 VAC 115-60-120	Amended	17:18 VA.R. 2651	6/20/01
18 VAC 115-60-150	Amended	17:18 VA.R. 2651	6/20/01
18 VAC 125-20-10	Amended	17:12 VA.R. 2026	3/28/01
18 VAC 125-20-30	Amended	17:12 VA.R. 2027	3/28/01
18 VAC 125-20-30	Amended	17:18 VA.R. 2652	6/20/01
18 VAC 125-20-43	Added	17:12 VA.R. 2027	3/28/01
18 VAC 125-20-120	Amended	17:18 VA.R. 2652	6/20/01
18 VAC 125-20-121	Added	17:18 VA.R. 2653	6/20/01
18 VAC 125-20-122	Added	17:18 VA.R. 2653	6/20/01
18 VAC 125-20-123	Added	17:18 VA.R. 2653	6/20/01
18 VAC 125-20-130	Amended	17:18 VA.R. 2654	6/20/01
18 VAC 125-20-160	Amended	17:18 VA.R. 2654	6/20/01
18 VAC 140-10-10	Amended	17:21 VA.R. 3118	8/1/01
18 VAC 140-10-20	Amended	17:21 VA.R. 3118	8/1/01
18 VAC 140-10-30	Amended	17:21 VA.R. 3118	8/1/01
18 VAC 140-10-40	Amended	17:21 VA.R. 3118	8/1/01
18 VAC 140-10-60	Amended	17:21 VA.R. 3118	8/1/01
18 VAC 140-10-70	Amended	17:21 VA.R. 3118	8/1/01
18 VAC 140-10-80	Amended	17:21 VA.R. 3118	8/1/01
18 VAC 140-10-100	Amended	17:21 VA.R. 3118	8/1/01
18 VAC 140-20-100	Amended	17:14 VA.R. 2198	4/25/01
18 VAC 140-20-105	Added	17:14 VA.R. 2198	4/25/01
18 VAC 140-20-106	Added	17:14 VA.R. 2199	4/25/01
18 VAC 140-20-110	Amended	17:14 VA.R. 2199	4/25/01
18 VAC 140-20-160	Amended	17:14 VA.R. 2199	4/25/01
Title 19. Public Safety			
19 VAC 30-40-30	Amended	17:15 VA.R. 2252	5/9/01
19 VAC 30-70-160	Amended	17:15 VA.R. 2252	5/9/01
19 VAC 30-70-530	Amended	17:15 VA.R. 2255	5/9/01
19 VAC 30-150-5	Added	17:15 VA.R. 2257	5/9/01
19 VAC 30-150-10	Amended	17:15 VA.R. 2257	5/9/01
19 VAC 30-150-20	Repealed	17:15 VA.R. 2257	5/9/01
19 VAC 30-150-30	Amended	17:15 VA.R. 2257	5/9/01
19 VAC 30-150-50	Amended	17:15 VA.R. 2257	5/9/01
19 VAC 30-160-5	Added	17:15 VA.R. 2257	5/9/01
19 VAC 30-160-20	Repealed	17:15 VA.R. 2257	5/9/01
19 VAC 30-160-30	Amended	17:15 VA.R. 2257	5/9/01
19 VAC 30-160-40	Amended	17:15 VA.R. 2257	5/9/01
19 VAC 30-160-45	Added	17:15 VA.R. 2257	5/9/01
19 VAC 30-165-10 et seq.	Amended	17:15 VA.R. 2258	5/9/01
Title 20. Public Utilities and Telecommunications			
20 VAC 5-309-10	Amended	17:18 VA.R. 2657	7/1/01
20 VAC 5-309-15	Added	17:18 VA.R. 2657	7/1/01
20 VAC 5-309-20	Amended	17:18 VA.R. 2657	7/1/01
20 VAC 5-309-30	Amended	17:18 VA.R. 2657	7/1/01
20 VAC 5-309-40	Amended	17:18 VA.R. 2657	7/1/01
20 VAC 5-309-50	Amended	17:18 VA.R. 2658	7/1/01
20 VAC 5-309-70	Amended	17:18 VA.R. 2658	7/1/01
20 VAC 5-309-90 through 20 VAC 5-309-180	Added	17:18 VA.R. 2658-2660	7/1/01
Title 21. Securities and Retail Franchising			
21 VAC 5-10 (Forms)	Amended	17:20 VA.R. 2925	7/1/01
21 VAC 5-20-10	Amended	17:20 VA.R. 2925	7/1/01
21 VAC 5-20-30	Amended	17:20 VA.R. 2925	7/1/01
21 VAC 5-20-40	Amended	17:20 VA.R. 2925	7/1/01
21 VAC 5-20-60 through 21 VAC 5-20-80	Amended	17:20 VA.R. 2925	7/1/01

Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
21 VAC 5-20-85	Added	17:20 VA.R. 2925	7/1/01
21 VAC 5-20-90	Amended	17:20 VA.R. 2926	7/1/01
21 VAC 5-20-120	Amended	17:20 VA.R. 2926	7/1/01
21 VAC 5-20-130	Amended	17:20 VA.R. 2926	7/1/01
21 VAC 5-20-155	Added	17:20 VA.R. 2926	7/1/01
21 VAC 5-20-220	Amended	17:20 VA.R. 2926	7/1/01
21 VAC 5-20-240	Amended	17:20 VA.R. 2926	7/1/01
21 VAC 5-20-280	Amended	17:20 VA.R. 2926	7/1/01
21 VAC 5-20-290	Amended	17:20 VA.R. 2931	7/1/01
21 VAC 5-30-30	Repealed	17:20 VA.R. 2931	7/1/01
21 VAC 5-30-60	Repealed	17:20 VA.R. 2931	7/1/01
21 VAC 5-30-80	Amended	17:20 VA.R. 2931	7/1/01
21 VAC 5-30-90	Amended	17:20 VA.R. 2931	7/1/01
21 VAC 5-80-10	Amended	17:20 VA.R. 2931	7/1/01
21 VAC 5-80-30 through 21 VAC 5-80-70	Amended	17:20 VA.R. 2931	7/1/01
21 VAC 5-80-90 through 21 VAC 5-80-110	Amended	17:20 VA.R. 2931	7/1/01
21 VAC 5-80-160	Amended	17:20 VA.R. 2931	7/1/01
21 VAC 5-80-200	Amended	17:20 VA.R. 2931	7/1/01
21 VAC 5-80-210	Amended	17:20 VA.R. 2931	7/1/01
Title 22. Social Services			
22 VAC 40-130-10 et seq.	Withdrawn	17:17 VA.R. 2456	--
22 VAC 40-230-10 et seq.	Repealed	17:18 VA.R. 2660	6/20/01
22 VAC 40-480-10 et seq.	Repealed	17:18 VA.R. 2661	6/20/01
22 VAC 40-690-10	Amended	17:18 VA.R. 2661	9/1/01
22 VAC 40-690-15	Added	17:18 VA.R. 2662	9/1/01
22 VAC 40-690-20	Amended	17:18 VA.R. 2662	9/1/01
22 VAC 40-690-30	Amended	17:18 VA.R. 2662	9/1/01
22 VAC 40-690-35	Added	17:18 VA.R. 2663	9/1/01
22 VAC 40-690-40	Amended	17:18 VA.R. 2663	9/1/01
22 VAC 40-690-50	Repealed	17:18 VA.R. 2664	9/1/01
22 VAC 40-690-55	Added	17:18 VA.R. 2664	9/1/01
22 VAC 40-690-55	Erratum	17:21 VA.R. 3124	--
22 VAC 40-690-60	Amended	17:18 VA.R. 2664	9/1/01
22 VAC 40-690-65	Added	17:18 VA.R. 2664	9/1/01
22 VAC 40-690-70	Repealed	17:18 VA.R. 2664	9/1/01
22 VAC 40-730-10 emer	Amended	17:13 VA.R. 2103	4/1/01-3/31/02
22 VAC 40-730-40 through 22 VAC 40-730-100 emer	Amended	17:13 VA.R. 2103-2104	4/1/01-3/31/02
22 VAC 40-900-10 et seq.	Repealed	17:18 VA.R. 2671	6/20/01
22 VAC 40-901-10 through 22 VAC 40-901-30	Added	17:18 VA.R. 2671	6/20/01
Title 24. Transportation and Motor Vehicles			
24 VAC 30-61-20	Amended	17:17 VA.R. 2456	6/6/01
24 VAC 30-61-40	Amended	17:17 VA.R. 2456	6/6/01
24 VAC 30-240-10	Amended	17:18 VA.R. 2671	5/1/01
24 VAC 30-280-10	Amended	17:13 VA.R. 2099	2/15/01
24 VAC 30-280-20 through 24 VAC 30-280-70	Added	17:13 VA.R. 2099-2102	2/15/01
24 VAC 30-440-10 et seq.	Repealed	17:14 VA.R. 2200	3/6/01
24 VAC 30-450-10 et seq.	Amended	17:14 VA.R. 2200	3/6/01
24 VAC 30-460-10	Repealed	17:14 VA.R. 2201	3/6/01
24 VAC 30-561-10	Amended	17:18 VA.R. 2672	5/2/01

NOTICES OF INTENDED REGULATORY ACTION

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

TITLE 3. ALCOHOLIC BEVERAGES

ALCOHOLIC BEVERAGE CONTROL BOARD

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Alcoholic Beverage Control Board intends to consider amending regulations entitled: **3 VAC 5-50-10 et seq. Retail Operations.** The purpose of the proposed action is to reduce the advance notice required of events to be catered under a caterer's license from two days to 24 hours. The agency intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: §§ 4.1-103 and 4.1-111 of the Code of Virginia.

Public comments may be submitted until July 18, 2001.

Contact: Sara M. Gilliam, Assistant Secretary, Alcoholic Beverage Control Board, 2901 Hermitage Rd., P.O. Box 27491, Richmond, VA 23261, telephone (804) 213-4440, FAX (804) 213-4442 or (804) 213-4687/TTY ☎

VA.R. Doc. No. R01-214; Filed May 30, 2001, 11:12 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 Alcoholic Beverage Control Board intends to consider amending regulations entitled: **3 VAC 5-60-10 et seq. Manufacturers and Wholesalers Operations.** The purpose of the proposed action is to increase from $5.00 to $10.00 the maximum wholesale value of novelty and specialty items bearing spirits advertising that may be given away, and allow permittees to provide routine business to mixed beverage licensees subject to the same conditions and limitations that apply to wholesalers and manufacturers. The agency intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: §§ 4.1-103 and 4.1-111 of the Code of Virginia.

Public comments may be submitted until July 18, 2001.

Contact: Sara M. Gilliam, Assistant Secretary, Alcoholic Beverage Control Board, 2901 Hermitage Rd., P.O. Box 27491, Richmond, VA 23261, telephone (804) 213-4440, FAX (804) 213-4442 or (804) 213-4687/TTY ☎

VA.R. Doc. No. R01-215; Filed May 30, 2001, 11:12 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 Alcoholic Beverage Control Board intends to consider amending regulations entitled: **3 VAC 5-70-10 et seq. Other Provisions.** The purpose of the proposed action is to allow for the peddling of cider and the reporting of cider sales by wholesale wine licensees in the same manner as beer. These changes are intended to accommodate cider wholesalers who are primarily beer wholesalers, allowing them to sell and invoice cider products in the same manner as their beer products. The agency intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: §§ 4.1-103, 4.1-111, and 4.1-213 of the Code of Virginia.

Public comments may be submitted until July 18, 2001.

Contact: Sara M. Gilliam, Assistant Secretary, Alcoholic Beverage Control Board, 2901 Hermitage Rd., P.O. Box 27491, Richmond, VA 23261, telephone (804) 213-4440, FAX (804) 213-4442 or (804) 213-4687/TTY ☎

VA.R. Doc. No. R01-216; Filed May 30, 2001, 11:12 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 Alcoholic Beverage Control Board intends to consider amending regulations entitled: **3 VAC 5-70-10 et seq. Other Provisions.** The purpose of the proposed action is to add provisions requiring all banquet and special event licensees in charge of public events to report to the board the income and expenses associated with the event when the licensee engages another person to organize, conduct or operate the event on behalf of the licensee. The agency intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: §§ 4.1-103 and 4.1-111 of the Code of Virginia.

Public comments may be submitted until July 18, 2001.

Contact: Sara M. Gilliam, Assistant Secretary, Alcoholic Beverage Control Board, 2901 Hermitage Rd., P.O. Box 27491, Richmond, VA 23261, telephone (804) 213-4440, FAX (804) 213-4442 or (804) 213-4687/TTY ☎

VA.R. Doc. No. R01-217; Filed May 30, 2001, 11:12 a.m.

TITLE 8. EDUCATION

STATE BOARD OF EDUCATION

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Board of Education intends to consider amending regulations entitled: **8 VAC 20-360-10 et seq. Rules Governing General Educational Development Certificates.** The Regulations Governing General Educational Development (GED) Certificates were last

amended in 1980. Since that time, the American Council on Education, which has oversight of GED testing, has established new requirements for the program that are not reflected in the current regulations. Additionally, the Code of Virginia has been amended to include new GED programs for 16-year olds. The purpose of the proposed action is to amend the regulation to ensure the integrity of the GED credential and align it with the Code of Virginia by adding requirements that reflect current program practice. The agency intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: § 22.1-223 of the Code of Virginia.

Public comments may be submitted until August 2, 2001.

Contact: Dr. Yvonne Thayer, Director, Adult Education Programs, Department of Education, P.O. Box 2120, Richmond, VA 23218, telephone (804) 225-2293.

VA.R. Doc. No. R01-219; Filed June 11, 2001, 11:45 a.m.

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TITLE 9. ENVIRONMENT

VIRGINIA WASTE MANAGEMENT BOARD

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Virginia Waste Management Board intends to consider amending regulations entitled: **9 VAC 20-110-10 et seq. Regulations Governing the Transportation of Hazardous Materials.** The purpose of the proposed action is to revise definitions as necessary for consistency with federal regulations; update references to cite current federal regulations; remove obsolete sections and revise, as necessary, requirements for registration of shippers. The agency intends to hold a public hearing on the proposed regulation after publication.

Purpose: The Regulations Governing the Transportation of Hazardous Materials regulate the method by which hazardous materials shall be loaded, unloaded, packed, identified, market, placarded, stored, and transported. The goal of amending the regulation is to incorporate federal regulations into state regulations to maintain consistency with federal regulations. By Virginia statute, these regulations are not allowed to be more restrictive than any applicable federal laws or regulations. Incorporation of these standards into state regulations will allow trained state and local law enforcement officials to enforce the requirements of these regulations.

Need: The proposed regulatory action will protect families' health and the environment by addressing the need for consistent federal and state regulations governing the transportation of hazardous materials. By amending the state regulations to incorporate federal regulations, law enforcement officers in the Commonwealth will be able to protect the public from improper transportation of hazardous materials. The Regulations Governing the Transportation of Hazardous Materials regulate the method by which hazardous materials shall be loaded, unloaded, packed, identified, marked, placarded, stored, and transported. By Virginia statute, these regulations shall not be more restrictive than any applicable federal laws or regulations.

Substance: The amendment of the regulations may include but will not be limited to the following:

1. Review of the definition section for consistency with definitions in the federal regulations;

2. Update references in the regulations to cite current federal regulations;

3. Remove obsolete sections; and

4. Review the registration of shippers requirement with the Department of Emergency Management.

Alternatives: The Code of Virginia mandates the promulgation of the regulations governing the loading, unloading, packing, identifying, marking, placarding, storing, and transporting of hazardous materials, so there is no alternative to their promulgation. The Code of Virginia also states that the regulations promulgated may be no more restrictive than applicable federal laws and regulations. The Regulations Governing the Transportation of Hazardous Materials incorporate federal requirements for loading, unloading, packing, identifying, marking, placarding, storing, and transporting hazardous materials. Any deviation from federal requirements would be in conflict with state statute. This approach is also the least burdensome method for regulating transporters of hazardous materials. Transporters of hazardous materials are already award of federal regulations governing the transport of hazardous materials and are responsible for compliance with federal regulations.

Public Participation: The board is seeking comments on the intended regulatory action, including ideas to assist in the development of a proposal and the costs and benefits of the alternatives stated in this notice or other alternatives. Anyone wishing to submit written comments for the public comment file may do so at the public meeting, by mail or by e-mail. Written comments should be signed by the commenter and include the name and address of the commenter. E-mail comments will be accepted and commenters should include their name and address. In order to be considered comments must be received by the close of the comment period.

A public meeting will be held and notice of the meeting can be found in the Calendar of Events section of the Virginia Register of Regulations. Oral comments may be submitted at that time.

The agency intends to hold at least one public hearing on the proposed regulation after publication.

Participatory Approach: The board is not using the participatory approach in the development of the proposal. The board has authorized the department to prepare a proposal without using an ad hoc advisory group.

Statutory Authority: §§ 10.1-1402 and 10.1-1450 of the Code of Virginia.

Public comments may be submitted until August 28, 2001.

Contact: Melissa Porterfield, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4238 or FAX (804) 698-4327.

VA.R. Doc. No. R01-231; Filed June 21, 2001, 11:38 a.m.

STATE WATER CONTROL BOARD

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Water Control Board intends to consider promulgating regulations entitled: **9 VAC 25-71-10 et seq. Regulations Governing the Discharge of Sewage and Other Waste from Boats** and repealing **9 VAC 25-70-10 et seq., Regulation No. 5 - Control of Pollution from Boats** and **9 VAC 25-730-10 et seq., Smith Mountain Lake No-Discharge Zone.** The purpose of the action is to provide a state regulation to address discharges of sewage and other wastes (decayed wood, sawdust, oil, etc.) from boats, especially with regard to implementation of no discharge zones. The agency intends to hold a public hearing on the proposed regulations after publication.

Statutory Authority: § 62.1-44.33 of the Code of Virginia.

Public comments may be submitted until August 10, 2001.

Contact: Michael B. Gregory, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4065, FAX (804) 698-4032 or e-mail mbgregory@deq.state.va.us.

VA.R. Doc. No. R01-220; Filed June 11, 2001, 8:37 a.m.

TITLE 17. LIBRARIES AND CULTURAL RESOURCES

DEPARTMENT OF HISTORIC RESOURCES

† 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 Historic Resources intends to consider promulgating regulations entitled: **17 VAC 10-30-10 et seq. Historic Rehabilitation Tax Credits.** The purpose of the proposed action is to implement the Historic Rehabilitation Tax Credit program. The regulations will provide clear guidance to Virginia taxpayers about eligibility for the program, application requirements and procedures, review standards, appeal procedures, and coordination with the federal Certified Historic Rehabilitation program. The agency intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: § 10.1-2202 of the Code of Virginia.

Public comments may be submitted until September 14, 2001.

Contact: Virginia E. McConnell, Resource Services Coordinator, Department of Historic Resources, 2801 Kensington Ave., Richmond, VA 23221, telephone (804) 367-2323 or FAX (804) 367-2391.

VA.R. Doc. No. R01-230; Filed June 25, 2001, 9:12 a.m.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

VIRGINIA BOARD FOR ASBESTOS AND LEAD

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 Board for Asbestos and Lead intends to consider promulgating regulations entitled: **18 VAC 15-40-10 et seq. Virginia Board for Asbestos, Lead and Home Inspectors, Certified Home Inspectors Regulations.** The 2001 Session of the Virginia General Assembly by House Bill 2174 created a regulatory program to administer certified home inspectors. The board seeks public comment on all areas of possible regulation with emphasis on the following areas: definitions of terms to be used in the regulations; entry standards for those seeking to practice as a certified home inspector; renewal standards for regulants; standards of practice and conduct; and grounds for disciplinary action against regulants. House Bill 2174 mandates the adoption of final regulations on or before July 1, 2003. The agency intends to hold a public hearing on the proposed regulation after publication.

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

Public comments may be submitted until August 3, 2001.

Contact: Christine Martine, Acting Assistant Director, Virginia Board for Asbestos and Lead, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-2648, FAX (804) 367-6128 or (804) 367-9753/TTY ☎

VA.R. Doc. No. R01-222; Filed June 12, 2001, 11:25 a.m.

AUCTIONEERS 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 Auctioneers Board intends to consider amending regulations entitled: **18 VAC 25-10-10 et seq. Public Participation Guidelines.** The purpose of the proposed action is to amend the regulations to allow the board to accept requests to be placed on a notification list, and to notify PPG list members, via electronic means. Other changes which may be necessary will be considered. The agency intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: §§ 9-6.14:7.1 and 54.1-602 of the Code of Virginia.

Public comments may be submitted until August 1, 2001.

Contact: Mark N. Courtney, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad

St., Richmond, VA 23230, telephone (804) 367-8514, FAX (804) 367-2475 or (804) 367-9753/TTY ☎

VA.R. Doc. No. R01-226; Filed June 13, 2001, 11:36 a.m.

BOARD FOR BARBERS AND COSMETOLOGY

† 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 for Barbers and Cosmetology intends to consider repealing regulations entitled: **18 VAC 40-10-10 et seq. Board for Barbers Public Participation Guidelines, and 18 VAC 55-10-10 et seq. Board for Cosmetology Public Participation Guidelines; and** promulgating regulations entitled: **18 VAC 41-10-10 et seq. Board for Barbers and Cosmetology Public Participation Guidelines.** The purpose of the proposed action is to repeal existing individual guidelines for the Board of Barbers and the Board of Cosmetology governing public participation and promulgating one new regulation for the Board of Barbers and Cosmetology Public Participation Guidelines in order to (i) ensure that the board is meeting its statutory mandate without burdensome requirements, and (ii) comply with § 54.1-706 of the Code of Virginia, which provides that the regulations of the Board for Barbers and the Board for Cosmetology in effect on June 13, 2000, shall remain in effect until July 1, 2002, or until the Board for Barbers and Cosmetology adopts new regulations, whichever occurs first. The agency intends to hold a public hearing on the proposed regulations after publication.

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

Public comments may be submitted until August 31, 2001.

Contact: David E. Dick, Assistant Director, Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, VA 23230, telephone (804) 367-2785 or FAX (804) 367-2474.

VA.R. Doc. Nos. R01-236, R01-238, R01-240; Filed June 27, 2001, 10:57 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 Board for Barbers and Cosmetology intends to consider repealing regulations entitled: **18 VAC 40-20-10 et seq. Board for Barbers Rules and Regulations, and 18 VAC 55-22-10 et seq. Board for Cosmetology Rules and Regulations;** and promulgating regulations entitled: **18 VAC 41-30-10 et seq. Board for Barbers and Cosmetology Rules and Regulations.** The purpose of the proposed action is to repeal existing individual regulations for the Board for Barbers and the Board for Cosmetology governing licensure and practice, and promulgate one new regulation for the Board of Barbers and Cosmetology governing licensure and practice as directed by § 54.1-706 of the Code of Virginia, to (i) sub-regulate the licensure and practice of waxing and haircutting; (ii) provide for and ensure that health and sanitary standards and safety are adequate in shops, salons, schools and other facilities where barbering and cosmetology are practiced; (iii) review regulatory provisions for the purpose of assuring that the board is meeting its statutory mandate to ensure minimal competence of all licensees without burdensome requirements; and (iv) provide for a fee increase for regulants that is adequate to support the costs of board operations and a proportionate share of the department's operations. The agency intends to hold a public hearing on the proposed regulations after publication.

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

Public comments may be submitted until August 31, 2001.

Contact: David E. Dick, Assistant Director, Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, VA 23230, telephone (804) 367-2785 or FAX (804) 367-2474.

VA.R. Doc. Nos. R01-237, R01-239, R01-241; Filed June 27, 2001, 10:57 a.m.

BOARD FOR BRANCH PILOTS

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 for Branch Pilots intends to consider amending regulations entitled: **18 VAC 45-10-10 et seq. Public Participation Guidelines.** The purpose of the proposed action is to amend the regulations to allow the board to accept requests to be placed on a notification list, and to notify PPG list members, via electronic means. Other changes which may be necessary will be considered. The agency intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: §§ 9-6.14:7.1 and 54.1-902 of the Code of Virginia.

Public comments may be submitted until August 1, 2001.

Contact: Mark N. Courtney, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8514, FAX (804) 367-2475 or (804) 367-9753/TTY ☎

VA.R. Doc. No. R01-227; Filed June 13, 2001, 11:37 a.m.

BOARD FOR CONTRACTORS

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 for Contractors intends to consider amending regulations entitled: **18 VAC 50-22-10 et seq. Board for Contractor Regulations**; and **18 VAC 50-30-10 et seq. Tradesman Rules and Regulations.** The purpose of the proposed action is to adjust the licensing fees for contractors and tradesmen regulated by the Board for Contractors. The board is mandated by statute to establish fees adequate to support the costs of board operations as well as proportionate department operations. The agency intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: §§ 54.1-201 and 54.1-1102 of the Code of Virginia.

Public comments may be submitted until August 3, 2001.

Contact: David E. Dick, Contractor Board Administrator, Board for Contractors, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-2785, FAX (804) 367-2474 or (804) 367-9753/TTY ☎

VA.R. Doc. No. R01-221; Filed June 12, 2001, 11:25 a.m.

REAL ESTATE 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 Real Estate Board intends to consider amending regulations entitled: **18 VAC 135-20-10 et seq. Virginia Real Estate Board Licensing Regulations.** The purpose of the proposed action is to make general clarifying changes, incorporate regulations regarding Internet advertising; review fees for compliance with the Callahan Act and make other changes which may result from the review. The agency intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: § 54.1-2105 of the Code of Virginia.

Public comments may be submitted until August 16, 2001.

Contact: Karen W. O'Neal, Regulatory Programs Coordinator, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8537 or FAX (804) 367-2475.

VA.R. Doc. No. R01-232; Filed June 18, 2001, 11:54 a.m.

TITLE 24. TRANSPORTATION AND MOTOR VEHICLES

COMMONWEALTH TRANSPORTATION 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 Commonwealth Transportation Board intends to consider repealing regulations entitled **24 VAC 30-150-10 et seq. Land Use Permit Manual** and promulgating regulations entitled: **24 VAC 30-151-10 et seq. Lane Use Permit Manual.** The purpose of the proposed action is to replace the existing regulation with a totally rewritten regulation. Changes being considered include reorganizing the regulation to improve readability and comprehension, eliminating redundant and obsolete text, conforming the regulation to amendments that have been made to other VDOT regulations, and addressing changes in administrative practices or office technology that have occurred since the last revision in 1983. The agency intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: § 33.1-12 of the Code of Virginia.

Public comments may be submitted until July 18, 2001.

Contact: Lynn D. Wagner, Permit Operations Program Manager, Department of Transportation, Maintenance Division, 1221 E. Broad St., Richmond, VA 23219, telephone (804) 225-3676, FAX (804) 692-0810 or e-mail wagner_ld@vdot.state.va.us.

VA.R. Doc. No. R01-212; Filed May 29, 2001, 9:50 a.m.

TITLE 9. ENVIRONMENT

STATE AIR POLLUTION CONTROL BOARD

Title of Regulation: **9 VAC 5-140-10 et seq. Regulation for Emissions Trading (Rev. D98).**

Statutory Authority: §§ 10.1-1308 and 10.1-1322.3 of the Code of Virginia.

Public Hearing Date: August 22, 2001 - 10 a.m.
Public comments may be submitted until September 14, 2001.
(See Calendar of Events section for additional information)

Agency Contact: Mary E. Major, Environmental Program Manager, Office of Air Regulatory Development, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4423, FAX (804) 698-4510, toll free 1-800-5925482 or (804) 698-4021 TTY.

Basis: Section 10.1-1308 of the Virginia Air Pollution Control Law authorizes the State Air Pollution Control Board to promulgate regulations abating, controlling and prohibiting air pollution in order to protect public health and welfare. The statutory authority for the emissions trading program is found in § 10.1-1322.3 of the Code of Virginia.

Purpose: The purpose of the regulation is to establish general provisions addressing applicability, permitting, allowance allocation, excess emissions, monitoring, and opt-in provisions to create a Virginia NO_X Budget Trading Program as a means of mitigating the interstate transport of ozone and nitrogen oxides in order to protect public health and welfare. The regulation is being proposed to create an enforceable mechanism to assure that collectively, all affected sources will not exceed the total NO_X emissions cap established by regulation for the year 2007 ozone season and to provide the regulatory basis for a program under which the creation, trading (buying and selling) and registering of emission credits can occur.

Substance:

1. The regulation applies to electric generating units (EGUs) with a nameplate capacity greater than 25 MWe and nonelectric generating units (non-EGUs) above 250 mmBtu, hereafter referred to as the core source categories. A “unit” is defined as a fossil fuel-fired stationary boiler, combustion turbine, or combined cycle system.

2. Core sources smaller than 25 tons/per/season (tps) are exempt.

3. Smaller sources within the core source categories are not mandated to be included in the program; however, smaller sources within the core source categories are allowed to opt-in to the program.

4. Initial allocations for core source categories is based on heat input multiplied by the core emission rate normalized over the state budget. The core emission rate for EGUs is 0.15 lb/mmBtu; for non-EGUs, 0.17 lb/mmBtu.

5. Subsequent allocations are issued annually beginning April 1 of each year for a specific year, projected 10 years in the future.

6. Baseline heat input (used to calculate allocations) for existing core sources is determined by averaging the two highest years of the immediate preceding 5 years.

7. Baseline allocations for permitted sources is based on the more stringent of the core emission rate or permit limits.

8. Sources may bank any allowances not used during a specific control period.

9. A compliance pool is established which allows for allocations from the pool for early reductions and on a "needs" basis. Allocations from the pool will be distributed to the sources prior to May 31, 2004. Allocations from the pool are valid for two years.

10. Sources that opt-in the program have a separate budget. Baseline determined for opt-ins is based upon the previous year's emissions.

11. All sources participating in the program, including those that chose to opt-in, must meet the monitoring requirements of 40 CFR Part 75 of the Code of Federal Regulations.

Issues:

1. Public: The primary advantage to the general public is that air quality will improve through a program designed to maximize market forces to reduce pollution in the most cost-effective manner. The cost of compliance is a key issue for the citizens of the Commonwealth since the utility industry is affected by this regulation. If the cost of control is excessive, the additional costs may be passed on to the consumer in the form of rate hikes.

This regulation provides for the trading of NO_X allowances to offset the cost of compliance. This approach provides more flexibility for compliance options for the sources affected while still protecting air quality. A compliance demonstration is required at the end of the ozone season. Sources must demonstrate that they have operated equipment such that the NO_X emissions are either equal to or below the specified limit. Tons of NO_X may be purchased or sold according to the need of the source owner; NO_X credits can also be generated as early reduction credits or the source may choose to bank credits to be used for compliance demonstrations in future years. Sources not

subject to the regulation may participate in the program as opt-in sources provided specific conditions are met.

Disadvantages to the regulated sources are in the areas of costs for control and monitoring. Sources will need to monitor emissions with continuous emission monitors (CEMs). If sources do not currently have CEMs they will need to install the monitoring equipment to participate in the program. The total state budget for NO_X allowances may not be sufficient to meet the needs if all sources were operating at maximum capacity. Some sources may need to install control equipment. In addition, new sources will need to purchase NO_X allowances for many years until they will be included into the allocation system as the regulation does not provide for any set-a sides for new sources.

2. Department: The advantages for the department are in the area of effective compliance and reduced inspections. The regulation provides procedures for continuous or process parameter monitoring of emissions for determining compliance with the NO_X emissions standard. This will result in very accurate data to be used for compliance demonstrations or enforcement actions when necessary. EPA will administer the trading and banking aspects of the regulation thereby avoiding any additional costs that would be associated with that activity.

Disadvantages include the need for the department to review the compliance demonstrations. More time may be involved if a source chooses to utilize early reduction credits (ERCS), credits from other states or banked credits. Each year a new NO_X allocation will need to be computed. The new NO_X allocations will need to be incorporated into either the source's Title V permit at the appropriate time or into a state operating permit.

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

Public Participation: The department is seeking comment on (i) the proposed regulation, (ii) the costs and benefits of the proposal and (iii) the additional issues identified below.

Additional Issues for Public Comment:

A. CHANGES TO AUTHORIZING LEGISLATION.

The authority under the Code of Virginia for emissions trading regulations is found in § 10.1-1322.3. In Chapter 580 of the 2001 Acts of Assembly, the provisions of § 10.1-1322.3 were amended as follows:

The regulations applicable to the electric power industry shall foster competition in the electric power industry, encourage construction of clean, new generating facilities, provide new source set-asides of five percent for the first five plan years and two percent per year thereafter, and provide an initial allocation period of five years.

This amendment necessitates changes to the proposed regulation subject to this comment period.

The proposed regulation does not provide a set-aside for new electric generating units (EGU) or new nonelectric generating units (non-EGU). The proposed regulation provides for an initial allocation period of 10 years. The new legislation provides a 5.0% NO_X set-aside for new EGU sources for the first five years of the program. That is, 5.0% of the allocations from the EGU budget would be kept in reserve for new electric generating sources wanting to locate in Virginia. The set-aside would decrease to 2.0% for every year thereafter. In addition, the new legislation requires that the initial allocation period be five years. Therefore, the proposed regulation will need to be amended to accommodate the requirements of the new legislation.

Any changes to the regulation to comply with the new legislation will be made following the public comment period and reflected in the final version. This approach to making the changes is provided for in Chapter 580. In general, the department is seeking comment regarding how to redraft the proposed regulation to meet the requirements of the new legislation. The statutory changes mentioned above are required by law and cannot be changed; therefore, the department is not accepting comment pertaining to the length of the allocation period or the size of a set-aside for new electric generating facilities. However, the department is seeking comment on the following specific issues relative to the changes required by the new legislation.

1. The proposal has the initial allocation period of 10 years. The legislation mandates a five-year initial allocation period for EGU sources only. This creates a two-tier allocation system; five years for EGUs, 10 years for non-EGUs. Should the board strive to achieve a simplified regulatory program by having all sources, both EGU and non-EGU, subject to the same allocation timeframes or should different regulatory allocation timeframes be crafted for the two sectors?

2. Should a set-aside be created for non-EGU sources? If so, should it also be 5.0% for the first five years, 2.0% for every year thereafter as specified in the legislation for EGUs, or something different?

3. Should the set-aside mandated by legislation be taken from the entire state budget or only from the EGU sector budget?

4. How should the set-aside be distributed: on a first come, first served basis; distributed equally to all requesting a portion of the set-aside; auction; or some other method?

5. How should the term "new generating facilities" referenced in the legislation be defined, i.e., who is eligible for the set-aside? Is the set-aside available to all sources that didn't receive an initial allocation? Is the set-aside only for sources that receive a first-time permit in that calendar year? Should the set-aside be made available only when a source actually begins to operate?

6. Should subsequent allocations be computed annually or should the time-frame be greater? If greater, how much greater and why?

B. EPA PRELIMINARY COMMENTS ON PROPOSED STATE REGULATION AND FEDERAL COURT DECISION ON EPA EMISSION BUDGETS.

On December 12, 2000, the department submitted the proposed regulation to the Regional Office of EPA for

preliminary review. By letter of March 9, 2001 (copy available upon request or via the DEQ web page), EPA, Region III, provided its comments on the proposal. EPA provided both (i) comments that identified certain changes that must be made to gain approval of the regulation by EPA and (ii) comments suggesting changes to improve the quality of the regulation. The mandatory changes addressed the value of the emission trading budget for EGUs and the compliance supplement pool, both of which are larger in the Virginia regulation then in the EPA regulation (40 CFR 51.121). The other comments suggested changes to make the Virginia regulation (based on 40 CFR Part 96) consistent with the version of the federal regulation (40 CFR Part 97) that is to be used if EPA should impose a federal implementation plan on the Commonwealth.

On June 8, 2001, the United States Court of Appeals for the District of Columbia remanded the growth factors that EPA used for the EGU budgets in 40 CFR 51.121 for reconsideration. This leaves open the possibility that the budgets may be revised by EPA.

The following is a brief summary of the method used to set the initial allocation of NO_X emission allowances to both the EGU and non-EGU source categories in the Virginia proposed regulation, along with an explanation of why Virginia chose to differ from the EPA method. The sum of the initial allocations for a particular source category (EGU and non-EGU) is used to form the overall emissions budget for each category.

EGU UNITS

First, both the EPA SIP Call rule (40 CFR Part 96) and the Section 126 rule (40 CFR Part 97) methodologies for allocating NO_X allowances were reviewed to determine which is more appropriate. The major difference between these two methods is the period used to establish baseline utilization level (expressed as heat input in millions of BTUs per ozone season). The SIP Call method uses the period of 1995 to 1996 to determine the utilization baseline, and looks at the total utilization of all affected units to set the baseline year. In contrast, the Section 126 rule considers a longer time period to set the utilization baseline (1995 to 1998). In addition, this method uses unit-specific utilization data to set unit-specific baseline levels. This is done by using the average of the two highest heat input values during the five-year period for each unit to set the utilization baseline for that unit.

Based on this evaluation of EPA methods, it was determined that the Section 126 method provided a more representative estimate of baseline unit utilization in Virginia. Therefore, this method was selected for allocating initial NO_X allowances in the proposed regulation. Once the baseline utilization levels were determined, the budget allocation was determined by multiplying the baseline level by an appropriate growth factor and then by the controlled emission rate of 0.15 lbs. of NO_X per million BTUs. However, two changes from the EPA method were included in the Virginia allocation method due to problems and errors encountered in the EPA data:

Heat Input Errors & Omissions: In reviewing the EPA heat input data used to establish baseline utilization levels, Virginia and the affected sources identified numerous data errors and omissions that have been corrected in the state allocation process.

Growth Factor Application: In the Section 126 rule, EPA used the baseline utilization determination method described above. This produced a different (and higher) overall baseline utilization estimate for Virginia. However, EPA did not modify its utilization projections for the 2007 control year and the resulting budget allocation. This action by EPA effectively reduced the original 32% growth estimate for Virginia (developed using the Integrated Planning Model) to less than 5%. The Commonwealth has corrected this miscalculation in the EPA data by applying the full 32% growth estimate to the EGU category in the state trading regulation.

NON-EGU UNITS

The same basic methodology used for allocating NO_X allowances to the EGU units was used to allocate allowances to the non-EGU units that are subject to the proposed regulation, with the following exceptions.

Heat Input Data Availability: In cases where unit-specific heat input data was available, this data was used in making allowance allocations to affected non-EGU units. However, where heat input data was not readily available, ozone season NO_X emissions were used in lieu of heat input to determine utilization baselines and allocate the allowances. The baseline utilization value was then multiplied by industry/unit specific growth factors to develop the 2007 base (pre-control) emissions.

Application of Controls: The applicable control requirement for non-EGU combustion units in the SIP Call is a 60% NO_X emission reduction from uncontrolled levels. Therefore it was necessary to determine the control status of each unit during the baseline period. If the unit was uncontrolled during the baseline period, the 60% reduction requirement was applied to the 2007 baseline emissions to determine the unit's budget allowance allocation. In cases where controls were in place during the baseline period, these controls and reduction levels were identified, and only the difference between the existing control rate and the 60% SIP Call rate was applied to the 2007 base emissions to determine the unit's budget allowance allocation.

It should be noted that some of the units on EPA's original list of units to receive initial allocations were omitted from the list in the Virginia proposed regulation for the following reasons:

1. Several units on the EPA list had actual design capacities that are less than the size cutoff of 250 million BTUs per hour or greater for units to be subject to the SIP Call control requirements.

2. Several units on the EPA list did not meet the definition of a "fossil fuel-fired" unit in that over 50% of the fuel combusted in these units during the baseline period (95-98) was not a fossil fuel.

The department is seeking comment on how to redraft the proposed regulation to address the EPA comments in combination with the court decision. In addition, there are specific issues relative to the changes required by the new legislation on which the department is seeking comment. These are cited below:

1. As explained, the proposed regulation identifies all sources and units within those sources that receive an initial allocation and provides a NO_X allocation for each unit. If EPA modifies the emissions budget in response to the court decision after the effective date of the final Virginia regulation, any changes to bring the individual unit allocations in the regulation in line with the new EPA emissions budget would require the department to initiate a new regulatory action under the Administrative Process Act. There are several alternatives the board could use to address this potential problem:

a. Leave the proposal with units and allocations listed by regulation. If EPA makes changes to the state emission budgets the regulation would be changed through the normal regulatory adoption process.

b. Modify the proposal to list the sources and units only and incorporate the EPA budget by reference. The allocation process would be accomplished outside of the regulatory process; that is, the individual allocations would not be identified in the regulation. This would result in accepting the EPA emissions budget, whether or not it is modified due to the court decision. It would also mean that any discrepancies previously noted by the department may not be addressed in the new EPA calculations.

2. Should the board accept the EPA comment that requires the EGU and non-EGU budgets to be lowered to meet the EPA budgets listed in the federal regulations? If so, how should the budgets be reduced? (This comment impacts whether the SIP can be approved by EPA).

3. The EPA also made comments of a general nature intended to improve the regulation but would not impact the approval of the SIP submittal. Should the board accept any of these comments? If so, which ones?

C. DEPARTMENT PREFERENCES ON ISSUES.

At this time the department is inclined to recommend to the board that the proposed regulation be amended as cited below to address the above issues. The department believes that this will be the best approach to ensure that the final regulation will gain EPA approval and facilitate the participation by Virginia sources in the national EPA emissions trading program. The department will reconsider its position in light of the comments received in response to this notice.

1. The state regulation should incorporate the EPA emissions budget and compliance supplement pool by reference, thus avoiding the necessity of revising the regulation should EPA revise its emissions budget or compliance supplement pool.

2. In order to accommodate the changes described in paragraph 1 above, the state regulation should not include the initial allocations for the individual units. The initial and subsequent allocations would be accomplished outside of the regulatory process.

3. The state regulation (which is based on 40 CFR Part 96) should incorporate the changes recommended by EPA to make it consistent with 40 CFR Part 97.

4. The methodology in 40 CFR Part 97, amended to accommodate the new state legislation (Chapter 580), should be used to distribute the new source set-aside.

5. The regulation should include a new source set-aside for non-EGUs consistent with that required by state law for EGUs. Each set-aside should come from the emissions budget for that source category.

6. The state regulation should provide for a single system for the initial allocation period and distribution of the new source set-asides for both EGUs and non-EGUs.

Schedule for Final Adoption: Executive Order Number Twenty-Five (98) prescribes the procedures that must be followed by state agencies in the development and review of regulations and associated support documents. Included in the executive order are provisions that limit the time by which regulatory agencies must complete the development of proposed and final regulations.

A final regulation document package must be delivered to the Registrar of Regulations for publication in the Virginia Register within 120 days of the close of the 60-day public comment period. During this 120-day period the agency must prepare responses to any public comments and gain the approval of the final regulation by the Attorney General's Office and the board. For this regulatory action, the public comment period ends on September 14, 2001; therefore, the due date for delivering the final to the Registrar is January 14, 2002.

Two events took place after approval of the proposed regulation by the board on November 8, 2000, that will require that the board consider additional issues during the adoption of the final that are outside of the normal process.

First, the authority under the Code of VIrginia for this regulation was amended. In Chapter 580 of the 2001 Acts of Assembly, the provisions of § 10.1-1322.3 were amended in such a way that will necessitate changes to the proposed regulation subject to this comment period. Chapter 580 allows the board to address any changes necessary to comply with the legislation after the public comment period (see below).

That the provision of this act shall not be construed to require the State Air Pollution Control Board to reinitiate the regulatory process for the development of the regulations required by this act and that any changes made to comply with the provisions of this act may be made following the public comment period on the proposed regulations approved for public comment by the State Air Pollution Control Board on November 8, 2000.

Second, on June 8, 2001, the United States Court of Appeals for the District of Columbia remanded the growth factors that EPA used for the EGU emissions budgets in 40 CFR 51.121 for reconsideration. This leaves open the possibility that the budgets may be revised by EPA.

Additional information on these issues may be found in this document under the section titled "Additional Issues for Public Comment" preceding this section.

Because of the time necessary to address these additional issues, the department may request additional time of up to

three months to meet the requirement for delivering the final regulation to the Registrar of Regulations, thus extending the date for delivering the final to the Registrar to April 12, 2001.

By notice of December 26, 2000 (65 FR 81366), EPA issued a finding that the Commonwealth, among others, failed to submit the SIP revision required by 40 CFR 51.121 by the required due date of October 30, 2000. The notice is effective January 25, 2001. If the Commonwealth does not make the required submittal, or the submittal is not found by EPA to be administratively complete, within 18 months of the effective date (July 25, 2002), EPA will impose certain sanctions. Regardless of any time needed to address these additional issues, the department will present the draft final regulation to the board in time to submit the regulation and receive the completeness determination by EPA prior to July 25, 2002.

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 25 (98). Section 9-6.14:7.1 G requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. The analysis presented below represents DPB's best estimate of these economic impacts.

Summary of the proposed regulation. The U.S. Environmental Protection Agency (EPA) has promulgated a rule, known as the NO_X SIP call rule, to reduce emissions of oxides of nitrogen (NO_X) of man-made origin. The reductions called for in this rule are over and above the other requirements of Title I of the Clean Air Act (CAA) and are also over and above the reductions required under the acid rain provisions required by Title IV of the CAA.[1] The primary purpose of the rule as enunciated by EPA is to reduce the amount of NO_X transported in the atmosphere between states in order to prevent NO_X emissions by upwind states from causing violations of the National Ambient Air quality Standards (NAAQS) in downwind states. The mechanism that EPA has chosen to use to implement this rule is to assign an aggregate emission limit for specific source categories in the 22 affected states and to give the states wide latitude in fashioning their State Implementation Plans (SIPs) for keeping NO_X emissions within the state below the mandatory cap.

EPA has recommended that states implement the requirements with what is commonly referred to as a "cap and trade" program. Cap and trade programs operate as follows: the cap, or emissions budget, is established for a group of sources. The cap is then divided up into shares, or allowances, each of which gives the holder a conditional right to emit some amount of the limited emission. The allowances are distributed, or allocated, to the sources according to some formula. Any source wishing to emit the capped emission must have sufficient allowances in its possession to cover all of its emissions. If a source emits fewer units of effluent than the number of allowances it is allocated, then it can sell those allowances to other sources. A source with emissions greater than the number allowances it owns must buy enough allowances to cover the excess emissions. Emissions are carefully monitored. Any source emitting quantities not covered by allowances is subject to penalties.

Cap and trade programs have two very attractive qualities. First, they provide a high level of certainty that the program will actually achieve the environmental quality goal established. This is due to the program establishing a fixed cap on the physical quantity of emissions, generally in terms of mass per period of time and also to enhanced monitoring, which is an integral part of these types of programs. The second attractive quality of cap and trade programs is that they provide the maximum amount of flexibility to the regulated community in deciding how to achieve the set cap on emissions.

This flexibility is accomplished by mimicking as closely as possible the structure of private markets for privately owned goods. Sources trade their allowances in this market Some sources will find that their cost of reducing emissions to a level below their allocation is less than the market price of allowances. These firms would profit form selling their allowances to those firms whose costs are higher than the allowance price. In this way, firms will trade their emission control responsibilities so that the emission reductions are accomplished in the cheapest possible way. It is not possible for a regulator to have enough information about sources to accomplish least cost reductions through regulatory mechanisms. Evidence from existing air emission trading programs strongly suggests that the closer the emissions market resembles markets for other private goods, the better the performance of the program for both protecting environmental quality and for doing so at the lowest possible cost. Evidence also suggests that the details of design and implementation of emission trading programs can be critically important in determining how well they actually perform once implemented.[2]

EPA has determined that trading between any sources in the 22-state region will be allowed under NO_X budget program. EPA has even has agreed to provide administrative support for the regional NO_X market by operating the system for tracking ownership and use of allowances. EPA published a "model" trading rule for states to follow in establishing their own programs. Some of the items covered in the model rule are mandatory of all participating programs while other items in the model rule are discretionary and will vary from state to state.

This proposed regulation establishes a NO_X Budget Trading Program, a cap and trade program, to implement requirements of the NO_X SIP call in a way that will allow

[1] A good background discussion of federal NO_X regulations may be found in Krolewski and Mingst (2000).

[2] The economics literature in this area is becoming quite large. A good starting place would be Ellerman et al. (2000).

Virginia sources to participate in the multi-state regional market comprising hundreds of sources. In its background document accompanying this proposal, the Department of Environmental Quality (DEQ) has provided a clear and succinct description of both the EPA mandate and the Air Board's proposal in response to that mandate. DEQ also lists all of the areas where the Air Board proposal diverges from the EPA model rule.

Estimated economic impact. The reductions in NO_X emissions from Virginia sources required by this regulation are mandated by federal law.[3] The economic benefits from the reductions will not depend greatly on the specific strategy chosen to implement the emissions reduction. The same may not be said for the costs arising from this rule. The cost of complying with air pollution regulations is known to vary widely depending on the type of regulation used to implement emissions reductions. The compliance cost estimates used in this report are derived from estimates made by EPA. These estimates are based on the assumption that the regulation is implemented with a cap and trade program very similar to that used under Title IV to control SO_2 emissions. Evidence suggests that, of the options available for NO_X reductions, such a program is likely to achieve the greatest possible savings on compliance costs. The trading program proposed by the Air Board follows the SO_2 model in most respects, and, thus may be expected to come close to achieving the cost savings associated with cap and trade programs. The compliance cost discussion that follows will include a discussion of the specific design choices made by the Air Board in its proposal.

A. COSTS.

1. Compliance costs. The EPA estimates that, given currently available technology, it will cost, on average, $1,977 (year 2000 dollars) per ton of ozone season NO_X emissions reduced. The average control costs for Virginia sources will probably not vary dramatically from the average for the control region, although the control costs for individual sources will show substantial variation. To estimate the compliance costs, we can multiply the average cost per ton by the number of tons. However, the number of tons reduced depends on which year you choose for your estimate since, under a cap, emissions cannot grow but under previous regulations emissions would have trended upward with economic activity. The figure used by DEQ in its background document reflects approximately a 45,000 ton reduction in ozone season NO_X tons.[4] This results in an annual compliance cost for Virginia sources of $89 million (year 2000 dollars).[5]

There are a number of important uncertainties as to the magnitude of this number. For example, if the technology for NO_X control improves, then these costs can be expected to fall. If economic growth is different from the expectations built into the cost model, then costs may be higher or lower depending on how actual growth differs from assumed growth. Dominion Generation (formerly Virginia Power) has argued forcefully that compliance costs will be significantly higher because the growth in electricity demand will, it believes, be much higher than projected in EPA's cost estimates. This means that in order to reduce emissions enough so that the cap is not exceed, sources will have to reduce average emission rates well below the 0.15 lb/mmBTU of heat input assumed in EPA's cost analysis. This would increase the average and total costs above those estimated by EPA. According to EPA's regulatory impact analysis, EGU costs would rise by about 30% if average emission rates were to 0.12 lb/mmBTU of heat input.

One key uncertainty about costs concerns the type of market arrangement that is used to implement the NO_X reductions. The costs estimated by EPA assume that the reductions are implemented through a regional trading program very similar to the national sulfur dioxide allowance trading program. As already noted, this program has been extremely successful in achieving the emission reduction requirement while greatly lowering the cost of control relative to what would have occurred under traditional regulatory instruments.[6]

2. Trading program design choices. One recent report[7] estimates that a well-designed allowance trading program can reduce compliance costs for EPA's NO_X SIP call by 40 to 47% below what they would be with the more traditional regulatory practice of specifying in source permits emission rate standards.[8] As discussed in an earlier section, the Air Board's proposal may be expected to achieve a large fraction of the potential savings. In this section, the particular design elements of the program will be outlined and discussed.

a. Allowance definition and use. The definition of an allowance in the proposed regulation is: an authorization for a source to emit up to one ton of nitrogen oxides during the control period of the specified year or of any year thereafter. This definition is important since it clearly establishes the characteristics of the asset to be traded. A NO_X allowance gives the owner a clearly delineated economic privilege and all allowances give exactly the same privilege. This clarity and uniformity in the definition of the asset eliminates uncertainty over the quality of the asset being traded in the market. This uncertainty can lower significantly the economic value created by the market.

Ambiguities in the delineation of an asset introduces significant risks into the transaction and will lead to defensive expenditures by parties to a trade. The buyer will

[3] See 40 CFR 51.121.

[4] This reduction reflects a choice to include only sources located in Virginia in calculating compliance costs. This does necessarily reflect the full compliance costs faced by Virginia utilities and their customers. Dominion Resources, Inc. owns a 1,500 megawatt facility located at Mt. Storm in West Virginia. Currently, this facility serves only Virginia customers. Thus, the compliance costs for this facility are paid by Virginians. There may be some facilities located in Virginia that sell significant amounts of power outside of Virginia. For those plants, compliance costs would be overstated.

[5] Dominion Resources, Inc. currently operates 8,100 megawatts of generating capacity serving the Virginia market. The company estimates it compliance costs to be $600 million in capital expenditures to be spent over the next two or three years and $30 million in operation and maintenance costs.

[6] See Ellerman et al. (2000).

[7] See Farrell et al. (1999).

[8] This type of rule is often referred to as "command and control" regulation.

not place as high a value on the purchase of such an asset because he will not know what value the right has to him until he has invested resources in determining the scope of the asset. The seller will be forced to place a lower value on the resource because of the expense of proving its characteristics to potential buyers.

This definition of an allowance will be consistent among the states participating in the regional NO_X market. This consistency will facilitate the establishment of the regional market for allowances. Allowances from any one part of the region may be used in any other part of the region.[9] The large regional market will significantly increase the opportunities for cost saving trades among sources. The larger trading area also gives greater assurance that the market for allowances will be "liquid"; that is, there will always be willing buyers and sellers in the market. Assurances that the allowance market will be liquid will prevent firms from having to make significant defensive over-expenditures in allowances.

b. Allowance allocation. Allowances must be allocated to sources. The methods for allocating allowances may be divided into two groups: methods that give firms incentive to change their behavior for the purposes of receiving future allowances and methods that do not give firms these incentives. It is well understood that, if the allowance market is reasonably liquid, allocation methods that give firms incentive to "chase" or "earn" allowances by changing their behavior can result in significant economic losses relative to methods lacking those incentives.

There are two ways to allocate allowances so that firms do not have incentive to chase allowances. One way is to hold an auction for the allowances (or to sell them at the current market price, which amounts to the same thing.) In this case, a firm wishing to use an allowance, must pay the market price, and the market price is the best available measure of the social (economic) value of the allowance.[10] The other way of efficiently allocating allowances is to give them away permanently (once and for all) based on *past* behavior; this is often called grandfathering. Since the allowances are given out on the basis of past behavior, noting the firm can do now will affect its future grant of allowances. Future behavior will be efficient because firms will face the market price as the cost of obtaining or using an allowance.

In its "model" rule, EPA proposed that allowances be given out only three years in advance. Under this scheme, there will be a continuing reallocation of allowances usable in any ozone season at least three years in the future. At the end of each season, firms report their heat input (fuel use) to the state authority, and, based on heat input for this and the previous few years, a firm will receive a proportional grant of allowances at no cost. The total number of allowances granted must add up to the state budget. The Air Board chose to use a 10-year continuing allocation window for this proposal. While this proposal is not as efficient as one containing a once-and-for-all allocation or an auction, the 10-year window represents a significant improvement in economic efficiency over the three-year window proposed by EPA.

Reallocation. In private markets the government generally does not have a large role in reallocating ownership of goods. Goods are owned privately and reallocated through voluntary trading when one person values a good more than the current owner does. Anytime the government takes a role in reallocating private goods, there is a significant probability that the reallocation will be no better or even worse than the original allocation. This same observation holds true in emission markets. If allowances are allocated once and for all, like ownership interests in private goods, then the owners of these allowances will trade them when someone else values them more highly than the current owner. There is no apparent reason for the government to be involved in reallocating allowances.

The SO_2 market was established by granting existing sources a permanent stream of future allowances based on their current share of the market. These sources can use the allowances or sell them. They can sell one year of allowances or their entire future stream; just like leasing or selling a piece of real property. When firms enter the market, they must buy the allowances they need from existing owners; just like someone wanting to use land must buy or lease land before they can do whatever it is they wanted the land for. When sources leave the market, the owner sells their stream of allowances to some other firm; just like a landowner who sells land when they do not need it any longer.

Reallocating allowances based on current decisions introduces uncertainty in the market and gives firms incentives to do economically inefficient things solely for the purpose of increasing its share of future allowance allocations. It is hard to imagine the chaos that such a rule would cause if it were applied to land or some other asset traded in private markets. At the end of each year, the government would examine how you used your land and decide how much land to give you to use in the year three years from now. This is exactly what EPA proposed doing in their model rule. This makes it extremely difficult for firms to plan for future expansions.

It would also be very expensive for firms write to contracts for future supply of allowances at a firm price because no one knows who will have what allocation just three years out. The cost of this uncertainty to the producers and users of electricity will likely be very high. For example, firms building large power plants routinely begin planning for increased expansion 10 years or more in advance of when they expect to bring the power on line. Contracting for a supply of NO_X credits for the period when the plant is in operation will involve purchasing forward contracts on allowances before any determination has been made about who will receive the allocations for those allowances. Since

[9] This permission is subject to the restrictions contained in Title I of the Clean Air Act which prevent sources from using allowances if doing so would result in an exceedance of air quality standards.

[10] Note that a firm wishing to use an allowance it already owns faces exactly the same cost because to use the allowance is to give up the money the firm could have had from selling the allowance. This "loss" from using something rather than selling it is called opportunity cost.

no one owns the allowances, there is no one who can make a firm commitment to supply allowances. This would not be true under a one-time allocation of allowances. Ownership would be settled, and contracts for allowances could be made for any future periods. Under the reallocation rule, firms will face both high contracting costs and a high degree of residual uncertainty. And the shorter the advance allocation window, the more severe will be the impact of the reallocation rule.

One key problem with a reallocation rule is that, for firms, the least cost production plan is no longer the best plan. This is because the firm must always take into account the gain or loss in future allocations whenever it makes a choice about changes in production. For example, any time a firm is considering changing the level of heat input for a source, it must consider the gain or loss of a free unit of allowance allocation in the near future. Firm A has found that it is no longer profitable to run some facility at a high capacity so it is considering cutting back 10 units of heat input. However, the financial manager points out that if it does stop producing the unprofitable 10 units, it will lose allowance allocation three years from now.

The shorter the time horizon for allocation, the lower are a firm's incentives to shut down old, inefficient sources or to reduce the amount of fuel they use (heat input). This is because shutting down the source or reducing heat input causes the firm to lose future allocations. In considering whether to shut a facility down, the loss of these allocations is a cost of shutting down the facility. It is much the same as if a firm operating a store could only keep the land and building as long as it kept the store open. The value of freeing up the land to go to its next best use is not included in the firm's decision and, hence, it will not have the proper incentive to shut down a marginal operation.

The same incentives apply to using energy conservation to reduce heat input per unit of output. Using additional fuel has both a cost and a benefit associated with it. The cost is the price of the fuel. The benefit of using additional fuel (heat input) is that it qualifies the source for a larger share of the NO_X allocation at the end of the allocation horizon. This reduces the incentives that the owner has to reduce fuel use.[11]

The Air Board's technical advisory committee for this regulation proposed a 10-year reallocation horizon. While this is still inefficient relative to a permanent allocation, the longer the allocation horizon, the less inefficiency from uncertainty and from giving firms incentives to change production in response to future free allocations.[12]

One reason given for the reallocation rule is that buying NO_X allowances would be a *barrier to entry* for new sources. While buying allowances is a cost of entry, it is not in any significant sense a barrier to entry any more than buying a lease, paper clips, and computers is a barrier to entry to starting an accounting business. These are costs of doing business. They are **not** barriers to entry. Similarly, using NO_X allowances imposes real costs on other firms since any allowances that one firm uses cannot be used by others. If firms are given allowances for free, then they are not forced to consider the costs that their activity imposes on society, because they do not take into account the higher value that another firm might be able to produce with the allowances.

A barrier to entry exists when an input necessary for entering a business is not available for purchase in a competitive market.[13] This is definitely not the case for the proposed NO_X market. In fact, there is already an active allowance trading market for NO_X covering nine northeastern states. This market will be a part of the 22-state regional market once it is in place. NO_X allowances are already for sale and can be purchased by visiting the web site of the Cantor Fitzgerald brokerage firm, among others. Independent power producers have not had difficulty purchasing the allowances they need to enter the market. Once the 22-state market is in place, opportunities for trading will increase dramatically. There is every reason to believe that the NO_X market will be at least as liquid as the SO_2 market has turned out to be.

The free allocation of allowances to firms based on heat input will result in firms entering the market even if it is inefficient for them to do so. For example, suppose that an existing firm is producing electricity and using allowances for its NO_X emissions. A new firm wishing to enter the market will be granted some fraction of its allowance requirements for free. The new firm can enter the market even if it can't produce power at a competitive rate. This is because, for every unit of heat input, it will be given some allowances for free in three years; the value to the firm of producing a unit of output is equal to the price of its output plus the value of what is given to it for free. The cost of these free allowances is paid by existing companies who must go and buy the allowances on the market. That existing sources must buy allowances at the market price is not a source of inefficiency. It is the granting of free allowances to new or expanding sources that is inefficient because their apparent cost of doing business is lower than the real cost since they do not need to take into account the costs they impose on others.

Arguments for a reallocation rule often frame the issue as one of fairness. The firms already in the market receive a windfall when the allocations are initially given out. It is true

[11] Some have suggested basing allocations on output rather than heat input. While this would increase incentive to conserve energy, it would have its own difficulties. Most troublesome among these is the problem of measuring output for different types of sources.

[12] A shorter *initial* allocation period, one that applies only to the allocation made at the beginning of the program, will not have any efficiency cost since this initial allocation depends only on behavior predating the program, not current or future behavior.

[13] Barriers to entry come in essentially three flavors: (1) the unavailability of some resource, information or knowledge essential for production, (2) government granted monopoly, or (3) a minimum efficient scale of production that is large relative to the size of the market. Electricity deregulation (the elimination of barrier type 2) was made possible by changes in technology that eliminated barrier type 3. As described in the text, given the size of the NO_X market already in existence, it is not correct to describe the requirement that firms purchase NO_X allowances as a "barrier to entry." It is no different than the requirement that firms buy the concrete or steel they need to produce electricity.

that existing firms receive a windfall when allowances are given out for free. It is important to point out that this windfall does not produce economic inefficiency. The shareholders and employees of the firms receiving the allowances are better off, however these firms face an opportunity cost of holding on to the allowances. The opportunity cost is the money the firms could receive for selling the allowances. If firms entering the market value the allowances at or above the market price, there are firms that will sell them. In this case, both the entering firms and the existing firms face an efficient set of incentives.

One way of getting around the fairness issue is to charge existing firms the market price for the allowances received. Another way would be to allocate the allowances in a way that takes account of what some potential entrants have already spent on entering the market. The first strategy may work as long as the charge is not enough to cause existing firms to effectively oppose the formation of the market. The second strategy, while superficially appealing, may be difficult to administer. Any effort to eliminate the appearance of unfairness between firms is likely to impose significant costs on the public. One might ask why imposing increased compliance costs on the public is somehow more fair than requiring new firms to purchase the resources they need to enter a business even though the existing firms didn't have to.

c. Opt-in sources. EPA's rule establishing the regional NO_X market automatically applies to large sources of NO_X emissions. States may allow other sources to opt-in to the emissions market program. Under EPA rules, states choosing to add opt-in provisions must adopt EPA's opt-in provisions without modification. Thus, the decision for the Air Board is whether or not to use opt-in provisions; if the decision is made to do so, then the state has no discretion about how to implement the provision.

The opt-in provision requires that a source monitor emissions for one full control period before entering the program. Emissions during this period constitute the source's baseline emissions. At the end of the baseline year (and for each year thereafter), the source receives an allowance allocation based on heat input times an emission rate. The heat input used is the lesser of last year's input and the baseline input. The emission rate is the lesser of the baseline emission rate and the most stringent applicable rate.

While opt-in provisions do expand the potential market and hence the potential savings from the market, they carry an economic cost as well. There is little doubt that firms will take the future allocation of emissions into account when making choices about production in the current year. As a result, firms will have incentive to move away from the least-cost method of production and the most profitable level of output. In addition, since firms have incentive to manage their emissions to maximize future allowance allocations, there are incentives to actually increase emissions in establishing a baseline. Opt-in provisions in the SO_2 program have had similar problems.[14]

d. Compliance supplement pool and early reduction credits. The Air Board proposal can, provide up to 6,990 extra allowances for the first two years of the program for sources facing particular difficulty in achieving the reductions required under this proposal. These extra allowances are referred to as the compliance supplement pool. The compliance supplement pool (CSP) will primarily be allocated as "early reduction credits" (ERCs) to sources that reduce their emission rate to below both 0.35 lbs/mmBTU *and* lest than 80% of 2001 emission rate. ERCs may be used only in the 2004 and 2005 ozone seasons. Any remaining CSP allowances will be allocated to firms making a clear demonstration of hardship in meeting the reduction requirements imposed by this rule.

The CSP adds to the flexibility of the program and has the added benefit of encouraging firms to reduce NO_X emissions earlier than is required. Any earlier reductions increase the value of the reductions by making the initial reductions happen sooner.[15] The increased flexibility will tend to reduce the costs of compliance for existing sources. If there is an over-production of reductions, the ERCs will be distributed *pro rata* among the sources qualifying.

e. Banking. Banking of unused allowances encourages sources to delay emissions and gives sources additional flexibility for smoothing their demand for allowances. Since a substantial portion of the damage from NO_X emissions is due to periods when emissions and weather conditions combine to exceed health standards, it is important that banked allowances not accumulate to the point where their use could result in periods of significant health effects. In order to balance these two opposing interests, the proposal includes a provision for “flow control,” which reduces the NO_X value of an allowance if the total stock of banked allowances exceeds 10 per cent of the total allowance allocations.

While banking is a valuable option for firms, it is less so when there is a liquid market for allowances. This is because banked allowances do not earn a rate of return; they only allow a source to avoid entering the market for allowances in order to make up for a shortage in a given season. If the market is liquid, then sources will prefer to sell allowances today and have the cash in the bank rather than hold a non-producing asset for more than a year or so. Since there is a risk that banked allowances will be discounted by flow control when a firm wishes to use them, then there is more incentive to use banked allowances early and to not hold a large stock of banked allowances.

A short allocation window or a set-aside provision (discussed in the next section) increases the uncertainty over future allocations. The increased uncertainty may

[14] For a discussion, see Ellerman et al. (2000).

[15] This will, in turn, delay somewhat the achievement of the final budget relative to what would have happened otherwise, but the net impact is a gain in the value of NO_X reduction benefits and a reduction in costs.

induce firms to choose to bank more allowances than they would in the absence of this uncertainty. Whether the banked allowances poses a risk of exceeding air quality standards depends on the size of the stock of banked allowances. The level of banking, in turn, depends to a significant extent on the level of risk firms face in future allocations. By increasing these risks, set-asides and short allocation windows could contribute to an increased risk from a large stock of banked allowances.

f. Set-asides. The EPA model rule contains provisions for a n allowance set-aside for new sources. Each season the state would take a percentage of each source's allowances[16] for that season and make those available to new sources. The Air Board chose not to implement a set-aside in the proposed regulation.

In the EPA model rule, these set-aside allowances would be handed out for free. This set-aside is equivalent to a cash subsidy for firms bringing new NO_X sources on line; paid for by a tax on the owners and users of existing sources. A set-aside program such as this would do substantial violence to the operation of the market. A set-aside gives firms incentives to build new sources even if those sources would represent a net economic loss to the Commonwealth and leads to over-investment in new facilities. In addition, a set-aside provision exacerbates the effects of the periodic reallocation rule discussed in the previous section. Since set-aside provisions are not part of the Air Board proposal, the discussion of set-asides was not included here but may be found in Appendix A.

B. BENEFITS. Nitrogen oxide emissions have a wide range of environmental effects. These effects arise through three main pathways: (1) direct effects of NO_X, (2) the effects of reduced NO_X emissions on ground-level ozone formation, and (3) the contribution of NO_X emissions to the formation of fine particulate matter (PM). Most of these impacts are harmful to people and to a variety of valuable environmental services. Thus, reductions in NO_X emissions below the levels specified by other provisions of the CAA can be expected to produce benefits for Virginia.

Table 1 lists the areas where NO_X reductions may have significant benefits. This table breaks benefits down into two important categories: quantified and unquantified benefits. The quantified benefits are those benefits for which the EPA has provided some numerical estimate of the overall economic value of the improvements resulting from the NO_X reductions required by this rule. The unquantified benefits, being more difficult to measure, are not given any numerical value estimates. That these benefit streams are unquantified should not be interpreted to mean that the benefits are small, only that they are hard to measure, and that the time and resources available did not permit scientifically defensible measures of value.

Table 1.
Ozone, NO_X, and PM Benefits from the NO_X SIP Call.

	Benefits of Ozone and NO_X Reductions-- Reductions in:	Benefits of PM Reductions-- Reductions in:
Quantified		
Health	Mortality (short-term exposures) Hospital admissions for all respiratory illnesses Acute respiratory symptoms	Mortality (long- and short-term exposures) Hospital admissions for: all respiratory illnesses congestive heart failure ischemic heart disease Acute and chronic bronchitis Lower and upper respiratory symptoms Minor restricted activity days Work loss days
Welfare	Commodity crop yield losses Commercial forest yield losses Worker productivity losses	Household soiling Impaired visibility Nitrogen deposition to estuarine and coastal waters
Unquantified		
Health	Airway responsiveness Pulmonary inflammation Increased susceptibility to respiratory infection Acute inflammation and respiratory cell damage Chronic respiratory damage/Premature aging of lungs UV-B (cost due to NO_X reduction)	Changes in pulmonary function Morphological changes Altered host defense mechanisms Other chronic respiratory disease Cancer
Welfare	Ecosystem and vegetation effects in Class I areas (e.g., national parks) Damages to urban ornamentals (e.g., grass, flowers, shrubs, and trees in urban areas) Fruit and vegetable crop losses Reduced yields of tree seedlings and non-commercial forests Damage to ecosystems Materials damage (other than consumer cleaning cost savings) Nitrates in drinking water Brown clouds Passive fertilization (cost due to NO_X reduction)	Materials damage (other than consumer cleaning cost savings) Damage to ecosystems (e.g., acid sulfate deposition) Nitrates in drinking water Brown clouds

Source: EPA 1998

[16] Five percent for the first five years of the program and two percent per year thereafter.

The EPA has reported its estimates of the economic value of the quantified portion of these benefits. EPA did not report the benefits by state. Since different states will receive different mixes of benefits, the aggregate dollar benefit estimates are not helpful for determining the level of benefits to be expected in Virginia. Based on these estimates, Table 2 reports the *average* benefit per ton of reductions throughout the 22-state region affected by this rule. The two columns represent two different scenarios reported by EPA: (1) a set of low range benefits assumptions and (2) a set of high range benefits assumptions. The benefits per ton are broken out into four categories of effect. This is only a first-order approximation to the benefits per ton that Virginia would expect to receive. There are some reasons to believe that Virginia's share of the benefits in some categories will be higher than average and in other categories will be lower than average.

For the categories of ozone effects and PM effects more of the benefits are likely to occur in the northeastern states than in the upwind states including Virginia. Virginia does have one non-attainment area and there may be greater benefits there from regional NO_X reductions than for other parts of the Commonwealth. The opposite is the case for agriculture and forestry, and for nitrogen deposition. In particular, the NO_X emissions are responsible for a substantial fraction of the nitrogen entering the Chesapeake Bay and other coastal estuaries each year. This nitrogen deposition is known to contribute to a number of serious water quality problems in estuarine waters. Although the estimates are highly uncertain, recent studies indicate that the NO_X SIP call emission reductions could add up to 20% of the reductions in Chesapeake Bay nitrogen loads that the Commonwealth has agreed to make as part of its multi-state agreement to improve water quality in the Bay.

Table 2.
Summary of Quantified Benefits in 2007 by Major Category for the Selected Regulatory Alternative.
(Dollars per ton reduced, 1990)

Category	Low	High
Ozone Health and Welfare	$23	$1,128
Agriculture & Forestry	$217	$478
Nitrogen Deposition	$198	$198
PM Health and Welfare	$479	$1,671
Total	**$917**	**$3,475**

Source: EPA, 1998

One way to estimate the benefits of these reductions is to estimate the cleanup costs avoided by the reduction in airborne deposition. Assuming average avoided costs in the range of $2 to $20 per pound per year of nitrogen, and a 20% contribution to nitrogen removal targets for the Bay, the Bay states could receive (undiscounted) benefits of from $26 million to $260 million over the next several years from reduced effluent control costs.[17] In addition, there would be significant benefits in avoided costs of cleanup for other Virginia estuarine waters. Not enough is known to quantify these benefits with any precision.

Because some of the costs of NO_X emissions are caused by sources outside Virginia and some are more the result of emissions inside Virginia, it would not be appropriate to take the level of reductions required by Virginia and simply multiply by the average benefits. Since the EPA did not separate benefits out by state, it would be overly speculative to give an estimate of aggregate benefits received by Virginia without substantial further research.

C. UNCERTAINTIES. Any attempt to estimate the costs and benefits of a major, regional pollution control effort such as that represented by this proposal must necessarily produce results subject to a high degree of uncertainty. Modeling the dispersion of emissions is very difficult. This makes it difficult to estimate accurately how and where the emissions contribute to ozone and PM exposure, nitrogen deposition in estuarine waters, and other eco-system dose-related problems. Second, understanding the effects of exposure and deposition on health and on environmental services is still relatively rudimentary. Measuring the economic value of any actual damages is costly and difficult, resulting in considerable uncertainty. Finally, there are a number of effects that are simply too difficult to arrive at numerical estimates for the physical and economic impact. These difficulties require that any cost and benefit estimates be taken as subject to huge margins of error. EPA's own estimates vary widely enough so that a net loss and a net gain are both within the reasonable range of outcomes for this regulation.

Businesses and entities affected. The primary impact of this regulation will fall on the firms owning sources of NO_X emissions and on those firms planning to build NO_X sources in Virginia. There are 64 individual electricity generating units representing 13 different firms. There are 13 units that are not classified as electricity generating units, and these represent seven firms. This rule also has a significant impact on firms planning to build NO_X sources in Virginia in the future. Although it is not known at this time how many firms have such plans at this time, there is expected to be a significant increase in electrical generation capacity as the market for electricity is deregulated.

Because this regulation has such a large effect on these sources, there are very significant secondary effects on prices and rates of return in the electric industry. A liquid market for NO_X allowances will reduce the cost of entry for new sources relative to entry costs under the more traditional style of regulation. A smoothly operating market also reduces the total cost of providing electricity to consumers since emission markets lower the costs of achieving pollution control targets. The combination of these two effects is that prices for electricity will be lower than they would under regulations with less effective trading provisions, as new firms enter the market. The lower cost of electricity will reflect both lower costs and increased competition in the newly deregulated electricity market.

Lower electricity prices (relative to prices in the absence of the regional market for NO_X) will tend to lower costs in

[17] These cost figures are not discounted because the timing of savings is very uncertain.

businesses throughout Virginia. It will also cause a higher quantity of electricity demanded as firms with lower electricity costs expand and as firms and consumers shift their energy consumption toward electricity.

As indicated in an earlier section, the reallocation of allowances acts as a subsidy for the building of new NO_X sources with the subsidy being paid by the owners and customers of existing sources. This will increase the entry of new sources to a level higher than is economically efficient. Since entering firms receive a costly input to production for free, they will not take into account the cost that the use of that resource imposes on others in the economy. Some sources will find it profitable to enter even though their entry will generate a net loss to Virginia's economy. This entry will drive electricity prices below their efficient level and will result in a reduction in the rate of return on capital for existing sources. This fall in rate of return will, in turn, result in a loss in income for existing source workers and shareholders to a level below that which is economically efficient. Lower electricity prices for electricity from fossil fuel fired boilers will also tend to increase carbon emissions relative to what would otherwise occur. The reduced economic value resulting from the inefficient incentives for entry is known as deadweight loss. The magnitude of this loss cannot readily be estimated at this time.[18]

Localities particularly affected. The costs of this regulation will not vary much between localities across Virginia. The direct costs will fall on electricity users and on shareholders of electric utilities and other affected firms. The indirect costs on other goods and services will also fall proportionately across the Commonwealth. The benefits of this rule will also be distributed proportionately with population across Virginia with a few notable exceptions. Since northern Virginia is the location of the only non-attainment area in Virginia, further NO_X reductions under the SIP call may reduce some of the other expenditures that would otherwise be required for the non-attainment area to achieve attainment status. Higher elevation woods in western Virginia will probably receive a greater than proportional benefit to timber resources from reductions in acid precipitation damage. Finally, a large share of the environmental benefits of these NO_X reductions will come from reduced nitrogen deposition in estuarine waters in the eastern part of the Commonwealth. In particular, water quality in the Chesapeake Bay will improve more quickly than would be the case without this rule. Savings resulting from avoided cleanup costs will fall partly on people in the Bay watershed and partly on all taxpayers. Other coastal watersheds will be similarly affected.

Projected impact on employment. The net impact of this regulation on employment cannot be known with any certainty although the EPA estimates that the implementation of this regulation with an allowance trading program could result in a net increase in employment because the additional jobs gained in the pollution control industry would more than offset any losses due to the higher costs due to the tighter environmental regulations.[19] In the long run, an efficient and competitive electric industry should provide the best environment for improving worker productivity an enhancing opportunities for employment.

Effects on the use and value of private property. The effects that this rule will have on private property are very difficult to estimate. There are some property owners who will definitely benefit. Landowners and business owners near the Chesapeake Bay will benefit from reduced nitrogen deposition in the Bay and the consequent improvement in water quality. Some landowners will benefit from reduced timber and crop damage attributable to atmospheric NO_X. In addition, there will be an increase in demand for pollution control services, which will increase the value of some firms in this industry.

There will be a significant loss to existing utilities and their shareholders due to increased costs of emission control and to increased entry of new sources who will garner a share of allowances held by existing utilities. The cost of electricity for many firms and consumers will rise as rates begin to reflect the value of scarce NO_X allowances needed for the production of electricity. This could have a significant effect on the value of particularly energy intensive firms.

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[18] The estimation of this loss is greatly complicated by the possibility that the reduction of electricity prices below the market rate may offset some of the existing efficiency loss caused by labor taxes. Any such effect would be offset by the loss of labor income due to the lower rate of return in the industry. As a matter of policy, it would probably not be appropriate to use an induced inefficiency in one market to attempt to address inefficiencies in other markets. Since very little is known about these "general equilibrium" effects, it will probably often be the case that such policies will result in lower income for everyone.

[19] See EPA (1999).

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Appendix A: Set-asides

The EPA model rule proposes a continuing set-aside program. As noted in an earlier section, set-aside provisions that reallocate allowances at anything less than the market price may be expected to increase the costs associated with this regulation. One way of avoiding the inefficiency is to auction set-aside allowances. If this is done, then sources still face the full cost of obtaining or using the allowances. The revenues from the auction can be used in a number of different ways. Auction revenues could be returned to the firms relinquishing the set-aside allowances. This is the strategy used in the SO_2 program. This scheme is known as a zero-revenue auction.

Alternatively, the auction revenues could be used for other purposes. There is the potential of a significant economic gain if auction revenues are used to offset other taxes. In particular, some economic studies suggest that an efficiency gain can be achieved by using auction revenues to reduce labor taxes.

The choice of what to do with auction revenues is probably much less important than the choice to charge for the set-aside. Unless the sources receiving the set-aside pay for the use of the set-aside allowances, then there will be an efficiency cost arising from the set-aside provisions.

For example, suppose that a firm is considering building a new source. If NO_X allowances have a market price of $1,000, then taking an allowance from an existing firm will have an economic cost of $1,000. If the new source would not make a profit if it had to pay for the allowance, then the firm is generating less than $1,000 for the economy and taking the allowance from the firm that values it at $1,000 and giving it to a firm that will generate less than $1,000 in value represents a net economic loss for the Commonwealth paid for by owners and customers of the existing sources. On the other hand, if the firm can make a profit after paying for the allowance, then it will enter even if it has to pay for the allowances. Thus, the set-aside will not increase the number of efficient firms who enter since those firms would enter anyway. Only inefficient firms would base their entry decision on whether they receive a grant of free allowances. Consequently, a set-aside rule will increase the average cost of electricity generated in Virginia.

To give a better idea of how inconsistent this set-aside provision is with market incentives, suppose that a government wanted to encourage the growing of Brussels sprouts. To implement this policy the government offers any *new* growers free land for growing the sprouts. The land to be given to the new growers will come from a 5.0% *set-aside*. In this example, it is obvious that the term *set-aside* is simply a euphemism for the confiscation of a portion of the land owned by existing farmers. While the policy will definitely increase the production of Brussels sprouts, it will do so at the expense of considerable economic damage by attenuating the ownership interest that existing farmers have in their property. It will also result in the production of Brussels sprouts that cost more to produce than their value in the marketplace. For these costly sprouts, every bushel produced represents a net reduction in economic well being. Such a policy sounds silly, but it is exactly analogous to the set-aside policy in the model rule. It is an extremely inefficient way to encourage new generation facilities.

There is an additional source of costs arising from the set-aside. Whatever method is chosen to allocate the set-aside allowances free to new sources, it will cause firms to change their production plans solely for the purpose of capturing the

free set-aside. These changes will increase the costs of production relative to what the firm would have done if it had not had the incentive to capture part of the set-aside. If the set-aside is allocated on a first-come/first-served basis, firms will have strong incentive to arrange it so their sources come on line at the beginning of the relevant period chosen by DEQ rather than at the time that provides the greatest net economic benefits. On the other hand, if the allocation is for a *pro rata* share of the available set-aside, firms will try to arrange it so that their sources come online in years when few other sources are planning to start up.

If the set-aside is only for the first year a source is online, then firms building boiler units will want to space them out over several years so that each new boiler can get free set-asides. If, on the other hand, the set-aside continues until the source can use its advance allocation, then only the first few firms to enter at the beginning of each five-year period will get any allocation and the incentive to arrange start-up timing to capture a block of set-aside allowances will be very great indeed. Either way there is a significant economic loss associated with the firm efforts to gain set-aside allocations

Allowance reallocation also affects a firm's decision about what type of fuel to use to fire the boiler. First, only fossil fired generation receives the allowance allocation, so there is differential treatment of sources giving a preference to fossil fired sources. Also because coal generally results in more NO_X per unit of heat input than does gas, the granting of free allocations will result in a larger subsidy for new coal-fired facilities than for new gas-fired facilities. Once again, a business decision will be made partly on the basis of gaining a free allocation of allowances rather than solely on the basis of the least cost production. One unintended consequence of the preferential treatment of fossil-fired, and specifically coal-fired, boilers is an increase in the carbon dioxide emissions over what would be expected under a market program without set-asides and reallocations.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The department has reviewed the economic impact analysis prepared by the Department of Planning and Budget and has no comment.

Summary:

The proposed regulation establishes a NO_X Budget Trading Program as a means of mitigating the interstate transport of ozone and nitrogen oxides including the following provisions: permitting allowance methodology, monitoring, banking, compliance supplement pool, compliance determination and opt-in provisions for sources not covered by the regulation.

Beginning May 31, 2004, electric generating units with a nameplate capacity greater than 25 MWe and nonelectric generating units above 250 mmBtu will be subject to the provisions of the regulation. NO_X emissions from subject units shall be capped to a specific limit (measured in tons) during the summer months of May 1 through September 30, otherwise know as the control period. The NO_X cap shall be determined through a methodology based upon emission rates multiplied by heat input. If a unit does not use all of its allowances for a specific control period, those extra tons may be banked for future use or sold. If a unit exceeds the capped limit, additional allowances may be purchased or the source may use banked allowances to offset the amount of NO_X generated above the capped limit.

Sources found to be out of compliance will be forced to surrender allowances for the next year on a ratio of 3:1, i.e., for every ton over the cap, three tons will be forfeited from the next year's allocation.

Emissions will need to be monitored according to 40 CFR Part 75 for all sources subject to the regulation and for any sources wishing to opt-in to the program.

A compliance supplement pool is provided for sources that generate early reduction credits or demonstrate "undue risk." The allowances from the pool are good for only two years and cannot be banked after that two-year period.

CHAPTER 140.
REGULATION FOR EMISSIONS TRADING.

PART I.
NO_X BUDGET TRADING PROGRAM.

Article 1.
NO_X Budget Trading Program General Provisions.

9 VAC 5-140-10. Purpose.

This chapter establishes general provisions and the applicability, permitting, allowance, excess emissions, monitoring, and opt-in provisions for the NO_X Budget Trading Program as a means of mitigating the interstate transport of ozone and nitrogen oxides. The board authorizes the administrator to assist the board in implementing the NO_X Budget Trading Program by carrying out the functions set forth for the administrator in this chapter.

9 VAC 5-140-20. Definitions.

A. As used in this chapter, all words or terms not defined here shall have the meanings given them in 9 VAC 5 Chapter 10 (9 VAC 5-10-10 et seq.), unless otherwise required by context.

B. For the purpose of this chapter and any related use, the following words or terms shall have the following meanings unless the context clearly indicates otherwise:

"Account certificate of representation" means the completed and signed submission required by Article 2 (9 VAC 5-140-100 et seq.) of this part for certifying the designation of a NO_X authorized account representative for a NO_X Budget source or a group of identified NO_X Budget sources who is authorized to represent the owners and operators of such source or sources and of the NO_X Budget units at such source or sources with regard to matters under the NO_X Budget Trading Program.

"Account number" means the identification number given by the administrator to each NO_X Allowance Tracking System account.

"Acid rain emissions limitation" means, as defined in 40 CFR 72.2, a limitation on emissions of sulfur dioxide or nitrogen oxides under the Acid Rain Program under Title IV of the CAA.

"Administrator" means the Administrator of the United States Environmental Protection Agency or the administrator's duly authorized representative.

"Allocate" or "allocation" means the determination by the permitting authority of the number of NO_X allowances to be initially credited to a NO_X Budget unit.

"Automated data acquisition and handling system or DAHS" means that component of the CEMS, or other emissions monitoring system approved for use under Article 8 (9 VAC 5-140-700 et seq.) of this part, designed to interpret and convert individual output signals from pollutant concentration monitors, flow monitors, diluent gas monitors, and other component parts of the monitoring system to produce a continuous record of the measured parameters in the measurement units required by Article 8 (9 VAC 5-140-700 et seq.) of this part.

"Boiler" means an enclosed fossil or other fuel-fired combustion device used to produce heat and to transfer heat to recirculating water, steam, or other medium.

"CAA" means the CAA, 42 USC 7401 et seq., as amended by Pub.L. No. 101-549 (November 15, 1990).

"Combined cycle system" means a system comprised of one or more combustion turbines, heat recovery steam generators, and steam turbines configured to improve overall efficiency of electricity generation or steam production.

"Combustion turbine" means an enclosed fossil or other fuel-fired device that is comprised of a compressor, a combustor, and a turbine, and in which the flue gas resulting from the combustion of fuel in the combustor passes through the turbine, rotating the turbine.

"Commence commercial operation" means, with regard to a unit that serves a generator, to have begun to produce steam, gas, or other heated medium used to generate electricity for sale or use, including test generation. Except as provided in 9 VAC 5-140-50, for a unit that is a NO_X Budget unit under 9 VAC 5-140-40 on the date the unit commences commercial operation, such date shall remain the unit's date of commencement of commercial operation even if the unit is subsequently modified, reconstructed, or repowered. Except as provided in 9 VAC 5-140-50 or Article 9 (9 VAC 5-140-800 et seq.) of this part, for a unit that is not a NO_X Budget unit under 9 VAC 5-140-40 on the date the unit commences commercial operation, the date the unit becomes a NO_X Budget unit under 9 VAC 5-140-40 shall be the unit's date of commencement of commercial operation.

"Commence operation" means to have begun any mechanical, chemical, or electronic process, including, with regard to a unit, start-up of a unit's combustion chamber. Except as provided in 9 VAC 5-140-50, for a unit that is a NO_X Budget unit under 9 VAC 5-140-40 on the date of commencement of operation, such date shall remain the unit's date of commencement of operation even if the unit is subsequently modified, reconstructed, or repowered. Except as provided in 9 VAC 5-140-50 or Article 9 (9 VAC 5-140-800 et seq.) of this part, for a unit that is not a NO_X Budget unit under 9 VAC 5-140-40 on the date of commencement of operation, the date the unit becomes a NO_X Budget unit under 9 VAC 5-140-40 shall be the unit's date of commencement of operation.

"Common stack" means a single flue through which emissions from two or more units are exhausted.

"Compliance account" means a NO_X Allowance Tracking System account, established by the administrator for a NO_X Budget unit under Article 6 (9 VAC 5-140-500 et seq.) of this part, in which the NO_X allowance allocations for the unit are initially recorded and in which are held NO_X allowances available for use by the unit for a control period for the purpose of meeting the unit's NO_X Budget emissions limitation.

"Compliance certification" means a submission to the permitting authority or the administrator, as appropriate, that is required under Article 4 (9 VAC 5-140-300 et seq.) of this part to report a NO_X Budget source's or a NO_X Budget unit's compliance or noncompliance with this chapter and that is signed by the NO_X authorized account representative in accordance with Article 2 (9 VAC 5-140-100 et seq.) of this part.

"Continuous emission monitoring system or CEMS" means the equipment required under Article 8 (9 VAC 5-140-700 et seq.) of this part to sample, analyze, measure, and provide, by readings taken at least once every 15 minutes of the measured parameters, a permanent record of nitrogen oxides emissions, expressed in tons per hour for nitrogen oxides. The following systems are component parts included, consistent with 40 CFR Part 75, in a continuous emission monitoring system:

1. Flow monitor;

2. Nitrogen oxides pollutant concentration monitors;

3. Diluent gas monitor (oxygen or carbon dioxide) when such monitoring is required by Article 8 (9 VAC 5-140-700 et seq.) of this part;

4. A continuous moisture monitor when such monitoring is required by Article 8 (9 VAC 5-140-700 et seq.) of this part; and

5. An automated data acquisition and handling system.

"Control period" means the period beginning May 1 of a year and ending on September 30 of the same year, inclusive, except for the calendar year 2004, the period shall begin May 31.

"Emissions" means air pollutants exhausted from a unit or source into the atmosphere, as measured, recorded, and reported to the administrator by the NO_X authorized account representative and as determined by the administrator in accordance with Article 8 (9 VAC 5-140-700 et seq.) of this part.

"Energy Information Administration" means the Energy Information Administration of the United States Department of Energy.

"Excess emissions" means any tonnage of nitrogen oxides emitted by a NO_X Budget unit during a control period that exceeds the NO_X Budget emissions limitation for the unit.

"Fossil fuel" means natural gas, petroleum, coal, or any form of solid, liquid, or gaseous fuel derived from such material.

"Fossil fuel-fired" means, with regard to a unit:

1. The combustion of fossil fuel, alone or in combination with any other fuel, where fossil fuel actually combusted comprises more than 50% of the annual heat input on a Btu basis during any year starting in 1995 or, if a unit had no heat input starting in 1995, during the last year of operation of the unit prior to 1995; or

2. The combustion of fossil fuel, alone or in combination with any other fuel, where fossil fuel is projected to comprise more than 50% of the annual heat input on a Btu basis during any year; provided that the unit shall be "fossil fuel-fired" as of the date, during such year, on which the unit begins combusting fossil fuel.

"General account" means a NO_X Allowance Tracking System account, established under Article 6 (9 VAC 5-140-500 et seq.) of this part, that is not a compliance account or an overdraft account.

"Generator" means a device that produces electricity.

"Heat input" means the product (in mmBtu/time) of the gross calorific value of the fuel (in Btu/lb) and the fuel feed rate into a combustion device (in mass of fuel/time), as measured, recorded, and reported to the administrator by the NO_X authorized account representative and as determined by the administrator in accordance with Article 8 (9 VAC 5-140-700 et seq.) of this part, and does not include the heat derived from preheated combustion air, recirculated flue gases, or exhaust from other sources.

"Implementation plan" means the portion or portions of the state implementation plan, or the most recent revision thereof, that has been approved in Subpart VV of 40 CFR Part 52 by the administrator 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 that implements the relevant requirements of the federal Clean Air Act.

"Life-of-the-unit, firm power contractual arrangement" means a unit participation power sales agreement under which a utility or industrial customer reserves, or is entitled to receive, a specified amount or percentage of nameplate capacity and associated energy from any specified unit and pays its proportional amount of such unit's total costs, pursuant to a contract:

1. For the life of the unit;

2. For a cumulative term of no less than 30 years, including contracts that permit an election for early termination; or

3. For a period equal to or greater than 25 years or 70% of the economic useful life of the unit determined as of the time the unit is built, with option rights to purchase or release some portion of the nameplate capacity and associated energy generated by the unit at the end of the period.

"Maximum design heat input" means the ability of a unit to combust a stated maximum amount of fuel per hour on a steady state basis, as determined by the physical design and physical characteristics of the unit.

"Maximum potential hourly heat input" means an hourly heat input used for reporting purposes when a unit lacks certified monitors to report heat input. If the unit intends to use Appendix D of 40 CFR Part 75 to report heat input, this value should be calculated, in accordance with 40 CFR Part 75, using the maximum fuel flow rate and the maximum gross calorific value. If the unit intends to use a flow monitor and a diluent gas monitor, this value should be reported, in accordance with 40 CFR Part 75, using the maximum potential flowrate and either the maximum carbon dioxide concentration (in percent CO_2) or the minimum oxygen concentration (in percent O_2).

"Maximum potential NO_X emission rate" means the emission rate of nitrogen oxides (in lb/mmBtu) calculated in accordance with section 3 of Appendix F of 40 CFR Part 75, using the maximum potential nitrogen oxides concentration as defined in section 2 of Appendix A of 40 CFR Part 75, and either the maximum oxygen concentration (in percent O_2) or the minimum carbon dioxide concentration (in percent CO_2), under all operating conditions of the unit except for unit start up, shutdown, and upsets.

"Maximum rated hourly heat input" means a unit-specific maximum hourly heat input (mmBtu) that is the higher of the manufacturer's maximum rated hourly heat input or the highest observed hourly heat input.

"Monitoring system" means any monitoring system that meets the requirements of Article 8 (9 VAC 5-140-700 et seq.) of this part, including a continuous emissions monitoring system, an excepted monitoring system, or an alternative monitoring system.

"Most stringent state or federal NO_X emissions limitation" means, with regard to a NO_X Budget opt-in source, the lowest NO_X emissions limitation (in terms of lb/mmBtu) that is applicable to the unit under the Virginia Air Pollution Control Law or federal law, regardless of the averaging period to which the emissions limitation applies.

"Nameplate capacity" means the maximum electrical generating output (in MWe) that a generator can sustain over a specified period of time when not restricted by seasonal or other deratings as measured in accordance with the United States Department of Energy standards.

"NO_X allowance" means an authorization by the permitting authority under the NO_X Budget Trading Program to emit up to one ton of nitrogen oxides during the control period of the specified year or of any year thereafter.

"NO_X allowance deduction" or "deduct NO_X allowances" means the permanent withdrawal of NO_X allowances by the administrator from a NO_X Allowance Tracking System compliance account or overdraft account to account for the number of tons of NO_X emissions from a NO_X Budget unit for a control period, determined in accordance with Article 8 (9 VAC 5-140-700 et seq.) of this part, or for any other allowance surrender obligation under this chapter.

"NO_X Allowance Tracking System" means the system by which the administrator records allocations, deductions, and transfers of NO_X allowances under the NO_X Budget Trading Program.

"NO_X Allowance Tracking System account" means an account in the NO_X Allowance Tracking System established by the administrator for purposes of recording the allocation, holding, transferring, or deducting of NO_X allowances.

"NO_X allowance transfer deadline" means midnight of November 30 or, if November 30 is not a business day, midnight of the first business day thereafter and is the deadline by which NO_X allowances may be submitted for recordation in a NO_X Budget unit's compliance account, or the overdraft account of the source where the unit is located, in order to meet the unit's NO_X Budget emissions limitation for the control period immediately preceding such deadline.

"NO_X allowances held" or "hold NO_X allowances" means the NO_X allowances recorded by the administrator, or submitted to the administrator for recordation, in accordance with Article 6 (9 VAC 5-140-500 et seq.) and Article 7 (9 VAC 5-140-600 et seq.) of this part, in a NO_X Allowance Tracking System account.

"NO_X authorized account representative" means, for a NO_X Budget source or NO_X Budget unit at the source, the natural person who is authorized by the owners and operators of the source and all NO_X Budget units at the source, in accordance with Article 2 (9 VAC 5-140-100 et seq.) of this part, to represent and legally bind each owner and operator in matters pertaining to the NO_X Budget Trading Program or, for a general account, the natural person who is authorized, in accordance with Article 6 (9 VAC 5-140-500 et seq.) of this part, to transfer or otherwise dispose of NO_X allowances held in the general account.

"NO_X Budget emissions limitation" means, for a NO_X Budget unit, the tonnage equivalent of the NO_X allowances available for compliance deduction for the unit and for a control period under 9 VAC 5-140-540 A and B, adjusted by any deductions of such NO_X allowances to account for excess emissions for a prior control period under 9 VAC 5-140-540 D or to account for withdrawal from the NO_X Budget Program, or for a change in regulatory status, for a NO_X Budget opt-in source under 9 VAC 5-140-860 or 9 VAC 5-140-870.

"NO_X Budget opt-in permit" means a NO_X Budget permit covering a NO_X Budget opt-in source.

"NO_X Budget opt-in source" means a unit that has been elected to become a NO_X Budget unit under the NO_X Budget Trading Program and whose NO_X Budget opt-in permit has been issued and is in effect under Article 9 (9 VAC 5-140-800 et seq.) of this part.

"NO_X Budget permit" means the legally binding and federally enforceable written document, or portion of such document, issued by the permitting authority under this chapter, including any permit revisions, specifying the NO_X Budget Trading Program requirements applicable to a NO_X Budget source, to each NO_X Budget unit at the NO_X Budget source, and to the owners and operators and the NO_X authorized account representative of the NO_X Budget source and each NO_X Budget unit.

"NO_X Budget source" means a source that includes one or more NO_X Budget units.

"NO_X Budget Trading Program" means a multi-state nitrogen oxides air pollution control and emission reduction program established in accordance with this chapter as a means of mitigating the interstate transport of ozone and nitrogen oxides, an ozone precursor.

"NO_X Budget unit" means a unit that is subject to the NO_X Budget Trading Program emissions limitation under 9 VAC 5-140-40 or 9 VAC 5-140-80.

"Operating" means, with regard to a unit under subdivision 4 b of 9 VAC 5-140-220 and 9 VAC 5-140-800, having documented heat input for more than 876 hours in the 6 months immediately preceding the submission of an application for an initial NO_X Budget permit under 9 VAC 5-140-830 A.

"Operator" means any person who operates, controls, or supervises a NO_X Budget unit, a NO_X Budget source, or unit for which an application for a NO_X Budget opt-in permit under 9 VAC 5-140-830 is submitted and not denied or withdrawn and shall include, but not be limited to, any holding company, utility system, or plant manager of such a unit or source.

"Opt-in" means to be elected to become a NO_X Budget unit under the NO_X Budget Trading Program through a final, effective NO_X Budget opt-in permit under Article 9 (9 VAC 5-140-800 et seq.) of this part.

"Overdraft account" means the NO_X Allowance Tracking System account, established by the administrator under Article 6 (9 VAC 5-140-500 et seq.) of this part, for each NO_X Budget source where there are two or more NO_X Budget units.

"Owner" means any of the following persons:

1. Any holder of any portion of the legal or equitable title in a NO_X Budget unit or in a unit for which an application for a NO_X Budget opt-in permit under 9 VAC 5-140-830 is submitted and not denied or withdrawn; or

2. Any holder of a leasehold interest in a NO_X Budget unit or in a unit for which an application for a NO_X Budget opt-in permit under 9 VAC 5-140-830 is submitted and not denied or withdrawn; or

3. Any purchaser of power from a NO_X Budget unit or from a unit for which an application for a NO_X Budget opt-in permit under 9 VAC 5-140-830 is submitted and not denied or withdrawn under a life-of-the-unit, firm power contractual arrangement. However, unless expressly provided for in a leasehold agreement, owner shall not include a passive lessor, or a person who has an equitable interest through such lessor, whose rental payments are not based, either directly or indirectly, upon the revenues or income from the NO_X Budget unit or the unit for which an application for a NO_X Budget opt-in permit under 9 VAC 5-140-830 is submitted and not denied or withdrawn; or

4. With respect to any general account, any person who has an ownership interest with respect to the NO_X allowances held in the general account and who is subject to the binding agreement for the NO_X authorized account representative to represent that person's ownership interest with respect to NO_X allowances.

"Permitting authority" means the State Air Pollution Control Board.

"Receive" or "receipt of" means, when referring to the permitting authority or the administrator, to come into possession of a document, information, or correspondence (whether sent in writing or by authorized electronic transmission), as indicated in an official correspondence log, or by a notation made on the document, information, or correspondence, by the permitting authority or the administrator in the regular course of business.

"Recordation," "record," or "recorded" means, with regard to NO_X allowances, the movement of NO_X allowances by the administrator from one NO_X Allowance Tracking System account to another, for purposes of allocation, transfer, or deduction.

"Reference method" means any direct test method of sampling and analyzing for an air pollutant as specified in Appendix A of 40 CFR Part 60.

"Serial number" means, when referring to NO_X allowances, the unique identification number assigned to each NO_X allowance by the administrator under 9 VAC 5-140-530 C.

"Source" means any governmental, institutional, commercial, or industrial structure, installation, plant, building, or facility that emits or has the potential to emit any regulated air pollutant under the CAA. For purposes of § 502(c) of the CAA, a "source," including a "source" with multiple units, shall be considered a single "facility."

"State" means the Commonwealth of Virginia. The term "state" shall have its conventional meaning where such meaning is clear from the context.

"State operating permit" means a permit issued under Article 1 (9 VAC 5-80-50 et seq.) of Part II of 9 VAC 5 Chapter 80.

"State trading program budget" means the total number of NO_X tons set forth in 9 VAC 5-140-900 and apportioned to all NO_X Budget units in accordance with the NO_X Budget Trading Program for use in a given control period.

"Submit or serve" means to send or transmit a document, information, or correspondence to the person specified in accordance with the applicable regulation:

1. In person;

2. By United States Postal Service; or

3. By other means of dispatch or transmission and delivery. Compliance with any "submission," "service," or "mailing" deadline shall be determined by the date of dispatch, transmission, or mailing and not the date of receipt.

"Title V operating permit" means a permit issued under Article 1 (9 VAC 5-80-50 et seq.) or Article 3 (9 VAC 5-80-360 et seq.) of Part II of 9 VAC 5 Chapter 80.

"Title V operating permit regulations" means the regulations codified in Article 1 (9 VAC 5-80-50 et seq.), Article 2 (9 VAC 5-80-310 et seq.), Article 3 (9 VAC 5-80-360 et seq.), and Article 4 (9 VAC 5-80-710 et seq.) of Part II of 9 VAC 5 Chapter 80.

"Ton" or "tonnage" means any "short ton" (i.e., 2,000 pounds). For the purpose of determining compliance with the NO_X Budget emissions limitation, total tons for a control period shall be calculated as the sum of all recorded hourly emissions (or the tonnage equivalent of the recorded hourly emissions rates) in accordance with Article 8 (9 VAC 5-140-700 et seq.) of this part, with any remaining fraction of a ton equal to or greater than 0.50 ton deemed to equal one ton and any fraction of a ton less than 0.50 ton deemed to equal zero tons.

"Unit" means a fossil fuel-fired stationary boiler, combustion turbine, or combined cycle system.

"Unit load" means the total (i.e., gross) output of a unit in any control period (or other specified time period) produced by combusting a given heat input of fuel, expressed in terms of:

1. The total electrical generation (MWe) produced by the unit, including generation for use within the plant; or

2. In the case of a unit that uses heat input for purposes other than electrical generation, the total steam pressure (psia) produced by the unit, including steam for use by the unit.

"Unit operating day" means a calendar day in which a unit combusts any fuel.

"Unit operating hour" or "hour of unit operation" means any hour (or fraction of an hour) during which a unit combusts any fuel.

"Utilization" means the heat input (expressed in mmBtu/time) for a unit. The unit's total heat input for the control period in each year shall be determined in accordance with 40 CFR Part 75 if the NO_X Budget unit was otherwise subject to the requirements of 40 CFR Part 75 for the year, or shall be based on the best available data reported to the administrator for the unit if the unit was not otherwise subject to the requirements of 40 CFR Part 75 for the year.

9 VAC 5-140-30. Measurements, abbreviations, and acronyms.

Measurements, abbreviations, and acronyms used in this chapter are defined as follows:

Btu--British thermal unit.
hr--hour.
Kwh--kilowatt hour.
lb--pounds.
mmBtu--million Btu.
MWe--megawatt electrical.
ton--2000 pounds.
CO_2--carbon dioxide.
NO_X--nitrogen oxides.
O_2--oxygen.

9 VAC 5-140-40. Applicability.

A. The following units shall be NO_X Budget units, and any source that includes one or more such units shall be a NO_X Budget source, subject to the requirements of this chapter:

1. Any unit that, any time on or after January 1, 1995, serves a generator with a nameplate capacity greater than 25 MWe and sells any amount of electricity; or

2. Any unit that is not a unit under this subsection and that has a maximum design heat input greater than 250 mmBtu/hr.

B. Notwithstanding subsection A of this section, a unit under subsection A of this section shall be subject only to the requirements of this subsection if the unit has a federally enforceable permit that meets the requirements of subdivision 1 of this subsection and restricts the unit's operating hours during each such control period to the number of hours (determined in accordance with subdivisions 1 a and b of this subsection) that limits the unit's potential NO_X mass emissions for the control period to 25 tons or less. Notwithstanding subsection A of this section, starting with the effective date of such federally enforceable permit, the unit shall not be a NO_X Budget unit.

1. For each control period under this subsection, the federally enforceable permit shall contain the following provisions:

a. Restrict the unit's operating hours to the number calculated by dividing 25 tons of potential NO_X mass emissions by the unit's maximum potential hourly NO_X mass emissions.

b. Require that the unit's potential NO_X mass emissions shall be calculated as follows:

(1) Select the default NO_X emission rate in Table 2 of 40 CFR 75.19 that would otherwise be applicable assuming that the unit burns only the type of fuel that has the highest default NO_X emission factor of any type of fuel that the unit is allowed to burn; and

(2) Multiply the default NO_X emission rate under subdivision 1 b (1) of this subsection by the unit's maximum rated hourly heat input. The owner or operator of the unit may petition the permitting authority to use a lower value for the unit's maximum rated hourly heat input than the value as defined under 9 VAC 5-140-20. The permitting authority may approve such lower value if the owner or operator demonstrates that the maximum hourly heat input specified by the manufacturer or the highest observed hourly heat input, or both, are not representative, and that such lower value is representative, of the unit's current capabilities because modifications have been made to the unit, limiting its capacity permanently.

c. Require that the owner or operator of the unit shall retain at the source that includes the unit, for five years, records demonstrating that the operating hours restriction, the fuel use restriction, and the other requirements of the permit related to these restrictions were met.

d. Require that the owner or operator of the unit shall report the unit's hours of operation (treating any partial hour of operation as a whole hour of operation) during each control period to the permitting authority by November 1 of each year for which the unit is subject to the federally enforceable permit.

2. The permitting authority that issues the federally enforceable permit with the operating hours restriction under subdivisions 1 a and b of this subsection shall notify the administrator in writing of each unit under subsection A of this section whose federally enforceable permit issued by the permitting authority includes such restrictions. The permitting authority shall also notify the administrator in writing of each unit under subsection A of this section whose federally enforceable permit issued by the permitting authority is revised to remove any such restriction, whose federally enforceable permit issued by the permitting authority includes any such restriction that is no longer applicable, or that does not comply with any such restriction.

3. If, for any control period under this subsection, the operating hours restriction under subdivisions 1 a and b of this subsection is removed from the unit's federally enforceable permit or otherwise becomes no longer applicable or if, for any such control period, the unit does not comply with the operating hours restriction under subdivisions 1 a and b of this subsection, the unit shall be a NO_X Budget unit, subject to the requirements of this chapter. Such unit shall be treated as commencing operation and, for a unit under subdivision A 1 of this section, commencing commercial operation on September 30 of the control period for which the operating hours restriction is no longer applicable or during which the unit does not comply with the operating hours restriction.

9 VAC 5-140-50. Retired unit exemption.

A. This section applies to any NO_X Budget unit, other than a NO_X Budget opt-in source, that is permanently retired.

B. 1. Any NO_X Budget unit, other than a NO_X Budget opt-in source, that is permanently retired shall be exempt from the NO_X Budget Trading Program, except for the provisions of this section, 9 VAC 5-140-20, 9 VAC 5-140-30, 9 VAC 5-140-40, 9 VAC 5-140-70 and Article 5 (9 VAC 5-140-400 et seq.), Article 6 (9 VAC 5-140-500 et seq.), and Article 7 (9 VAC 5-140-600 et seq.) of this part.

2. The exemption under subdivision 1 of this subsection shall become effective the day on which the unit is permanently retired. Within 30 days of permanent retirement, the NO_X authorized account representative (authorized in accordance with Article 2 (9 VAC 5-140-100 et seq.) of this part) shall submit a statement to the permitting authority otherwise responsible for administering any NO_X Budget permit for the unit. A copy of the statement shall be submitted to the administrator. The statement shall state (in a format prescribed by the permitting authority) that the unit is permanently retired and will comply with the requirements of subsection C of this section.

3. After receipt of the notice under subdivision 2 of this subsection, the permitting authority shall amend any permit

covering the source at which the unit is located to add the provisions and requirements of the exemption under subdivision 1 of this subsection and subsection C of this section.

C. 1. A unit exempt under this section shall not emit any nitrogen oxides, starting on the date that the exemption takes effect. The owners and operators of the unit shall be allocated allowances in accordance with Article 5 (9 VAC 5-140-400 et seq.) of this part.

2. a. A unit exempt under this section and located at a source that is required, or but for this exemption would be required, to have a Title V operating permit shall not resume operation unless the NO_X authorized account representative of the source submits a complete NO_X Budget permit application under 9 VAC 5-140-220 for the unit not less than 18 months (or such lesser time provided under the permitting authority's Title V operating permits regulations for final action on a permit application) prior to the later of May 31, 2004, or the date on which the unit is to first resume operation.

b. A unit exempt under this section and located at a source that is required, or but for this exemption would be required, to have a state operating permit shall not resume operation unless the NO_X authorized account representative of the source submits a complete NO_X Budget permit application under 9 VAC 5-140-220 for the unit not less than 18 months (or such lesser time provided under the permitting authority's state operating permits regulations for final action on a permit application) prior to the later of May 31, 2004, or the date on which the unit is to first resume operation.

3. The owners and operators and, to the extent applicable, the NO_X authorized account representative of a unit exempt under this section shall comply with the requirements of the NO_X Budget Trading Program concerning all periods for which the exemption is not in effect, even if such requirements arise, or must be complied with, after the exemption takes effect.

4. A unit that is exempt under this section is not eligible to be a NO_X Budget opt-in source under Article 9 (9 VAC 5-140-800 et seq.) of this part.

5. For a period of five years from the date the records are created, the owners and operators of a unit exempt under this section shall retain at the source that includes the unit, records demonstrating that the unit is permanently retired. The five-year period for keeping records may be extended for cause, at any time prior to the end of the period, in writing by the permitting authority or the administrator. The owners and operators bear the burden of proof that the unit is permanently retired.

6. a. On the earlier of the following dates, a unit exempt under subsection B of this section shall lose its exemption:

(1) The date on which the NO_X authorized account representative submits a NO_X Budget permit application under subdivision 2 of this subsection; or

(2) The date on which the NO_X authorized account representative is required under subdivision 2 of this subsection to submit a NO_X Budget permit application.

b. For the purpose of applying monitoring requirements under Article 8 (9 VAC 5-140-700 et seq.) of this part, a unit that loses its exemption under this section shall be treated as a unit that commences operation or commercial operation on the first date on which the unit resumes operation.

9 VAC 5-140-60. Standard requirements.

A. The following requirements concerning permits shall apply:

1. The NO_X authorized account representative of each NO_X Budget source required to have a federally enforceable permit and each NO_X Budget unit required to have a federally enforceable permit at the source shall:

a. Submit to the permitting authority a complete NO_X Budget permit application under 9 VAC 5-140-220 in accordance with the deadlines specified in 9 VAC 5-140-210 B and C;

b. Submit in a timely manner any supplemental information that the permitting authority determines is necessary in order to review a NO_X Budget permit application and issue or deny a NO_X Budget permit.

2. The owners and operators of each NO_X Budget source required to have a federally enforceable permit and each NO_X Budget unit required to have a federally enforceable permit at the source shall have a NO_X Budget permit issued by the permitting authority and operate the unit in compliance with such NO_X Budget permit.

3. The owners and operators of a NO_X Budget source that is not otherwise required to have a federally enforceable permit are not required to submit a NO_X Budget permit application, and to have a NO_X Budget permit, under Article 3 (9 VAC 5-140-200 et seq.) of this part for such NO_X Budget source.

B. The following requirements concerning monitoring shall apply:

1. The owners and operators and, to the extent applicable, the NO_X authorized account representative of each NO_X Budget source and each NO_X Budget unit at the source, shall comply with the monitoring requirements of Article 8 (9 VAC 5-140-700 et seq.) of this part.

2. The emissions measurements recorded and reported in accordance with Article 8 (9 VAC 5-140-700 et seq.) of this part shall be used to determine compliance by the unit with the NO_X Budget emissions limitation under subsection C of this section.

C. The following requirements concerning nitrogen oxides shall apply:

1. The owners and operators of each NO_X Budget source and each NO_X Budget unit at the source shall hold NO_X allowances available for compliance deductions under 9 VAC 5-140-540, as of the NO_X allowance transfer deadline, in the unit's compliance account and the source's

overdraft account in an amount not less than the total NO_X emissions for the control period from the unit, as determined in accordance with Article 8 (9 VAC 5-140-700 et seq.) of this part.

2. Each ton of nitrogen oxides emitted in excess of the NO_X Budget emissions limitation shall constitute a separate violation of this chapter, the CAA, and the Virginia Air Pollution Control Law.

3. A NO_X Budget unit shall be subject to the requirements under subdivision 1 of this subsection starting on the later of May 31, 2004, or the date on which the unit commences operation.

4. NO_X allowances shall be held in, deducted from, or transferred among NO_X Allowance Tracking System accounts in accordance with Article 5 (9 VAC 5-140-400 et seq.), Article 6 (9 VAC 5-140-500 et seq.), Article 7 (9 VAC 5-140-600 et seq.), and Article 9 (9 VAC 5-140-800 et seq.) of this part.

5. A NO_X allowance shall not be deducted, in order to comply with the requirements under subdivision 1 of this subsection, for a control period in a year prior to the year for which the NO_X allowance was allocated.

6. A NO_X allowance allocated by the permitting authority under the NO_X Budget Trading Program is a limited authorization to emit one ton of nitrogen oxides in accordance with the NO_X Budget Trading Program. No provision of the NO_X Budget Trading Program, the NO_X Budget permit application, the NO_X Budget permit, or an exemption under 9 VAC 5-140-50 and no provision of law shall be construed to limit the authority of the United States or the state to terminate or limit such authorization.

7. A NO_X allowance allocated by the permitting authority under the NO_X Budget Trading Program does not constitute a property right.

8. Upon recordation by the administrator under Article 6 (9 VAC 5-140-500 et seq.), Article 7 (9 VAC 5-140-600 et seq.), or Article 9 (9 VAC 5-140-800 et seq.) of this part, every allocation, transfer, or deduction of a NO_X allowance to or from a NO_X Budget unit's compliance account or the overdraft account of the source where the unit is located is deemed to amend automatically, and become a part of, any NO_X Budget permit of the NO_X Budget unit by operation of law without any further review.

D. The owners and operators of a NO_X Budget unit that has excess emissions in any control period shall:

1. Surrender the NO_X allowances required for deduction under 9 VAC 5-140-540 D 1; and

2. Pay any fine, penalty, or assessment or comply with any other remedy imposed under 9 VAC 5-140-540 D 3.

E. The following requirements concerning recordkeeping and reporting shall apply:

1. Unless otherwise provided, the owners and operators of the NO_X Budget source and each NO_X Budget unit at the source shall keep on site at the source each of the following documents for a period of five years from the date the document is created. This period may be extended for cause, at any time prior to the end of five years, in writing by the permitting authority or the administrator.

a. The account certificate of representation for the NO_X authorized account representative for the source and each NO_X Budget unit at the source and all documents that demonstrate the truth of the statements in the account certificate of representation, in accordance with 9 VAC 5-140-130; provided that the certificate and documents shall be retained on site at the source beyond such five-year period until such documents are superseded because of the submission of a new account certificate of representation changing the NO_X authorized account representative.

b. All emissions monitoring information, in accordance with Article 8 (9 VAC 5-140-700 et seq.) of this part; provided that to the extent that Article 8 (9 VAC 5-140-700 et seq.) of this part provides for a three-year period for recordkeeping, the three-year period shall apply.

c. Copies of all reports, compliance certifications, and other submissions and all records made or required under the NO_X Budget Trading Program.

d. Copies of all documents used to complete a NO_X Budget permit application and any other submission under the NO_X Budget Trading Program or to demonstrate compliance with the requirements of the NO_X Budget Trading Program.

2. The NO_X authorized account representative of a NO_X Budget source and each NO_X Budget unit at the source shall submit the reports and compliance certifications required under the NO_X Budget Trading Program, including those under Article 4 (9 VAC 5-140-300 et seq.), Article 8 (9 VAC 5-140-700 et seq.), or Article 9 (9 VAC 5-140-800 et seq.) of this part.

F. The following requirements concerning liability shall apply:

1. Any person who knowingly violates any requirement or prohibition of the NO_X Budget Trading Program, a NO_X Budget permit, or an exemption under 9 VAC 5-140-50 shall be subject to enforcement pursuant to the Air Pollution Control Law of Virginia.

2. Any person who knowingly makes a false material statement in any record, submission, or report under the NO_X Budget Trading Program shall be subject to criminal enforcement pursuant to the Air Pollution Control Law of Virginia.

3. No permit revision shall excuse any violation of the requirements of the NO_X Budget Trading Program that occurs prior to the date that the revision takes effect.

4. Each NO_X Budget source and each NO_X Budget unit shall meet the requirements of the NO_X Budget Trading Program.

5. Any provision of the NO_X Budget Trading Program that applies to a NO_X Budget source (including a provision applicable to the NO_X authorized account representative of a NO_X Budget source) shall also apply to the owners and

operators of such source and of the NO_X Budget units at the source.

6. Any provision of the NO_X Budget Trading Program that applies to a NO_X Budget unit (including a provision applicable to the NO_X authorized account representative of a NO_X budget unit) shall also apply to the owners and operators of such unit. Except with regard to the requirements applicable to units with a common stack under Article 8 (9 VAC 5-140-700 et seq.) of this part, the owners and operators and the NO_X authorized account representative of one NO_X Budget unit shall not be liable for any violation by any other NO_X Budget unit of which they are not owners or operators or the NO_X authorized account representative and that is located at a source of which they are not owners or operators or the NO_X authorized account representative.

G. No provision of the NO_X Budget Trading Program, a NO_X Budget permit application, a NO_X Budget permit, or an exemption under 9 VAC 5-140-50 shall be construed as exempting or excluding the owners and operators and, to the extent applicable, the NO_X authorized account representative of a NO_X Budget source or NO_X Budget unit from compliance with any other provision of the applicable implementation plan, a federally enforceable permit, or the CAA.

9 VAC 5-140-70. Computation of time.

A. Unless otherwise stated, any time period scheduled under the NO_X Budget Trading Program to begin on the occurrence of an act or event shall begin on the day the act or event occurs.

B. Unless otherwise stated, any time period scheduled under the NO_X Budget Trading Program to begin before the occurrence of an act or event shall be computed so that the period ends the day before the act or event occurs.

C. Unless otherwise stated, if the final day of any time period under the NO_X Budget Trading Program falls on a weekend or a state or federal holiday, the time period shall be extended to the next business day.

9 VAC 5-140-80. (Reserved.)

9 VAC 5-140-90. (Reserved.)

Article 2.
NO_X Authorized Account Representative for NO_X Budget Sources.

9 VAC 5-140-100. Authorization and responsibilities of the NO_X authorized account representative.

A. Except as provided under 9 VAC 5-140-110, each NO_X Budget source, including all NO_X Budget units at the source, shall have one and only one NO_X authorized account representative with regard to all matters under the NO_X Budget Trading Program concerning the source or any NO_X Budget unit at the source.

B. The NO_X authorized account representative of the NO_X Budget source shall be selected by an agreement binding on the owners and operators of the source and all NO_X Budget units at the source.

C. Upon receipt by the administrator of a complete account certificate of representation under 9 VAC 5-140-130, the NO_X authorized account representative of the source shall represent and, by his representations, actions, inactions, or submissions, legally bind each owner and operator of the NO_X Budget source represented and each NO_X Budget unit at the source in all matters pertaining to the NO_X Budget Trading Program, notwithstanding any agreement between the NO_X authorized account representative and such owners and operators. The owners and operators shall be bound by any decision or order issued to the NO_X authorized account representative by the permitting authority, the administrator, or a court regarding the source or unit.

D. No NO_X Budget permit shall be issued, and no NO_X Allowance Tracking System account shall be established for a NO_X Budget unit at a source, until the administrator has received a complete account certificate of representation under 9 VAC 5-140-130 for a NO_X authorized account representative of the source and the NO_X Budget units at the source.

E. 1. Each submission under the NO_X Budget Trading Program shall be submitted, signed, and certified by the NO_X authorized account representative for each NO_X Budget source on behalf of which the submission is made. Each such submission shall include the following certification statement by the NO_X authorized account representative: "I am authorized to make this submission on behalf of the owners and operators of the NO_X Budget sources or NO_X Budget units for which the submission is made. I certify under penalty of law that I have personally examined, and am familiar with, the statements and information submitted in this document and all its attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false statements and information or omitting required statements and information, including the possibility of fine or imprisonment."

2. The permitting authority and the administrator shall accept or act on a submission made on behalf of owner or operators of a NO_X Budget source or a NO_X Budget unit only if the submission has been made, signed, and certified in accordance with subdivision 1 of this subsection.

9 VAC 5-140-110. Alternate NO_X authorized account representative.

A. An account certificate of representation may designate one and only one alternate NO_X authorized account representative who may act on behalf of the NO_X authorized account representative. The agreement by which the alternate NO_X authorized account representative is selected shall include a procedure for authorizing the alternate NO_X authorized account representative to act in lieu of the NO_X authorized account representative.

B. Upon receipt by the administrator of a complete account certificate of representation under 9 VAC 5-140-130, any representation, action, inaction, or submission by the

alternate NO_X authorized account representative shall be deemed to be a representation, action, inaction, or submission by the NO_X authorized account representative.

C. Except in this section and 9 VAC 5-140-100 A, 9 VAC 5-140-120, 9 VAC 5-140-130, and 9 VAC 5-140-510, whenever the term "NO_X authorized account representative" is used in this chapter, the term shall be construed to include the alternate NO_X authorized account representative.

9 VAC 5-140-120. Changing the NO_X authorized account representative and the alternate NO_X authorized account representative; changes in the owners and operators.

A. The NO_X authorized account representative may be changed at any time upon receipt by the administrator of a superseding complete account certificate of representation under 9 VAC 5-140-130. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous NO_X authorized account representative prior to the time and date when the administrator receives the superseding account certificate of representation shall be binding on the new NO_X authorized account representative and the owners and operators of the NO_X Budget source and the NO_X Budget units at the source.

B. The alternate NO_X authorized account representative may be changed at any time upon receipt by the administrator of a superseding complete account certificate of representation under 9 VAC 5-140-130. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous alternate NO_X authorized account representative prior to the time and date when the administrator receives the superseding account certificate of representation shall be binding on the new alternate NO_X authorized account representative and the owners and operators of the NO_X Budget source and the NO_X Budget units at the source.

C. 1. In the event a new owner or operator of a NO_X Budget source or a NO_X Budget unit is not included in the list of owners and operators submitted in the account certificate of representation, such new owner or operator shall be deemed to be subject to and bound by the account certificate of representation, the representations, actions, inactions, and submissions of the NO_X authorized account representative and any alternate NO_X authorized account representative of the source or unit, and the decisions, orders, actions, and inactions of the permitting authority or the administrator, as if the new owner or operator were included in such list.

2. Within 30 days following any change in the owners and operators of a NO_X Budget source or a NO_X Budget unit, including the addition of a new owner or operator, the NO_X authorized account representative or alternate NO_X authorized account representative shall submit a revision to the account certificate of representation amending the list of owners and operators to include the change.

9 VAC 5-140-130. Account certificate of representation.

A. A complete account certificate of representation for a NO_X authorized account representative or an alternate NO_X authorized account representative shall include the following elements in a format prescribed by the administrator:

1. Identification of the NO_X Budget source and each NO_X Budget unit at the source for which the account certificate of representation is submitted.

2. The name, address, e-mail address (if any), telephone number, and facsimile transmission number (if any) of the NO_X authorized account representative and any alternate NO_X authorized account representative.

3. A list of the owners and operators of the NO_X Budget source and of each NO_X Budget unit at the source.

4. The following certification statement by the NO_X authorized account representative and any alternate NO_X authorized account representative: "I certify that I was selected as the NO_X authorized account representative or alternate NO_X authorized account representative, as applicable, by an agreement binding on the owners and operators of the NO_X Budget source and each NO_X Budget unit at the source. I certify that I have all the necessary authority to carry out my duties and responsibilities under the NO_X Budget Trading Program on behalf of the owners and operators of the NO_X Budget source and of each NO_X Budget unit at the source and that each such owner and operator shall be fully bound by my representations, actions, inactions, or submissions and by any decision or order issued to me by the permitting authority, the administrator, or a court regarding the source or unit."

5. The signature of the NO_X authorized account representative and any alternate NO_X authorized account representative and the dates signed.

B. Unless otherwise required by the permitting authority or the administrator, documents of agreement referred to in the account certificate of representation shall not be submitted to the permitting authority or the administrator. Neither the permitting authority nor the administrator shall be under any obligation to review or evaluate the sufficiency of such documents, if submitted.

9 VAC 5-140-140. Objections concerning the NO_X authorized account representative.

A. Once a complete account certificate of representation under 9 VAC 5-140-130 has been submitted and received, the permitting authority and the administrator shall rely on the account certificate of representation unless and until a superseding complete account certificate of representation under 9 VAC 5-140-130 is received by the administrator.

B. Except as provided in 9 VAC 5-140-120 A or B, no objection or other communication submitted to the permitting authority or the administrator concerning the authorization, or any representation, action, inaction, or submission of the NO_X authorized account representative shall affect any representation, action, inaction, or submission of the NO_X authorized account representative or the finality of any decision or order by the permitting authority or the administrator under the NO_X Budget Trading Program.

C. Neither the permitting authority nor the administrator shall adjudicate any private legal dispute concerning the authorization or any representation, action, inaction, or submission of any NO_X authorized account representative,

including private legal disputes concerning the proceeds of NO_X allowance transfers.

9 VAC 5-140-150 through 9 VAC 5-140-190. (Reserved.)

Article 3.
Permits.

9 VAC 5-140-200. General NO_X Budget trading program permit requirements.

A. For each NO_X Budget source required to have a federally enforceable permit, such permit shall include a NO_X Budget permit administered by the permitting authority.

1. For NO_X Budget sources required to have a Title V operating permit, the NO_X Budget portion of the Title V permit shall be administered in accordance with the permitting authority's Title V operating permits regulations, except as provided otherwise by this article or Article 9 (9 VAC 5-140-800 et seq.) of this part.

2. For NO_X Budget sources required to have a state operating permit, the NO_X Budget portion of the state operating permit shall be administered in accordance with the permitting authority's regulations promulgated to administer state operating permits, except as provided otherwise by this article or Article 9 (9 VAC 5-140-800 et seq.) of this part.

B. Each NO_X Budget permit (including a draft or proposed NO_X Budget permit, if applicable) shall contain all applicable NO_X Budget Trading Program requirements and shall be a complete and segregable portion of the permit under subsection A of this section.

9 VAC 5-140-210. Submission of NO_X Budget permit applications.

A. The NO_X authorized account representative of any NO_X Budget source required to have a federally enforceable permit shall submit to the permitting authority a complete NO_X Budget permit application under 9 VAC 5-140-220 by the applicable deadline in subsection B of this section.

B. 1. The following requirements shall apply to NO_X Budget sources required to have a Title V operating permit:

a. For any source with one or more NO_X Budget units under 9 VAC 5-140-40 that commence operation before January 1, 2000, the NO_X authorized account representative shall submit a complete NO_X Budget permit application under 9 VAC 5-140-220 covering such NO_X Budget units to the permitting authority at least 18 months (or such lesser time provided under the permitting authority's Title V operating permits regulations for final action on a permit application) before May 31, 2004.

b. For any source with any NO_X Budget unit under 9 VAC 5-140-40 that commences operation on or after January 1, 2000, the NO_X authorized account representative shall submit a complete NO_X Budget permit application under 9 VAC 5-140-220 covering such NO_X Budget unit to the permitting authority at least 18 months (or such lesser time provided under the permitting authority's Title V operating permits regulations for final action on a permit application) before the later of May 31, 2004, or the date on which the NO_X Budget unit commences operation.

2. The following requirements shall apply to NO_X Budget sources required to have a state operating permit:

a. For any source with one or more NO_X Budget units under 9 VAC 5-140-40 that commence operation before January 1, 2000, the NO_X authorized account representative shall submit a complete NO_X Budget permit application under 9 VAC 5-140-220 covering such NO_X Budget units to the permitting authority at least 18 months (or such lesser time provided under the permitting authority's state operating permits regulations for final action on a permit application) before May 31, 2004.

b. For any source with any NO_X Budget unit under 9 VAC 5-140-40 that commences operation on or after January 1, 2000, the NO_X authorized account representative shall submit a complete NO_X Budget permit application under 9 VAC 5-140-220 covering such NO_X Budget unit to the permitting authority at least 18 months (or such lesser time provided under the permitting authority's state operating permits regulations for final action on a permit application) before the later of May 31, 2004, or the date on which the NO_X Budget unit commences operation.

C. For a NO_X Budget source required to have a Title V operating permit, the NO_X authorized account representative shall submit a complete NO_X Budget permit application under 9 VAC 5-140-220 for the NO_X Budget source covering the NO_X Budget units at the source in accordance with the permitting authority's Title V operating permits regulations addressing operating permit renewal.

9 VAC 5-140-220. Information requirements for NO_X Budget permit applications.

A complete NO_X Budget permit application shall include the following elements concerning the NO_X Budget source for which the application is submitted, in a format acceptable to the permitting authority:

1. Identification of the NO_X Budget source, including plant name and the ORIS (Office of Regulatory Information Systems) or facility code assigned to the source by the Energy Information Administration, if applicable;

2. Identification of each NO_X Budget unit at the NO_X Budget source and whether it is a NO_X Budget unit under 9 VAC 5-140-40 or under Article 9 (9 VAC 5-140-800 et seq.) of this part;

3. The standard requirements under 9 VAC 5-140-60; and

4. For each NO_X Budget opt-in unit at the NO_X Budget source, the following certification statements by the NO_X authorized account representative:

a. "I certify that each unit for which this permit application is submitted under Article 9 (9 VAC 5-140-800 et seq.) of 9 VAC 5 Chapter 140 is not a NO_X Budget unit under 9 VAC 5-140-40 and is not covered by a retired unit exemption under 9 VAC 5-140-50 that is in effect."

b. If the application is for an initial NO_X Budget opt-in permit, "I certify that each unit for which this permit application is submitted under Article 9 (9 VAC 5-140-800 et seq.) of 9 VAC 5 Chapter 140 is currently operating, as that term is defined under 9 VAC 5-140-20."

9 VAC 5-140-230. NO_X Budget permit contents.

A. Each NO_X Budget permit (including any draft or proposed NO_X Budget permit, if applicable) shall contain, in a format acceptable to the permitting authority, all elements required for a complete NO_X Budget permit application under 9 VAC 5-140-220 as approved or adjusted by the permitting authority.

B. Each NO_X Budget permit is deemed to incorporate automatically the definitions of terms under 9 VAC 5-140-20 and, upon recordation by the administrator under Article 6 (9 VAC 5-140-500 et seq.), Article 7 (9 VAC 5-140-600 et seq.), or Article 9 (9 VAC 5-140-800 et seq.) of this part, every allocation, transfer, or deduction of a NO_X allowance to or from the compliance accounts of the NO_X Budget units covered by the permit or the overdraft account of the NO_X Budget source covered by the permit.

9 VAC 5-140-240. Effective date of initial NO_X Budget permit.

The initial NO_X Budget permit covering a NO_X Budget unit for which a complete NO_X Budget permit application is timely submitted under 9 VAC 5-140-210 B shall become effective by the later of:

1. May 31, 2004;

2. May 1 of the year in which the NO_X Budget unit commences operation, if the unit commences operation on or before May 1 of that year;

3. The date on which the NO_X Budget unit commences operation, if the unit commences operation during a control period; or

4. May 1 of the year following the year in which the NO_X Budget unit commences operation, if the unit commences operation on or after October 1 of the year.

9 VAC 5-140-250. NO_X Budget permit revisions.

A. For a NO_X Budget source with a Title V operating permit, except as provided in 9 VAC 5-140-230 B, the permitting authority shall revise the NO_X Budget permit, as necessary, in accordance with the permitting authority's Title V operating permit regulations addressing permit revisions.

B. For a NO_X Budget source with a state operating permit, except as provided in 9 VAC 5-140-230 B, the permitting authority shall revise the NO_X Budget permit, as necessary, in accordance with the permitting authority's state operating permit regulations addressing permit revisions.

9 VAC 5-140-260 through 9 VAC 5-140-190. (Reserved.)

Article 4.
Compliance Certification.

9 VAC 5-140-300. Compliance certification report.

A. For each control period in which one or more NO_X Budget units at a source are subject to the NO_X Budget emissions limitation, the NO_X authorized account representative of the source shall submit to the permitting authority and the administrator by November 30 of that year a compliance certification report for each source covering all such units.

B. The NO_X authorized account representative shall include in the compliance certification report under subsection A of this section the following elements, in a format prescribed by the administrator, concerning each unit at the source and subject to the NO_X Budget emissions limitation for the control period covered by the report:

1. Identification of each NO_X Budget unit;

2. The serial numbers of the NO_X allowances that are to be deducted from each unit's compliance account under 9 VAC 5-140-540 for the control period;

3. For units sharing a common stack and having NO_X emissions that are not monitored separately or apportioned in accordance with Article 8 (9 VAC 5-140-700 et seq.) of this part, the percentage of allowances that is to be deducted from each unit's compliance account under 9 VAC 5-140-540 E; and

4. The compliance certification under subsection C of this section.

C. In the compliance certification report under subsection A of this section, the NO_X authorized account representative shall certify, based on reasonable inquiry of those persons with primary responsibility for operating the source and the NO_X Budget units at the source in compliance with the NO_X Budget Trading Program, whether each NO_X Budget unit for which the compliance certification is submitted was operated during the calendar year covered by the report in compliance with the requirements of the NO_X Budget Trading Program applicable to the unit, including:

1. Whether the unit was operated in compliance with the NO_X Budget emissions limitation;

2. Whether the monitoring plan that governs the unit has been maintained to reflect the actual operation and monitoring of the unit, and contains all information necessary to attribute NO_X emissions to the unit, in accordance with Article 8 (9 VAC 5-140-700 et seq.) of this part;

3. Whether all the NO_X emissions from the unit, or a group of units (including the unit) using a common stack, were monitored or accounted for through the missing data procedures and reported in the quarterly monitoring reports, including whether conditional data were reported in the quarterly reports in accordance with Article 8 (9 VAC 5-140-700 et seq.) of this part. If conditional data were reported, the owner or operator shall indicate whether the status of all conditional data has been resolved and all necessary quarterly report resubmissions have been made;

4. Whether the facts that form the basis for certification under Article 8 (9 VAC 5-140-700 et seq.) of this part of each monitor at the unit or a group of units (including the unit) using a common stack, or for using an excepted

monitoring method or alternative monitoring method approved under Article 8 (9 VAC 5-140-700 et seq.) of this part, if any, has changed; and

5. If a change is required to be reported under subdivision 4 of this subsection, specify the nature of the change, the reason for the change, when the change occurred, and how the unit's compliance status was determined subsequent to the change, including what method was used to determine emissions when a change mandated the need for monitor recertification.

9 VAC 5-140-310. Permitting authority's and administrator's action on compliance certifications.

A. The permitting authority or the administrator may review and conduct independent audits concerning any compliance certification or any other submission under the NO_X Budget Trading Program and make appropriate adjustments of the information in the compliance certifications or other submissions.

B. The administrator may deduct NO_X allowances from or transfer NO_X allowances to a unit's compliance account or a source's overdraft account based on the information in the compliance certifications or other submissions, as adjusted under subsection A of this section.

9 VAC 5-140-320 through 9 VAC 5-140-390. (Reserved.)

Article 5.
NO_X Allowance Allocations.

9 VAC 5-140-400. State trading program budget.

In accordance with 9 VAC 5-140-410 and 9 VAC 5-140-420, the board shall allocate to the NO_X Budget units under 9 VAC 5-140-40 A, for each control period specified in 9 VAC 5-140-410, a total number of NO_X allowances equal to the trading program budget set forth in 9 VAC 5-140-900.

9 VAC 5-140-410. Timing requirements for NO_X allowance allocations.

A. The NO_X allowance allocations for the control periods in 2004 through 2013 shall be as set forth in 9 VAC 5-140-940 and 9 VAC 5-140-950. Owners of NO_X Budget units that operate in Virginia for which the NO_X allowance allocations are not set forth in 9 VAC 5-140-940 and 9 VAC 5-140-950 will need to purchase NO_X allowances from the market.

B. By April 1, 2004, and April 1 of each year thereafter, the permitting authority shall submit to the administrator the NO_X allowance allocations, in accordance with 9 VAC 5-140-420, for the control period in the year that is 10 years after the year of the applicable April 1 deadline for submission. If the permitting authority fails to submit to the administrator the NO_X allowance allocations in accordance with this subsection, the administrator shall allocate, for the applicable control period, the same number of NO_X allowances as were allocated for the preceding control period.

9 VAC 5-140-420. NO_X allowance allocations.

A. 1. For a NO_X allowance allocation under 9 VAC 5-140-410 B, the heat input (in mmBtu) used for calculating NO_X allowance allocations for each NO_X Budget unit under 9 VAC 5-140-40 shall be the average of the two highest heat inputs for the control periods in the five years immediately preceding the year during which the NO_X allocation is calculated.

2. If the unit is under 9 VAC 5-140-40 A 1 and has less than two control periods of heat input, the owner shall not be required to average a zero balance to determine the average under subdivision 1 of this subsection.

3. The unit's total heat input for the control period in each year specified under subdivision 1 of this subsection shall be determined in accordance with 40 CFR Part 75 if the NO_X Budget unit was otherwise subject to the requirements of 40 CFR Part 75 for the year, or shall be based on the best available data reported to the permitting authority for the unit if the unit was not otherwise subject to the requirements of 40 CFR Part 75 for the year.

B. For each control period under 9 VAC 5-140-410, the permitting authority shall allocate to all NO_X Budget units under 9 VAC 5-140-40 A 1 that commenced operation before May 1 of the control period immediately preceding the year during which the NO_X allocation is calculated under subdivision A 1 of this section, a total number of NO_X allowances equal to 100% of the tons of NO_X emissions in the state trading program budget apportioned to electric generating units under 9 VAC 5-140-40 in accordance with the following procedures:

1. The permitting authority shall allocate NO_X allowances to each NO_X Budget unit under 9 VAC 5-140-40 A 1 in an amount equaling 0.15 lb/mmBtu or the unit's permitted NO_X limit (expressed as lb/mmBtu), whichever is less, multiplied by the heat input determined under subsection A of this section, rounded to the nearest whole NO_X allowance as appropriate.

2. If the initial total number of NO_X allowances allocated to all NO_X Budget units under 9 VAC 5-140-40 A 1 for a control period under subdivision 1 of this subsection does not equal 100% of the number of tons of NO_X emissions in the state trading program budget apportioned to electric generating units, the permitting authority shall adjust the total number of NO_X allowances allocated to all such NO_X Budget units for the control period under subdivision 1 of this subsection so that the total number of NO_X allowances allocated equals 100% of the number of tons of NO_X emissions in the state trading program budget apportioned to electric generating units. This adjustment shall be made by: multiplying each unit's allocation by the number of tons of NO_X emissions in the state trading program budget apportioned to electric generating units in 9 VAC 5-140-920 divided by the total number of NO_X allowances allocated under subdivision 1 of this subsection, and rounding to the nearest whole NO_X allowance as appropriate.

C. For each control period under 9 VAC 5-140-410, the permitting authority shall allocate to all NO_X Budget units under 9 VAC 5-140-40 A 2 that commenced operation before May 1 of the control period immediately preceding the year during which the NO_X allocation is calculated under subdivision A 1 of this section, a total number of NO_X allowances equal to 100% of the tons of NO_X emissions in the

state trading program budget apportioned to nonelectric generating units under 9 VAC 5-140-40 in accordance with the following procedures:

1. The permitting authority shall allocate NO_X allowances to each NO_X Budget unit under 9 VAC 5-140-40 A 2 in an amount equaling 0.17 lb/mmBtu or the unit's permitted NO_X limit (expressed as lb/mmBtu), whichever is less, multiplied by the heat input determined under subsection A of this section, rounded to the nearest whole NO_X allowance as appropriate.

2. If the initial total number of NO_X allowances allocated to all NO_X Budget units under 9 VAC 5-140-40 A 2 for a control period under subdivision 1 of this subsection does not equal 100% of the number of tons of NO_X emissions in the state trading program budget apportioned to nonelectric generating units, the permitting authority shall adjust the total number of NO_X allowances allocated to all such NO_X Budget units for the control period under subdivision 1 of this subsection so that the total number of NO_X allowances allocated equals 100% of the number of tons of NO_X emissions in the state trading program budget apportioned to nonelectric generating units. This adjustment shall be made by: multiplying each unit's allocation by the number of tons of NO_X emissions in the state trading program budget apportioned to nonelectric generating units in 9 VAC 5-140-930 divided by the total number of NO_X allowances allocated under subdivision 1 of this subsection, and rounding to the nearest whole NO_X allowance as appropriate.

9 VAC 5-140-430. Compliance supplement pool.

A. Sources required to implement NO_X emission control measures by May 31, 2004, to demonstrate compliance with this chapter in the 2004 and 2005 ozone seasons may use NO_X allowances from the compliance supplement pool, as set forth in 9 VAC 5-140-910, issued in accordance with this section.

B. A source may not use NO_X allowances from the compliance supplement pool to demonstrate compliance after the 2005 control period.

C. For any NO_X Budget unit that intends to reduce its NO_X emission rate in the 2002 or 2003 control period, the owners and operators may request that early reduction credits (ERCs) be reserved in accordance with the following requirements:

1. Each NO_X Budget unit for which the owners and operators intend to request, or request, any ERCs in accordance with subdivision 4 of this subsection shall monitor and report NO_X emissions in accordance with Article 8 (9 VAC 5-140-700 et seq.) of this part starting in the 2001 control period and for each control period for which the ERCs are requested. The unit's percent monitor data availability shall not be less than 90% during the 2001 control period, and the unit shall be in full compliance with any applicable state or federal NO_X emission control requirements during 2001 through 2003.

2. NO_X emission rate and heat input under subdivision 3 of this subsection shall be determined in accordance with Article 8 (9 VAC 5-140-700 et seq.) of this part.

3. Each NO_X Budget unit for which the owners and operators request any ERCs under subdivision 4 of this subsection shall reduce its NO_X emission rate, for each control period for which ERCs are requested, to less than both 0.35 lb/mmBtu and 80% of the unit's NO_X emission rate in the 2001 control period.

4. The NO_X authorized account representative of a NO_X Budget unit that intends to meet the requirements of subdivisions 1 and 3 of this subsection may submit to the permitting authority a request to reserve ERCs for the unit based on NO_X emission rate reductions anticipated to be made by the unit in the control period for 2002 or 2003.

a. The NO_X authorized account representative may request that ERCs be reserved for the control period in an amount equal to the unit's anticipated heat input for the control period multiplied by the difference between 0.35 lb/mmBtu and the unit's anticipated NO_X emission rate for the control period, divided by 2000 lb/ton, and rounded to the nearest whole number of tons.

b. The NO_X authorized account representative shall submit the ERC reserve request, in a format acceptable to the permitting authority, by October 1, 2001.

D. The permitting authority shall review each ERC reserve request submitted in accordance with subsection C of this section and shall reserve NO_X allowances for the NO_X Budget units covered by the request as follows:

1. Upon receipt of each ERC reserve request, the permitting authority shall make any necessary adjustments to the request to ensure that the amount of the ERCs requested meets the requirements of subsection C of this section.

2. If 80% of the compliance supplement pool set forth in 9 VAC 5-140-910 has a number of NO_X allowances equal to or greater than the amount of ERCs in all ERC reserve requests under subsection C of this section for 2002 and 2003 (as adjusted under subdivision 1 of this subsection), the permitting authority shall reserve for each NO_X Budget unit covered by the requests one NO_X allowance for each ERC requested (as adjusted under subdivision 1 of this subsection).

3. If 80% of the compliance supplement pool set forth in 9 VAC 5-140-910 has a number of NO_X allowances less than the amount of ERCs in all ERC reserve requests under subsection C of this section for 2002 and 2003 (as adjusted under subdivision 1 of this subsection), the permitting authority shall reserve NO_X allowances for each NO_X Budget unit covered by the requests according to the following formula and rounding to the nearest whole number of NO_X allowances as appropriate:

Unit's allocation for ERCs = Unit's adjusted ERCs x [(Compliance supplement pool) / (Total adjusted ERCs for all units)]

Where:

"Unit's allocation for ERCs" is the number of NO_X allowances reserved for the unit for ERCs.

"Unit's adjusted ERCs" is the amount of ERCs requested for the unit for 2002 and 2003 in ERC reserve requests under subsection C of this section, as adjusted under subdivision 1 of this subsection.

"Compliance supplement pool" is 80% of the number of NO_X allowances in the compliance supplement pool set forth in 9 VAC 5-140-910.

"Total adjusted ERCs for all units" is the amount of ERCs requested for all units for 2002 and 2003 in ERC reserve requests under subsection C of this section, as adjusted under subdivision 1 of this subsection.

4. The permitting authority shall complete the ERC reserve issuance process by no later than December 1, 2001.

5. The NO_X authorized account representative shall submit verification that the NO_X Budget unit has met the requirements of subdivisions C 1 and 3 of this section, in a format acceptable to the permitting authority, by November 1, 2003.

6. If the permitting authority finds that the NO_X Budget unit has met the requirements of subdivisions C 1 and 3 of this section, it shall allocate the ERCs to the unit no later than February 1, 2004.

7. If the number of ERCs allocated under subdivision 6 of this subsection is less than the number of ERCs reserved, the excess ERCs shall be returned to the compliance supplement pool for distribution under subsection F of this section.

E. For any NO_X Budget unit that reduces its NO_X emission rate in the 2002 or 2003 control period, the owners and operators may request early reduction credits (ERCs) in accordance with the following requirements:

1. Each NO_X Budget unit for which the owners and operators intend to request, or request, any ERCs in accordance with subdivision 4 of this subsection shall monitor and report NO_X emissions in accordance with Article 8 (9 VAC 5-140-700 et seq.) of this part starting in the 2001 control period and for each control period for which the ERCs are requested. The unit's percent monitor data availability shall not be less than 90% during the 2001 control period, and the unit shall be in full compliance with any applicable state or federal NO_X emission control requirements during 2001 through 2003.

2. NO_X emission rate and heat input under subdivisions 3 and 4 of this subsection shall be determined in accordance with Article 8 (9 VAC 5-140-700 et seq.) of this part.

3. Each NO_X Budget unit for which the owners and operators request any ERCs under subdivision 4 of this subsection shall reduce its NO_X emission rate, for each control period for which ERCs are requested, to less than both 0.35 lb/mmBtu and 80% of the unit's NO_X emission rate in the 2001 control period.

4. The NO_X authorized account representative of a NO_X Budget unit that meets the requirements of subdivisions 1 and 3 of this subsection may submit to the permitting authority a request for ERCs for the unit based on NO_X emission rate reductions made by the unit in the control period for 2002 or 2003.

a. The NO_X authorized account representative may request ERCs for the control period in an amount equal to the unit's heat input for the control period multiplied by the difference between 0.35 lb/mmBtu and the unit's NO_X emission rate for the control period, divided by 2000 lb/ton, and rounded to the nearest whole number of tons.

b. The NO_X authorized account representative shall submit the ERC request, in a format acceptable to the permitting authority, by November 1, 2003.

F. The permitting authority shall review each ERC request submitted in accordance with subsection E of this section and shall allocate NO_X allowances to NO_X Budget units covered by the request as follows:

1. Upon receipt of each ERC request, the permitting authority shall make any necessary adjustments to the request to ensure that the amount of the ERCs requested meets the requirements of subsection E of this section.

2. If the compliance supplement pool set forth in 9 VAC 5-140-910 has a number of NO_X allowances equal to or greater than the amount of ERCs in all ERC requests under subsection E of this section for 2002 and 2003 (as adjusted under subdivision 1 of this subsection), the permitting authority shall allocate to each NO_X Budget unit covered by the requests one NO_X allowance for each ERC requested (as adjusted under subdivision 1 of this subsection).

3. If the compliance supplement pool set forth in 9 VAC 5-140-910 has a number of NO_X allowances less than the amount of ERCs in all ERC requests under subsection E of this section for 2002 and 2003 (as adjusted under subdivision 1 of this subsection), the permitting authority shall allocate NO_X allowances to each NO_X Budget unit covered by the requests according to the following formula and rounding to the nearest whole number of NO_X allowances as appropriate:

Unit's allocation for ERCs = Unit's adjusted ERCs x [(Compliance supplement pool) / (Total adjusted ERCs for all units)]

Where:

"Unit's allocation for ERCs" is the number of NO_X allowances allocated to the unit for ERCs.

"Unit's adjusted ERCs" is the amount of ERCs requested for the unit for 2002 and 2003 in ERC requests under subsection E of this section, as adjusted under subdivision 1 of this subsection.

"Compliance supplement pool" is the number of NO_X allowances in the compliance supplement pool set forth in 9 VAC 5-140-910 minus any allowances issued under subsection D of this section.

"Total adjusted ERCs for all units" is the amount of ERCs requested for all units for 2002 and 2003 in ERC

requests under subsection E of this section, as adjusted under subdivision 1 of this subsection.

4. The permitting authority shall complete the ERC issuance process by no later than February 1, 2004.

G. For any NO_X Budget unit that demonstrate a need for an extension of the May 31, 2004, compliance deadline, the owners and operators may request direct distribution credits (DDCs) in accordance with the following requirements:

1. The NO_X authorized account representative of a NO_X Budget unit may submit to the permitting authority a request for DDCs for the unit that contains a demonstration of the following:

a. For a source used to generate electricity, compliance with this chapter by May 31, 2004, would create undue risk for the reliability of the electricity supply. This demonstration shall include a showing that it would not be feasible to import electricity from other electricity generation systems during the installation of control technologies necessary to comply with this chapter.

b. For a source not used to generate electricity, compliance with this chapter by May 31, 2004, would create undue risk for the source or its associated industry. This demonstration shall include a showing that operation of the unit would be disrupted resulting in loss of services to the public or severely hampering operation of the facility and endangering future potential operation.

c. For a source subject to this chapter, it was not possible for the source to comply with this chapter by generating ERCs or acquiring ERCs from other sources.

d. For a source subject to this chapter, it was not possible to comply with this chapter by acquiring sufficient NO_X allowances from other sources or persons subject to the emissions trading program.

2. The NO_X authorized account representative shall submit the DDC request, in a format acceptable to the permitting authority, by February 1, 2004.

H. The permitting authority shall review each DDC request submitted in accordance with subsection G of this section and shall allocate NO_X allowances to NO_X Budget units covered by the request as follows:

1. Upon receipt of each DDC request, the permitting authority shall make any necessary adjustments to the request to ensure that the amount of the DDCs requested meets the requirements of subsection G of this section.

2. If the compliance supplement pool set forth in 9 VAC 5-140-910 has a number of NO_X allowances equal to or greater than the amount of DDCs in all DDC requests under subsection G of this section for 2002 and 2003 (as adjusted under subdivision 1 of this subsection), the permitting authority shall allocate to each NO_X Budget unit covered by the requests one NO_X allowance for each DDC requested (as adjusted under subdivision 1 of this subsection).

3. If the compliance supplement pool set forth in 9 VAC 5-140-910 has a number of NO_X allowances less than the amount of DDCs in all DDC requests under subsection G of this section for 2002 and 2003 (as adjusted under subdivision 1 of this subsection), the permitting authority shall allocate NO_X allowances to each NO_X Budget unit covered by the requests according to the following formula and rounding to the nearest whole number of NO_X allowances as appropriate:

Unit's allocation for DDCs = Unit's adjusted DDCs x [(Compliance supplement pool) / (Total adjusted DDCs for all units)]

Where:

"Unit's allocation for DDCs" is the number of NO_X allowances allocated to the unit for DDCs.

"Unit's adjusted DDCs" is the amount of DDCs requested for the unit for 2002 and 2003 in DDC requests under subsection G of this section, as adjusted under subdivision 1 of this subsection.

"Compliance supplement pool" is the number of NO_X allowances in the compliance supplement pool set forth in 9 VAC 5-140-910 minus any allowances issued under subsections D and F of this section.

"Total adjusted DDCs for all units" is the amount of DDCs requested for all units for 2002 and 2003 in DDC requests under subsection G of this section, as adjusted under subdivision 1 of this subsection.

4. For a DDC request made under subsection G of this section, the permitting authority shall conduct a public comment period of at least 30 days to receive comment on the appropriateness of allocating DDCs to a source under subsection G of this section. At the end of the public comment period, a public hearing shall be held. The permitting authority shall notify the public, by advertisement in at least one newspaper of general circulation in the affected air quality control region, of the opportunity for the public comment and the public hearing on the information available for public inspection under the provisions of subdivision 4 a of this subsection. The notification shall be published at least 30 days prior to the day of the public hearing.

a. Information on the early reduction request, as well as the preliminary review and analysis and preliminary decision of the permitting authority, shall be available for public inspection during the entire public comment period in at least one location in the affected air quality control region.

b. A copy of the notice shall be sent to all local air pollution control agencies having implementation plan responsibilities in the affected air quality control region, all states sharing the affected air quality control region, and to the regional administrator, U.S. Environmental Protection Agency.

5. The permitting authority shall complete the DDC issuance process by no later than May 31, 2004.

I. By May 31, 2004, the permitting authority shall submit to the administrator the allocations of NO_X allowances determined

under subsections D, F and H of this section. The administrator shall record the allocations to the extent that they are consistent with the requirements of subsections C through H of this section.

J. NO_X allowances recorded under subsection I of this section may be deducted for compliance under 9 VAC 5-140-540 for the control periods in 2004 or 2005. Notwithstanding 9 VAC 5-140-550 A, the administrator shall deduct as retired any NO_X allowance that is recorded under subsection I of this section and is not deducted for compliance in accordance with 9 VAC 5-140-540 for the control period in 2004 or 2005.

K. NO_X allowances recorded under subsection I of this section are treated as banked NO_X allowances in 2005 for the purposes of 9 VAC 5-140-550 A and B.

9 VAC 5-140-440 through 9 VAC 5-140-490. (Reserved.)

Article 6.
NO_X Allowance Tracking System.

9 VAC 5-140-500. NO_X Allowance Tracking System accounts.

A. Consistent with 9 VAC 5-140-510 A, the administrator shall establish one compliance account for each NO_X Budget unit and one overdraft account for each source with one or more NO_X Budget units. Allocations of NO_X allowances pursuant to Article 5 (9 VAC 5-140-400 et seq.) of this part or 9 VAC 5-140-880 and deductions or transfers of NO_X allowances pursuant to 9 VAC 5-140-310, 9 VAC 5-140-540, 9 VAC 5-140-560, Article 7 (9 VAC 5-140-600 et seq.) of this part, or Article 9 (9 VAC 5-140-800 et seq.) of this part shall be recorded in the compliance accounts or overdraft accounts in accordance with this article.

B. Consistent with 9 VAC 5-140-510 B, the administrator shall establish, upon request, a general account for any person. Transfers of allowances pursuant to Article 7 (9 VAC 5-140-600 et seq.) of this part shall be recorded in the general account in accordance with this article.

9 VAC 5-140-510. Establishment of accounts.

A. Upon receipt of a complete account certificate of representation under 9 VAC 5-140-130, the administrator shall establish:

1. A compliance account for each NO_X Budget unit for which the account certificate of representation was submitted; and

2. An overdraft account for each source for which the account certificate of representation was submitted and that has two or more NO_X Budget units.

B. 1. Any person may apply to open a general account for the purpose of holding and transferring allowances. A complete application for a general account shall be submitted to the administrator and shall include the following elements in a format prescribed by the administrator:

a. Name, mailing address, e-mail address (if any), telephone number, and facsimile transmission number (if any) of the NO_X authorized account representative and any alternate NO_X authorized account representative;

b. Organization name and type of organization;

c. A list of all persons subject to a binding agreement for the NO_X authorized account representative or any alternate NO_X authorized account representative to represent their ownership interest with respect to the allowances held in the general account;

d. The following certification statement by the NO_X authorized account representative and any alternate NO_X authorized account representative: "I certify that I was selected as the NO_X authorized account representative or the NO_X alternate authorized account representative, as applicable, by an agreement that is binding on all persons who have an ownership interest with respect to allowances held in the general account. I certify that I have all the necessary authority to carry out my duties and responsibilities under the NO_X Budget Trading Program on behalf of such persons and that each such person shall be fully bound by my representations, actions, inactions, or submissions and by any order or decision issued to me by the administrator or a court regarding the general account."

e. The signature of the NO_X authorized account representative and any alternate NO_X authorized account representative and the dates signed.

f. Unless otherwise required by the permitting authority or the administrator, documents of agreement referred to in the account certificate of representation shall not be submitted to the permitting authority or the administrator. Neither the permitting authority nor the administrator shall be under any obligation to review or evaluate the sufficiency of such documents, if submitted.

2. Upon receipt by the administrator of a complete application for a general account under subdivision 1 of this subsection:

a. The administrator shall establish a general account for the person or persons for whom the application is submitted.

b. The NO_X authorized account representative and any alternate NO_X authorized account representative for the general account shall represent and, by his representations, actions, inactions, or submissions, legally bind each person who has an ownership interest with respect to NO_X allowances held in the general account in all matters pertaining to the NO_X Budget Trading Program, notwithstanding any agreement between the NO_X authorized account representative or any alternate NO_X authorized account representative and such person. Any such person shall be bound by any order or decision issued to the NO_X authorized account representative or any alternate NO_X authorized account representative by the administrator or a court regarding the general account.

c. Each submission concerning the general account shall be submitted, signed, and certified by the NO_X authorized account representative or any alternate NO_X authorized account representative for the persons having an ownership interest with respect to NO_X allowances held

in the general account. Each such submission shall include the following certification statement by the NO_X authorized account representative or any alternate NO_X authorized account representative any: "I am authorized to make this submission on behalf of the persons having an ownership interest with respect to the NO_X allowances held in the general account. I certify under penalty of law that I have personally examined, and am familiar with, the statements and information submitted in this document and all its attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false statements and information or omitting required statements and information, including the possibility of fine or imprisonment."

d. The administrator shall accept or act on a submission concerning the general account only if the submission has been made, signed, and certified in accordance with subdivision 2 c of this subsection.

3. a. An application for a general account may designate one and only one NO_X authorized account representative and one and only one alternate NO_X authorized account representative who may act on behalf of the NO_X authorized account representative. The agreement by which the alternate NO_X authorized account representative is selected shall include a procedure for authorizing the alternate NO_X authorized account representative to act in lieu of the NO_X authorized account representative.

b. Upon receipt by the administrator of a complete application for a general account under subdivision 1 of this subsection, any representation, action, inaction, or submission by any alternate NO_X authorized account representative shall be deemed to be a representation, action, inaction, or submission by the NO_X authorized account representative.

4. a. The NO_X authorized account representative for a general account may be changed at any time upon receipt by the administrator of a superseding complete application for a general account under subdivision 1 of this subsection. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous NO_X authorized account representative prior to the time and date when the administrator receives the superseding application for a general account shall be binding on the new NO_X authorized account representative and the persons with an ownership interest with respect to the allowances in the general account.

b. The alternate NO_X authorized account representative for a general account may be changed at any time upon receipt by the administrator of a superseding complete application for a general account under subdivision 1 of this subsection. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous alternate NO_X authorized account representative prior to the time and date when the administrator receives the superseding application for a general account shall be binding on the new alternate NO_X authorized account representative and the persons with an ownership interest with respect to the allowances in the general account.

c. (1) In the event a new person having an ownership interest with respect to NO_X allowances in the general account is not included in the list of such persons in the account certificate of representation, such new person shall be deemed to be subject to and bound by the account certificate of representation, the representation, actions, inactions, and submissions of the NO_X authorized account representative and any alternate NO_X authorized account representative of the source or unit, and the decisions, orders, actions, and inactions of the administrator, as if the new person were included in such list.

(2) Within 30 days following any change in the persons having an ownership interest with respect to NO_X allowances in the general account, including the addition of persons, the NO_X authorized account representative or any alternate NO_X authorized account representative shall submit a revision to the application for a general account amending the list of persons having an ownership interest with respect to the NO_X allowances in the general account to include the change.

5. a. Once a complete application for a general account under subdivision 1 of this subsection has been submitted and received, the administrator shall rely on the application unless and until a superseding complete application for a general account under subdivision 1 of this subsection is received by the administrator.

b. Except as provided in subdivision 4 of this subsection, no objection or other communication submitted to the administrator concerning the authorization, or any representation, action, inaction, or submission of the NO_X authorized account representative or any alternate NO_X authorized account representative for a general account shall affect any representation, action, inaction, or submission of the NO_X authorized account representative or any alternate NO_X authorized account representative or the finality of any decision or order by the administrator under the NO_X Budget Trading Program.

c. The administrator shall not adjudicate any private legal dispute concerning the authorization or any representation, action, inaction, or submission of the NO_X authorized account representative or any alternate NO_X authorized account representative for a general account, including private legal disputes concerning the proceeds of NO_X allowance transfers.

C. The administrator shall assign a unique identifying number to each account established under subsection A or B of this section.

9 VAC 5-140-520. NO_X Allowance Tracking System responsibilities of NO_X authorized account representative.

A. Following the establishment of a NO_X Allowance Tracking System account, all submissions to the administrator pertaining to the account, including, but not limited to, submissions concerning the deduction or transfer of NO_X allowances in the account, shall be made only by the NO_X authorized account representative for the account.

B. The administrator shall assign a unique identifying number to each NO_X authorized account representative.

9 VAC 5-140-530. Recordation of NO_X allowance allocations.

A. The administrator shall record the NO_X allowances for 2004 in the NO_X Budget units' compliance accounts as allocated under Article 5 (9 VAC 5-140-400 et seq.) of this part. The administrator shall also record the NO_X allowances allocated under 9 VAC 5-140-880 A 1 for each NO_X Budget opt-in source in its compliance account.

B. Each year, after the administrator has made all deductions from a NO_X Budget unit's compliance account and the overdraft account pursuant to 9 VAC 5-140-540, the administrator shall record NO_X allowances, as allocated to the unit under Article 5 (9 VAC 5-140-400 et seq.) of this part or under 9 VAC 5-140-880 A 2, in the compliance account for the year after the last year for which allowances were previously allocated to the compliance account.

C. When allocating NO_X allowances to and recording them in an account, the administrator shall assign each NO_X allowance a unique identification number that shall include digits identifying the year for which the NO_X allowance is allocated.

9 VAC 5-140-540. Compliance.

A. The NO_X allowances are available to be deducted for compliance with a unit's NO_X Budget emissions limitation for a control period in a given year only if the NO_X allowances:

1. Were allocated for a control period in a prior year or the same year; and

2. Are held in the unit's compliance account, or the overdraft account of the source where the unit is located, as of the NO_X allowance transfer deadline for that control period or are transferred into the compliance account or overdraft account by a NO_X allowance transfer correctly submitted for recordation under 9 VAC 5-140-600 by the NO_X allowance transfer deadline for that control period.

B. 1. Following the recordation, in accordance with 9 VAC 5-140-610, of NO_X allowance transfers submitted for recordation in the unit's compliance account or the overdraft account of the source where the unit is located by the NO_X allowance transfer deadline for a control period, the administrator shall deduct NO_X allowances available under subsection A of this section to cover the unit's NO_X emissions (as determined in accordance with Article 8 (9 VAC 5-140-700 et seq.) of this part) for the control period:

a. From the compliance account; and

b. Only if no more NO_X allowances available under subsection A of this section remain in the compliance account, from the overdraft account. In deducting allowances for units at the source from the overdraft account, the administrator shall begin with the unit having the compliance account with the lowest NO_X Allowance Tracking System account number and end with the unit having the compliance account with the highest NO_X Allowance Tracking System account number (with account numbers sorted beginning with the left-most character and ending with the right-most character and the letter characters assigned values in alphabetical order and less than all numeric characters).

2. The administrator shall deduct NO_X allowances first under subdivision 1 a of this subsection and then under subdivision 1 b of this subsection:

a. Until the number of NO_X allowances deducted for the control period equals the number of tons of NO_X emissions, determined in accordance with Article 8 (9 VAC 5-140-700 et seq.) of this part, from the unit for the control period for which compliance is being determined for the control period; or

b. Until no more NO_X allowances available under subsection A of this section remain in the respective account.

C. 1. The NO_X authorized account representative for each compliance account may identify by serial number the NO_X allowances to be deducted from the unit's compliance account under subsection B, D, or E of this section. Such identification shall be made in the compliance certification report submitted in accordance with 9 VAC 5-140-300.

2. The administrator shall deduct NO_X allowances for a control period from the compliance account, in the absence of an identification or in the case of a partial identification of NO_X allowances by serial number under subdivision 1 of this subsection, or the overdraft account on a first-in, first-out (FIFO) accounting basis in the following order:

a. Those NO_X allowances that were allocated for the control period to the unit under Article 5 (9 VAC 5-140-400 et seq.) or Article 9 (9 VAC 5-140-800 et seq.) of this part;

b. Those NO_X allowances that were allocated for the control period to any unit and transferred and recorded in the account pursuant to Article 7 (9 VAC 5-140-600 et seq.) of this part, in order of their date of recordation;

c. Those NO_X allowances that were allocated for a prior control period to the unit under Article 5 (9 VAC 5-140-400 et seq.) or Article 9 (9 VAC 5-140-800 et seq.) of this part; and

d. Those NO_X allowances that were allocated for a prior control period to any unit and transferred and recorded in the account pursuant to Article 7 (9 VAC 5-140-600 et seq.) of this part, in order of their date of recordation.

D. 1. After making the deductions for compliance under subsection B of this section, the administrator shall deduct from the unit's compliance account or the overdraft account of the source where the unit is located a number of NO_X allowances, allocated for a control period after the control period in which the unit has excess emissions, equal to three times the number of the unit's excess emissions.

2. If the compliance account or overdraft account does not contain sufficient NO_X allowances, the administrator shall deduct the required number of NO_X allowances, regardless of the control period for which they were allocated, whenever NO_X allowances are recorded in either account.

3. Any allowance deduction required under this subsection shall not affect the liability of the owners and operators of the NO_X Budget unit for any fine, penalty, or assessment, or their obligation to comply with any other remedy, for the same violation, as ordered under the CAA or the Virginia Air Pollution Control Law. The following guidelines shall be followed in assessing fines, penalties or other obligations:

a. For purposes of determining the number of days of violation, if a NO_X Budget unit has excess emissions for a control period, each day in the control period (153 days) constitutes a day in violation unless the owners and operators of the unit demonstrate that a lesser number of days should be considered.

b. Each ton of excess emissions is a separate violation.

E. In the case of units sharing a common stack and having emissions that are not separately monitored or apportioned in accordance with Article 8 (9 VAC 5-140-700 et seq.) of this part:

1. The NO_X authorized account representative of the units may identify the percentage of NO_X allowances to be deducted from each such unit's compliance account to cover the unit's share of NO_X emissions from the common stack for a control period. Such identification shall be made in the compliance certification report submitted in accordance with 9 VAC 5-140-300.

2. Notwithstanding subdivision B 2 a of this section, the administrator shall deduct NO_X allowances for each such unit until the number of NO_X allowances deducted equals the unit's identified percentage (under subdivision 1 of this subsection) of the number of tons of NO_X emissions, as determined in accordance with Article 8 (9 VAC 5-140-700 et seq.) of this part, from the common stack for the control period for which compliance is being determined or, if no percentage is identified, an equal percentage for each such unit.

F. The administrator shall record in the appropriate compliance account or overdraft account all deductions from such an account pursuant to subsection B, D, or E of this section.

9 VAC 5-140-550. Banking.

A. NO_X allowances may be banked for future use or transfer in a compliance account, an overdraft account, or a general account, as follows:

1. Any NO_X allowance that is held in a compliance account, an overdraft account, or a general account shall remain in such account unless and until the NO_X allowance is deducted or transferred under 9 VAC 5-140- 310, 9 VAC 5-140-540, 9 VAC 5-140-560, Article 7 (9 VAC 5-140-600 et seq.) of this part, or Article 9 (9 VAC 5-140-800 et seq.) of this part.

2. The administrator shall designate, as a "banked" NO_X allowance, any NO_X allowance that remains in a compliance account, an overdraft account, or a general account after the administrator has made all deductions for a given control period from the compliance account or overdraft account pursuant to 9 VAC 5-140-540.

B. Each year starting in 2005, after the administrator has completed the designation of banked NO_X allowances under subdivision A 2 of this section and before May 1 of the year, the administrator shall determine the extent to which banked NO_X allowances may be used for compliance in the control period for the current year, as follows:

1. The administrator shall determine the total number of banked NO_X allowances held in compliance accounts, overdraft accounts, or general accounts.

2. If the total number of banked NO_X allowances determined, under subdivision 1 of this subsection, to be held in compliance accounts, overdraft accounts, or general accounts is less than or equal to 10% of the sum of the state trading program budgets for the control period for the states in which NO_X Budget units are located, any banked NO_X allowance may be deducted for compliance in accordance with 9 VAC 5-140-540.

3. If the total number of banked NO_X allowances determined, under subdivision 1 of this subsection, to be held in compliance accounts, overdraft accounts, or general accounts exceeds 10% of the sum of the state trading program budgets for the control period for the states in which NO_X Budget units are located, any banked allowance may be deducted for compliance in accordance with 9 VAC 5-140-540, except as follows:

a. The administrator shall determine the following ratio: 0.10 multiplied by the sum of the state trading program budgets for the control period for the states in which NO_X Budget units are located and divided by the total number of banked NO_X allowances determined, under subdivision 1 of this subsection, to be held in compliance accounts, overdraft accounts, or general accounts.

b. The administrator shall multiply the number of banked NO_X allowances in each compliance account or overdraft account by the ratio determined in subdivision 3 a of this subsection. The resulting product is the number of banked NO_X allowances in the account that may be deducted for compliance in accordance with 9 VAC 5-140-540. Any banked NO_X allowances in excess of the resulting product may be deducted for compliance in accordance with 9 VAC 5-140-540, except that, if such NO_X allowances are used to make a deduction, two such NO_X allowances shall be deducted for each deduction of one NO_X allowance required under 9 VAC 5-140-540.

9 VAC 5-140-560. Account error.

The administrator may, at his sole discretion and on his own motion, correct any error in any NO_X Allowance Tracking System account. Within 10 business days of making such correction, the administrator shall notify the NO_X authorized account representative for the account.

9 VAC 5-140-570. Closing of general accounts.

A. The NO_X authorized account representative of a general account may instruct the administrator to close the account by submitting a statement requesting deletion of the account from the NO_X Allowance Tracking System and by correctly submitting for recordation under 9 VAC 5-140-600 an allowance transfer of all NO_X allowances in the account to one or more other NO_X Allowance Tracking System accounts.

B. If a general account shows no activity for a period of a year or more and does not contain any NO_X allowances, the administrator may notify the NO_X authorized account representative for the account that the account shall be closed and deleted from the NO_X Allowance Tracking System following 20 business days after the notice is sent. The account shall be closed after the 20-day period unless before the end of the 20-day period the administrator receives a correctly submitted transfer of NO_X allowances into the account under 9 VAC 5-140-600 or a statement submitted by the NO_X authorized account representative demonstrating to the satisfaction of the administrator good cause as to why the account should not be closed.

9 VAC 5-140-580. (Reserved.)

9 VAC 5-140-590. (Reserved.)

Article 7.
NO_X Allowance Transfers.

9 VAC 5-140-600. Submission of NO_X allowance transfers.

The NO_X authorized account representatives seeking recordation of a NO_X allowance transfer shall submit the transfer to the administrator. To be considered correctly submitted, the NO_X allowance transfer shall include the following elements in a format specified by the administrator:

1. The numbers identifying both the transferor and transferee accounts;

2. A specification by serial number of each NO_X allowance to be transferred; and

3. The printed name and signature of the NO_X authorized account representative of the transferor account and the date signed.

9 VAC 5-140-610. EPA recordation.

A. Within five business days of receiving a NO_X allowance transfer, except as provided in subsection B of this section, the administrator shall record a NO_X allowance transfer by moving each NO_X allowance from the transferor account to the transferee account as specified by the request, provided that:

1. The transfer is correctly submitted under 9 VAC 5-140-600;

2. The transferor account includes each NO_X allowance identified by serial number in the transfer; and

3. The transfer meets all other requirements of this chapter.

B. A NO_X allowance transfer that is submitted for recordation following the NO_X allowance transfer deadline and that includes any NO_X allowances allocated for a control period prior to or the same as the control period to which the NO_X allowance transfer deadline applies shall not be recorded until after completion of the process of recordation of NO_X allowance allocations in 9 VAC 5-140-530 B.

C. Where a NO_X allowance transfer submitted for recordation fails to meet the requirements of subsection A of this section, the administrator shall not record such transfer.

9 VAC 5-140-620. Notification.

A. Within five business days of recordation of a NO_X allowance transfer under 9 VAC 5-140-610, the administrator shall notify each party to the transfer. Notice shall be given to the NO_X authorized account representatives of both the transferor and transferee accounts.

B. Within 10 business days of receipt of a NO_X allowance transfer that fails to meet the requirements of 9 VAC 5-140-610 A, the administrator shall notify the NO_X authorized account representatives of both accounts subject to the transfer of:

1. A decision not to record the transfer; and

2. The reasons for such nonrecordation.

C. Nothing in this section shall preclude the submission of a NO_X allowance transfer for recordation following notification of nonrecordation.

9 VAC 5-140-630 through 9 VAC 5-140-690. (Reserved.)

Article 8.
Monitoring and Reporting.

9 VAC 5-140-700. General requirements.

A. The owners and operators, and to the extent applicable, the NO_X authorized account representative of a NO_X Budget unit shall comply with the monitoring and reporting requirements as provided in this article and in Subpart H of 40 CFR Part 75. For purposes of complying with such requirements, the definitions in 9 VAC 5-140-20 and in 40 CFR 72.2 shall apply, and the terms "affected unit," "designated representative," and "continuous emission monitoring system" (or "CEMS") in 40 CFR Part 75 shall be replaced by the terms "NO_X Budget unit," "NO_X authorized account representative," and "continuous emission monitoring system" (or "CEMS"), respectively, as defined in 9 VAC 5-140-20.

B. The owner or operator of each NO_X Budget unit shall meet the following requirements. These provisions also apply to a unit for which an application for a NO_X Budget opt-in permit is submitted and not denied or withdrawn, as provided in Article 9 (9 VAC 5-140-800 et seq.) of this part:

1. Install all monitoring systems required under this article for monitoring NO_X mass. This includes all systems

required to monitor NO_X emission rate, NO_X concentration, heat input, and flow, in accordance with 40 CFR 75.72 and 40 CFR 75.76.

2. Install all monitoring systems for monitoring heat input, if required under 9 VAC 5-140-760 for developing NO_X allowance allocations.

3. Successfully complete all certification tests required under 9 VAC 5-140-710 and meet all other provisions of this article and 40 CFR Part 75 applicable to the monitoring systems under subdivisions 1 and 2 of this subsection.

4. Record, and report data from the monitoring systems under subdivisions 1 and 2 of this subsection.

C. The owner or operator shall meet the requirements of subdivisions B 1 through B 3 of this section on or before the following dates and shall record and report data on and after the following dates:

1. NO_X Budget units for which the owner or operator intends to apply for early reduction credits under 9 VAC 5-140-430 shall comply with the requirements of this article by May 1, 2001.

2. Except for NO_X Budget units under subdivision 1 of this subsection, NO_X Budget units under 9 VAC 5-140-40 that commence operation before January 1, 2002, shall comply with the requirements of this article by May 1, 2003.

3. NO_X Budget units under 9 VAC 5-140-40 that commence operation on or after January 1, 2002, and that report on an annual basis under 9 VAC 5-140-740 D shall comply with the requirements of this article by the later of the following dates:

a. May 1, 2003; or

b. The earlier of:

(1) 180 days after the date on which the unit commences operation; or

(2) For units under 9 VAC 5-140-40 A 1, 90 days after the date on which the unit commences commercial operation.

4. NO_X Budget units under 9 VAC 5-140-40 that commence operation on or after January 1, 2002, and that report on a control season basis under 9 VAC 5-140-740 D shall comply with the requirements of this article by the later of the following dates:

a. The earlier of:

(1) 180 days after the date on which the unit commences operation; or

(2) For units under 9 VAC 5-140-40 A 1, 90 days after the date on which the unit commences commercial operation.

b. However, if the applicable deadline under subdivision 4 a of this subsection does not occur during a control period, May 1; immediately following the date determined in accordance with subdivision 4 a of this subsection.

5. For a NO_X Budget unit with a new stack or flue for which construction is completed after the applicable deadline under subdivision 1, 2, or 3 of this subsection or Article 9 (9 VAC 5-140-800 et seq.) of this part:

a. 90 days after the date on which emissions first exit to the atmosphere through the new stack or flue;

b. However, if the unit reports on a control season basis under 9 VAC 5-140-740 D and the applicable deadline under subdivision 5 a of this subsection does not occur during the control period, May 1 immediately following the applicable deadline in subdivision 5 a of this subsection.

6. For a unit for which an application for a NO_X Budget opt in permit is submitted and not denied or withdrawn, the compliance dates specified under Article 9 (9 VAC 5-140-800 et seq.) of this part.

D. 1. The owner or operator of a NO_X Budget unit that misses the certification deadline under subdivision C 1 of this section is not eligible to apply for early reduction credits. The owner or operator of the unit becomes subject to the certification deadline under subdivision C 2 of this section.

2. The owner or operator of a NO_X Budget under subdivisions C 3 or C 4 of this section shall determine, record and report NO_X mass, heat input (if required for purposes of allocations) and any other values required to determine NO_X mass (e.g. NO_X emission rate and heat input or NO_X concentration and stack flow) using the provisions of 40 CFR 75.70(g), from the date and hour that the unit starts operating until all required certification tests are successfully completed.

E. 1. No owner or operator of a NO_X Budget unit or a non-NO_X Budget unit monitored under 40 CFR 75.72(b)(2)(ii) shall use any alternative monitoring system, alternative reference method, or any other alternative for the required continuous emission monitoring system without having obtained prior written approval in accordance with 9 VAC 5-140-750.

2. No owner or operator of a NO_X Budget unit or a non-NO_X Budget unit monitored under 40 CFR 75.72(b)(2)(ii) shall operate the unit so as to discharge, or allow to be discharged, NO_X emissions to the atmosphere without accounting for all such emissions in accordance with the applicable provisions of this article and 40 CFR Part 75 except as provided for in 40 CFR 75.74.

3. No owner or operator of a NO_X Budget unit or a non-NO_X Budget unit monitored under 40 CFR 75.72(b)(2)(ii) shall disrupt the continuous emission monitoring system, any portion thereof, or any other approved emission monitoring method, and thereby avoid monitoring and recording NO_X mass emissions discharged into the atmosphere, except for periods of recertification or periods when calibration, quality assurance testing, or maintenance is performed in accordance with the applicable provisions of this article and 40 CFR Part 75 except as provided for in 40 CFR 75.74.

4. No owner or operator of a NO_X Budget unit or a non-NO_X Budget unit monitored under 40 CFR 75.72(b)(2)(ii) shall retire or permanently discontinue use of the continuous

emission monitoring system, any component thereof, or any other approved emission monitoring system under this article, except under any one of the following circumstances:

a. During the period that the unit is covered by a retired unit exemption under 9 VAC 5-140-50 that is in effect;

b. The owner or operator is monitoring emissions from the unit with another certified monitoring system approved, in accordance with the applicable provisions of this article and 40 CFR Part 75, by the permitting authority for use at that unit that provides emission data for the same pollutant or parameter as the retired or discontinued monitoring system; or

c. The NO_X authorized account representative submits notification of the date of certification testing of a replacement monitoring system in accordance with 9 VAC 5-140-710 B 2.

9 VAC 5-140-710. Initial certification and recertification procedures.

A. The owner or operator of a NO_X Budget unit that is subject to an acid rain emissions limitation shall comply with the initial certification and recertification procedures of 40 CFR Part 75, except that:

1. If, prior to January 1, 1998, the administrator approved a petition under 40 CFR 75.17(a) or (b) for apportioning the NO_X emission rate measured in a common stack or a petition under 40 CFR 75.66 for an alternative to a requirement in 40 CFR 75.17, the NO_X authorized account representative shall resubmit the petition to the administrator under 9 VAC 5-140-750 A to determine if the approval applies under the NO_X Budget Trading Program.

2. For any additional CEMS required under the common stack provisions in 40 CFR 75.72, or for any NO_X concentration CEMS used under the provisions of 40 CFR 75.71(a)(2), the owner or operator shall meet the requirements of subsection B of this section.

B. The owner or operator of a NO_X Budget unit that is not subject to an acid rain emissions limitation shall comply with the following initial certification and recertification procedures, except that the owner or operator of a unit that qualifies to use the low mass emissions excepted monitoring methodology under 40 CFR 75.19 shall also meet the requirements of subsection C of this section and the owner or operator of a unit that qualifies to use an alternative monitoring system under Subpart E of 40 CFR Part 75 shall also meet the requirements of subsection D of this section. The owner or operator of a NO_X Budget unit that is subject to an acid rain emissions limitation, but requires additional CEMS under the common stack provisions in 40 CFR 75.72, or that uses a NO_X concentration CEMS under 40 CFR 75.71(a)(2) also shall comply with the following initial certification and recertification procedures.

1. The owner or operator shall ensure that each monitoring system required by Subpart H of 40 CFR Part 75 (that includes the automated data acquisition and handling system) successfully completes all of the initial certification testing required under 40 CFR 75.20. The owner or operator shall ensure that all applicable certification tests are successfully completed by the deadlines specified in 9 VAC 5-140-700 C. In addition, whenever the owner or operator installs a monitoring system in order to meet the requirements of this chapter in a location where no such monitoring system was previously installed, initial certification according to 40 CFR 75.20 is required.

2. Whenever the owner or operator makes a replacement, modification, or change in a certified monitoring system that the administrator or the permitting authority determines significantly affects the ability of the system to accurately measure or record NO_X mass emissions or heat input or to meet the requirements of 40 CFR 75.21 or Appendix B to 40 CFR Part 75, the owner or operator shall recertify the monitoring system according to 40 CFR 75.20(b). Furthermore, whenever the owner or operator makes a replacement, modification, or change to the flue gas handling system or the unit's operation that the administrator or the permitting authority determines to significantly change the flow or concentration profile, the owner or operator shall recertify the continuous emissions monitoring system according to 40 CFR 75.20(b). Examples of changes that require recertification include: replacement of the analyzer, change in location or orientation of the sampling probe or site, or changing of flow rate monitor polynomial coefficients.

3. a. The NO_X authorized account representative shall submit to the permitting authority, the appropriate EPA Regional Office and the permitting authority a written notice of the dates of certification in accordance with 9 VAC 5-140-730.

b. The NO_X authorized account representative shall submit to the permitting authority a certification application for each monitoring system required under Subpart H of 40 CFR Part 75. A complete certification application shall include the information specified in Subpart H of 40 CFR Part 75.

c. Except for units using the low mass emission excepted methodology under 40 CFR 75.19, the provisional certification date for a monitor shall be determined using the procedures set forth in 40 CFR 75.20(a)(3). A provisionally certified monitor may be used under the NO_X Budget Trading Program for a period not to exceed 120 days after receipt by the permitting authority of the complete certification application for the monitoring system or component thereof under subdivision 3 b of this subsection. Data measured and recorded by the provisionally certified monitoring system or component thereof, in accordance with the requirements of 40 CFR Part 75, shall be considered valid quality-assured data (retroactive to the date and time of provisional certification), provided that the permitting authority does not invalidate the provisional certification by issuing a notice of disapproval within 120 days of receipt of the complete certification application by the permitting authority.

d. The permitting authority shall issue a written notice of approval or disapproval of the certification application to the owner or operator within 120 days of receipt of the

complete certification application under subdivision 3 b of this subsection. In the event the permitting authority does not issue such a notice within such 120-day period, each monitoring system that meets the applicable performance requirements of 40 CFR Part 75 and is included in the certification application shall be deemed certified for use under the NO_X Budget Trading Program.

(1) If the certification application is complete and shows that each monitoring system meets the applicable performance requirements of 40 CFR Part 75, then the permitting authority shall issue a written notice of approval of the certification application within 120 days of receipt.

(2) A certification application shall be considered complete when all of the applicable information required to be submitted under subdivision 3 b of this subsection has been received by the permitting authority. If the certification application is not complete, then the permitting authority shall issue a written notice of incompleteness that sets a reasonable date by which the NO_X authorized account representative shall submit the additional information required to complete the certification application. If the NO_X authorized account representative does not comply with the notice of incompleteness by the specified date, then the permitting authority may issue a notice of disapproval under subdivision 3 d (3) of this subsection.

(3) If the certification application shows that any monitoring system or component thereof does not meet the performance requirements of this chapter, or if the certification application is incomplete and the requirement for disapproval under subdivision 3 d (2) of this subsection has been met, the permitting authority shall issue a written notice of disapproval of the certification application. Upon issuance of such notice of disapproval, the provisional certification is invalidated by the permitting authority and the data measured and recorded by each uncertified monitoring system or component thereof shall not be considered valid quality-assured data beginning with the date and hour of provisional certification. The owner or operator shall follow the procedures for loss of certification in subdivision 3 e of this subsection for each monitoring system or component thereof that is disapproved for initial certification.

(4) The permitting authority may issue a notice of disapproval of the certification status of a monitor in accordance with 9 VAC 5-140-720 B.

e. If the permitting authority issues a notice of disapproval of a certification application under subdivision 3 d (3) of this subsection or a notice of disapproval of certification status under subdivision 3 d (4) of this subsection, then:

(1) The owner or operator shall substitute the following values, for each hour of unit operation during the period of invalid data beginning with the date and hour of provisional certification and continuing until the time, date, and hour specified under 40 CFR 75.20(a)(5)(i):

(a) For units using or intending to monitor for NO_X emission rate and heat input or for units using the low mass emission excepted methodology under 40 CFR 75.19, the maximum potential NO_X emission rate and the maximum potential hourly heat input of the unit.

(b) For units intending to monitor for NO_X mass emissions using a NO_X pollutant concentration monitor and a flow monitor, the maximum potential concentration of NO_X and the maximum potential flow rate of the unit under section 2.1 of Appendix A of 40 CFR Part 75;

(2) The NO_X authorized account representative shall submit a notification of certification retest dates and a new certification application in accordance with subdivisions 3 a and b of this subsection; and

(3) The owner or operator shall repeat all certification tests or other requirements that were failed by the monitoring system, as indicated in the permitting authority's notice of disapproval, no later than 30 unit operating days after the date of issuance of the notice of disapproval.

C. The owner or operator of a gas-fired or oil-fired unit using the low mass emissions excepted methodology under 40 CFR 75.19 shall meet the applicable general operating requirements of 40 CFR 75.10, the applicable requirements of 40 CFR 75.19, and the applicable certification requirements of this section, except that the excepted methodology shall be deemed provisionally certified for use under the NO_X Budget Trading Program, as of the following dates:

1. The following requirements shall apply to units that are reporting on an annual basis under 9 VAC 5-140-740 D;

a. For a unit that has commences operation before its compliance deadline under subsection B of this section, from January 1 of the year following submission of the certification application for approval to use the low mass emissions excepted methodology under 40 CFR 75.19 until the completion of the period for the permitting authority review; or

b. For a unit that commences operation after its compliance deadline under subsection B of this section, the date of submission of the certification application for approval to use the low mass emissions excepted methodology under 40 CFR 75.19 until the completion of the period for permitting authority review, or

2. The following requirements shall apply to units that are reporting on a control period basis under 9 VAC 5-140-740 D:

a. For a unit that commenced operation before its compliance deadline under subsection B of this section, where the certification application is submitted before May 1, from May 1 of the year of the submission of the certification application for approval to use the low mass emissions excepted methodology under 40 CFR 75.19 until the completion of the period for the permitting authority review; or

b. For a unit that commenced operation before its compliance deadline under subsection B of this section, where the certification application is submitted after May 1, from May 1 of the year following submission of the certification application for approval to use the low mass emissions excepted methodology under 40 CFR 75.19 until the completion of the period for the permitting authority review; or

c. For a unit that commences operation after its compliance deadline under subsection B of this section, where the unit commences operation before May 1, from May 1 of the year that the unit commenced operation, until the completion of the period for the permitting authority's review.

d. For a unit that has not operated after its compliance deadline under subsection B of this section, where the certification application is submitted after May 1, but before October 1, from the date of submission of a certification application for approval to use the low mass emissions excepted methodology under 40 CFR 75.19 until the completion of the period for the permitting authority's review.

D. The NO_X authorized account representative representing the owner or operator of each unit applying to monitor using an alternative monitoring system approved by the administrator and, if applicable, the permitting authority under Subpart E of 40 CFR Part 75 shall apply for certification to the permitting authority prior to use of the system under the NO_X Trading Program. The NO_X authorized account representative shall apply for recertification following a replacement, modification or change according to the procedures in subsection B of this section. The owner or operator of an alternative monitoring system shall comply with the notification and application requirements for certification according to the procedures specified in subdivision B 3 of this section and 40 CFR 75.20(f).

9 VAC 5-140-720. Out of control periods.

A. Whenever any monitoring system fails to meet the quality assurance requirements of Appendix B of 40 CFR Part 75, data shall be substituted using the applicable procedures in Subpart D, Appendix D, or Appendix E of 40 CFR Part 75.

B. Whenever both an audit of a monitoring system and a review of the initial certification or recertification application reveal that any system or component should not have been certified or recertified because it did not meet a particular performance specification or other requirement under 9 VAC 5-140-710 or the applicable provisions of 40 CFR Part 75, both at the time of the initial certification or recertification application submission and at the time of the audit, the permitting authority shall issue a notice of disapproval of the certification status of such system or component. For the purposes of this subsection an audit shall be either a field audit or an audit of any information submitted to the permitting authority or the administrator. By issuing the notice of disapproval, the permitting authority revokes prospectively the certification status of the system or component. The data measured and recorded by the system or component shall not be considered valid quality-assured data from the date of issuance of the notification of the revoked certification status until the date and time that the owner or operator completes subsequently approved initial certification or recertification tests. The owner or operator shall follow the initial certification or recertification procedures in 9 VAC 5-140-710 for each disapproved system.

9 VAC 5-140-730. Notifications.

The NO_X authorized account representative for a NO_X Budget unit shall submit written notice to the permitting authority and the administrator in accordance with 40 CFR 75.61, except that if the unit is not subject to an acid rain emissions limitation, the notification is only required to be sent to the permitting authority.

9 VAC 5-140-740. Recordkeeping and reporting.

A. 1. The NO_X authorized account representative shall comply with all recordkeeping and reporting requirements in this section and with the requirements of 9 VAC 5-140-100 E.

2. If the NO_X authorized account representative for a NO_X Budget unit subject to an acid rain emission limitation who signed and certified any submission that is made under Subpart F or G of 40 CFR Part 75 and that includes data and information required under this article or Subpart H of 40 CFR Part 75 is not the same person as the designated representative or the alternative designated representative for the unit under 40 CFR Part 72, the submission shall also be signed by the designated representative or the alternative designated representative.

B. 1. The owner or operator of a unit subject to an acid rain emissions limitation shall comply with requirements of 40 CFR 75.62, except that the monitoring plan shall also include all of the information required by Subpart H of 40 CFR Part 75.

2. The owner or operator of a unit that is not subject to an acid rain emissions limitation shall comply with requirements of 40 CFR 75.62, except that the monitoring plan is only required to include the information required by Subpart H of 40 CFR Part 75.

C. The NO_X authorized account representative shall submit an application to the permitting authority within 45 days after completing all initial certification or recertification tests required under 9 VAC 5-140-710 including the information required under Subpart H of 40 CFR Part 75.

D. The NO_X authorized account representative shall submit quarterly reports, as follows:

1. If a unit is subject to an acid rain emission limitation or if the owner or operator of the NO_X budget unit chooses to meet the annual reporting requirements of this article, the NO_X authorized account representative shall submit a quarterly report for each calendar quarter beginning with:

a. For units that elect to comply with the early reduction credit provisions under 9 VAC 5-140-430, the calendar quarter that includes the date of initial provisional certification under 9 VAC 5-140-710 B 3 c. Data shall be reported from the date and hour corresponding to the date and hour of provisional certification; or

b. For units commencing operation prior to May 1, 2003 that are not required to certify monitors by May 1, 2001 under 9 VAC 5-140-700 C 1, the earlier of the calendar quarter that includes the date of initial provisional certification under 9 VAC 5-140-710 B 3 c or, if the certification tests are not completed by May 1, 2003, the partial calendar quarter from May 1, 2003, through June 30, 2003. Data shall be recorded and reported from the earlier of the date and hour corresponding to the date and hour of provisional certification or the first hour on May 1, 2003; or

c. For a unit that commences operation after May 1, 2003, the calendar quarter in which the unit commences operation, data shall be reported from the date and hour corresponding to when the unit commenced operation.

2. If a NO_X budget unit is not subject to an acid rain emission limitation, then the NO_X authorized account representative shall either:

a. Meet all of the requirements of 40 CFR Part 75 related to monitoring and reporting NO_X mass emissions during the entire year and meet the reporting deadlines specified in subdivision 1 of this subsection; or

b. Submit quarterly reports only for the periods from the earlier of May 1 or the date and hour that the owner or operator successfully completes all of the recertification tests required under 40 CFR 75.74(d)(3) through September 30 of each year in accordance with the provisions of 40 CFR 75.74(b). The NO_X authorized account representative shall submit a quarterly report for each calendar quarter, beginning with:

(1) For units that elect to comply with the early reduction credit provisions under 9 VAC 5-140-430, the calendar quarter that includes the date of initial provisional certification under 9 VAC 5-140-710 B 3 c. Data shall be reported from the date and hour corresponding to the date and hour of provisional certification;

(2) For units commencing operation prior to May 1, 2003, that are not required to certify monitors by May 1, 2001, under 9 VAC 5-140-700 C 1, the earlier of the calendar quarter that includes the date of initial provisional certification under 9 VAC 5-140-710 B 3 c, or if the certification tests are not completed by May 1, 2003, the partial calendar quarter from May 1, 2003 through June 30, 2003. Data shall be reported from the earlier of the date and hour corresponding to the date and hour of provisional certification or the first hour of May 1, 2003;

(3) For units that commence operation after May 1, 2003, during the control period, the calendar quarter in which the unit commences operation. Data shall be reported from the date and hour corresponding to when the unit commenced operation;

(4) For units that commence operation after May 1, 2003, and before May 1 of the year in which the unit commences operation, the earlier of the calendar quarter that includes the date of initial provisional certification under 9 VAC 5-140-710 B 3 c or, if the certification tests are not completed by May 1 of the year in which the unit commences operation, May 1 of the year in which the unit commences operation. Data shall be reported from the earlier of the date and hour corresponding to the date and hour of provisional certification or the first hour of May 1 of the year after the unit commences operation; or

(5) For units that commence operation after May 1, 2003, and after September 30 of the year in which the unit commences operation, the earlier of the calendar quarter that includes the date of initial provisional certification under 9 VAC 5-140-710 B 3 c or, if the certification tests are not completed by May 1 of the year after the unit commences operation, May 1 of the year after the unit commences operation. Data shall be reported from the earlier of the date and hour corresponding to the date and hour of provisional certification or the first hour of May 1 of the year after the unit commences operation.

3. The NO_X authorized account representative shall submit each quarterly report to the administrator within 30 days following the end of the calendar quarter covered by the report. Quarterly reports shall be submitted in the manner specified in Subpart H of 40 CFR Part 75 and 40 CFR 75.64.

a. For units subject to an acid rain emissions limitation, quarterly reports shall include all of the data and information required in Subpart H of 40 CFR Part 75 for each NO_X Budget unit (or group of units using a common stack) as well as information required in Subpart G of 40 CFR Part 75.

b. For units not subject to an acid rain emissions limitation, quarterly reports are only required to include all of the data and information required in Subpart H of 40 CFR Part 75 for each NO_X Budget unit (or group of units using a common stack).

4. The NO_X authorized account representative shall submit to the administrator a compliance certification in support of each quarterly report based on reasonable inquiry of those persons with primary responsibility for ensuring that all of the unit's emissions are correctly and fully monitored. The certification shall state that:

a. The monitoring data submitted were recorded in accordance with the applicable requirements of this article and 40 CFR Part 75, including the quality assurance procedures and specifications; and

b. For a unit with add-on NO_X emission controls and for all hours where data are substituted in accordance with 40 CFR 75.34(a)(1), the add-on emission controls were operating within the range of parameters listed in the monitoring plan and the substitute values do not systematically underestimate NO_X emissions; and

c. For a unit that is reporting on a control period basis under this subsection the NO_X emission rate and NO_X concentration values substituted for missing data under Subpart D of 40 CFR Part 75 are calculated using only

values from a control period and do not systematically underestimate NO_X emissions.

9 VAC 5-140-750. Petitions.

A. The NO_X authorized account representative of a NO_X Budget unit that is subject to an acid rain emissions limitation may submit a petition under 40 CFR 75.66 to the administrator requesting approval to apply an alternative to any requirement of this article.

1. Application of an alternative to any requirement of this article is in accordance with this article only to the extent that the petition is approved by the administrator, in consultation with the permitting authority.

2. Notwithstanding subdivision 1 of this subsection, if the petition requests approval to apply an alternative to a requirement concerning any additional CEMS required under the common stack provisions of 40 CFR 75.72, the petition is governed by subsection B of this section.

B. The NO_X authorized account representative of a NO_X Budget unit that is not subject to an acid rain emissions limitation may submit a petition under 40 CFR 75.66 to the permitting authority and the administrator requesting approval to apply an alternative to any requirement of this article.

1. The NO_X authorized account representative of a NO_X Budget unit that is subject to an acid rain emissions limitation may submit a petition under 40 CFR 75.66 to the permitting authority and the administrator requesting approval to apply an alternative to a requirement concerning any additional CEMS required under the common stack provisions of 40 CFR 75.72 or a NO_X concentration CEMS used under 40 CFR 75.71(a)(2).

2. Application of an alternative to any requirement of this article is in accordance with this article only to the extent the petition under this subsection is approved by both the permitting authority and the administrator.

9 VAC 5-140-760. Additional requirements to provide heat input data for allocations purposes.

A. The owner or operator of a unit that elects to monitor and report NO_X mass emissions using a NO_X concentration system and a flow system shall also monitor and report heat input at the unit level using the procedures set forth in 40 CFR Part 75.

B. The owner or operator of a unit that monitor and report NO_X mass emissions using a NO_X concentration system and a flow system shall also monitor and report heat input at the unit level using the procedures set forth in 40 CFR Part 75 for any source that is applying for early reduction credits under 9 VAC 5-140-430.

9 VAC 5-140-770 through 9 VAC 5-140-790. (Reserved.)

Article 9.
Individual Unit Opt-ins.

9 VAC 5-140-800. Applicability.

A unit that is not a NO_X Budget unit under 9 VAC 5-140-40, vents all of its emissions to a stack, and is operating may qualify under this article to become a NO_X Budget opt-in source. A unit that is a NO_X Budget unit, is covered by a retired unit exemption under 9 VAC 5-140-50 that is in effect, or is not operating is not eligible to become a NO_X Budget opt-in source.

9 VAC 5-140-810. General.

Except otherwise as provided in this chapter, a NO_X Budget opt-in source shall be treated as a NO_X Budget unit for purposes of applying Articles 1 (9 VAC 5-140-10 et seq.) through 8 (9 VAC 5-140-700 et seq.) of this part.

9 VAC 5-140-820. NO_X authorized account representative.

A unit for which an application for a NO_X Budget opt-in permit is submitted and not denied or withdrawn, or a NO_X Budget opt-in source located at the same source as one or more NO_X Budget units, shall have the same NO_X authorized account representative as such NO_X Budget units.

9 VAC 5-140-830. Applying for NO_X Budget opt-in permit.

A. In order to apply for an initial NO_X Budget opt-in permit, the NO_X authorized account representative of a unit qualified under 9 VAC 5-140-800 may submit to the permitting authority at any time, except as provided under 9 VAC 5-140-860 G:

1. A complete NO_X Budget permit application under 9 VAC 5-140-220;

2. A monitoring plan submitted in accordance with Article 8 (9 VAC 5-140-700 et seq.) of this part; and

3. A complete account certificate of representation under 9 VAC 5-140-130, if no NO_X authorized account representative has been previously designated for the unit.

B. The NO_X authorized account representative of a NO_X Budget opt-in source shall submit a complete NO_X Budget permit application under 9 VAC 5-140-220 to renew the NO_X Budget opt-in permit in accordance with 9 VAC 5-140-210 C and, if applicable, an updated monitoring plan in accordance with Article 8 (9 VAC 5-140-700 et seq.) of this part.

9 VAC 5-140-840. Opt-in process.

The permitting authority shall issue or deny a NO_X Budget opt-in permit for a unit for which an initial application for a NO_X Budget opt-in permit under 9 VAC 5-140-830 is submitted, in accordance with 9 VAC 5-140-200 and the following:

1. The permitting authority shall determine, on an interim basis, the sufficiency of the monitoring plan accompanying the initial application for a NO_X Budget opt-in permit under 9 VAC 5-140-830. A monitoring plan is sufficient, for purposes of interim review, if the plan appears to contain information demonstrating that the NO_X emissions rate and heat input of the unit are monitored and reported in accordance with Article 8 (9 VAC 5-140-700 et seq.) of this part. A determination of sufficiency shall not be construed as acceptance or approval of the unit's monitoring plan.

2. If the permitting authority determines that the unit's monitoring plan is sufficient under subdivision 1 of this section and after completion of monitoring system certification under Article 8 (9 VAC 5-140-700 et seq.) of

this part, the NO_X emissions rate and the heat input of the unit shall be monitored and reported in accordance with Article 8 (9 VAC 5-140-700 et seq.) of this part for one full control period during which monitoring system availability is not less than 90% and during which the unit is in full compliance with any applicable state or federal emissions or emissions-related requirements. Solely for purposes of applying the requirements in the prior sentence, the unit shall be treated as a "NO_X Budget unit" prior to issuance of a NO_X Budget opt-in permit covering the unit.

3. Based on the information monitored and reported under subdivision 2 of this section, the unit's baseline heat rate shall be calculated as the unit's total heat input (in mmBtu) for the control period and the unit's baseline NO_X emissions rate shall be calculated as the unit's total NO_X emissions (in lb) for the control period divided by the unit's baseline heat rate.

4. After calculating the baseline heat input and the baseline NO_X emissions rate for the unit under subdivision 3 of this section, the permitting authority shall serve a draft NO_X Budget opt-in permit on the NO_X authorized account representative of the unit.

5. Within 20 days after the issuance of the draft NO_X Budget opt-in permit, the NO_X authorized account representative of the unit shall submit to the permitting authority a confirmation of the intention to opt in the unit or a withdrawal of the application for a NO_X Budget opt-in permit under 9 VAC 5-140-830. The permitting authority shall treat the failure to make a timely submission as a withdrawal of the NO_X Budget opt-in permit application.

6. If the NO_X authorized account representative confirms the intention to opt-in the unit under subdivision 5 of this section, the permitting authority shall issue the draft NO_X Budget opt-in permit in accordance with 9 VAC 5-140-200.

7. Notwithstanding subdivisions 1 through 6 of this section, if at any time before issuance of a draft NO_X Budget opt-in permit for the unit, the permitting authority determines that the unit does not qualify as a NO_X Budget opt-in source under 9 VAC 5-140-800, the permitting authority shall issue a draft denial of a NO_X Budget opt-in permit for the unit in accordance with 9 VAC 5-140-200.

8. A NO_X authorized account representative of a unit may withdraw its application for a NO_X Budget opt-in permit under 9 VAC 5-140-830 at any time prior to the issuance of the final NO_X Budget opt-in permit. Once the application for a NO_X Budget opt-in permit is withdrawn, a NO_X authorized account representative wanting to reapply shall submit a new application for a NO_X Budget permit under 9 VAC 5-140-830.

9. The effective date of the initial NO_X Budget opt-in permit shall be May 1 of the first control period starting after the issuance of the initial NO_X Budget opt-in permit by the permitting authority. The unit shall be a NO_X Budget opt-in source and a NO_X Budget unit as of the effective date of the initial NO_X Budget opt-in permit.

9 VAC 5-140-850. NO_X Budget opt-in permit contents.

A. Each NO_X Budget opt-in permit (including any draft or proposed NO_X Budget opt-in permit, if applicable) shall contain all elements required for a complete NO_X Budget opt-in permit application under 9 VAC 5-140-220 as approved or adjusted by the permitting authority.

B. Each NO_X Budget opt-in permit is deemed to incorporate automatically the definitions of terms under 9 VAC 5-140-20 and, upon recordation by the administrator under Article 6 (9 VAC 5-140-500 et seq.), Article 7 (9 VAC 5-140-600 et seq.), or Article 9 (9 VAC 5-140-800 et seq.) of this part, every allocation, transfer, or deduction of NO_X allowances to or from the compliance accounts of each NO_X Budget opt-in source covered by the NO_X Budget opt-in permit or the overdraft account of the NO_X Budget source where the NO_X Budget opt-in source is located.

9 VAC 5-140-860. Withdrawal from NO_X Budget Trading Program.

A. To withdraw from the NO_X Budget Trading Program, the NO_X authorized account representative of a NO_X Budget opt-in source shall submit to the permitting authority a request to withdraw effective as of a specified date prior to May 1 or after September 30. The submission shall be made no later than 90 days prior to the requested effective date of withdrawal.

B. Before a NO_X Budget opt-in source covered by a request under subsection A of this section may withdraw from the NO_X Budget Trading Program and the NO_X Budget opt-in permit may be terminated under subsection E of this section, the following conditions shall be met:

1. For the control period immediately before the withdrawal is to be effective, the NO_X authorized account representative shall submit or shall have submitted to the permitting authority an annual compliance certification report in accordance with 9 VAC 5-140-300.

2. If the NO_X Budget opt-in source has excess emissions for the control period immediately before the withdrawal is to be effective, the administrator shall deduct or has deducted from the NO_X Budget opt-in source's compliance account, or the overdraft account of the NO_X Budget source where the NO_X Budget opt-in source is located, the full amount required under 9 VAC 5-140-540 D for the control period.

3. After the requirements for withdrawal under subdivisions 1 and 2 of this subsection are met, the administrator shall deduct from the NO_X Budget opt-in source's compliance account, or the overdraft account of the NO_X Budget source where the NO_X Budget opt-in source is located, NO_X allowances equal in number to and allocated for the same or a prior control period as any NO_X allowances allocated to that source under 9 VAC 5-140-880 for any control period for which the withdrawal is to be effective. The administrator shall close the NO_X Budget opt-in source's compliance account and shall establish, and transfer any remaining allowances to, a new general account for the owners and operators of the NO_X Budget opt-in source. The NO_X authorized account representative for the NO_X

Budget opt-in source shall become the NO_X authorized account representative for the general account.

C. A NO_X Budget opt-in source that withdraws from the NO_X Budget Trading Program shall comply with all requirements under the NO_X Budget Trading Program concerning all years for which such NO_X Budget opt-in source was a NO_X Budget opt-in source, even if such requirements arise or shall be complied with after the withdrawal takes effect.

D. 1. After the requirements for withdrawal under subsections A and B of this section are met (including deduction of the full amount of NO_X allowances required), the permitting authority shall issue a notification to the NO_X authorized account representative of the NO_X Budget opt-in source of the acceptance of the withdrawal of the NO_X Budget opt-in source as of a specified effective date that is after such requirements have been met and that is prior to May 1 or after September 30.

2. If the requirements for withdrawal under subsections A and B of this section are not met, the permitting authority shall issue a notification to the NO_X authorized account representative of the NO_X Budget opt-in source that the NO_X Budget opt-in source's request to withdraw is denied. If the NO_X Budget opt-in source's request to withdraw is denied, the NO_X Budget opt-in source shall remain subject to the requirements for a NO_X Budget opt-in source.

E. After the permitting authority issues a notification under subdivision D 1 of this section that the requirements for withdrawal have been met, the permitting authority shall revise the NO_X Budget permit covering the NO_X Budget opt-in source to terminate the NO_X Budget opt-in permit as of the effective date specified under subdivision D 1 of this section. A NO_X Budget opt-in source shall continue to be a NO_X Budget opt-in source until the effective date of the termination.

F. If the permitting authority denies the NO_X Budget opt-in source's request to withdraw, the NO_X authorized account representative may submit another request to withdraw in accordance with subsections A and B of this section.

G. Once a NO_X Budget opt-in source withdraws from the NO_X Budget Trading Program and its NO_X Budget opt-in permit is terminated under this section, the NO_X authority account representative may not submit another application for a NO_X Budget opt-in permit under 9 VAC 5-140-830 for the unit prior to the date that is four years after the date on which the terminated NO_X Budget opt-in permit became effective.

9 VAC 5-140-870. Change in regulatory status.

A. When a NO_X Budget opt-in source becomes a NO_X Budget unit under 9 VAC 5-140-40, the NO_X authorized account representative shall notify in writing the permitting authority and the administrator of such change in the NO_X Budget opt-in source's regulatory status, within 30 days of such change.

B. Upon notification under subsection A of this section, the permitting authority and administrator shall take the following actions:

1. a. When the NO_X Budget opt-in source becomes a NO_X Budget unit under 9 VAC 5-140-40, the permitting authority shall revise the NO_X Budget opt-in source's NO_X Budget opt-in permit to meet the requirements of a NO_X Budget permit under 9 VAC 5-140-230 as of an effective date that is the date on which such NO_X Budget opt-in source becomes a NO_X Budget unit under 9 VAC 5-140-40.

b. (1) The administrator shall deduct from the compliance account for the NO_X Budget unit under subdivision 1 a of this subsection, or the overdraft account of the NO_X Budget source where the unit is located, NO_X allowances equal in number to and allocated for the same or a prior control period as:

(a) Any NO_X allowances allocated to the NO_X Budget unit (as a NO_X Budget opt-in source) under 9 VAC 5-140-880 for any control period after the last control period during which the unit's NO_X Budget opt-in permit was effective; and

(b) If the effective date of the NO_X Budget permit revision under subdivision 1 a of this subsection is during a control period, the NO_X allowances allocated to the NO_X Budget unit (as a NO_X Budget opt-in source) under 9 VAC 5-140-880 for the control period multiplied by the ratio of the number of days, in the control period, starting with the effective date of the permit revision under subdivision 1 a of this subsection, divided by the total number of days in the control period.

(2) The NO_X authorized account representative shall ensure that the compliance account of the NO_X Budget unit under subdivision 1 a of this subsection, or the overdraft account of the NO_X Budget source where the unit is located, includes the NO_X allowances necessary for completion of the deduction under subdivision 1 b (1) of this subsection. If the compliance account or overdraft account does not contain sufficient NO_X allowances, the administrator shall deduct the required number of NO_X allowances, regardless of the control period for which they were allocated, whenever NO_X allowances are recorded in either account.

c. For every control period during which the NO_X Budget permit revised under subdivision B 1 a of this subsection is effective, the NO_X Budget unit under subdivision 1 a of this subsection shall be treated, solely for purposes of NO_X allowance allocations under 9 VAC 5-140-420, as a unit that commenced operation on the effective date of the NO_X Budget permit revision under subdivision 1 a of this subsection and shall be allocated NO_X allowances under 9 VAC 5-140-420.

2. a. When the NO_X authorized account representative of a NO_X Budget opt-in source does not renew its NO_X Budget opt-in permit under 9 VAC 5-140-830 B, the administrator shall deduct from the NO_X Budget opt-in unit's compliance account, or the overdraft account of the NO_X Budget source where the NO_X Budget opt-in source is located, NO_X allowances equal in number to and allocated for the same or a prior control period as any NO_X allowances allocated to the NO_X Budget opt-in source under 9 VAC 5-140-880 for any control period

after the last control period for which the NO_X Budget opt-in permit is effective. The NO_X authorized account representative shall ensure that the NO_X Budget opt-in source's compliance account or the overdraft account of the NO_X Budget source where the NO_X Budget opt-in source is located includes the NO_X allowances necessary for completion of such deduction. If the compliance account or overdraft account does not contain sufficient NO_X allowances, the administrator shall deduct the required number of NO_X allowances, regardless of the control period for which they were allocated, whenever NO_X allowances are recorded in either account.

b. After the deduction under subdivision 2 a of this subsection is completed, the administrator shall close the NO_X Budget opt-in source's compliance account. If any NO_X allowances remain in the compliance account after completion of such deduction and any deduction under 9 VAC 5-140-540, the administrator shall close the NO_X Budget opt-in source's compliance account and shall establish, and transfer any remaining allowances to, a new general account for the owners and operators of the NO_X Budget opt-in source. The NO_X authorized account representative for the NO_X Budget opt-in source shall become the NO_X authorized account representative for the general account.

9 VAC 5-140-880. NO_X allowance allocations to opt-in units.

A. 1. By December 31 immediately before the first control period for which the NO_X Budget opt-in permit is effective, the permitting authority shall allocate NO_X allowances to the NO_X Budget opt-in source and submit to the administrator the allocation for the control period in accordance with subsection B of this section.

2. By no later than December 31, after the first control period for which the NO_X Budget opt-in permit is in effect, and December 31 of each year thereafter, the permitting authority shall allocate NO_X allowances to the NO_X Budget opt-in source, and submit to the administrator allocations for the next control period, in accordance with subsection B of this section.

B. For each control period for which the NO_X Budget opt-in source has an approved NO_X Budget opt-in permit, the NO_X Budget opt-in source shall be allocated NO_X allowances in accordance with the following procedures:

1. The heat input (in mmBtu) used for calculating NO_X allowance allocations shall be the lesser of:

a. The NO_X Budget opt-in source's baseline heat input determined pursuant to subdivision 3 of 9 VAC 5-140-840; or

b. The NO_X Budget opt-in source's heat input, as determined in accordance with Article 8 (9 VAC 5-140-700 et seq.) of this part, for the control period in the year prior to the year of the control period for which the NO_X allocations are being calculated.

2. The permitting authority shall allocate NO_X allowances to the NO_X Budget opt-in source in an amount equaling the heat input (in mmBtu) determined under subdivision 1 of this subsection multiplied by the lesser of:

a. The NO_X Budget opt-in source's baseline NO_X emissions rate (in lb/mmBtu) determined pursuant to subdivision 3 of 9 VAC 5-140-840; or

b. The most stringent state or federal NO_X emissions limitation applicable to the NO_X Budget opt-in source during the control period.

3. The permitting authority shall not allocate to any NO_X Budget opt-in source any NO_X allowances from the state trading program budget set forth in 9 VAC 5-140-900.

9 VAC 5-140-890. (Reserved.)

Article 10.
State Trading Program Budget and Compliance Supplement Pool.

9 VAC 5-140-900. State trading program budget.

For use in each control period for the years 2004 through 2013, the total number of NO_X tons apportioned to all NO_X Budget units is 24,298.

9 VAC 5-140-910. Compliance supplement pool budget for years 2004 and 2005.

For use in each control period for the years 2004 and 2005, the total number of NO_X tons apportioned to all NO_X Budget units for use as a compliance supplement pool is 6,990.

9 VAC 5-140-920. Total electric generating unit allocations.

For use in each control period for the years 2004 through 2013, the total number of NO_X tons apportioned to all NO_X Budget units under 9 VAC 5-140-40 A 1 is 21,614.

9 VAC 5-140-930. Total nonelectric generating unit allocations.

For use in each control period for the years 2004 through 2013, the total number of NO_X tons apportioned to all NO_X Budget units under 9 VAC 5-140-40 A 2 is 2,684.

9 VAC 5-140-940. Individual electric generating unit allocations.

For use in each control period for the years 2004 through 2013, the number of NO_X tons apportioned to each NO_X Budget unit under 9 VAC 5-140-40 A 1 is as follows:

Plant	*Plant_id*	*Point_id*	*NO_X Allocation*
VA POWER - BELLEMEADE	*50996*	*1*	*97*
VA POWER - BELLEMEADE	*50996*	*2*	*112*
VA POWER - BREMO BLUFF	*3796*	*3*	*174*
VA POWER - BREMO BLUFF	*3796*	*4*	*491*
VA POWER - CHESAPEAKE	*3803*	*1*	*378*

VA POWER - CHESAPEAKE	3803	2	392
VA POWER - CHESAPEAKE	3803	3	470
VA POWER - CHESAPEAKE	3803	4	725
ST. LAURENT PAPER	10017	ST_rp.	74
VA POWER - CHESTERFIELD	3797	--8	334
VA POWER - CHESTERFIELD	3797	3	294
VA POWER - CHESTERFIELD	3797	4	495
VA POWER - CHESTERFIELD	3797	5	978
VA POWER - CHESTERFIELD	3797	6	1711
VA POWER - CHESTERFIELD	3797	7	402
AEP - CLINCH RIVER	3775	1	696
AEP - CLINCH RIVER	3775	2	661
AEP - CLINCH RIVER	3775	3	730
VA POWER - CLOVER	7213	1	1313
VA POWER - CLOVER	7213	2	1421
COGENTRIX - HOPEWELL	10377	ST_ell	416
COGENTRIX - PORTSMOUTH	10071	ST_uth	452
COGENTRIX RICHMOND 1	54081	ST_d 1	392
COGENTRIX RICHMOND 2	54081	ST_d 2	272
COMMONWEALTH ATLANTIC LP	52087	GT_LP	216
VA POWER - DARBYTOWN	7212	--1	37
VA POWER - DARBYTOWN	7212	--2	36
VA POWER - DARBYTOWN	7212	--3	38
VA POWER - DARBYTOWN	7212	--4	37
DOSWELL #1	52019	CA_#1	203
DOSWELL #1	52019	CT_#1	225
DOSWELL #2	52019	CA_#2	232
DOSWELL #2	52019	CT_#2	225
AEP - GLEN LYN	3776	51	129
AEP - GLEN LYN	3776	52	140
AEP - GLEN LYN	3776	6	619
GORDONSVILLE ENERGY 1	54844	CA_e 1	101
GORDONSVILLE ENERGY 2	54844	CA_e 2	95
VA POWER - GRAVEL NECK	7032	--3	27
VA POWER - GRAVEL NECK	7032	--4	30
VA POWER - GRAVEL NECK	7032	--5	18
VA POWER - GRAVEL NECK	7032	--6	22
HOPEWELL COGEN, INC.	10633	CT_nc.	130
HOPEWELL COGEN, INC.	10633	CW_nc.	67
LG&E-WESTMORELAND ALTAVISTA	10773	1	23
LG&E-WESTMORELAND ALTAVISTA	10773	2	21
LG&E-WESTMORELAND HOPEWELL	10771	1	21
LG&E-WESTMORELAND HOPEWELL	10771	2	20
LG&E-WESTMORELAND SOUTHAMPTON	10774	1	29
LG&E-WESTMORELAND SOUTHAMPTON	10774	2	37
MECKLENBURG COGEN	52007	ST_urg	288
VA POWER - POSSUM POINT	3804	3	281
VA POWER - POSSUM POINT	3804	4	671
VA POWER - POSSUM POINT	3804	5	409
PEPCO -POTOMAC RIVER	3788	1	258
PEPCO - POTOMAC RIVER	3788	2	177
PEPCO -POTOMAC RIVER	3788	3	294
PEPCO - POTOMAC RIVER	3788	4	283
PEPCO - POTOMAC RIVER	3788	5	282
SEI BIRCHWOOD	12	1	410
DELMARVA P&L - TASLEY	3785	10	8
VA POWER – YORKTOWN	3809	1	491
VA POWER – YORKTOWN	3809	2	533
VA POWER – YORKTOWN	3809	3	971

9 VAC 5-140-950. Individual nonelectric generating unit allocations.

For use in each control period for the years 2004 through 2013, the number of NO_X tons apportioned to each NO_X Budget unit under 9 VAC 5-140-40 A 2 is as follows:

Plant	Plant_id	Point_id	NO_X Allocation (Tons per control period)
CELANESE ACETATE LLC (FORMERLY HOECHST CELANESE CORP)	0004	001	145
CELANESE ACETATE LLC (FORMERLY HOECHST CELANESE CORP)	0004	002	20
DAN RIVER INC (SCHOOLFIELD DIV)	0002	003	97
GEORGIA-PACIFIC - BIG ISLAND MILL	0003	002	98
GEORGIA-PACIFIC - BIG ISLAND MILL	0003	005	2
HONEYWELL INTERNATIONAL INC	0026	10B	98

HONEYWELL INTERNATIONAL INC	*0026*	*10C*	*143*
INTERNATIONAL PAPER - FRANKLIN (FORMERLY UNION CAMP CORP/FINE PAPER DIV)	*0006*	*017*	*71*
ST. LAURENT PAPER PRODUCTS CORP.	*0001*	*002*	*284*
WESTVACO CORP	*0003*	*001*	*810*
WESTVACO CORP	*0003*	*004*	*763*
WESTVACO CORP	*0003*	*005*	*148*
WESTVACO CORP	*0003*	*011*	*5*

PART II.
(Reserved.)

VA.R. Doc. No. R99-149; Filed June 27, 2001, 8:41 a.m.

VIRGINIA WASTE MANAGEMENT BOARD

Title of Regulation: **9 VAC 20-60-12 et seq. Virginia Hazardous Waste Management Regulations (amending 9 VAC 20-60-14, 9 VAC 20-60-17, 9 VAC 20-60-20, 9 VAC 20-60-30, 9 VAC 20-60-50, 9 VAC 20-60-70, 9 VAC 20-60-80, 9 VAC 20-60-124, 9 VAC 20-60-260, 9 VAC 20-60-261, 9 VAC 20-60-262, 9 VAC 20-60-264, 9 VAC 20-60-265, 9 VAC 20-60-270, 9 VAC 20-60-273, 9 VAC 20-60-315, 9 VAC 20-60-430, 9 VAC 20-60-440, 9 VAC 20-60-450, 9 VAC 20-60-480, 9 VAC 20-60-490, 9 VAC 20-60-1260, 9 VAC 20-60-1270, 9 VAC 20-60-1280, 9 VAC 20-60-1380, 9 VAC 20-60-1390, 9 VAC 20-60-1410, 9 VAC 20-60-1420, 9 VAC 20-60-1430, and 9 VAC 20-60-1505; adding 9 VAC 20-60-355 and 9 VAC 20-60-1285; repealing 9 VAC 20-60-60, Appendix 7.1, Part XI (9 VAC 20-60-960 through 9 VAC 20-60-1250, including Appendix 11.2), and Appendix 12.1).**

Statutory Authority: §§ 10.1-1402 and Article 4 (§ 10.1-1426 et seq.) of Chapter 14 of Title 10.1 of the Code of Virginia.

Public Hearing Date: August 15, 2001 - 11 a.m.
Public comments may be submitted until September 14, 2001.
(See Calendar of Events section for additional information)

Agency Contact: Robert G. Wickline, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4213, FAX (804) 698-4327, e-mail rgwickline@deq.state.va.us.

Basis: Section 10.1-1402 of the Virginia Waste Management Act and Chapter 11.1 (§ 10.1-1182 et seq.) of Title 10.1 of the Code of Virginia authorize the Virginia Waste Management Board to issue regulations as may be necessary to carry out its powers and duties required by the Act and consistent with the federal statutes and regulations. The hazardous waste management program, usually known as RCRA (for the enabling statute, the Resource Conservation and Recovery Act), is mandated on the federal level under the management of United States Environmental Protection Agency (USEPA). The USEPA authorizes qualifying states to operate state hazardous waste management programs, if they are at least as stringent as the federal program, in lieu of the federal program (see RCRA § 3006). Virginia's program, through Amendment 14, has been authorized by the USEPA.

The statutes imply that the legislature desires an equivalent Virginia program that is no more restrictive than the federal program except where substantial reason exists for additional prudence. There are a few requirements in the Virginia regulations that are more restrictive than the federal regulations. These are adjustments of the federal regulations to accommodate the particular situation in Virginia. For example, by statute fees may be collected for review of permit applications. Also, underground injection of hazardous waste is not allowed in Virginia because it does not have salt domes or appropriate geological structures to support such a facility. However, these are not new or amended requirements. The proposed amendments reinstate the annual reporting requirement for transporters, which is not required by federal law or regulation. Also, the use of "hazardous constituent" as used in 40 CFR 294.93 is expanded to include 40 CFR 294, Appendix IX constituents, and 40 CFR 264.94(a)(2) is changed to include current primary drinking water standards rather than an out-dated table included in the federal text.

In transforming Virginia regulations into the incorporation-by-reference format and thus directly adopting federal text verbatim, the difference between federal and state regulations has been reduced. Incorporation of the federal provision on permitting as a part of Amendment 15A improves this parallelism between federal and state regulations regarding hazardous waste management. This course of action was recommended by Virginia industry and should ease the burden on industries with multi-state holdings, because Virginia regulations will more closely resemble the federal regulations with which they are already familiar while remaining protective of human health and the environment. The Virginia statute and regulations can be found at http://www.deq.state.va.us/regulations.

Purpose: Amendment of the existing Virginia Hazardous Waste Management Regulations, 9 VAC 20-60-12 et seq., is needed to continue the effective monitoring of the generation, transportation, treatment, storage, and disposal of hazardous waste in the Commonwealth. By regulating these activities, the Commonwealth protects public health, natural resources and the environment. By maintaining the equivalence of its regulations with those issued by the USEPA under RCRA and the Hazardous and Solid Waste Amendments of 1984 (HSWA), the Commonwealth remains eligible to carry out its own hazardous waste management program and be an authorized state under the federal acts.

In transforming Virginia regulations into the incorporation-by-reference format and thus directly adopting federal text verbatim, the difference between federal and state regulations has been reduced. Incorporation of the federal provisions on permitting as a part of Amendment 15A improves this parallelism between federal and state regulations regarding hazardous waste management. This course of action was recommended by Virginia industry and should ease the burden on industries with multi-state holdings because Virginia regulations will more closely resemble the federal regulations with which they are already familiar while protecting human health and the environment.

The amendment also returns to the regulations transportation provisions and forms that were a part of the regulations in the past and allows for improved management of the transportation of hazardous waste. Re-inclusion of a petition provision allows submission of petitions that seek changes in the definition of their waste as a solid waste when it meets specific criteria related to recycling and to recognize the delistings of hazardous wastes made by USEPA.

Substance: In Amendment 14 of the regulations, much of the analogous text was removed and replaced with language incorporating federal text from Title 40 of the Code of Federal Regulations. While the substance of the regulations remained much the same, the appearance of the text was much changed. The purpose of Amendment 15A is to comprehensively review the revised text and to incorporate additional federal text in replacement of analogous Virginia text. In particular, a main goal of Amendment 15A is to delete the text describing the permitting process located in Part XI (9 VAC 20-60-960 through 9 VAC 20-60-1250) and replace it with incorporation of analogous text at 40 CFR Part 270 and elsewhere in Title 40 of the federal regulations.

Changes in Part II of the regulations include the removal of outdated and conflicting review provisions now covered by executive order. Other changes are the removal of verbatim quotation of the statutes regarding powers of the board, powers of the director, powers of the department, and enforcement penalties and options. That text is replaced with direct citations to the statutes.

In Part III of the regulations, the incorporation of federal text into Virginia regulations is expanded in 9 VAC 20-60-124 and 9 VAC 20-60-270 to coincide with the removal of all analogous text of Part XI. Also, text from Part XI that is not clearly contained in and redundant with federal regulations is transferred to 9 VAC 20-60-124 B and 9 VAC 20-60-270 B. In 9 VAC 20-60-261, it is proposed that text now direct "conditionally exempt small quantity generators" to the Solid Waste Management Regulations for the rule about the disposal of exempt hazardous waste in solid waste facilities, removing a redundant regulatory control (the rule is unchanged since the two regulations have the same rule). In 9 VAC 20-60-262, generators are required to see that the transporters or facility to which they transfer the hazardous waste have the proper identification number and permit required by the regulations. Also in 9 VAC 20-60-262, the requirement is removed for generators to give a 15-day prior notification before creating a new accumulation area. In 9 VAC 20-60-264, the use of "hazardous constituent" as used in 40 CFR 294.93 is expanded to include 40 CFR Part 294, Appendix IX constituents, and 40 CFR 264.94(a)(2) is changed to include current primary drinking water standards rather than an out-dated table included in the federal text. Since Amendment 14 was adopted, the USEPA has adopted its own universal waste standards for mercury containing lamps. This result is that there is no longer a need for a separate Virginia universal waste, and in Part XVI the previous standard is removed. However, provisions related to crushing of bulbs that were a part of the current Virginia standard but are not a part of the federal standard are retained and relocated to 9 VAC 20-60-273.

In Part IV at 9 VAC 20-60-355, the generator is required to have and use an USEPA identification number. The section explains that these are available from the department and establishes procedures to allow for issuance of provisional numbers. In Part VII, the requirement for transporters to file an annual report and the forms for that report are reinstated as they existed prior to Amendment 14. In Part XII, the nomenclature for permit modification classification is changed to match the federal nomenclature. Also, language is added to clarify how corrective action permits fit with the permit fee schedule. In Part XIV, language is proposed to allow the department to issue a matching variance from state regulations after the USEPA has delisted a waste from being a hazardous waste. Also, procedures were reinstated to allow the department to issue a variance to recycled materials such that they are no longer defined to be a solid waste for the purposes of the regulations.

Issues: The removal of analogous text in Part XI and its replacement with language incorporating federal text from Title 40 of the Code of Federal Regulations is a major change to the regulations proposed in Amendment 15A. The movement to the incorporations-by-reference format results in a simplification and clarification in understanding the rules that apply. It also makes clear those few requirements where Virginia has different provisions, for example, its prohibition on underground injection.

In 9 VAC 20-60-262, the requirement is removed for generators to give a 15-day prior notification before creating a new accumulation area. This well-intended requirement proved to be impractical for the regulated community. By allowing for notice at the time of establishment of an accumulation area and a prompt entry in the operating record, the process becomes practical for those regulated. This is not an advantage or disadvantage for the department and is not expected to impact the public.

In 9 VAC 20-60-264 B 16 and 17, the use of "hazardous constituent" as used in 40 CFR 294.93 is expanded to include 40 CFR Part 294, Appendix IX constituents, and 40 CFR 264.94(a)(2) is changed to include current primary drinking water standards rather than an out-dated table included in the federal text. Current practices and interpretations by the department and USEPA, for technical reasons, make these the usual applied standards; however, some of the regulated community may feel that these changes are a disadvantage in their particular situation. This is particularly true if they are involved in or anticipate participating in closure of waste management areas. Therefore, the regulated community is alerted to these possibilities and is asked to evaluate these changes relative to their own situation and plans and to provide comments on how they may be impacted. The changes are an advantage to the department and the public because they present a clearer standard and broader spectrum for evaluating clean up and monitoring.

The reinstatement of transporter requirements for annual reports (forms provided) may be a disadvantage to transporters, since additional accounting and reporting effort is required. Since such reports were required prior to Amendment 14, this may not be a great disadvantage. Compliance staff of the department has experienced

unexpected difficulty tracking transportation compliance since the reports were discontinued with Amendment 14; therefore, the reinstatement is an advantage to the department. Improved compliance tracking is an advantage to the public.

The USEPA is examining its policy regarding state programs for universal waste that allow crushing of the waste lamps (mercury containing bulbs). In its own universal waste standards for used lamps, it does not allow crushing; however, many state programs, including Virginia's, allow crushing, and EPA could adopt a number of different policies in how it deals with the states and authorization of state programs. The regulated community has an advantage in flexibility to use crushing offered by the Virginia regulations as proposed and should comment on the issue. USEPA may decide that crushing is a disadvantage to the public. The department finds neither advantage nor disadvantage to its programs, but it does favor the flexibility the crushing provision allows to the regulated community. While some of the regulated community may find the crushing provision an advantage, the advantage would be nullified by two standards, an enabling Virginia provision and a position by USEPA that disapproves of crushing and refusal to authorize Virginia's provision.

Locality Particularly Affected: No locality is known to bear any identified disproportionate material impact that would not be experienced by another locality.

Public Participation: In addition to any other comments, the agency is seeking comments on the costs and benefits of the proposal and the impacts of the regulation on farm or forestlands.

Anyone wishing to submit written comments for the public comment file may do so at the public hearing or by mail. Written comments should be signed by the commenter and include the name and address of the commenter. In order to be considered, the comments must be received by the close of the comment period. Oral comments may be submitted at the public hearing.

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 25 (98). Section 9-6.14:7.1 G requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. The analysis presented below represents DPB's best estimate of these economic impacts.

Summary of the proposed regulation. The Virginia Waste Management Board (the board) proposes (i) to expand the number of hazardous constituents for which a clean up goal can be established, (ii) to update the drinking water standards used in demonstrating ground water clean up, (iii) to reinstate the requirement to file annual reports by hazardous waste transporters, (iv) to authorize the Department of Environmental Quality (the agency) to issue variances for recycled materials from being considered as hazardous waste, and (v) to adopt federal permit modification designations.

Estimated economic impact. The proposed regulations are the second step of a process to incorporate federal regulations by reference and deleting repetitive language in Virginia waste management regulations. Previously, Amendment 14 of the regulations removed much of the text and incorporated federal text by reference. The proposed regulations incorporate additional changes and further federal language. While the substance of the regulation remains mostly the same, a few of the proposed changes may have significant economic impact.

These regulations contain rules for dealing with releases from solid waste management units. Sometimes, facilities that treat, store, or dispose of hazardous waste leak, spill, and overflow hazardous constituents to the ground, or to the groundwater. These releases must be cleaned up to protect public health and the environment. To reach this objective, regulated units must know which chemical constituents need to be looked for in the contaminated earth, or groundwater. A list of constituent chemicals that must be monitored is referenced in the regulation. Once a release of a chemical on the list is identified then a specific concentration level for that constituent must be established to ensure ground water clean up. To do so, the constituent must be on the list of hazardous constituents for which a clean up goal can be established. If a constituent is on this list then a specific clean up goal is determined using one of three existing methods. These methods take on different approaches. A specific clean up standard can be established by ensuring that the level of the constituent in the ground water is less than the background level of the same constituent, that there are no health risks, or that the level of constituent comply with the drinking water standards.

Under the current regulations, the universe of hazardous constituents for which monitoring is required is not exactly the same as the universe of chemicals for which a clean up goal can be established. This discrepancy leads to the monitoring of about twenty constituents for which no clean up goal can be established. Potentially, a constituent level in the ground water may be high enough to pose a health hazard, but no clean up goal can be established for it. This is only likely for releases that occurred after 1980. Clean up goals for pre-1980 releases are subject to the Environmental Protection Agency's (EPA) authority and do not suffer from this drawback. The agency has been trying to mitigate this problem in establishing clean up goals for post-1980 releases by persuading the permit applicants to agree to the desired clean up goals. Under the current regulations, clean up for additional constituents cannot be legally enforced without the consent of the applicant. The proposed regulation eliminates potential risks to health and the environment by expanding the number of hazardous constituents for which a clean up goal can be established to include all of the constituents for which monitoring is required.

Enforcement of a complete clean up may not be feasible under the current regulations in the event that the ground water contamination is identified. According to the agency, in many cases, a violation of monitoring standards involves more than one constituent.[1] For example, solvents are commonly released constituents. Solvents are often mixed with other solvents to increase their function, and the release may be a mixture of listed solvents. Since there is the possibility that a corrective action may not be required for one of the constituents, only a partial clean up can be enforced. A partial clean up leaving a hazardous constituent in place that exceeds risk-based standards is, by definition, a serious health, or environmental risk. Thus, the proposed change is likely to reduce the potential health risks from ground water contamination.

The release of hazardous waste is expected to be discovered one or two times in a year and about ten percent of these cases are expected to involve one of the twenty constituents for which a clean up goal cannot be established.[2] This proposed change is also likely to save the agency some staff time. The agency believes that the staff time required for establishing clean up standards for additional constituents would be significantly less than the staff time currently devoted to persuade the permit applicants.[3] On the other hand, hazardous waste management facilities are likely to incur additional clean up costs. Clean up costs are likely to vary depending on how early the release is detected, the type of constituent, and if the ground water is contaminated. For example, if a release contaminated only earth without reaching the groundwater, costs may be about a few thousand dollars to remove the earth. However, if ground water is contaminated, clean up costs are likely to be several million dollars. A large plume of hard-to-treat constituents might take years and tens of millions of dollars to clean up. It is unlikely that the costs of the proposed changes will reach these levels. The additional costs involved in cleaning up one of twenty constituents are likely to be small relative to total clean up costs because in many cases clean up measures must be taken anyway for a partial clean up.

Moreover, an applicant's incentives to take corrective measures diminish as the clean-up costs increase. Given the fact that a complete clean up cannot be enforced under the current regulations, it is unlikely that the regulant will voluntarily agree to treat serious contamination involving high costs. The proposed regulations will make sure that compliance can be enforced in all cases.

The board is also proposing to use updated primary drinking water standards. Drinking water standards can be used to demonstrate ground water clean up. The idea is that, if ground water is considered clean enough for humans to drink routinely, then it is not a threat to human health or the environment and needs no further clean-up. According to the agency, current standards included in the regulation are outdated. They may no longer be protective of health or the environment. Thus, demonstration of a clean up by these outdated standards may no longer be safe for health and the environment. Similar to the list of constituents, outdated standards pose a potential problem for releases that occurred after 1980. For these cases, the agency has been using persuasion to adopt safer standards, but in some cases had to concede to the use of outdated standards. The proposed standards are up to date and several times more stringent for some of the constituents.

Implementation of more stringent standards is expected to eliminate the potential health risks that may be present under the current regulations. According to the agency, the standards in current regulations are no longer protective of human health and are likely to leave some serious health risk. That said, the agency is not aware of any health risks in about nine cases where outdated standards had to be accepted. The previous experience while being helpful to give an idea does not rule out the possibility that a serious risk might arise from one or two expected releases in a year. Incorporating the most recent standards is likely to increase the clean up costs of hazardous waste management facilities if they choose to demonstrate clean up using drinking water standards. Complying with proposed drinking water standards, which may be ten times more stringent for some of the constituents, may increase costs associated with this particular method significantly. However, the regulants have the option to demonstrate compliance by two other methods. These individuals are likely to choose the least cost method. Thus, this proposed change is likely to reduce potentially serious health and environmental risks that may be present under the current regulations.

Previously, transporters of hazardous waste were required to file annual reports and forms. The paperwork requirement was removed in February of 1999, when this regulation was last amended. The board is proposing to reinstate the old requirement. These reports are prepared from already available information. No new data collection is required. According to the agency, it would cost transporters about $100 to file required report and forms. Thus the total cost to 750 waste management transporters is expected to be about $75,000 annually. Also, the agency will start processing these reports again and devote some staff time for that purpose without new hires. Reinstating the old requirement is justified on the grounds that these reports serve as a compliance management tool. These reports are crucial to track the movement of waste from a generation stage to disposal. Required reports are likely to enforce compliance because the traces of a waste from a generator to a transporter then to a disposal facility can easily be established. This helps ensure that the same quantity and type of waste departing from a generator is the same quantity and type that is disposed. Thus, improper waste disposal could be reduced. Additionally, transporter reports will enhance the value of reports from generators and disposal facilities because their use is significantly reduced without the reports from transporters.

The proposed regulations will reinstate the ability of the agency to issue a variance for recycled materials from being considered as solid waste and consequently hazardous waste. The agency lost its ability to issue this variance following the amendments to these regulations in February

[1] Source: The Department of Environmental Quality

[2] ibid.

[3] ibid.

1999. This was because the agency was under the assumption that EPA would be issuing the variances but it turned out that was not the case. The agency has never intended to stop issuing variances for recycled material. In fact, the agency has been rectifying the situation under its general authority so that recyclers would not be inconvenienced. Treating recycled material as hazardous waste has the potential to introduce additional costs to recycling facilities and to discourage recycling. Thus, the proposed changes will fix a regulatory mistake that has the potential to increase recycling costs significantly.

The proposed regulations also adopt federal nomenclature to designate types of permit modifications. Federal and state nomenclatures both have three tiers. Eight of the defined permit modifications are assigned to a higher tier in the current regulation than they are in the federal regulations. Adoption of federal regulations will move these eight modifications into a lower tier without eliminating or changing the definitions. This is expected to reduce permit fees and the amount of information required from applicants. The agency expects to lose about four to five thousand dollars in permit revenues per year, but also devote slightly less staff time.

Businesses and entities affected. The proposed regulations are expected to affect about 150 instate and 600 out of state transporters and 50 hazardous waste management facilities.

Localities particularly affected. The proposed regulations apply throughout the Commonwealth.

Projected impact on employment. A positive impact on employment is expected in the events that a hazardous waste release occur. In such cases, additional labor may be required to clean up for additional hazardous constituents.

Effects on the use and value of private property. The proposed regulations will increase the aggregate compliance costs of hazardous waste transporters. The higher costs are likely to reduce the value of transport businesses by about $100 per transporter. Also, the value of waste management facilities may decline to account for higher expected clean up costs. On the other hand, neighboring properties, both residential and commercial, may increase in value due to reduced exposure to potential health risks.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The department has reviewed the economic impact analysis prepared by the Department of Planning and Budget and has no comment.

Summary:

Amendment 15A incorporates federal text in place of analogous Virginia text. In particular, the language describing the permitting process located in Part XI (9 VAC 20-60-960 through 9 VAC 20-60-1250) is being deleted and replaced with incorporation of analogous text at 40 CFR Part 270 and elsewhere in Title 40 of the federal regulations. Consideration will be given to the reinstatement of a number of forms and procedures regarding transporters and petitions to the director, which were previously in the regulations, but were removed in Amendment 14.

9 VAC 20-60-14. Definitions derived from incorporations of reference texts.

A. These regulations contain the text herein and several incorporated texts from Title 40 of the Code of Federal Regulations (cited as 40 CFR followed by a part number, section number and subsection reference numbers). These incorporated texts are fully a part of these regulations; however, definitions, additions, modifications and exemptions stated in the text written herein direct how the incorporated text shall be interpreted, and they take precedence over the verbatim interpretation of the incorporated text. These incorporated texts include definitions that are fully a part of these regulations and generally applicable throughout all incorporated text and all text written herein; however, stated in the text written herein are directions as to how the incorporated text shall be interpreted, and these directions take precedence over the verbatim interpretation of the incorporated text.

B. Unless a specific direction regarding the substitution of terms is given elsewhere, the following terms, where they appear in the Code of Federal Regulations shall, for the purpose of these regulations, have the following meanings or interpretations:

1. *"Director"* shall supplant the "Administrator," "Assistant Administrator," "Assistant Administrator for Solid Waste and Emergency Response" and the "Regional Administrator," wherever they appear.

2. *"Department of Environmental Quality"* shall supplant the "United States Environmental Protection Agency," "Environmental Protection Agency," "Agency," "EPA," "EPA Headquarters," "EPA Region(s)" or "Regional Office," wherever they appear. The use of "EPA" as an adjective in "EPA Acknowledgment of Consent," "EPA document," "EPA form," "EPA identification number," "EPA number," "EPA Publication," or similar phrase shall not be supplanted with "Department of Environmental Quality" and shall remain as in the original text cited.

3. *"Qualified engineer" or "engineer"* means ~~an engineer licensed as~~ a ~~certified~~ professional engineer *certified to practice* in the Commonwealth of Virginia.

4. *"State," "authorized state,"* and *"approved state"* means the Commonwealth of Virginia.

5. *"Approved program"* means the Virginia regulatory program for the Virginia Hazardous Waste Management Regulations.

C. If a part of 40 CFR (as in 40 CFR Part 260) is cited, it shall mean the entire part (in this case, all of Part 260) including all subdivisions. If a section or subsection of a part of 40 CFR (as in 40 CFR 260.10) is cited, it shall mean the entire section (Section 10 of Part 260) and its subdivisions, but it does not include other sections or subsections of the same part.

D. The text of federal regulations incorporated by reference in these regulations includes dates that occurred before the effective date of the incorporation of those requirements into these regulations. Such dates shall not be construed as creating a retroactive right or obligation under the Virginia Hazardous Waste Management Regulations when that right

or obligation did not exist in these regulations prior to the incorporation of the federal regulations by reference. In such cases, the effective date under Virginia Hazardous Waste Management Regulations is the earliest date the requirement was incorporated into these regulations or is as otherwise specified in these regulations. If a right or obligation existed under federal regulations based on a date in federal regulations and there is a period from the date cited in the incorporated text until the date they took effect in these regulations, nothing ~~is~~ *in* these regulations shall contravene or countermand the legal application of the federal regulation for that period.

E. The text of federal regulations incorporated by reference in these regulations includes references to "RCRA," the "Resource Conservation and Recovery Act," sections of "RCRA," "Subtitle C of RCRA," the "Act," and other citations of enabling federal statutes. These statutes provide authority for actions by the United States Environmental Protection Agency, the administrator, and authorized states to regulate solid and hazardous waste management. The Virginia Waste Management Act (§ 10.1-1400 et seq.) of Title 10.1 of the Code of Virginia provides authority to the Virginia Waste Management Board, the director and the department analogous to many of those found in the federal statutes. See Part II (9 VAC 20-60-20 et seq.) of this chapter. Wherever in the incorporation by reference in these regulations of text from the Code of Federal Regulations there is a citation of authority from federal statutes, the authority and power of the analogous or related portions of the Virginia Waste Management Act shall be considered to apply in addition to the federal statutory citation and to support enforcement of the requirement.

9 VAC 20-60-17. Definitions created by these regulations.

A. The following words and terms when used in this chapter shall have the following meanings unless the context clearly indicates otherwise:

"Administrator" means the Administrator of the United States Environmental Protection Agency or his designee. See 9 VAC 20-60-14 B 1.

"Another regulation of the Virginia Administrative Code" means any regulation that is not in 9 VAC 20-60-12 et seq., the Virginia Hazardous Waste Management Regulations.

"Application, Part A" means that part of the application ~~which~~ *that* a permit applicant shall complete to qualify for interim status under § 3005(e) of RCRA or this chapter and for consideration for a permit.

"Application, Part B" means that part of the application ~~which~~ *that* a permit applicant shall complete to be considered for a permit as required by 9 VAC 20-60-1010.

"Approved program" means a state program ~~which~~ *that* has been approved by the U.S. EPA. An "approved state" is one administering an "approved program" under the hazardous waste *management* provisions of RCRA.

"Authorization (authorized program)" means a state hazardous waste program ~~which~~ *that* has been approved under the authorities of the ~~Resource Conservation and Recovery Act~~ *RCRA*.

"Authorized representative" means the manager, superintendent, or person of equivalent responsibility responsible for the overall operation of a facility or an operational unit (i.e., part of a facility).

"Board" means the Virginia Waste Management Board.

"Commonwealth" means the Commonwealth of Virginia.

"Department" means the Virginia Department of Environmental Quality.

"Director" means the Director of the Department of Environmental Quality.

"Emergency permit" means a permit issued where an imminent and substantial endangerment to human health or the environment is determined to exist by the director. ~~See 9 VAC 20-60-1050 A.~~

"EPA" means the U.S. Environmental Protection Agency. See 9 VAC 20-60-14 B 2.

"EPA identification number" means the number assigned by EPA or the director to each hazardous waste generator, hazardous waste transporter, or hazardous waste facility.

"EPA hazardous waste number" means the number assigned by EPA to each waste listed in Subpart D of 40 CFR Part 261 and to each *waste exhibiting a* characteristic identified in Subpart C of 40 CFR Part 261.

"Hazardous material" means a substance or material which has been determined by the Secretary of Transportation to be capable of posing an unreasonable risk to health, safety, and property when transported in commerce, and which has been so designated under 49 CFR Parts 171 and 173.

"HSWA" means the Hazardous and Solid Waste Amendments of 1984 (P.L. 98-616).

"HSWA drip pad" means a drip pad where F032 wastes are handled.

"HSWA tank" means a tank owned or operated by a small quantity generator or an underground tank for which construction ~~commences~~ *commenced* after July 14, 1986, or an underground tank that cannot be entered for inspection.

"HWM" means hazardous waste management.

"Non-HSWA tank" means any tank that is not a HSWA tank.

"Non-HSWA drip pad" means a drip pad where F034 or F035 wastes are handled.

"Permit" means a control document issued by the Commonwealth pursuant to this chapter, or by the EPA administrator pursuant to applicable federal regulations. The term "permit" includes any functional equivalent such as an authorization, license, emergency permit, or permit by rule. It does not include interim status under RCRA or this chapter, nor does it include draft permits.

"Permitted hazardous waste management facility" or *"permitted facility"* means a hazardous waste treatment, storage, or disposal facility that has received an EPA or Commonwealth permit in accordance with the requirements of this chapter or a permit from an authorized state program.

"Qualified engineer" or "engineer" means a professional engineer certified to practice in the Commonwealth of Virginia.

"RCRA" means the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (42 USC § 6901 et seq.).

"Regulation" means the control, direction and governance of solid and hazardous waste activities by means of the adoption and enforcement of laws, ordinances, rules and regulations.

"Responsible individual" means an individual authorized to sign official documents for and act on behalf of a company or organization. See also "authorized representative."

"Signature" means the name of a person written with his own hand.

"These regulations" means 9 VAC 20-60-12 et seq., the Virginia Hazardous Waste Management Regulations.

"VHWMR" means 9 VAC 20-60-12 et seq., the Virginia Hazardous Waste Management Regulations.

B. Terms used in liability insurance requirements. In the liability insurance requirements, the terms "bodily injury" and "property damage" shall have the meanings given these terms by the case law of the Virginia court system. However, these terms do not include those liabilities which, consistent with standard industry practices, are excluded from coverage in liability policies for bodily injury and property damage. The department intends the meanings of other terms used in the liability insurance requirements to be consistent with their common meanings within the insurance industry.

9 VAC 20-60-20. Authority for chapter.

A. This chapter is issued under *Chapter 11.1 (§ 10.1-1182 et seq.) of Title 10.1 of the Code of Virginia and the* Virginia Waste Management Act, Chapter 14 (§ 10.1-1400 et seq.) of Title 10.1 of the Code of Virginia.

B. Section 10.1-1402 of the Code of Virginia~~,~~ assigns the Virginia Waste Management Board the responsibility for carrying out the purposes and provisions of the chapter and compatible provisions of federal acts.

~~C. The board is authorized to:~~

~~1. Exercise general supervision and control over waste management activities in the Commonwealth.~~

~~2. To consult, advise and coordinate with the Governor, the Secretary, the General Assembly, other state agencies and federal agencies for the purpose of implementing the chapter and the federal acts.~~

~~3. Provide technical assistance and advice concerning all aspects of waste management.~~

~~4. Develop and keep current a state solid and hazardous waste management plan and provide technical assistance and advice or other aid for the development and implementation of local or regional solid and hazardous waste management.~~

~~5. Promote the development of resource conservation and resource recovery systems and provide technical assistance and advice on resource conservation, resource recovery, and resource recovery systems.~~

~~6. Collect such data and information as may be necessary to conduct the state programs, including data on the identification of and amounts of waste generated, transported, stored, treated, or disposed, and resource recovery.~~

~~7. Require any person who generates, collects, transports, stores, or provides treatment or disposal of a hazardous waste to maintain such records, manifest and reporting system as may be required pursuant to federal statute or regulations.~~

~~8. Designate, in accordance with criteria and listings identified under federal statute or regulation, classes, types or lists of waste which it deems to be hazardous.~~

~~9. Consult and coordinate with the heads of any other appropriate state and federal agencies, any appropriate independent regulatory agencies and any other appropriate governmental instrumentalities for the purpose of achieving maximum effectiveness and enforcement of this article while imposing the least burden of duplicative requirements on those persons subject to the provisions of this article.~~

~~10. Make application for such funds as may become available under federal acts and to transmit such funds when applicable to any appropriate person.~~

~~11. Promulgate and enforce such regulations as may be necessary to carry out its powers and duties and the intent of this chapter and the federal acts.~~

~~12. Subject to the approval of the governor, acquire by purchase, exercise of the right of eminent domain in accordance with Chapter 1.1 (§ 25-46.1 et seq.) of Title 25 of the Code of Virginia, grant, gift, devise or otherwise, the fee simple title to any lands, selected in the discretion of the board as constituting necessary and appropriate sites to be used for the purpose of the management of hazardous waste as defined in the chapter, including any and all lands adjacent to the site as the board may deem necessary or suitable for restricted areas. In all instances the board shall dedicate lands so acquired in perpetuity to such purposes. In its selection of a site pursuant to this paragraph, the board shall consider the appropriateness of any state-owned property for a disposal site in accordance with the criteria for selection of a hazardous waste management site.~~

~~13. Assume responsibility for the perpetual custody and maintenance of any hazardous waste management facilities.~~

~~14. Collect, from any person operating or using a hazardous waste management facility, fees sufficient to finance such perpetual custody and maintenance due to that facility as may be necessary. All fees received by the board pursuant to this part shall be used exclusively to satisfy the responsibilities assumed by the board for the perpetual custody and maintenance of hazardous waste management facilities.~~

~~15. Collect, from any person operating or proposing to operate a hazardous waste treatment, storage, or disposal facility or any person transporting hazardous wastes, permit application fees sufficient to defray only costs related to the issuance of permits as required by the Code in accordance with regulations promulgated by the board, but such fees shall not exceed the cost necessary to implement this paragraph. All fees received shall be used exclusively for the hazardous waste management program set forth herein.~~

~~16. To issue, deny, amend, and revoke certification of site suitability for hazardous waste facilities.~~

~~17. To make separate orders and regulations it deems necessary to meet any emergency to protect public health, natural resources, and the environment from the release or imminent release of waste.~~

~~18. Take actions to contain or clean up sites where solid or hazardous waste has been improperly managed and to institute legal proceedings to recover the costs of the containment or clean up activities from the responsible parties.~~

~~19. Collect, hold, manage and disburse funds received for violations of solid and hazardous waste laws and regulations or court orders pertaining to them for the purpose of responding to solid or hazardous waste incidents and clean ups of sites which have been improperly managed, including sites eligible for a joint federal and state remedial project under the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, Public Law 96-510.~~

~~20. To abate hazards and nuisances dangerous to public health, safety or the environment, both emergency and otherwise, created by the improper disposal, treatment, storage, transportation or management of substances within the jurisdiction of the board.~~

~~21. Notwithstanding any other provision of law to the contrary, regulate the management of mixed low-level radioactive waste.~~

~~D. The department has the following general powers, all of which, with the approval of the director, may be exercised by a unit, board or division of the department with respect to matters assigned to that organizational entity:~~

~~1. Administer the policies, rules, and regulations established by the Board pursuant to the Act.~~

~~2. Employ such personnel as may be required.~~

~~3. Make and enter into all contracts and agreements necessary or incidental to the performance of its duties and the execution of its powers under the Act, including, but not limited to, contracts with the United States, other state agencies, and governmental subdivisions of the Commonwealth.~~

~~4. Other powers designated by the Act.~~

~~E. The director shall:~~

~~1. Under direction and control of the Secretary of Natural Resources, exercise such powers and perform such duties as are conferred or imposed upon him by law and any other duties required of him by the governor or the board.~~

~~2. In addition to other responsibilities set forth in the Act, carry out management and supervisory responsibilities in accordance with the rules, regulations and policies of the board. In no event shall the director have the authority to promulgate any final regulations.~~

~~3. Be vested with all the authority of the board when it is not in session, subject to such rules and regulations as may be prescribed by the board.~~

9 VAC 20-60-30. Purpose of chapter.

A. The purpose of this chapter is to provide for the control of all hazardous wastes that are generated within, or transported to, the Commonwealth for the purposes of storage, treatment, or disposal or for the purposes of resource conservation or recovery.

B. This chapter establishes a management control system ~~which~~ *that* assures the safe and acceptable management of a hazardous waste from the moment of its generation through each step of management until the ultimate destruction or disposal.

C. This chapter is promulgated to meet the requirements of the Commonwealth legislative authority referenced in 9 VAC 20-60-20 A and will provide for a state hazardous waste program that will meet the requirements of ~~the federal Resource Conservation and Recovery Act, Public Law 94-580, 42 USC 6901~~ *RCRA*.

9 VAC 20-60-50. Application of chapter.

A. This chapter applies to any person that generates, transports, stores, treats, or disposes of a hazardous waste.

B. All persons who notify the U.S. Environmental Protection Agency under the authorities of § 3010 of ~~the Resource Conservation and Recovery Act~~ *RCRA* are subject to the provisions of this chapter.

C. All persons who did not notify the U.S. Environmental Protection Agency under the authorities of § 3010 of ~~the Resource Conservation and Recovery Act~~ *RCRA*, but that generate, transport, store, treat, or dispose of a hazardous waste shall also comply with the provisions of this chapter.

9 VAC 20-60-60. ~~Regulatory evaluation.~~ *(Repealed.)*

~~A. Within three years after the effective date of this chapter, the department shall perform analysis on this chapter and provide the Waste Management Board with a report on the results. The analysis shall include:~~

~~1. The purpose and need for the chapter;~~

~~2. Alternatives which would achieve the stated purpose of this chapter in a less burdensome and intrusive manner;~~

~~3. An assessment of the effectiveness of this chapter;~~

~~4. The results of a regulatory review of current state and federal statutory and regulatory requirements, including~~

identification and justification of this chapter's requirements which exceed federal requirements; and

5. The results of a review as to whether this chapter is clearly written and easily understandable by affected parties.

B. Upon review of the department's analysis, the Waste Management Board shall confirm the need to:

1. Continue this chapter without amendment;

2. Repeal this chapter; or

3. Amend this chapter.

The Waste Management Board will authorize the department to initiate the applicable regulatory process, and to carry out the decision of the Waste Management Board, if amendment or repeal of this chapter is warranted.

9 VAC 20-60-70. Public participation.

A. All regulations developed under the provisions of Title 10.1 *of the Code of Virginia* for hazardous waste management shall be developed in accordance with the provisions of the Commonwealth of Virginia Administrative Process Act (§ 9-6.14:1 et seq. of the Code of Virginia) and the Virginia Waste Management Board Public Participation Guidelines, 9 VAC 20-10-10 et seq.

B. All permits for hazardous waste management facilities, including permits by rule, will be the subject of a public hearing, as specified in 9 VAC 20-60-1220 *9 VAC 20-60-270*.

C. Modifications and revisions to all hazardous waste management facility permits, except changes to interim status, shall be subject to public participation in accordance with Part XI (9 VAC 20-60-960 et seq.) of this chapter *9 VAC 20-60-270*.

D. Modifications and revisions to this chapter shall be the subject of public participation as specified by the Virginia Administrative Process Act and the public participation guidelines of the department *board*.

E. Dockets of all permitting actions, enforcement actions, and administrative actions relative to this chapter shall be available to the public for review, consistent with the Commonwealth of Virginia Administrative Process Act, Virginia Freedom of Information Act (§ 2.1-340 et seq. of the Code of Virginia), and the provisions of this chapter.

F. All reports and related materials received from hazardous waste generators, transporters and facilities, as required by this chapter, shall be open to the public for review.

G. Public participation in the compliance evaluation and enforcement programs is encouraged. The department will:

1. Investigate and provide written responses to all citizen complaints addressed to the department;

2. Not oppose intervention by any citizen in a suit brought before a court by the department as a result of the enforcement action; and

3. Publish a notice in major daily or weekly newspaper of general circulation in the area and broadcast over local radio stations, and provide at least 30 days of public comment on proposed settlements of civil enforcement actions except where the settlement requires some immediate action.

H. Appropriate segments of the public will be provided information relative to the planning and implementation of this chapter on a routine and continuing basis.

9 VAC 20-60-80. Enforcement and appeal procedures; offenses and penalties.

A. All administrative enforcement and appeals taken from actions of the director relative to the provisions of this chapter shall be governed by the Virginia Administrative Process Act.

B. Inspections, right of entry.

1. In addition to the provisions of 9 VAC 20-60-1060 I, upon presentation of appropriate credentials and upon consent of the owner or custodian, the director or his designee shall have the right to enter at any reasonable time onto any property to include but not limited to conveyance, vehicle, facility or premises, to inspect, investigate, evaluate, conduct tests or take samples for testing in order to determine whether the provisions of this chapter are being complied with.

2. If the director or his designee is denied entry, he may apply to an appropriate circuit court for an inspection warrant authorizing such investigation, evaluation, inspection, testing or taking of samples for testing as provided in Chapter 24 (§ 19.2-393 et seq.) of Title 19.2, Code of Virginia.

C. Orders.

1. The board is authorized to issue orders to require any person to comply with the provisions of this chapter. Any such order shall be issued only after a hearing with at least thirty days notice to the affected person of the time, place, and purpose of it. Such order shall become effective not less than 15 days after mailing a copy of it by certified mail to the last known address of such person.

2. The provisions of 9 VAC 20-60-80 C 1, shall not affect the authority of the board to issue separate orders and regulations to meet any emergency to protect public health, natural resources, and the environment from the release or imminent threat of release of waste.

D. Penalties, injunctions, civil penalties and charges for violations.

1. In addition to penalties provided below, any person who knowingly transports any hazardous waste to an unpermitted facility; who knowingly transports, treats, stores, or disposes of hazardous waste without a permit or in violation of a permit; or who knowingly makes any false statement or representation in any application, label, manifest, record, permit, or other document filed, maintained, or used for purposes of hazardous waste program compliance shall be guilty of a felony punishable by a term of imprisonment of not less than one year nor more than five years and a fine of not more than twenty-five thousand dollars for each day of violation, either or both.

~~The provisions of this subsection (9 VAC 20-60-80 D 1) shall be deemed to constitute a lesser included offense of the violation set forth under 9 VAC 20-60-80 D 6. Each day of violation of each requirement shall constitute a separate offense.~~

~~2. In addition to the other provisions of this part, any person who violates any provisions of this chapter shall, upon such finding by an appropriate circuit court, be assessed a civil penalty of not more than twenty-five thousand dollars for each day of such violation. All penalties under this part shall be recovered in a civil action brought by the attorney general in the name of the Commonwealth.~~

~~3. Any person violating, or failing, neglecting, or refusing to obey any lawful regulation or order of the board or director, any condition of a permit, or certification or any provision of the Act may be compelled, in a proceeding instituted in an appropriate court by the board or the director, to obey such regulation, permit, certification, order, or provision of the Act and to comply with it by injunction, mandamus, or other appropriate remedy.~~

~~4. Without limiting the remedies which may be obtained in 9 VAC 20-60-80 D 3, any person violating, or failing, neglecting, or refusing to obey any injunction, mandamus or other remedy obtained pursuant to 9 VAC 20-60-80 D 3, shall be subject, in the discretion of the court, to a civil penalty not to exceed twenty-five thousand dollars for each violation. Each day of violation shall constitute a separate offense.~~

~~5. With the consent of any person who has violated or failed, neglected or refused to obey any regulation or order of the board or the director, or any provisions of this Act, the board may provide, in an order issued by the board against such person, for the payment of civil charges for past violations in specific sums, not to exceed the limits specified in 9 VAC 20-60-80 D. Such civil charges shall be instead of any appropriate civil penalty which could be imposed under 9 VAC 20-60-80 D.~~

~~6. Any person who knowingly transports, treats, stores, disposes of, or exports any hazardous waste in violation of this chapter and who knows at the time that he thereby places another person in imminent danger of death or serious bodily injury, shall, upon conviction, be guilty of a felony punishable by a term of imprisonment of not less than two years nor more than fifteen years and a fine of not more than $250,000, either or both. A defendant that is not an individual shall, upon conviction of violating 9 VAC 20-60-80 be subject to a fine not exceeding the greater of $1,000,000 or an amount that is three times the economic benefit realized by the defendant as a result of the offense. The maximum penalty shall be doubled with respect to both fine and imprisonment for any subsequent conviction of the same person.~~

~~7. Prosecution under 9 VAC 20-60-80 shall be commenced within three years after discovery of the offense, notwithstanding the provisions of any other statute.~~

~~8. The board shall be entitled to an award of reasonable attorneys' fees and costs in any action brought by the board under 9 VAC 20-60-80 D in which it substantially prevails on the merits of the case, unless special circumstances would make an award unjust.~~

~~E. Legal representation.~~

~~1. The attorney general shall represent the board and the director in all actions and proceedings for the enforcement of this chapter except actions or proceedings to which the Commonwealth or any of its agencies or institutions is a party defendant.~~

~~2. Upon approval by the governor, the board is authorized to employ special counsel in actions or proceedings where the Commonwealth or any of its agencies or institutions is a party defendant.~~

~~F. If the director, any board member or any officer or employee of the department is arrested, indicted or otherwise prosecuted on any criminal charge arising out of any act committed in the discharge of his duties related to the regulations, the director may employ an attorney approved by the attorney general to defend such person. The compensation for such attorney shall, subject to the approval of the attorney general, be paid out of the funds appropriated for the administration of the department.~~

B. Sections 10.1-1455 through 10.1-1457 of the Code of Virginia provide for penalties, enforcement and judicial review. These sections describe the right of entry for inspections, the issuance of orders, penalties, injunctions, and other provisions and procedures for enforcement of these regulations.

9 VAC 20-60-124. Adoption of 40 CFR Part 124 by reference.

A. Except as otherwise provided, those regulations of the United States Environmental Protection Agency set forth in ~~Subpart~~ *Subparts* A *and B* of 40 CFR Part 124 ~~that are required for state~~*, wherein they relate to* RCRA programs ~~(Resource Conservation and Recovery Act) by 40 CFR 271.14~~*,* are hereby incorporated as part of the ~~Virginia Hazardous Waste Management Regulations~~ *VHWMR*. Except as otherwise provided, all material definitions, reference materials and other ancillaries that are a part of incorporated sections of 40 CFR Part 124 are also hereby incorporated as part of the Virginia Hazardous Waste Management Regulations.

B. In all locations in these regulations where text from 40 CFR Part 124 is incorporated by reference, the following additions, modifications and exceptions shall amend the incorporated text for the purpose of its incorporation into these regulations:

1. Other sections of these regulations, particularly in ~~Parts XI (9 VAC 20-60-960 et seq.)~~ *9 VAC 20-60-270* and *Part* XIV (9 VAC 20-60-1370 et seq.) *of this chapter*, describe processes or procedures wherein items from 40 CFR Part 124 are applied as a part of more complete and detailed requirements. The incorporations of portions of 40 CFR Part 124 in this part shall not be construed so as to contradict or interfere with the operations of other parts of these regulations.

2. In addition to the citations in 40 CFR 124.5(a), permits may be modified, revoked and reissued, or terminated for

reasons stated in 9 VAC 20-60-270 B and Part XIV (9 VAC 20-60-1370 et seq.) of this chapter.

3. Text of 40 CFR 124.5(b) is not incorporated into these regulations. Administrative appeal shall be conducted in accordance the Virginia Administrative Process Act (§ 9-6.14:1 et seq. of the Code of Virginia).

~~2.~~ *4.* In 40 CFR 124.5(d), 40 CFR 124.6(e), and 40 CFR 124.10(b), the term "Regional Administrator" shall mean the regional administrator of Region III of the United States Environmental Protection Agency or his designee.

~~3.~~ *5.* In 40 CFR 124.5(d), 40 CFR 124.6(e), and 40 CFR 124.10(b), the term "EPA" shall mean the United States Environmental Protection Agency.

~~4.~~ *6.* In 40 CFR 124.10(c)(1)(ii), the term "EPA" shall mean the United States Environmental Protection Agency.

~~5.~~ *7.* In Subpart A of 40 CFR Part 124, there are several references to elements of 40 CFR Part 270. These regulations do not incorporate 40 CFR Part 270 in its entirety, but do contain requirements in ~~Parts XI~~ *9 VAC 20-60-270 B* and *Part* XIV *(9 VAC 20-60-1370 et seq.)* of this chapter that are analogous to many of the subelements of 40 CFR Part 270 that are not incorporated by reference. Where a reference to a subelement of 40 CFR Part 270 is included in text of the Code of Federal Regulations incorporated in these regulations, those analogous requirements of these regulations shall be substituted for the subelement of 40 CFR Part 270.

9 VAC 20-60-260. Adoption of 40 CFR Part 260 by reference.

A. Except as otherwise provided, the regulations of the United States Environmental Protection Agency set forth in 40 CFR Part 260 are hereby incorporated as part of the Virginia Hazardous Waste Management Regulations. Except as otherwise provided, all material definitions, reference materials and other ancillaries that are a part of 40 CFR Part 260 are also hereby incorporated as part of the Virginia Hazardous Waste Management Regulations.

B. In all locations in these regulations where 40 CFR Part 260 is incorporated by reference, the following additions, modifications and exceptions shall amend the incorporated text for the purpose of its incorporation into these regulations:

1. In 40 CFR 260.10, the term "Administrator" shall mean the administrator of the United States Environmental Protection Agency or his designee.

2. In 40 CFR 260.10, the term "EPA" shall mean the United States Environmental Protection Agency.

3. In 40 CFR 260.10 the term "new tank system" and "existing tank system," the reference to July 14, 1986, applies only to tank regulations promulgated pursuant to federal Hazardous and Solid Waste Amendment (HSWA) requirements. HSWA requirement categories include:

a. Interim status and permitting requirements applicable to tank systems owned and operated by small quantity generators;

b. Leak detection requirements for all underground tank systems for which construction commences after July 14, 1986; and

c. Permitting standards for underground tanks that cannot be entered for inspection.

For non-HSWA regulations, the reference date shall be January 1, 1998.

4. In 40 CFR 260.10, the term "Regional Administrator" shall mean the regional administrator of Region III of the United States Environmental Protection Agency or his designee.

5. In 40 CFR 260.10 definitions of the terms "Person," "State," and "United States," the term "state" shall have the meaning originally intended by the Code of Federal Regulations and not be supplanted by "Commonwealth of Virginia."

6. In 40 CFR 260.10 and wherever elsewhere in Title 40 of the Code of Federal Regulations the term "universal waste" appears, it shall be amended by addition of the following sentence: "In addition to the hazardous wastes listed herein, the term "universal waste" shall include those hazardous wastes listed in Part XVI (9 VAC 20-60-1495 et seq.) of the Virginia Hazardous Waste Management Regulations as universal wastes, under such terms and requirements as shall therein be ascribed."

7. Throughout 40 CFR 260.11(a), the terms "EPA" and "U.S. Environmental Protection Agency" shall not be supplanted with the term "Commonwealth of Virginia."

8. In Part XIV (9 VAC 20-60-1370 et seq.), the Virginia Hazardous Waste Management Regulations contain ~~analogous~~ provisions *analogous* to ~~40 CFR 260.23,~~ 40 CFR 260.30, 40 CFR 260.31, 40 CFR 260.32, 40 CFR 260.33, 40 CFR 260.40, and 40 CFR 260.41. These sections of 40 CFR Part 260 are not incorporated by reference and are not a part of the Virginia Hazardous Waste Management Regulations.

9. Sections 40 CFR 260.2, 40 CFR 260.20, 40 CFR 260.21 ~~and~~, 40 CFR 260.22 *and 40 CFR 260.23* are not included in the incorporation of 40 CFR Part 260 by reference and are not a part of the Virginia Hazardous Waste Management Regulations.

10. Appendix I to 40 CFR Part 260 is not incorporated by reference and is not a part of the Virginia Hazardous Waste Management Regulations.

9 VAC 20-60-261. Adoption of 40 CFR Part 261 by reference.

A. Except as otherwise provided, the regulations of the United States Environmental Protection Agency set forth in 40 CFR Part 261 are hereby incorporated as part of the Virginia Hazardous Waste Management Regulations. Except as otherwise provided, all material definitions, reference materials and other ancillaries that are a part of 40 CFR Part 261 are also hereby incorporated as part of the Virginia Hazardous Waste Management Regulations.

B. In all locations in these regulations where 40 CFR Part 261 is incorporated by reference, the following additions, modifications and exceptions shall amend the incorporated text for the purpose of its incorporation into these regulations:

1. Any agreements required by 40 CFR 261.4(b)(11)(ii) shall be sent to the United States Environmental Protection Agency at the address shown and to the director (Department of Environmental Quality, Post Office Box 10009, Richmond, Virginia 23240-0009).

2. In 40 CFR 261.4(e)(3)(iii), the text "in the Region where the sample is collected" shall be deleted.

3. In 40 CFR 261.4(f)(1), the term "Regional Administrator" shall mean the regional administrator of Region III of the United States Environmental Protection Agency or his designee.

4. In 40 CFR 261.6(a)(2), recyclable materials shall be subject to the requirements of ~~Parts XI (9 VAC 20-60-960 et seq.)~~ *9 VAC 20-60-270* and *Part* XII (9 VAC 20-60-1260 et seq.) of ~~these regulations~~ *this chapter*.

5. No hazardous waste from a conditionally exempt small quantity generator shall be ~~disposed~~ *managed* as described in 40 CFR 261.5(g)(3)(iv) or 40 CFR 261.5(g)(3)(v) unless ~~the solid waste management facility had written permission from the department to receive~~ such waste *management is in full compliance with all requirements of the Solid Waste Management Regulations (9 VAC 20-80-10 et seq.)*.

6. In 40 CFR 261.9 and wherever elsewhere in Title 40 of the Code of Federal Regulations there is a listing of universal wastes or a listing of hazardous wastes that are the subject of provisions set out in 40 CFR Part 273 as universal wastes, it shall be amended by addition of the following sentence: "In addition to the hazardous wastes listed herein, the term "universal waste" and all lists of universal waste or waste subject to provisions of 40 CFR Part 273 shall include those hazardous wastes listed in Part XVI (9 VAC 20-60-1495 et seq.) of the Virginia Hazardous Waste Management Regulations as universal wastes, under such terms and requirements as shall therein be ascribed."

7. In Subparts B and D of 40 CFR Part 261, the term "Administrator" shall mean the administrator of the United States Environmental Protection Agency, and the term "Director" shall not supplant "Administrator" throughout Subparts B and D.

~~8. All radioactive wastes classified as low-level radioactive material by the United States Nuclear Regulatory Commission shall be a hazardous waste. NOTE: A waste may be a hazardous waste as defined by 40 CFR Part 261 and a low-level radioactive waste. These "mixed wastes" are required to comply with the requirements of these regulations and all regulations of the United States Nuclear Regulatory Commission that apply.~~

9 VAC 20-60-262. Adoption of 40 CFR Part 262 by reference.

A. Except as otherwise provided, the regulations of the United States Environmental Protection Agency set forth in 40 CFR Part 262 are hereby incorporated as part of the Virginia Hazardous Waste Management Regulations. Except as otherwise provided, all material definitions, reference materials and other ancillaries that are a part of 40 CFR Part 262 are also hereby incorporated as part of the Virginia Hazardous Waste Management Regulations.

B. In all locations in these regulations where 40 CFR Part 262 is incorporated by reference, the following additions, modifications and exceptions shall amend the incorporated text for the purpose of its incorporation into these regulations:

1. In 40 CFR 262.42(a)(2), the words "for the Region in which the generator is located" is deleted from the incorporated text and is not a part of these regulations.

2. In 40 CFR 262.12, 40 CFR 262.53, 40 CFR 262.54, 40 CFR 262.55, 40 CFR 262.56 and 40 CFR 262.57, the term "Administrator" shall mean the administrator of the United States Environmental Protection Agency or his designee.

3. In 40 CFR 262.12, 40 CFR 262.53, 40 CFR 262.54, 40 CFR 262.55, 40 CFR 262.56 and 40 CFR 262.57, the term "Regional Administrator" shall mean the regional administrator of Region III of the United States Environmental Protection Agency or his designee.

4. For accumulation areas established before March 1, 1988, the generator shall notify the director that he accumulates hazardous waste in accordance with 40 CFR 262.34 by March 1, 1988. For accumulation areas established after March 1, 1988, he shall notify the director ~~least 15 days~~ *and document in the operating record that he intends to accumulate hazardous waste in accordance with 40 CFR 262.34* prior to *or immediately upon the* establishment of ~~the~~ *each* accumulation ~~areas that he intends to accumulate hazardous waste in accordance with 40 CFR 262.34~~ *area*. In the case of a new generator who creates such accumulation areas after March 1, 1988, he shall notify the director at the time the generator files the Notification of Hazardous Waste Activity that he intends to accumulate hazardous waste in accord with 40 CFR 262.34. This notification shall specify the exact location of the accumulation area at the site.

5. In addition to the requirements in 40 CFR Part 262, management of hazardous wastes is required to comply with the Regulations Governing the Transportation of Hazardous Materials (9 VAC 20-110-10 et seq.), including packaging and labeling for transport.

6. ~~In addition to the requirements of 40 CFR Part 262, the~~ *A* generator shall ~~designate on the manifest all subsequent transporters of the hazard waste shipment~~ *not offer his hazardous waste to a transporter or to a facility that has not received a permit and an EPA identification number*.

9 VAC 20-60-264. Adoption of 40 CFR Part 264 by reference.

A. Except as otherwise provided, the regulations of the United States Environmental Protection Agency set forth in 40 CFR Part 264 are hereby incorporated as part of the Virginia Hazardous Waste Management Regulations. Except as otherwise provided, all material definitions, reference materials and other ancillaries that are a part of 40 CFR Part 264 are also hereby incorporated as part of the Virginia Hazardous Waste Management Regulations.

B. In all locations in these regulations where 40 CFR Part 264 is incorporated by reference, the following additions, modifications and exceptions shall amend the incorporated text for the purpose of its incorporation into these regulations:

1. Sections 40 CFR 264.1(d), 40 CFR 264.1(f), 40 CFR 264.149, 40 CFR 264.150, 40 CFR 264.301(l), and Appendix VI are not included in the incorporation of 40 CFR Part 264 by reference and are not a part of the Virginia Hazardous Waste Management Regulations.

2. In 40 CFR 264.1(g)(11) and wherever elsewhere in Title 40 of the Code of Federal Regulations there is a listing of universal wastes or a listing of hazardous wastes that are the subject of provisions set out in 40 CFR Part 273 as universal wastes, it shall be amended by addition of the following sentence: "In addition to the hazardous wastes listed herein, the term "universal waste" and all lists of universal waste or waste subject to provisions of 40 CFR Part 273 shall include those hazardous wastes listed in Part XVI (9 VAC 20-60-1495 et seq.) of the Virginia Hazardous Waste Management Regulations as universal wastes, under such terms and requirements as shall therein be ascribed."

3. In 40 CFR 264.12(a), the term "Regional Administrator" shall mean the regional administrator of Region III of the United States Environmental Protection Agency or his designee.

4. In 40 CFR 264.33, the following sentence shall be added to the end of the paragraph: "A record of tests or inspections will be maintained on a log at that facility or other reasonably accessible and convenient location."

5. In addition to the notifications required by 40 CFR 264.56(d)(2), notification shall be made to the on-scene coordinator, the National Response Center and the ~~Commonwealth Emergency Response Team~~ *Virginia Department of Emergency Management, Emergency Operations Center*. In the associated report filed under 40 CFR 264.56(j), the owner or operator shall include such other information specifically requested by the director, which is reasonably necessary and relevant to the purpose of an operating record.

6. In 40 CFR 264.143(h), 40 CFR 264.145(h), and 40 CFR 264.151, an owner or operator may use the same financial mechanism for multiple facilities. If the facilities covered by the mechanism are located in more than one state, identical evidence of financial assurance must be submitted to and maintained with all RCRA authorized state agencies where facilities covered by the financial mechanism are located or with the regional administrators where facilities are located in states without RCRA authorization.

7. In 40 CFR 264.147(a)(1)(ii), 40 CFR 264.147(b)(1)(ii), 40 CFR 264.147(g)(2), and 40 CFR 264.147(i)(4), the term "Virginia" shall not be substituted for the term "State*" or "States*."

8. In 40 CFR 264.191(a), the compliance date of January 12, 1988, applies only for HSWA tanks. For non-HSWA tanks, the compliance date is November 2, 1997, instead of January 12, 1997.

9. In 40 CFR 264.191(c), the reference to July 14, 1986, applies only to HSWA tanks. For non-HSWA tanks, the applicable date is November 2, 1987, instead of July 14, 1986.

10. In 40 CFR 264.193, the federal effective dates apply only to HSWA tanks. For non-HSWA tanks, the applicable date is November 2, 1997, instead of January 12, 1997.

11. A copy of all reports made in accordance with 40 CFR 264.196(d) shall be sent to the director and to the chief administrative officer of the local government of the jurisdiction in which the event occurs. The sentence in 40 CFR 264.196(d)(1), "If the release has been reported pursuant to 40 CFR part 302, that report will satisfy this requirement." is not incorporated by reference into these regulations and is not a part of the Virginia Hazardous Waste Management Regulations.

12. The following text shall be substituted for 40 CFR 264.570(a): "The requirements of this subpart apply to owners and operators of facilities that use new or existing drip pads to convey wood drippage, precipitation and/or surface water run-off to an associated collection system. Existing HSWA drip pads are those constructed before December 6, 1990, and those for which the owner or operator has a design and has entered into a binding financial or other agreement for construction prior to December 6, 1990. Existing non-HSWA drip pads are those constructed before January 14, 1993, and those for which the owner or operator has a design and has entered into a binding financial or other agreements for construction prior to January 14, 1993. All other drip pads are new drip pads. The requirement at 40 CFR 264.573(b)(3) to install a leak collection system applies only to those HSWA drip pads that are constructed after December 24, 1992, except for those constructed after December 24, 1992, for which the owner or operator has a design and has entered into a binding financial or other agreement for construction prior to December 24, 1992. For non-HSWA drip pads, the requirement at 40 CFR 264.573(b)(3) to install a leak collection system applies only to those non-HSWA drip pads that are constructed after September 8, 1993, except for those constructed after September 8, 1993, for which the owner or operator has a design and has entered into a binding financial or other agreement for construction prior to September 8, 1993."

13. In 40 CFR 264.1030(c), the reference to 40 CFR 124.15 shall be replaced by a reference to 40 CFR 124.5.

14. The underground injection of hazardous waste for treatment, storage or disposal shall be prohibited throughout the Commonwealth of Virginia.

15. In addition to the notices required in Subpart B and others parts of 40 CFR Part 264, the following notices are also required:

a. The owner or operator of a facility that has arranged to receive hazardous waste from a foreign source *(a source located outside of the United States of America)* shall notify the director and administrator in writing at least four weeks in advance of the date the waste is expected to arrive at the facility. Notice of subsequent shipments of the same waste from the same foreign source is not required.

b. The owner or operator of a facility that receives hazardous waste from an off-site source (except where the owner or operator of the facility is also the generator of this waste) shall inform the generator in writing that he has appropriate permits for, and will accept, the waste that the generator is shipping. The owner or operator shall keep a copy of this written notice as part of the operating record.

c. Before transferring ownership or operation of a facility during its operating life, or of a disposal facility during the post-closure care period, the owner or operator shall notify the new owner or operator in writing of the requirements contained in 9 VAC 20-60-264 and ~~Part XI (9 VAC 20-60-960 et seq.) of this chapter~~ *9 VAC 20-60-270*. An owner or operator's failure to notify the new owner or operator of the above requirements in no way relieves the new owner or operator of his obligation to comply with all applicable requirements.

d. Any person responsible for the release of a hazardous substance from the facility which poses an immediate or imminent threat to public health and who is required by law to notify the National Response Center shall notify the director and the chief administrative officer of the local government of the jurisdiction in which the release occurs or their designees. In cases when the released hazardous substances are hazardous wastes or hazardous waste constituents additional requirements are prescribed by Subpart D of 40 CFR Part 264.

16. In 40 CFR 264.93, "hazardous constituents" shall include constituents identified in 40 CFR Part 264 Appendix IX in addition to those in 40 CFR Part 261 Appendix VIII.

17. The federal text at 40 CFR 264.94(a)(2) is not incorporated by reference. The following text shall be substituted for 40 CFR 264.94(a)(2): "For any of the constituents for which the USEPA has established a Primary Maximum Contaminant Level (PMCL) under 40 CFR Part 141 (regulations under the Safe Drinking Water Act), the concentration must not exceed the value of the PMCL if the background level of the constituent is below the PMCL; or."

9 VAC 20-60-265. Adoption of 40 CFR Part 265 by reference.

A. Except as otherwise provided, the regulations of the United States Environmental Protection Agency set forth in 40 CFR Part 265 are hereby incorporated as part of the Virginia Hazardous Waste Management Regulations. Except as otherwise provided, all material definitions, reference materials and other ancillaries that are a part of 40 CFR Part 265 are also hereby incorporated as part of the Virginia Hazardous Waste Management Regulations.

B. In all locations in these regulations where 40 CFR Part 265 is incorporated by reference, the following additions, modifications and exceptions shall amend the incorporated text for the purpose of its incorporation into these regulations:

1. Sections 40 CFR 265.1(c)(4), 40 CFR 265.149 and 40 CFR 265.150 and Subpart R of 40 CFR Part 265 are not included in the incorporation of 40 CFR Part 265 by reference and are not a part of the Virginia Hazardous Waste Management Regulations.

2. In 40 CFR 265.1(c)(14) and wherever elsewhere in Title 40 of the Code of Federal Regulations there is a listing of universal wastes or a listing of hazardous wastes that are the subject of provisions set out in 40 CFR Part 273 as universal wastes, it shall be amended by addition of the following sentence: "In addition to the hazardous wastes listed herein, the term "universal waste" and all lists of universal waste or waste subject to provision of 40 CFR Part 273 shall include those hazardous wastes listed in Part XVI (9 VAC 20-60-1495 et seq.) of the Virginia Hazardous Waste Management Regulations as universal wastes, under such terms and requirements as shall therein be ascribed."

3. A copy of all reports and notices made in accordance with 40 CFR 265.12 shall be sent to the director, the administrator and to chief administrative officer of the local government of the jurisdiction in which the event occurs.

4. In 40 CFR 265.12(a), the term "Regional Administrator" shall mean the regional administrator of Region III of the United States Environmental Protection Agency or his designee.

5. In 40 CFR 265.33, the following sentence shall be added to the end of the paragraph: "A record of tests or inspections will be maintained on a log at that facility or other reasonably accessible and convenient location."

6. In addition to the notifications required by 40 CFR 265.56(d)(2), notification shall be made to the on-scene coordinator, the National Response Center and the ~~Commonwealth Emergency Response Team~~ *Virginia Department of Emergency Management, Emergency Operations Center*. In the associated report filed under 40 CFR 265.56(j), the owner or operator shall include such other information specifically requested by the director, which is reasonably necessary and relevant to the purpose of an operating record.

7. In addition to the requirements of 40 CFR 265.91, a log shall be made of each ground water monitoring well describing the soils or rock encountered, the permeability of

formations, and the cation exchange capacity of soils encountered. A copy of the logs with appropriate maps shall be sent to the ~~department~~ *director or his designee*.

8. In 40 CFR 265.143(g) and 40 CFR 265.145(g), an owner or operator may use the same financial mechanism for multiple facilities. If the facilities covered by the mechanism are located in more than one state, identical evidence of financial assurance must be submitted to and maintained with all RCRA authorized state agencies where facilities covered by the financial mechanism are located or with the regional administrators where facilities are located in states without RCRA authorization.

9. In 40 CFR 265.147(a)(1)(ii), 40 CFR 265.147(g)(2), and 40 CFR 265.147(i)(4), the term "Virginia" shall not be substituted for the term "State*" or "States*."

10. In 40 CFR 265.191(a), the compliance date of January 12, 1988, applies only for HSWA tanks. For non-HSWA tanks, the compliance date is November 2, 1986.

11. In 40 CFR 265.191(c), the reference to July 14, 1986, applies only to HSWA tanks. For non-HSWA tanks, the applicable date is November 2, 1987.

12. In 40 CFR 265.193, the federal effective dates apply only to HSWA tanks. For non-HSWA tanks, the applicable date is January 12, 1987 is replaced with November 2, 1997.

13. The following text shall be substituted for 40 CFR 265.440(a): "The requirements of this subpart apply to owners and operators of facilities that use new or existing drip pads to convey wood drippage, precipitation and/or surface water run-off to an associated collection system. Existing HSWA drip pads are those constructed before December 6, 1990, and those for which the owner or operator has a design and has entered into a binding financial or other agreement for construction prior to December 6, 1990. Existing non-HSWA drip pads are those constructed before January 14, 1993, and those for which the owner or operator has a design and has entered into a binding financial or other agreement for construction prior to January 14, 1993. All other drip pads are new drip pads. The requirement at 40 CFR 265.443(b)(3) to install a leak collection system applies only to those HSWA drip pads that are constructed after December 24, 1992, except for those constructed after December 24, 1992, for which the owner or operator has a design and has entered into a binding financial or other agreement for construction prior to December 24, 1992. For non-HSWA drip pads, the requirement at 40 CFR 264.573(b)(3) to install a leak collection system applies only to those non-HSWA drip pads that are constructed after September 8, 1993, except for those constructed after September 8, 1993, for which the owner or operator has a design and has entered into a binding financial or other agreement for construction prior to September 8, 1993."

14. In 40 CFR 265.1083(c)(4)(ii), the second occurrence of the term "EPA" shall mean the United States Environmental Protection Agency.

15. In addition to the requirements of 40 CFR 265.310, the owner or operator shall consider at least the following factors in addressing the closure and post-closure care objectives of this part:

a. Type and amount of hazardous waste and hazardous waste constituents in the landfill;

b. The mobility and the expected rate of migration of the hazardous waste and hazardous waste constituents;

c. Site location, topography, and surrounding land use, with respect to the potential effects of pollutant migration;

d. Climate, including amount, frequency and pH of precipitation;

e. Characteristics of the cover, including material, final surface contours, thickness, porosity and permeability, slope, length of run of slope, and type of vegetation on the cover; and

f. Geological and soil profiles and surface and subsurface hydrology of the site.

16. Additionally, during the post-closure care period, the owner or operator of a hazardous waste landfill shall comply with the requirements of 40 CFR 265.116 and the following items:

a. Maintain the function and integrity of the final cover as specified in the approved closure plan;

b. Maintain and monitor the leachate collection, removal, and treatment system, if present, to prevent excess accumulation of the leachate in the system;

c. Maintain and monitor the landfill gas collection and control system, if present, to control the vertical and horizontal escape of gases;

d. Protect and maintain, if present, surveyed benchmarks; and

e. Restrict access to the landfill as appropriate for its post-closure use.

17. The underground injection of hazardous waste for treatment, storage or disposal shall be prohibited throughout the Commonwealth of Virginia.

18. Regulated units of the facility are those units used for storage treatment or disposal of hazardous waste in surface impoundments, waste piles, land treatment units, or landfills ~~which~~ *that* received hazardous waste after July 26, 1982. In addition to the requirements of Subpart G of 40 CFR Part 265, owners or operators of regulated units who manage hazardous wastes in regulated units shall comply with the closure and post-closure requirements contained in Subpart G of 40 CFR Part 264, Subpart H of 40 CFR Part 264, and Subpart K of 40 CFR Part 264 through Subpart N of 40 CFR Part 264, as applicable, and shall comply with the requirements in Subpart F of 40 CFR Part 264 during any post-closure care period and for the extended ground water monitoring period, rather than the equivalent requirements contained in 40 CFR Part 265. The following provisions shall also apply:

a. For owners or operators of surface impoundments or waste piles included above who intend to remove all hazardous wastes at closure in accordance with 40 CFR 264.228(a)(1) or 40 CFR 264.258(a), as applicable, submittal of contingent closure and contingent post-closure plans is not required. However, if the facility is subsequently required to close as a landfill in accordance with Subpart N of 40 CFR Part 264, a modified closure plan shall be submitted no more than 30 days after such determination. These plans will be processed as closure plan amendments. For such facilities, the corresponding post-closure plan shall be submitted within 90 days of the determination that the unit shall be closed as a landfill.

b. A permit application as required under ~~Part XI (9 VAC 20-60-960 et seq.)~~ *9 VAC 20-60-270* to address the post-closure care requirements of 40 CFR 264.117 and for ground water monitoring requirements of 40 CFR 264.98, 40 CFR 264.99, or 40 CFR 264.100, as applicable, shall be submitted for all regulated units which fail to satisfy the requirements of closure by removal or decontamination in 40 CFR 264.228(a)(1), 40 CFR 264.258(a), or 40 CFR 264.280(d) and 40 CFR 264.280(e), as applicable. The permit application shall be submitted at the same time as the closure plan for those units closing with wastes in place and six months following the determination that closure by removal or decontamination is unachievable for those units attempting such closure. The permit application shall address the post-closure care maintenance of both the final cover and the ground water monitoring wells as well as the implementation of the applicable ground water monitoring program whenever contaminated soils, subsoils, liners, etc., are left in place. When all contaminated soils, subsoils, liners, etc., have been removed yet ground water contamination remains, the permit application shall address the post-closure care maintenance of the ground water monitoring wells as well as the implementation of the applicable ground water monitoring program.

c. In addition to the requirements of 40 CFR 264.112(d)(2)(i) for requesting an extension to the one year limit, the owner or operator shall demonstrate that he will continue to take all steps to prevent threats to human health and the environment.

d. In addition to the requirements of 40 CFR 264.119(c), the owner or operator shall also request a modification to the post-closure permit if he wishes to remove contaminated structures and equipment.

9 VAC 20-60-270. Adoption of 40 CFR Part 270 by reference.

A. Except as otherwise provided, those regulations of the United States Environmental Protection Agency set forth in ~~Subpart A of~~ 40 CFR Part 270 ~~that are required for state RCRA programs (Resource Conservation and Recovery Act) by 40 CFR 271.14~~ are hereby incorporated as part of the Virginia Hazardous Waste Management Regulations. ~~40 CFR 270.1(c)(2) is also hereby incorporated as part of the Virginia Hazardous Waste Management Regulations.~~ Except as otherwise provided, all material definitions, reference materials and other ancillaries that are a part of incorporated sections of 40 CFR Part 270 are also hereby incorporated as part of the Virginia Hazardous Waste Management Regulations.

B. In all locations in these regulations where 40 CFR Part 270 is incorporated by reference, the following additions, modifications and exceptions shall amend the incorporated text for the purpose of its incorporation into these regulations:

1. In 40 CFR Part 270 and wherever elsewhere in Title 40 of the Code of Federal Regulations there is a listing of universal wastes or a listing of hazardous wastes that are the subject of provisions set out in 40 CFR Part 273 as universal wastes, it shall be amended by addition of the following sentence: "In addition to the hazardous wastes listed herein, the term "universal waste" and all lists of universal waste or waste subject to provisions of 40 CFR Part 273 shall include those hazardous wastes listed in Part XVI (9 VAC 20-60-1495 et seq.) of the Virginia Hazardous Waste Management Regulations as universal wastes, under such terms and requirements as shall therein be ascribed."

2. At 40 CFR 270.4(a)(3), the leak detection system requirements include double liners, cap quality assurance programs, monitoring, action leakage rates, and response action plans and will be implemented through the procedures of 40 CFR 270.42(a) Class 1 permit modifications subject to footnote 1, which require prior approval of the director.

~~2.~~ *3.* In 40 CFR 270.5, the term "Administrator" shall mean the administrator of the United States Environmental Protection Agency or his designee.

~~3.~~ *4.* In 40 CFR 270.5, the term "Regional Administrator" shall mean the regional administrator of Region III of the United States Environmental Protection Agency or his designee.

~~4.~~ *5.* The underground injection of hazardous waste for treatment, storage or disposal shall be prohibited throughout the Commonwealth of Virginia, and no permits shall be issued for underground injection facilities.

~~5. Permit modifications for implementing a leak detection system shall be classified as required in 9 VAC 20-60-1170 and not as specified in 40 CFR 270.4.~~

~~C. Part XI (9 VAC 20-60-960 et seq.) of these regulations contains requirements from the incorporated text of 40 CFR Part 270 and additional requirements and clarifications unique to these regulations. The incorporation by reference in 9 VAC 20-60-270 shall be considered as supporting Part XI of these regulations and consistent with Title 40 of the Code of Federal Regulations; and any apparent conflict between requirements of the text incorporated by reference and the text of Part XI shall be resolved by compliance with Part XI. Except where the requirements of Part XI and 9 VAC 20-60-270 are mutually exclusive, compliance with both is required. No conflict shall be assumed to exist until the director renders a written opinion that a conflict exists and indicates the nature of the conflict.~~

6. Validity of the federal HWM permits.

a. Hazardous waste management facilities located in Virginia which possess an effective final RCRA permit issued by the United States Environmental Protection Agency will be considered to possess a valid Virginia hazardous waste management permit for the duration of the unexpired term of the federal permit, provided that:

(1) The facility remains in compliance with all of the conditions specified in the federal permit;

(2) The operator submits a complete copy of the federal permit to the director no later than the effective date of the federal permit; and

(3) The owner and operator of the facility submit a request to continue the federal permit addressed to the director.

b. Federal permits issued to hazardous waste management facilities located in Virginia by the United States Environmental Protection Agency pursuant to HSWA requirements which constitute the federal portion of the combined Virginia - United States Environmental Protection Agency RCRA permits are considered, for the purposes of this chapter, as addenda to the Virginia permits and will remain in effect during the unexpired term of the Virginia permit.

7. All permit applications and reapplications required by these regulations shall be accompanied by an appropriate permit application fee as specified in Part XII (9 VAC 20-60-1260 et seq.) of this chapter. Applications or reapplications not accompanied by such fees will not be considered complete. The director shall not issue a permit before receiving a complete application except permits by rule, emergency permits, or continued federal permits. In addition, an application for a permit is not complete until the director receives an application form and any supplemental information, which are completed to his satisfaction. The completeness of any application for a permit shall be judged independently of the status of any other permit application or permit for the same facility or activity. In cases where Part A of the application was first submitted to the United States Environmental Protection Agency Administrator, a copy of such submission shall also be sent to the director.

8. Interim status.

a. The director may deny interim status to any owner or operator if, at the time the Part A application is submitted, the facility is in violation of any regulation of the board so as to pose a substantial present or potential hazard to human health or environment.

b. Interim status terminates when final disposition of a permit application is made or when interim status is terminated by the director. Interim status may be terminated for any of the following reasons:

(1) Failure to submit a completed Part B application on time;

(2) Failure to furnish any information required by this chapter;

(3) Falsification, misrepresentation or failure to fully disclose any information submitted or required to be kept under this chapter;

(4) Violation of this chapter; and

(5) A determination that the facility poses a significant threat to public health or the environment.

c. The director may terminate the interim status upon receiving a voluntary request for such an action from the owner and the operator of the facility.

(1) To be considered for voluntary termination such request shall:

(a) Be received by the director prior to the issuance of the request to submit Part B of the permit application in accordance with this section; and

(b) Be accompanied by a waiver of procedures contained in this section.

(2) Termination under this part will not be granted to the owner and operator of the facility:

(a) Which is not in compliance with the standards contained in 9 VAC 20-60-265; or

(b) When termination proceedings have been instituted under this section.

d. The effective date of the termination of the interim status will be determined by the director to allow for proper closure of the facility in accordance with Subpart G of 40 CFR Part 264 and Subpart G of 40 CFR Part 265, as applicable.

9. Each permit shall include permit conditions necessary to achieve compliance with the Virginia Waste Management Act (§ 10.1-1400 et seq. of the Code of Virginia) and regulations, including each of the applicable requirements specified in this part (Part III) of these regulations. In satisfying this provision, the director may incorporate applicable requirements of Part III directly into the permit or establish other permit conditions that are based on these requirements.

10. When the standards or regulations on which the permit was based have been changed by statute, through promulgation of new or amended standards or regulations or by judicial decision after the permit was issued, cause may exist to modify a permit but not to revoke or reissue the permit (except with the permittee's request or agreement).

a. The director may modify the permit when the standards or regulations on which the permit was based have been changed by statute or if standards or regulations have been amended.

b. The permittee may request modification when:

(1) The permit condition requested to be modified was based on a promulgated hazardous waste regulation; and

(2) The Commonwealth has revised, withdrawn or modified that portion of the regulation on which the permit condition was based.

c. If a court of competent jurisdiction has remanded and stayed Commonwealth regulations, if the remand and stay concern that portion of the regulations on which the permit condition was based and if a request is filed by the permittee, the permit may be modified.

11. The director may modify a permit:

a. If he determines good cause exists for modification of a compliance schedule, such as an act of God, strike, flood, or material shortage or other events over which the permittee has little or no control and for which there is no reasonably available remedy.

b. When modification of a closure or post-closure plan is required under 40 CFR 264.112(c) and 40 CFR 264.118(d).

c. After he receives the notification of expected closure under 40 CFR 264.113 and he determines that extension of the 90-day or 180-day periods under that part is warranted.

d. When modification is warranted with regard to

(1) The 30-year post-closure period under 40 CFR 264.117(a);

(2) Continuation of the security requirements under 40 CFR 264.117(b); or

(3) Permission to disturb the integrity of the containment system under 40 CFR 264.117(c).

e. When the permittee has filed a request under 40 CFR 264.147(d) for a variance to the level of financial responsibility or when the director demonstrates under 40 CFR 264.147(d) that an upward adjustment of the level of financial responsibility is required.

f. When the corrective action program specified in the permit under 40 CFR 264.100 has not brought the regulated unit into compliance with the ground water protection standard within a reasonable period of time.

g. To include a detection monitoring program meeting the requirements of 40 CFR 264.98, when the owner or operator has been conducting a compliance monitoring program under 40 CFR 264.99 or a corrective action program under 40 CFR 264.100 and the compliance period ends before the end of the post-closure care period for the unit.

h. When a permit requires a compliance monitoring program under 40 CFR 264.99, but monitoring data collected prior to permit issuance indicate that the facility is exceeding the ground water protection standard.

i. When a land treatment unit is not achieving complete treatment of hazardous constituents under its current permit conditions.

12. In addition to the other general information requirements to be part of the contents of any Part B in 40 CFR 270.14(b), the following information is required for all hazardous waste management facilities, except as provided otherwise:

a. A copy of the general inspection schedule required by 40 CFR 264.15(b). Include, where applicable, as part of the inspection schedule, specific requirements in 40 CFR 264.174, 40 CFR 264.193(i), 40 CFR 264.195, 40 CFR 264.226, 40 CFR 264.254, 40 CFR 264.273, 40 CFR 264.303, 40 CFR 264.573, 40 CFR 264.574, 40 CFR 264.602, 40 CFR 264.1033, 40 CFR 264.1052, 40 CFR 264.1053, and 40 CFR 264.1058.

b. Traffic pattern, estimated volume (number, types of vehicles) and control; describe access road surfacing and load bearing capacity; show traffic control signals.

13. A period of 30 days shall elapse between the date of public notice and the date of a public hearing under 40 CFR 270.42(b)(4) and 40 CFR 270.42(c)(4).

14. Notices given under 40 CFR 270.30(l)(1) shall be written.

15. The suitability of the facility location will not be considered at the time of permit modification or revocation and reissuance unless new information or standards indicate that an endangerment to human health or the environment exists which was unknown at the time of permit issuance.

16. The agencies of the Commonwealth publish notices of regulatory activity, permit hearings and other official notices in the Virginia Register. Any references in incorporated federal text that indicate a publication is to be made in the Federal Register shall be construed to mean the Virginia Register when such publication is to be made by an agency of the Commonwealth.

9 VAC 20-60-273. Adoption of 40 CFR Part 273 by reference.

A. Except as otherwise provided, the regulations of the United States Environmental Protection Agency set forth in 40 CFR Part 273 are hereby incorporated as part of the Virginia Hazardous Waste Management Regulations. Except as otherwise provided, all material definitions, reference materials and other ancillaries that are a part of 40 CFR Part 273 are also hereby incorporated as part of the Virginia Hazardous Waste Management Regulations.

B. In all locations in these regulations where 40 CFR Part 273 is incorporated by reference, the following additions, modifications and exceptions shall amend the incorporated text for the purpose of its incorporation into these regulations:

1. In 40 CFR 273.32(a)(3), the term "EPA" shall mean the United States Environmental Protection Agency or his designee.

2. In addition to universal wastes included in 40 CFR Part 273, other wastes are defined to be universal wastes in Part XVI (9 VAC 20-60-1495 et seq.) of these regulations. Part XVI also contains waste specific requirements associated with the waste defined to be universal waste therein. In 40 CFR 273.1, the definitions in 40 CFR 273.6, and wherever elsewhere in Title 40 of the Code of Federal Regulations there is a listing of universal wastes or a listing of hazardous waste that are the subject of provisions set out in 40 CFR Part 273 as universal wastes, it shall be amended by addition of the following sentence: "In addition to the hazardous wastes listed herein, the term "universal waste" and all lists of universal waste or waste subject to provisions of 40 CFR Part 273 shall include those hazardous wastes listed in Part XVI (9 VAC 20-60-1495 et seq.) of the Virginia Hazardous Waste Management Regulations as universal wastes, under such terms and requirements as shall therein be ascribed." Any listing of universal wastes in 40 CFR Part 273 shall incorporate the universal wastes set out in Part XVI in a manner identical to those included in the federal text; whether, for example, as in 40 CFR 273.32(b)(4), 40 CFR 273.32(b)(5), 40 CFR 273.39(b)(2), and 40 CFR 273.62(a)(20) or as items to be included in a calculation or requirement as in the definitions of "Large Quantity Handler of Universal Waste" and "Small Quantity Handler of Universal Waste."

3. In addition to the requirements for lamps contained in 40 CFR 273, the following requirements shall apply:

a. A used lamp shall be considered discarded and a waste on the date the generator permanently removes it from its fixture. An unused lamp becomes a waste on the date the generator discards it since that is the date on which he is deemed to have decided to discard it in accordance with 40 CFR 273.5(c)(2).

b. Universal waste lamps may be crushed or intentionally broken on the site of generation to reduce their volume; however, breaking, crushing, handling, and storage must occur in a safe and controlled manner that minimizes the release of mercury to the workplace and the environment and must comply with 29 CFR 1910.1000. The procedure for breaking, crushing, handling and storing of the lamps must be documented and use a mechanical unit specifically designed for the process that incorporates the containment and filtration of process air flows to remove mercury-containing vapors and dusts.

~~3.~~ *4.* A small quantity handler having a waste subject to the requirements of 40 CFR 273.13(a)(3)(i) is also subject to *9 VAC 20-60-270 and* Parts IV (9 VAC 20-60-305 et seq.), VII (9 VAC 20-60-420 et seq.), ~~XI (9 VAC 20-60-960 et seq.),~~ and XII (9 VAC 20-60-1260 et seq.) of ~~these regulations~~ *this chapter*.

9 VAC 20-60-315. Notification.

A. Any person that notified the EPA of hazardous waste management activities as referenced in 9 VAC 20-60-305 B shall provide a copy of that notification to the director.

B. Any person involved in hazardous waste management activities that did not comply with the notification requirements of the EPA as referenced in 9 VAC 20-60-305 B but is subject to those requirements shall notify the director in writing of their hazardous waste management activities by the effective date of this chapter. Notification ~~may~~ *shall* be accomplished by the use of EPA Form 8700-12 ~~or the provision of the same information in any other manner selected by the notifier~~.

C. Any person who initiated a hazardous waste management activity subsequent to the preliminary notification period of 42 USC § 6930 but prior to the effective date of this chapter shall notify the director of the initiation of such activities by the effective date of this chapter. Notification ~~may~~ *shall* be accomplished by the use of EPA Form 8700-12 ~~or the provisions of the same information in any other manner selected by the notifier~~.

D. (Reserved.)

E. Transporters shall provide only one notification form for all transportation activities.

F. One notification form is required for each generator site.

G. A notification form is required for each storage, treatment, disposal, or other facility. However, if one geographic site includes more than one storage, treatment or disposal activity, only one notification form for the entire facility site is required.

~~H. Generators that store, treat, or dispose of hazardous waste on-site shall file a notification form for generation activities as well as storage, and treatment and disposal activities.~~

~~I.~~ *H.* New generators, transporters, treaters, storers, and disposers (those initiating activities subsequent to the assumption of the hazardous waste management program by the Commonwealth) shall comply with the requirements of 9 VAC 20-60-262, 9 VAC 20-60-263, and 9 VAC 20-60-264, as applicable, to obtain an identification number from the administrator *or the director*.

9 VAC 20-60-355. EPA identification number.

A. A generator shall not treat, store, dispose of, transport, or offer for transportation hazardous waste without having received an EPA identification number from the administrator or the director.

B. A generator who has not received an EPA identification number may obtain one by applying to the director using EPA Form 8700-12. Upon receiving a request, the director will assign an EPA identification number to the generator.

C. A generator shall not offer his hazardous waste to transporters or to facilities that have not received an EPA identification number.

D. Provisional identification number. If an emergency or other unusual incident occurs which causes a necessity for the rapid transport of a hazardous waste to an authorized hazardous waste management facility, the generator involved in such a circumstance can telephone the Department of Environmental Quality (804-698-4000) and obtain a provisional identification number. Applicants receiving such a number will be mailed a blank EPA Form 8700-12 that shall be completed and returned to the Department of Environmental Quality regional office within 10 calendar days. (Note: The department's website, http://www.deq.state.va.us,

or the receptionist at 804-698-4000, will provide information on how to contact the appropriate regional office.)

9 VAC 20-60-430. Recordkeeping and reporting requirements.

A. Except as provided in 9 VAC 20-60-430 B and 9 VAC 20-60-430 C, all transporters shall retain one signed copy of all manifests in their records for not less than three years from the date of acceptance for shipment by the initial transporter. The retained copy shall show his signature as well as those of the generator and the designated facility owner or operator, or next designated transporter.

B. For shipments delivered to the designated facility by water (bulk shipment), each water (bulk shipment) transporter shall retain a copy of the shipping paper containing all the information required in ~~9 VAC 20-60-470 C 2~~ *40 CFR 263.20(e)(2)* for a period of three years from the date of acceptance by the initial transporter.

C. For shipments of hazardous waste by rail within the United States:

1. The initial rail transporter shall keep a copy of the manifest and shipping paper with all the information required in ~~9 VAC 20-60-470 D 2~~ *40 CFR 263.20(f)(2)* for a period of three years from the date the hazardous waste was accepted by the initial transporter.

2. The final rail transporter shall keep a copy of the signed and dated manifest (or the shipping paper if signed by the designated facility in lieu of the manifest) for a period of three years from the date the hazardous waste was accepted by the initial transporter.

3. Intermediate rail transporters are not required to keep records pursuant to this chapter.

D. A transporter who transports hazardous waste out of the United States shall keep a copy of the manifest, indicating that the hazardous waste left the United States, for a period of three years from the date the waste was accepted by the initial transporter.

E. The periods of retention referred to in this part are extended automatically during the course of any unresolved enforcement action regarding the regulated activity or as requested by the director.

F. All transporters permitted by the director under 9 VAC 20-60-450 are required to submit an annual report of hazardous waste transporting activities. The annual report shall be a summary of activities and shall be submitted on and include the information required by the Transporter Annual Report form (Form 7.2-1). The annual report shall be submitted within 90 days of the close of the reporting year. The reporting year ends December 31 of each calendar year.

9 VAC 20-60-440. Identification number.

A. All persons who transport hazardous waste within, out of or into the Commonwealth shall apply for and receive from the ~~Virginia Department of Environmental Quality~~ *director* an identification number prior to such transport.

B. An EPA identification number shall be obtained from the ~~Virginia Department of Environmental Quality~~ *director* by submitting an application on EPA Form 8700-12.

C. The identification number issued to the transporter shall be included at all times on:

1. All correspondence related to the transport of hazardous waste and shall be displayed in the format as follows:

Hazardous Waste Transporter ID Number _____

Virginia Hazardous Waste Transporter Permit Number _____;

2. The manifest provided by the generator of a hazardous waste and utilized in the transport of hazardous waste, and

3. All documents related to the reporting of a discharge or accident.

D. The identification number and permit number shall remain unique to the applicant as long as the applicant continues to do business as a transporter of hazardous waste in the Commonwealth of Virginia. The identification number may not be transferred without the approval of EPA. The permit number may not be transferred without the approval of the director.

E. Provisional identification number. If an emergency or other unusual incident occurs which causes a necessity for the rapid transport of a hazardous waste to an authorized HWM facility, the transporter involved in such a circumstance can telephone the Department of Environmental Quality (804-698-4000) and obtain a provisional identification number. Applicants receiving such a number will be mailed a blank EPA Form 8700-12*,* which shall be completed and returned to the ~~department~~ *director or his designee* within 10 calendar days.

9 VAC 20-60-450. Transporter permit.

A. This chapter applies to all persons who transport a hazardous waste, except as otherwise provided in Part VII (9 VAC 20-60-420 et seq.) of this chapter.

B. The transporter permit required under 9 VAC 20-60-450 applies only to those transporters who transport hazardous waste shipments which originate or terminate or both in the Commonwealth. Transporters who transport hazardous waste only through the Commonwealth are not required to obtain a transporter permit.

C. Permit issuance. Upon receipt of a complete application ~~(Appendix 7.1 of this part)~~*, Form 7.1,* accompanied by the appropriate permit application fee as specified in Part XII (9 VAC 20-60-1260 et seq.) of this chapter, the director shall either:

1. Issue a permit, provided conditions of 9 VAC 20-60-440 are met; or

2. Deny the permit when it can be demonstrated that the transporter has violated regulations of the Commonwealth, another state or the federal government, so as to pose substantial present or potential hazard to health or environment. The procedure for denying a permit shall be

consistent with the Virginia Administrative Process Act (§ 9-6.14:1 et seq. of the Code of Virginia).

D. The term of the transporter permit shall be 10 years. A permit shall remain in effect until one or more of the following conditions are met:

1. The transporter ceases business operation;

2. The transporter requests, in writing, that the permit be terminated;

3. The permit is revoked;

4. The director determines that an emergency exists and that summary termination of a permit is necessary to prevent the creation or continuance, or both, of an immediate and present threat to human health or critical damage to the environment;

5. Upon the expiration date of the permit, unless reapplication for a new permit has been received by the director 30 days prior to such date.

E. Revocation of permit.

1. Revocation for cause. The director may revoke a transporter's permit when it can be demonstrated that a transporter has violated this chapter so as to pose substantial present or potential hazard to health or environment. The procedure for revoking a permit shall be consistent with the Administrative Process Act of the Commonwealth.

2. Revocation and reissuance. Whenever the transporter changes his corporate name, ownership or the EPA identification number ~~or any of these~~, he shall notify the ~~Department of Environmental Quality~~ *director* within 30 days of such a change. Upon receiving such a notification the ~~department~~ *director* will revoke the old permit and reissue it reflecting the appropriate changes. The reissued permit will remain valid for the unexpired duration of the revoked permit.

3. Within 30 days of the receipt of the notice of revocation, the original copy of the permit shall be returned to the ~~Department of Environmental Quality~~ *director*.

F. The transporter permit number shall appear at all times on:

1. All correspondence to the Commonwealth;

2. All documents related to the reporting of a discharge or accident.

G. Temporary transporter permit. If a provisional identification number is issued by ~~EPA~~ *the director* pursuant to the provisions of 9 VAC 20-60-440 E the applicant may obtain a temporary transporter permit by calling the director or his representative at ~~(804) 225-2667~~ *804-698-4000*. The permit will be valid only for the duration of the activity ~~which~~ *that* required the provisional EPA identification number. The applicant shall submit a permit application conforming with 9 VAC 20-60-450 C within 10 calendar days.

H. Emergency transporter permit. In the event of a determination by the Commonwealth that circumstances dictate expedient action to protect human health and environmental quality, provisions of 9 VAC 20-60-260, 9 VAC 20-60-262, and Part VII of this chapter may be waived by the director or his designee. Such waiver will be considered as an emergency transporter permit valid for the duration of an emergency only.

9 VAC 20-60-480. Acceptance, shipment and delivery of hazardous waste.

A. A transporter shall not accept for shipment any hazardous waste for transport without determining that requirements of 9 VAC 20-60-263 have been complied with.

B. If a manifest is required by 9 VAC 20-60-263, the generator shall sign and date the manifest and release the hazardous waste shipment to the transporter.

C. The transporter who is subject to 9 VAC 20-60-480 B shall sign and date the manifest and accept the hazardous waste for shipment.

D. The transporter shall not accept any hazardous waste for shipment unless *the generator has met* all applicable labeling, container and packaging requirements of this chapter ~~have been met by the generator~~.

E. If the transporter ships the hazardous waste to a treatment, storage or disposal facility or transfers the hazardous waste to another transporter, such acts shall be in accordance with the following:

1. The receiving treatment, storage or disposal facility or transporter shall have an identification number issued by the EPA *or authorized state*;

2. The manifest shall be signed over to the receiving treatment, storage or disposal facility or transporter with the prior transporter retaining a copy of the manifest.

F. The transporter shall maintain the labeling required by the Regulations Governing the Transportation of Hazardous Materials (9 VAC 20-110-10 et seq.) during the shipment of the hazardous waste.

G. 1. The transporter shall deliver the entire quantity of hazardous waste ~~which~~ *that* he accepted for shipment from a generator or a previous transporter to:

a. The designated facility listed on the manifest;

b. The next designated transporter; or

c. The place outside the United States designated by the generator.

2. If the hazardous waste shipment cannot be delivered in accordance with 9 VAC 20-60-480 G 1, the transporter must contact the generator for further directions concerning an alternate facility for delivery and must revise the manifest according to the generator's instructions.

H. If the hazardous waste shipment will terminate within the Commonwealth of Virginia, the transporter shall deliver the shipment to a storage, treatment, disposal, or other facility permitted by the Commonwealth of Virginia under the provisions of this chapter or a facility permitted by the EPA or which qualifies for interim status.

I. If the shipment of hazardous waste is transported out of the Commonwealth, the transporter shall deliver the shipment to a designated facility permitted by that state under an approved program or by EPA or which qualifies for interim status ~~(see 9 VAC 20-60-990)~~ in the opinion of the applicable aforementioned authority.

J. If the shipment of hazardous waste is shipped out of the United States, the transporter shall handle the manifest in accordance with 9 VAC 20-60-263.

K. If the transporter mixes hazardous wastes of different shipping descriptions specified in Regulations Governing the Transportation of Hazardous Materials by placing them into a single container, such transporter shall also comply with 9 VAC 20-60-262.

L. All transporters shipping a hazardous waste to a destination within the Commonwealth from another state shall comply with all provisions of this chapter including obtaining a transporter permit from the director and an identification number from the EPA.

M. A transporter that imports a hazardous waste from a foreign country into the Commonwealth shall comply with the provisions of 9VAC20-60-262 and shall obtain a transporter permit from the director and obtain an ID number from the EPA.

~~N. A transporter shall not accept for transport a hazardous waste or hazardous material which is prohibited from transportation by either the U.S. Department of Transportation or EPA.~~

9 VAC 20-60-490. Discharges.

A. The transporter shall comply with all federal and Commonwealth requirements relative to discharges.

B. 1. In the event of a discharge or spill of hazardous wastes, the transporter shall take appropriate emergency actions to protect human life, health, and the environment and shall notify appropriate local authorities. Upon arrival on the scene of state or local emergency or law-enforcement personnel, the transporter shall carry out such actions as required of him.

2. The transporter shall clean up any hazardous waste discharge that occurs during transportation and shall take such action as is required by the federal government, the Virginia ~~Water Control Board, the~~ Department of Emergency ~~Services~~ *Management*, the ~~Department of Environmental Quality~~ *director*, or local officials, so that the hazardous waste discharge no longer presents a hazard to human health or the environment.

3. If the discharge of hazardous waste occurs during transportation and ~~a Department of Environmental Quality official~~ *the director or his designee* determines that immediate removal of the waste is necessary to protect human health or the environment, an emergency transporter permit ~~will~~ *may* be issued in accordance with 9 VAC 20-60-450 H.

4. The disposal of the ~~discharge~~ *discharged* materials shall be done in a manner consistent with this chapter and other applicable Virginia and federal regulations.

C. Discharges by air, rail, highway, or water (nonbulk) transporters.

1. In addition to requirements contained in preceding parts, an air, rail, highway or water (nonbulk) transporter who has discharged hazardous waste shall give notice at the earliest practicable moment to agencies indicated in 9 VAC 20-60-490 C 2 after each incident that occurs during the course of transportation (including loading, unloading, and temporary storage) in which as a direct result of the discharge of the hazardous wastes:

a. A person is killed;

b. A person receives injuries requiring his hospitalization;

c. Estimated carrier or other property damage exceeds $50,000;

d. Fire, breakage, spillage, or suspected radioactive contamination occurs involving shipment of radioactive material;

e. Fire, breakage, spillage, or suspected contamination occurs involving shipment of etiologic agents; or

f. A situation exists of such a nature that, in the judgment of the transporter, it should be reported in accordance with 9 VAC 20-60-490 C 2 even though it does not meet the above criteria (e.g., continuing danger of life exists at the scene of the incident), or as required by 49 CFR 171.15.

2. The notice required by 9 VAC 20-60-490 C 1 shall be given to:

a. The National Response Center, U.S. Coast Guard, at 800-424-8802 (toll free) or at 202-426-2675 (toll call); and

b. The *Virginia* Department of Emergency ~~Services~~ *Management* at 800-468-8892 (toll free) or 804-674-2400 (Richmond local area). In a case of discharges affecting state waters, the notice shall also be given to the PReP Coordinator in the appropriate regional office of the Department of Environmental Quality.

3. When notifying as required in 9 VAC 20-60-490 C 1, the notifier shall provide the following information:

a. Name of person reporting the discharge and his role in the discharge;

b. Name, telephone number and address of the transporter;

c. Name, telephone number and address of the generator;

d. Telephone number where the notifier can be contacted;

e. Date, time and location of the discharge;

f. Type of incident, nature of hazardous waste involvement, and whether a continuing danger to life exists at the scene;

g. Classification, name and quantity of hazardous waste involved; and

h. The extent of injuries, if any.

4. Within 15 calendar days of the discharge of any quantity of hazardous waste, the transporter shall send a written report on DOT Form F5800.1 in duplicate to the Chief, Information System Division, Transportation Programs Bureau, Department of Transportation, Washington, D.C. 20590. Two copies of this report will also be filed with the *Director,* Department of Environmental Quality, Post Office Box 10009, 629 East Main Street, Richmond, Virginia 23240-0009.

5. In reporting discharges of hazardous waste as required in 9 VAC 20-60-490 C 4, the following information shall be furnished in Part H of the DOT Form F5800.1 in addition to information normally required:

a. An estimate of the quantity of the waste removed from the scene;

b. The name and address of the facility to which it was taken; and

c. The manner of disposition of any unremoved waste.

A copy of the hazardous waste manifest shall be attached to the report.

D. Discharges by water (bulk) transporters.

1. A water (bulk) transporter shall, as soon as he has knowledge of any discharge of hazardous waste from the vessel, notify, by telephone, radio telecommunication or a similar means of rapid communication, the office designated in 9 VAC 20-60-490 C 2.

2. If notice as required in 9 VAC 20-60-490 D 1 is impractical, the following offices may be notified in the order of priority:

a. The government official predesignated in the regional contingency plan as the on-scene coordinator. Such regional contingency plan for Virginia is available at the office of the 5th U.S. Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23705;

b. Commanding officer or officer-in-charge of any U.S. Coast Guard unit in the vicinity of the discharge; or

c. Commander of the 5th U.S. Coast Guard District.

3. When notifying the notifier shall provide the following information:

a. Name of person reporting the discharge and his role in the discharge;

b. Name, telephone number and address of the transporter;

c. Name, telephone number and address of the generator;

d. Telephone number so the notifier can be contacted;

e. Date, time, location of the discharge;

f. Type of incident and nature of hazardous waste involvement and whether a continuing danger to life exists at the scene;

g. Classification, name and quantity of hazardous waste involved; and

h. The extent of injuries, if any.

E. Discharges at fixed facilities. Any transporter responsible for the release of a hazardous material (as defined in Part I (9 VAC 20-60-12 et seq.) of this chapter) from a fixed facility (e.g., transfer facility) which poses an immediate or imminent threat to public health and who is required by law to notify the National Response Center shall notify the chief administrative ~~officer~~ *officers (or their designees)* of the local ~~government~~ *governments* of the ~~jurisdiction~~ *jurisdictions* in which the release occurs as well as the ~~department~~ *director* or ~~their designees~~ *his designee*.

APPENDIX 7.1. *(Repealed.)*
~~APPLICATION FOR A TRANSPORTER PERMIT.~~

~~Name~~ _____
~~Date~~ _____

~~Address (if applicable)~~ _____
~~Phone Number~~ _____

_____
~~Completed by~~ _____

_____
~~Title~~ _____

~~EPA ID #~~ _____

~~1. Please attach financial data:~~

~~a. Interstate transporters: Copy of document showing insurance required under 49 CFR Part 387.~~

~~b. Intrastate transporters: Either copy of insurance required under 49 CFR Part 387 or latest annual balance sheet.~~

~~2. Incorporated in ___~~

~~3. VA Corporation ID# (if applicable) ___~~

~~4. Corporate Headquarters Address ___~~
~~___~~
~~___~~
~~___~~

~~5. Chief Executive Officer___~~

~~6. Are you presently licensed or permitted by any other state to transport hazardous materials or hazardous wastes? Yes [ ] No [ ]~~

~~If yes, attach a list of licensing/permit agent and appropriate code to identify your licenses/permits.~~

~~7. Have you been informed by a state or federal agency of violations pertaining to the management of hazardous wastes or transportation of hazardous wastes/materials? Yes [ ] No [ ]~~

~~If yes, give agency issuing notice of violations and circumstances.~~

~~8. Give name, address, and telephone number of the principal contact.~~

~~___~~

~~___~~

~~NOTE: Permit application fee must accompany this Transporter Permit Application. See Appendix 12.1 of the Virginia Hazardous Waste Management Regulations, 9 VAC 20-60-12 et seq.~~

~~Certification Below Must Be Signed~~

~~I certify that all statements are true and are representative of the ability of _____ to provide hazardous waste transportation services consistent with the Commonwealth of Virginia Hazardous Waste Management Regulations.~~

~~Name___~~

~~Title___~~

~~Date___~~

PART XI.
~~HAZARDOUS WASTE MANAGEMENT FACILITY PERMIT REGULATIONS.~~ *(Repealed.)*

9 VAC 20-60-960 through 9 VAC 20-60-1250. *(Repealed.)*

APPENDIX 11.2. *(Repealed.)*

(Note: All text in Part XI is being repealed but is not shown as stricken text.)

9 VAC 20-60-1260. Purpose, scope, and applicability.

A. The purpose of this part is to establish a schedule of fees collected by the department in the support of its permit issuance programs required by Parts *III (9 VAC 20-60-270 et seq.) and* VII (9 VAC 20-60-420 et seq.) ~~and XI (9 VAC 20-60-960 et seq.)~~ of this chapter.

B. Part XII (9 VAC 20-60-1260 et seq.) of this chapter applies to all persons required to submit a permit application ("applicants") under *9 VAC 20-60-270 and* 9 VAC 20-60-420 E ~~and 9 VAC 20-60-970~~ unless specifically exempt under 9 VAC 20-60-1260 G. The fees shall be assessed in accordance with 9 VAC 20-60-1270.

C. When the director finds it necessary to modify any permit under ~~9 VAC 20-60-1140 or 9 VAC 20-60-1150~~ *9 VAC 20-60-270*, the holder of that permit shall be considered an applicant and shall be assessed a fee in accordance with 9 VAC 20-60-1270 D even if the director shall have initiated the modification action.

D. When the director finds it necessary to revoke and reissue any permit in accordance with ~~9 VAC 20-60-1150 B 1~~ *9 VAC 20-60-270*, the holder of that permit shall be considered an applicant for a new permit and shall be assessed a fee in accordance with 9 VAC 20-60-1270 C.

E. If the director finds it necessary either to revoke and reissue a permit ~~in accordance with 9 VAC 20-60-1150 B 2~~ or to perform a minor modification of a permit in accordance with ~~9 VAC 20-60-1170~~ *9 VAC 20-60-270*, the holder of that permit shall be considered an applicant and shall be assessed a fee in accordance with 9 VAC 20-60-1270 E.

F. When the director finds it necessary to issue an emergency treatment, storage, or disposal permit in accordance with ~~9 VAC 20-60-1050 A~~ *9 VAC 20-60-270*, the holder of that permit shall be considered an applicant and shall be assessed a fee in accordance with 9 VAC 20-60-1270 F. No permit application fee will be assessed to the holders of the emergency transportation permits issued in accordance with 9 VAC 20-60-450 H.

G. Exemptions.

1. The owners and operators of HWM treatment, storage, and disposal facilities who have submitted Part A of their application ~~as required by 9 VAC 20-60-980 D 1~~ and who have qualified for interim status in accordance with ~~9 VAC 20-60-990~~ *9 VAC 20-60-270* are exempt from the requirements of Part XII of this chapter until a Part B application for the entire facility or a portion of the facility has been requested or voluntarily submitted ~~in accordance with 9 VAC 20-60-980 D 2~~. The owner and operator of an HWM facility submitting a Part B application will be considered an applicant for a new permit.

2. The owners and operators of HWM facilities ~~which~~ *that* are deemed to possess a permit by rule in accordance with ~~9 VAC 20-60-1040~~ *9 VAC 20-60-270* are exempt from the requirements of Part XII of this chapter.

3. Hazardous waste generators that accumulate wastes on-site in accordance with 40 CFR 262.34 are not subject to regulations contained in Part XII of this chapter since HWM permits are not required for such accumulations.

H. The effective date of Part XII of this chapter is October 1, 1984.

9 VAC 20-60-1270. Determination of application fee amount.

A. General.

1. Each application for a new permit and each application for a modification to a permit is a separate action and shall be assessed a separate fee. The amount of such fees is determined on the basis of 9 VAC 20-60-1270.

2. The amount of the permit application fee is based on the costs directly associated with the permitting program required by Parts *III (9 VAC 20-60-270 et seq.) and* VII (9 VAC 20-60-420 et seq.) ~~and XI (9 VAC 20-60-960 et seq.)~~ of this chapter and includes costs for personnel and contractual effort and the prorated costs of supplies, equipment, communications and office space. The fee schedules are shown in ~~Appendix 12.1 of this part~~ *9 VAC 20-60-1285*. These schedules will be re-evaluated annually and the results of such re-evaluations will be used to recommend to the Virginia Waste Management Board the necessary adjustments.

B. Transporter fees.

1. Application fees for the transporter permits are shown in ~~Table 12.1-1 of Appendix 12.1 of this part~~ *9 VAC 20-60-*

1285 A. Based on the greater regulatory effort associated with the issuance of permits to the transporters without terminals or other facilities in the Commonwealth, the out-of-state transporters are charged higher fees.

2. Since Part VII of this chapter does not provide for a modification procedure, all transporter permit applications are considered to be for new permits.

C. New HWM facility permits.

1. All applicants for new hazardous waste treatment, storage, and disposal facility permits are assessed a base fee shown in Table ~~12.1-2 of Appendix 12.1 of this part~~ *9 VAC 20-60-1285 B*.

2. Applicants for a facility permit which includes one or more of the hazardous waste treatment, storage or disposal units or processes that require ground water protection *or corrective action for solid waste management units* in accordance with Subpart F of 40 CFR Part 264, Subpart K of 40 CFR Part 264, Subpart L of 40 CFR Part 264, Subpart M of 40 CFR Part 264, and Subpart N of 40 CFR Part 264, as applicable, ("land-based TSD units") are assessed a supplementary fee shown in ~~Table 12.1-2 of Appendix 12.1 of this part~~ *9 VAC 20-60-1285 B*, in addition to the base fee specified 9 VAC 20-60-1270 C 1 and any other supplementary fee that may be appropriate.

3. Applicants for a facility permit which includes one or more hazardous waste incineration, boiler, or industrial furnace units or processes regulated in accordance with Subpart O of 40 CFR Part 264 are assessed a supplementary fee shown in ~~Table 12.2-2 of Appendix 12.1 of this part~~ *9 VAC 20-60-1285 B*, in addition to the base fee specified in 9 VAC 20-60-1270 C 1 and any other supplementary fee that may be appropriate.

4. Applicants for a facility permit for storage of hazardous wastes in containers, tanks or drip pads, or both, subject to Subpart I of 40 CFR Part 264, Subpart J of 40 CFR Part 264, and Subpart W of 40 CFR Part 264 will not be assessed any supplementary fees unless required to close and perform post-closure care as landfills as provided for in 40 CFR 264.197(b) and 40 CFR 264.571(b).

5. The transporter permits are separate permits and require a separate administrative action. Applicants for new treatment, storage, and disposal facility permits who also apply for a transporter permit will be assessed separate fees in accordance with 9 VAC 20-60-1270 B.

D. Modifications to existing HWM facility permits.

1. Except as provided for in 9 VAC 20-60-1270 E, all applicants for a modification of an existing HWM facility permit are assessed a modification base fee shown in ~~Table 12.1-3 of Appendix 12.1 of this part~~ *9 VAC 20-60-1285 C*.

2. Applicants for a modification ~~which~~ *that* includes or involves the addition of hazardous wastes not currently in the permit are assessed a supplementary modification fee shown in ~~Table 12.1-3 of Appendix 12.1 of this part~~ *9 VAC 20-60-1285 C*, in addition to the base fee specified in 9 VAC 20-60-1270 D 1 and any other supplementary fee that may be appropriate.

3. *Applicants for a major (Class 3) modification that includes or involves corrective action for solid waste management units under 40 CFR 264.101 and Title 40, Subpart S shall be assessed a supplementary modification fee shown in 9 VAC 20-60-1285 C in addition to supplementary fees specified in 9 VAC 20-60-1270 D 1 and any other supplementary fee that may be appropriate.*

4. Applicants for a *major (Class 3)* modification ~~which~~ *that* includes or involves the addition of one or more new hazardous waste land-based TSD units or processes; or requires a substantive change in the design of the existing land-based TSD units or processes, are assessed a supplementary modification fee shown in ~~Table 12.1-3~~ *9 VAC 20-60-1285 C* in addition to the base fee specified in 9 VAC 20-60-1270 D 1 and any other supplementary fee that may be appropriate. For the purpose of 9 VAC 20-60-1270 D, it will be deemed that a ~~substantive~~ *major* change is required whenever a change in the design of the ground water protection system or whenever a new land treatment demonstration permit specified in ~~9 VAC 20-60-1050 C~~ *9 VAC 20-60-270* is necessary.

~~4.~~ *5.* Applicants for a *major (Class 3)* modification ~~which~~ *that* includes or involves the addition of one or more hazardous waste incineration units or processes, or requires a substantive change in the design of an existing incineration unit or process, are assessed a supplementary modification fee shown in ~~Table 12.1-3 of Appendix 12.1 of this part~~ *9 VAC 20-60-1285 C*, in addition to the base fee specified in 9 VAC 20-60-1270 D 1 and any other supplementary fee that may be appropriate. For the purposes of 9 VAC 20-60-1270 D, it will be deemed that a ~~substantive~~ *major* change is required whenever a change occurs that necessitates the performance of a trial burn in accordance with ~~9 VAC 20-60-1050 B~~ *9 VAC 20-60-270*.

~~5.~~ *6.* Applicants for a *major (Class 3)* modification which includes or involves new treatment, storage or disposal units, processes or areas, or requires a substantive change in the design of any existing hazardous waste treatment, storage or disposal units, processes or areas, neither of which is a hazardous waste land-based TSD or incineration unit, are assessed a supplementary modification fee shown in ~~Table 12.1-3 of Appendix 12.1 of this part~~ *9 VAC 20-60-1285 C*, in addition to the base fee specified in 9 VAC 20-60-1270 D 1 and any other supplementary fee that may be appropriate. For the purposes of 9 VAC 20-60-1270 D, expansion of an existing container storage facility is not considered to be a ~~substantive~~ *major* change.

~~6.~~ *7.* Applicants for a modification ~~which~~ *that* is not a minor modification *and is a substantive (Class 2)* as specified in ~~9 VAC 20-60-1170~~ *9 VAC 20-60-270* and ~~which~~ *that* is not subject to the requirements of 9 VAC 20-60-1270 D 2 through 9 VAC 20-60-1270 D ~~5~~ *6*, are assessed a supplementary modification fee shown in ~~Table 12.1-3 of Appendix 12.1 of this part~~ *9 VAC 20-60-1285 C*, in addition to the base fee specified in 9 VAC 20-60-1270 D 1.

~~7.~~ *8.* Applicants for numerous modifications subject to several supplementary fees will not be assessed a permit application fee in excess to the one required for a new permit for a comparable HWM facility.

E. Minor modifications of existing HWM facility permits. All applicants for minor *(Class 1)* modification of an existing HWM facility permit provided for in ~~9 VAC 20-60-1170~~ *9 VAC 20-60-270* are assessed a fee shown in ~~Table 12.1-4 of Appendix 12.1 of this part~~ *9 VAC 20-60-1285 D*.

F. Emergency permits. Applicants for an emergency hazardous waste treatment, storage or disposal permit as provided for in ~~9 VAC 20-60-1050 A~~ *9 VAC 20-60-270* are assessed a fee shown in ~~Table 12.1-5 of Appendix 12.1 of this part~~ *9 VAC 20-60-1285 E*, unless the director shall determine that a lesser fee is appropriate at the time the permit is issued.

9 VAC 20-60-1280. Payment of fees.

A. Due date.

1. Except as specified in ~~9 VAC 20-60-1280 A~~ *subdivision* 2 ~~and 9 VAC 20-60-1280 A 3~~ *of this subsection*, all permit application fees are due on the day of application and must accompany the application.

2. All holders of a Virginia HWM facility permit issued prior to the effective date of this part shall submit the application fees as required by the conditions specified in that permit.

~~3. All applicants for an HWM facility permit or for a modification of an existing permit who have submitted their application prior to the effective date of this part and who have not been issued such a permit or a modification to a permit by that date, shall submit the appropriate application fee within 60 days of the effective date of Part XII (9 VAC 20-60-1260 et seq.) of this chapter or by the effective date of the permit or the modification to the permit, whichever is sooner.~~

B. Method of payment. Acceptable payment is cash or check made payable to the Commonwealth of Virginia, Department of Environmental Quality.

C. Incomplete payments. All incomplete payments will be deemed nonpayments.

D. Late payment. No applications will be deemed to be complete (see ~~9 VAC 20-60-980 C~~ *9 VAC 20-60-270*) until *the director receives* proper payment ~~is received by the department~~.

~~APPENDIX 12.1.~~ *9 VAC 20-60-1285.* Permit application fee schedule.

*(*The effective date of this ~~appendix~~ *fee schedule* is October 1, 1984.*)*

~~Schedule of Fees.~~

~~Table 12.1-1.~~ *A.* Transporter fees.

Transporters with terminals or other facilities within the Commonwealth.	$80
Other transporters.	$120

~~Table 12.1-2.~~ *B.* New TSD facility fees.

Base fee for all facilities*, including corrective action for solid waste management units*.	$9,720
Supplementary fee for one or more land-based TSD units.	$22,590
Supplementary fee for one or more incineration, boiler, or industrial furnace units *(BIF)*.	$14,490

~~Table 12.1-3.~~ *C. Major (Class 3)* Permit modification fees.

Base fee for all *major (Class 3)* modifications.	$50
Addition of new wastes.	$1,330
Addition of or ~~substantive~~ *major (Class 3)* change to one or more land-based TSD units.	$25,920
Addition of or ~~substantive~~ *major (Class 3)* change to one or more incineration, boiler, or industrial furnace units.	$19,430
Addition of or ~~substantive~~ *major (Class 3)* change to other treatment, storage or disposal units, processes or areas *and major change related to corrective action for solid waste management units*.	$8,080
~~Nonsubstantive~~ *Substantive* changes *(Class 2)*.	$1,330

~~Table 12.1-4.~~ *D.* Minor *(Class 1)* permit modification fees.

Minor *(Class 1)* permit modification fee.	$50

~~Table 12.1-5.~~ *E.* Emergency permit fees.

Emergency permit fee.	$1,330

Illustrative Examples

Example 1.

The applicant is submitting a Part B application for an HWM permit for a facility consisting of several surface impoundments, a land treatment process and an ancillary tank and container storage facility. The required fee is calculated as follows:

Base Fee.	$9,720
Supplementary fee for land-based TSD units.	$22,590
Tank storage facility (see 9 VAC 20-60-1270 C 4).	$0
Total fee.	$32,310

Example 2.

After an HWM facility permit has been issued to the facility described in Example 1, the owner and the operator of the facility propose to change the manufacturing process and apply for a modification to allow for an addition of several new hazardous streams to be treated in two new incinerators. The required modification fee is calculated from ~~Table 12.1-3~~ *subsection C of this section* as follows:

Base fee.	$50
Addition of new wastes.	$1,330
Addition of new incineration units.	$19,430
Total modification fee.	$20,810

The fee for a comparable new permit calculated on the basis of ~~Table 12.1-2~~ *subsection B of this section* is as follows:

Base fee.	$9,720
Supplementary fee for land-based units.	$22,590
Supplementary fee for incineration units.	$14,490
Storage facility.	$0
Total fee.	$46,800

which is larger than the required modification fee, so that the provisions of 9 VAC 20-60-1270 D 7 do not apply and the proper fee is $20,810.

Example 3.

After an HWM facility permit has been issued to the facility described in Example 1, the owner and the operator of the facility propose to expand their container storage facility for a storage of additional new waste streams, and apply for a permit modification. The required modification fee is calculated from ~~Table 12.1-3~~ *subsection C of this section* as follows:

Base fee.	$50
Addition of a new waste.	$1,330
Fee for nonsubstantive change.	$1,330
Total modification fee.	$2,710

9 VAC 20-60-1380. Changes to identification and listing of hazardous wastes.

A. General changes.

1. The administrator may from time to time add or delete wastes listed in Subpart D of 40 CFR Part 261.

2. The petitions to exclude wastes listed in Subpart D of 40 CFR Part 261 which are subject to federal jurisdiction shall be addressed directly to the administrator in accordance with the requirements contained in Subpart C of 40 CFR Part 260.

B. ~~(Reserved.)~~ *A person whose wastes were delisted as a result of a successful petition to the administrator shall provide to the director:*

1. The petitioner's name and address;

2. A copy of the petition to the director; and

3. A copy of the administrator's decision.

A person whose wastes were delisted as a result of a successful petition to the administrator may petition the director for a variance from these regulations to allow the application of the delisting to hazardous waste management within the Commonwealth. The director will process the petition in accordance with 9 VAC 20-60-1420 B. (Note: it is usual that delistings by the administrator are incorporated into the Commonwealth's regulation during the next rulemaking by the board; the variance would allow application of the delisting during the interim period before the regulations are amended.)

9 VAC 20-60-1390. Changes in classifications as a solid waste.

A. Variances.

~~1. The administrator may from time to time exclude recycled wastes from being considered a solid waste for the purpose of the regulation of hazardous wastes under Title 40 of the Code of Federal Regulations.~~

~~2. The petitions to exclude wastes are subject to federal jurisdiction and shall be addressed directly to the administrator in accordance with the requirements contained in Subpart C of 40 CFR Part 260.~~

~~B. (Reserved.)~~

1. Applicability.

a. A person who recycles waste that is managed entirely within the Commonwealth may petition the director to exclude the waste at a particular site from the classification as the solid waste (Parts I and III). The conditions under which a petition for a variance will be accepted are shown in subdivision 2 of this subsection. The wastes excluded under such petitions may still, however, remain classified as a solid waste for the purposes of other regulations issued by the Virginia Waste Management Board or other agencies of the Commonwealth.

b. A person who generated wastes at a generating site in Virginia and whose waste is subject to federal jurisdiction (e.g., the waste is transported across state boundaries) shall first obtain a favorable decision from the administrator in accordance with Subpart C, 40 CFR Part 260, before his waste may be considered for a variance by the director.

c. A person who recycles materials from a generating site outside the Commonwealth and who causes them to be brought into the Commonwealth for recycling shall first obtain a favorable decision from the administrator in accordance with Subpart C, 40 CFR Part 260, before the waste may be considered for a variance by the director.

d. A person who received a favorable decision from the administrator in the response to a petition for variance or a person whose wastes were delisted as a result of a successful petition to the administrator shall provide a notification to the director containing the following information: (i) the petitioner's name and address and (ii) a copy of the administrator's decision*.*

2. Conditions for a variance. In accordance with the standards and criteria in subsection B of this section and the procedures in 9 VAC 20-60-1420 A, the director may determine on a case-by-case basis that the following recycled materials are not solid wastes:

a. Materials that are accumulated speculatively without sufficient amounts being recycled (as defined in Part I).

b. Materials that are reclaimed and then reused within the original primary production process in which they were generated; and

c. Materials that have been reclaimed but shall be reclaimed further before the materials are completely recovered.

B. Standards and criteria for variances.

1. The director may grant requests for a variance from classifying as a solid waste those materials that are accumulated speculatively without sufficient amounts being recycled if the applicant demonstrates that sufficient amounts of the material will be recycled or transferred for recycling in the following year. If a variance is granted, it is valid only for the following year, but can be renewed on an annual basis by filing a new application. The director's decision will be based on the following criteria:

a. The manner in which the material is expected to be recycled, and when the material is expected to be recycled, and whether this expected disposition is likely to occur (for example, because of past practice, market factors, the nature of the material, or contractual arrangement for recycling);

b. The reason that the applicant has accumulated the material for one or more years without recycling 75% of the volume accumulated at the beginning of the year;

c. The quantity of material already accumulated and the quantity expected to be generated and accumulated before the material is recycled;

d. The extent to which the material is handled to minimize loss; and

e. Other relevant factors.

2. The director may grant requests for a variance from classifying as a solid waste those materials that are reclaimed and then reused as feedstock within the original production process in which the materials were generated if the reclamation operation is an essential part of the production process. This determination will be based on the following criteria:

a. How economically viable the production process would be if it were to use virgin materials, rather than reclaimed materials;

b. The prevalence of the practice on an industry-wide basis;

c. The extent to which the material is handled before reclamation to minimize loss;

d. The time periods between generating the material and its reclamation, and between reclamation and return to the original primary production process;

e. The location of the reclamation operation in relation to the production process;

f. Whether the reclaimed material is used for the purpose for which it was originally produced when it is returned to the original process, and whether it is returned to the process in substantially its original form;

g. Whether the person who generates the material also reclaims it; and

h. Other relevant factors.

3. The director may grant requests for a variance from classifying as a solid waste those materials that have been reclaimed but shall be reclaimed further before recovery is completed if, after initial reclamation, the resulting material is commodity-like (even though it is not yet a commercial product, and has to be reclaimed further). This determination will be based on the following factors:

a. The degree of processing the material has undergone and the degree of further processing that is required;

b. The value of the material after it has been reclaimed;

c. The degree to which the reclaimed material is like an analogous raw material;

d. The extent to which an end market for the reclaimed material is guaranteed;

e. The extent to which the reclaimed material is handled to minimize loss; and

f. Other relevant factors.

9 VAC 20-60-1410. Changes in the required management procedures.

A. Reclamation of precious metals. ~~1.~~ The director may decide on a case-by-case basis that persons accumulating or storing the recyclable materials described in 40 CFR 261.6(a)(2)(iii) should be regulated under 40 CFR 261.6(b) and 40 CFR 261.6(c) rather than under provisions of 20 VAC 20-60-266. The basis for this decision is that the materials are being accumulated or stored in a manner that does not protect human health and the environment because the materials or their toxic constituents have not been adequately contained, or because the materials being accumulated or stored together are incompatible. In making this decision, the director will consider the following factors:

~~a.~~ *1.* The types of materials accumulated or stored and the amounts accumulated or stored;

~~b.~~ *2.* The method of accumulation or storage;

~~c.~~ *3.* The length of time the materials have been accumulated or stored before being reclaimed;

~~d.~~ *4.* Whether any contaminants are being released into the environment, or are likely to be so released; and

~~e.~~ *5.* Other relevant factors. The procedures for this decision are set forth in 9 VAC 20-60-1420 ~~D~~ *C*.

B. Variance from containment requirements for tanks.

1. The owner or operator may obtain a variance from the requirements of 40 CFR 265.193 or 40 CFR 264.193 if the director finds, as a result of a demonstration by the owner or operator, either:

a. That alternative design and operating practices, together with location characteristics, will prevent the migration of hazardous waste or hazardous constituents into the ground water or surface water at least as effectively as secondary containment during the active life of the tank system; or

b. That in the event of a release that does migrate to ground water or surface water, no substantial present or potential hazard will be posed to human health or the environment.

2. New underground tank systems may not, per a demonstration in accordance with ~~9 VAC 20-60-1410 B~~ *subdivision* 5 *of this subsection*, be exempted from the secondary containment requirements of this section.

3. Application for a variance as allowed in ~~9 VAC 20-60-1410 B~~ *subdivision* 1 *of this subsection* does not waive compliance with the requirements of 40 CFR 265.193 or 40 CFR 264.193 for new tank systems.

4. In deciding whether to grant a variance based on a demonstration of equivalent protection of ground water and surface water, the director will consider:

a. The nature and quantity of the wastes;

b. The proposed alternate design and operation;

c. The hydrogeologic setting of the facility, including the thickness of soils between the tank system and groundwater; and

d. All other factors that would influence the quality and mobility of the hazardous waste constituents and the potential for them to migrate to ground water or surface water.

5. In deciding whether to grant a variance, based on a demonstration of no substantial present or potential hazard, the director will consider:

a. The potential adverse effects on groundwater, surface water, and land quality taking into account:

(1) The physical and chemical characteristics of the waste in the tank system, including its potential for migration;

(2) The hydrogeological characteristics of the facility and surrounding land;

(3) The potential for health risks caused by human exposure to waste constituents;

(4) The potential for damage to wildlife, crops, vegetation, and physical structures caused by exposure to waste constituents; and

(5) The persistence and permanence of the potential adverse effects;

b. The potential adverse effects of a release on ground water quality, taking into account:

(1) The quantity and quality of ground water and the direction of ground water flow;

(2) The proximity and withdrawal rates of water in the area;

(3) The current and future uses of ground water in the area; and

(4) The existing quality of groundwater, including other sources of contamination and their cumulative impact on the ground water quality;

c. The potential adverse effects of a release on surface water quality, taking into account:

(1) The quantity and quality of ground water and the direction of ground water flow;

(2) The patterns of rainfall in the region;

(3) The proximity of the tank system to surface waters;

(4) The current and future uses of surface waters in the area any water quality standards established for those surface waters; and

(5) The existing quality of surface water, including other sources of contamination and the cumulative impact on surface water quality; and

d. The potential adverse effects of a release on the land surrounding the tank system, taking into account:

(1) The patterns of rainfall in the region; and

(2) The current and future uses of the surrounding land.

6. The owner or operator of a tank system, for which a variance from secondary containment had been granted in accordance with the requirements of ~~9 VAC 20-60-1410 B~~ *subdivision* 4 *of this subsection* at which a release of hazardous waste has occurred from the primary tank system but has not migrated beyond the zone of engineering control (as established in the variance), shall:

a. Comply with the requirements of 40 CFR 265.196 or 40 CFR 264.196, except 40 CFR 265.196(d) or 40 CFR 264.196(d);

b. Decontaminate or remove contaminated soil to the extent necessary to:

(1) Enable the tank system, for which the variance was granted, to resume operation with the capability for the detection of and response to releases at least equivalent to the capability it had prior to the release; and

(2) Prevent the migration of hazardous waste or hazardous constituents to ground water or surface water; and

c. If contaminated soil cannot be removed or decontaminated in accordance with ~~9 VAC 20-60-1410 B~~ *subdivision* 6 b *of this subsection*, comply with the requirements of 40 CFR 265.197(b) or 40 CFR 264.197(b), as applicable;

7. The owner or operator of a tank system, for which a variance from secondary containment had been granted in accordance with the requirements of ~~9 VAC 20-60-1410 B~~ *subdivision* 4 *of this subsection*, at which a release of hazardous waste has occurred from the primary tank system and has migrated beyond the zone of engineering control (as established in the variance), shall:

a. Comply with the requirements of 40 CFR 265.196(a) through 40 CFR 265.196(d) or 40 CFR 264.196(a) through 40 CFR 264.196(d);

b. Prevent the migration of hazardous waste or hazardous constituents to ground water or surface water, if possible, and decontaminate or remove contaminated soil. If contaminated soil cannot be decontaminated or removed, or if ground water has been contaminated, the owner or operator shall comply with the requirements of 40 CFR 265.197(b) or 40 CFR 264.197(b); and

c. If repairing, replacing, or reinstalling the tank system, provide secondary containment in accordance with the requirements of 40 CFR 265.193(a) through 40 CFR 265.193(f) or 40 CFR 264.193(a) through 40 CFR 264.193(f) or reapply for a variance from secondary containment and meet the requirements for new tank systems in 40 CFR 265.192 or 40 CFR 264.192 if the tank system is replaced.

The owner or operator shall comply with these requirements even if contaminated soil can be decontaminated or removed, and ground water or surface water has not been contaminated.

C. Petitions to allow land disposal of a waste prohibited under 9 VAC 20-60-268.

1. Any person seeking an exemption from a prohibition under 9 VAC 20-60-268 for the disposal of a restricted hazardous waste in a particular unit or units shall submit a petition to the EPA administrator in accordance with 40 CFR 268.6.

2. (Reserved.)

9 VAC 20-60-1420. Administrative procedures.

A. Procedures for variances to be classified as a boiler. The director will use the following procedures in evaluating applications for variances to classify particular enclosed controlled flame combustion devices as boilers:

1. The applicant must apply to the director for the variance. The application must address the relevant criteria contained in 9 VAC 20-60-1400.

2. The director will evaluate the application and issue a draft notice tentatively granting or denying the application. Notification of this tentative decision will be provided by newspaper advertisement or radio broadcast in the locality where the applicant is located. The director will accept comment on the tentative decision for 30 days, and may also hold a public hearing upon request or at his discretion. The director will issue a final decision after receipt of comments and after the hearing (if any).

B. Variances. The director will use the following procedures in evaluating applications for variances submitted under *9 VAC 20-60-1380 B,* 9 VAC 20-60-1390 and 9 VAC 20-60-1400.

1. The applicant shall apply to the director. The application shall address the relevant criteria contained in *9 VAC 20-60-1380 B,* 9 VAC 20-60-1390 and 9 VAC 20-60-1400.

2. The director will evaluate the application and issue a draft notice tentatively granting or denying the application. Notification of this tentative decision will be provided by newspaper advertisement and radio broadcast in the locality where the applicant is located. The director will accept comment on the tentative decision for 30 days, and may also hold a public hearing upon request or at his discretion. The director will issue a final decision after receipt of comments and after the hearing (if any), and will publish it in the newspaper in the locality where the applicant is located.

C. Changes in management procedures.

1. Recycling activities. In determining whether to regulate recycling activities in a manner differing from procedures described in 40 CFR 261.6(a)(2)(iv), the director will fulfill all the requirements of Article 3 (§ 9-6.14:11 et seq. of the Code of Virginia) of the Administrative Process Act. In addition to the process required by the APA, the director will:

a. If a generator is accumulating the waste, issue a notice setting forth the factual basis for the decision and stating that the person shall comply with applicable requirements of 9 VAC 20-60-262. The notice will become final within 30 days, unless the person served requests a public hearing to challenge the decision. Upon receiving such a request, the director will hold a public hearing. The director will provide notice of the hearing to the public and allow public participation at the hearing. The director will issue a final order after the hearing stating whether or not compliance with 9 VAC 20-60-262 is required. The order becomes effective in 30 days, unless the director specifies a later date or unless review under Article 4 (§ 9-6.14:15 et seq. of the Code of Virginia) of the Administrative Process Act is requested.

b. If the person is accumulating the recyclable material at a storage facility, issue a notice stating that the person shall obtain a permit in accordance with all applicable provisions of ~~Parts~~ *Part* III (9 VAC 20-60-124 et seq.), ~~XI (9 VAC 20-60-960 et seq.)~~ *9 VAC 20-60-270*, and *Part* XII (9 VAC 20-60-1260 et seq.) of this chapter. The owner or operator of the facility shall apply for a permit within no less than 60 days and no more than six months of notice, as specified in the notice. If the owner or operator of the facility wishes to challenge the director's decision, he may do so in his permit application, in a public hearing held on the draft permit, or in comments filed on the draft permit or on the notice of intent to deny the permit. The fact sheet accompanying the permit will specify the reasons for the director's determination. The questions of whether the director's decision was proper will remain open for consideration during the public comment period discussed under 9 VAC 20-60-1210 and in any subsequent hearing.

2. Variance from secondary containment. The following procedures shall be followed in order to request a variance from secondary containment:

a. The director shall be notified in writing by the owner or operator that he intends to conduct and submit a

demonstration for a variance from secondary containment as allowed in 40 CFR 265.193(g), (or 40 CFR 264.195(g)), and 9 VAC 20-60-1410 B according to the following schedule:

(1) For existing tank systems, at least 24 months prior to the date that secondary containment shall be provided in accordance with 40 CFR 265.193(a) or 40 CFR 264.193(a); and

(2) For new tank systems, at least 30 days prior to entering into a contract for installation of the tank system.

b. As part of the notification, the owner or operator shall also submit to the director a description of the steps necessary to conduct the demonstration and a timetable for completing each of the steps. The demonstration shall address each of the factors listed in 9 VAC 20-60-1410 B 4 or 9 VAC 20-60-1410 B 5.

c. The demonstration for a variance shall be completed and submitted to the director within 180 days after notifying the director of intent to conduct the demonstration.

d. In case of facilities regulated under 9 VAC 20-60-265:

(1) The director will inform the public, through a newspaper notice, of the availability of the demonstration for a variance. The notice shall be placed in a daily or weekly major local newspaper of general circulation and shall provide at least 30 days from the date of the notice for the public to review and comment on the demonstration for a variance. The director also will hold a public hearing, in response to a request or at his own discretion, whenever such a hearing might clarify one or more issues concerning the demonstration for a variance. Public notice of the hearing will be given at least 30 days prior to the date of the hearing and may be given at the same time as notice of the opportunity for the public to review and comment on the demonstration. These two notices may be combined.

(2) The director will approve or disapprove the request for a variance within 90 days of receipt of the demonstration from the owner or operator and will notify in writing the owner or operator and each person who submitted written comments or requested notice of the variance decision. If the demonstration for a variance is incomplete or does not include sufficient information, the 90-day time period will begin when the director receives a complete demonstration, including all information necessary to make a final determination. If the public comment period in ~~9 VAC 20-60-1420 D~~ *subdivision* 2 d (1) *of this subsection* is extended, the 90-day time period will be similarly extended.

e. In case of facilities regulated under 9 VAC 20-60-264, if a variance is granted to the permittee, the director will require the permittee to construct and operate the tank system in the manner that was demonstrated to meet the requirements for the variance.

9 VAC 20-60-1430. Petitions to include additional hazardous wastes.

A. General.

1. Any person seeking to add a hazardous waste or a category of hazardous waste to the universal waste regulations of 9 VAC 20-60-273 and Part XVI (9 VAC 20-60-1495 et seq.) of this chapter may petition for a regulatory amendment under this part.

2. To be successful, the petitioner shall demonstrate to the satisfaction of the director that regulation under the universal waste regulations of 9 VAC 20-60-273 and Part XVI of this chapter:

a. Is appropriate for the waste or category of waste;

b. Will improve management practices for the waste or category of waste; and

c. Will improve implementation of the hazardous waste program.

The petition shall include the information required by 9 VAC 20-60-1370 C. The petition should also address as many of the factors listed in ~~9 VAC 20-60-1430~~ *subsection* B *of this section* as are appropriate for the waste or category of waste addressed in the petition.

3. The director will grant or deny a petition using the factors listed in ~~9 VAC 20-60-1430~~ *subsection* B *of this section*. The decision will be based on the weight of evidence showing that regulation under 9 VAC 20-60-273 and Part XVI of this chapter is appropriate for the waste or category of waste, will improve management practices for the waste or category of waste, and will improve implementation of the hazardous waste program.

4. The director may request additional information needed to evaluate the merits of the petition.

5. If the director adds new hazardous wastes to the list contained in 9 VAC 20-60-273 and in Part XVI of these regulations, management of these wastes under the universal waste regulations would only be allowed within the Commonwealth or other states that have added those particular wastes to their regulations. Shipments of such wastes to a state where universal waste standards do not apply to that waste would have to comply with the full hazardous waste requirements of Parts I through XV of this chapter.

B. Factors to consider.

1. The waste or category of waste, as generated by a wide variety of generators, is listed in Subpart D of 40 CFR Part 261, or (if not listed) a proportion of the waste stream exhibits one or more characteristics of hazardous waste identified in Subpart C of 40 CFR Part 261. (When a characteristic waste is added to the universal waste regulations of 9 VAC 20-60-273 and Part XVI of this chapter by using a generic name to identify the waste category (e.g., batteries), the definition of universal waste will be amended to include only the hazardous waste portion of the waste category (e.g., hazardous waste batteries). Thus, only the portion of the waste stream that

does exhibit one or more characteristics (i.e., is hazardous waste) is subject to the universal waste regulations of 9 VAC 20-60-273 and Part XVI of this chapter;

2. The waste or category of waste is not exclusive to a specific industry or group of industries, is commonly generated by a wide variety of types of establishments (including, for example, households, retail and commercial businesses, office complexes, conditionally exempt small quantity generators, small businesses, government organizations, as well as large industrial facilities);

3. The waste or category of waste is generated by a large number of generators (e.g., more than 1,000 nationally) and is frequently generated in relatively small quantities by each generator;

4. Systems to be used for collecting the waste or category of waste (including packaging, marking, and labeling practices) would ensure close stewardship of the waste;

5. The risk posed by the waste or category of waste during accumulation and transport is relatively low compared to other hazardous wastes, and specific management standards proposed or referenced by the petitioner (e.g., waste management requirements appropriate to be added to 9 VAC 20-60-273 or Part XVI of this chapter; and applicable requirements of the Virginia Regulations Governing the Transportation of Hazardous Materials, 9 VAC 20-110-10 et seq.) would be protective of human health and the environment during accumulation and transport;

6. Regulation of the waste or category of waste under 9 VAC 20-60-273 will increase the likelihood that the waste will be diverted from nonhazardous waste management systems (e.g., the municipal waste stream, nonhazardous industrial or commercial waste stream, municipal sewer or stormwater systems) to recycling, treatment, or disposal in compliance with the Virginia Hazardous Waste Management Regulations;

7. Regulation of the waste or category of waste under *9 VAC 20-60-273* will improve implementation of and compliance with the hazardous waste regulatory program; and

8. Such other factors as may be appropriate.

9 VAC 20-60-1505. Additional universal wastes~~--mercury-containing lamps~~.

~~A. "Mercury-containing lamp" means an electric lamp into which mercury was intentionally introduced by the manufacture for the operation of the lamp. "Electric lamp" means the bulb or tube portion of a lighting device specifically designed to produce radiant energy, most often in the ultraviolet (UV), visible, and infrared (IR) regions of the electromagnetic spectrum. Electric lamps include, but are not limited to: incandescent lamps, fluorescent lamps, high pressure sodium lamps, high intensity discharge lamps, mercury vapor lamps, metal halide lamps, and neon lamps.~~

~~B. A used mercury-containing lamp becomes a waste on the date the handler permanently removes it from its fixture. An unused mercury-containing lamp becomes a waste on the date the handler discards it.~~

~~C. In addition to the provisions of Part III (9 VAC 20-60-124 et seq.) of this chapter and other parts of these regulations pertaining to universal wastes, the following special requirements apply to universal wastes that are mercury-containing lamps:~~

~~1. All handlers (both small quantity handlers and large quantity handlers) of universal waste must manage universal waste mercury-containing lamps in accordance with the requirement of 9 VAC 20-60-273 that apply to all universal wastes.~~

~~2. All handlers (both small quantity handlers and large quantity handlers) of universal waste must manage mercury-containing lamps so as to prevent releases of any universal waste or component thereof to the environment. This includes, but is not limited to:~~

~~a. Containing unbroken lamps in packaging that will minimize breakage during normal handling conditions;~~

~~b. Containing broken lamps in packaging that will minimize releases of lamp fragments and residues;~~

~~c. Managing lamps so as to minimize breakage;~~

~~d. Immediately containing all releases of residue from the lamps; and~~

~~e. Determining if any material resulting from a release, clean-up residues from a spill or breakage, or other solid waste generated from handling the lamps is hazardous waste in accordance with 9 VAC 20-60-261. If these wastes are found to be hazardous waste, they shall be managed under the requirements for hazardous waste contained in these regulations.~~

~~3. Universal waste mercury-containing lamps may be crushed or intentionally broken on-site to reduce their volume; however, breaking, crushing, handling, and storage must occur in a safe and controlled manner that minimize the release of mercury to the workplace and the environment and must comply with 29 CFR 1910.1000. The procedure for breaking, crushing, handling and storing of the lamps must be documented and use a mechanical unit specifically designed for the process and incorporating the containment and filtration of process air flows to remove mercury-containing vapors and dusts.~~

~~4. In addition to the labeling and marking requirements of 9 VAC 20-60-273, universal waste mercury-containing lamps and containers of mercury-containing lamps must be labeled or marked clearly and legibly "Universal Waste Mercury-containing Lamps," "Waste Mercury-containing Lamps" or "Used Mercury-containing Lamps."~~

Note: At this time, there are no universal wastes that are not also universal wastes under 40 CFR Part 273 or 9 VAC 20-60-273 B.

NOTICE: The forms used in administering 9 VAC 20-60-12 et seq., Virginia Hazardous Waste Management Regulations, are listed below. Any amended or added forms are reflected in the listing and are published following the listing.

FORMS

~~1993 Hazardous Waste Report (EPA), EPA Form 8700-13 A/B (eff. 8/93).~~

~~Uniform Hazardous Waste Manifest (EPA), EPA Form 8700-22.~~

~~Notification of Regulated Waste Activity (EPA), EPA Form 8700-12 (eff. 11/93).~~

Application for a Transporter Permit, Form 7.1 (eff. 6/01).

Transporter Annual Report, Form 7.2-1 (eff. 6/01).

Intra-Commonwealth Shipments, Form 7.2-2 (eff. 6/01).

Shipments to Other States, Form 7.2-3 (eff. 6/01).

Shipments into the Commonwealth, Form 7.2-4 (eff. 6/01).

Shipments to Foreign Facilities, Form 7.2-5 (eff. 6/01).

APPLICATION FOR A TRANSPORTER PERMIT.

Name _____ Date _____

Address _____ Phone Number _____

_____ Completed by _____

_____ Title _____

EPA ID # _____

1. Please attach financial data:

a. Interstate transporters: Copy of document showing insurance required under 49 CFR Part 387 (MCS-90 Surety Bond).

b. Intrastate transporters: Either copy of insurance required under 49 CFR Part 387 or latest annual balance sheet.

2. Incorporated in _____

3. VA Corporation ID# (if applicable) _____

4. Corporate Headquarters Address _____

_____

5. Chief Executive Officer _____

6. Are you presently licensed or permitted by any other state to transport hazardous materials or hazardous wastes? Yes | | No | |

If yes, attach a list of licensing/permit agent and appropriate code to identify your licenses/permits.

7. Have you been informed by a state or federal agency of violations pertaining to the management of hazardous wastes or transportation of hazardous wastes/materials? Yes | | No | |

If yes, give the name of the agency issuing the notice of violations and the circumstances.

8. Give name, address, and telephone number of the principal contact.

_____

NOTE: Permit application fee must accompany this Transporter Permit Application. See Appendix 12.1 of the Virginia Hazardous Waste Management Regulations, 9 VAC 20-60-12 et seq.

Certification Below Must Be Signed

I certify that all statements are true and are representative of the ability of to provide hazardous waste transportation services consistent with the Commonwealth of Virginia Hazardous Waste Management Regulations.

Name _____

Title _____

Date _____

FORM 7.1 revised 6/2001

TRANSPORTER ANNUAL REPORT.

Transporter Name _____ EPA ID # _____

Address _____ VA Transporter Permit # _____

_____ Phone Number _____

_____ Reporting Year _____

1. Hazardous waste originating in Virginia was transported. [ ] Yes [ ] No

If yes, indicate shipments on the appropriate forms.

a. Shipments within the Commonwealth on Form 7.2-2

b. Shipments from the Commonwealth to the States on Form 7.2-3

c. Shipments into the Commonwealth on Form 7.2-4

d. Shipments to foreign facilities on Form 7.2-5

2. Please list name and address of designated official in firm who can be contacted on hazardous waste transport matters: (if other than reporting official):

Name _____ Title _____

Address _____ Phone Number _____

_____

_____

_____

Signature of Reporting Official Date

_____ _____

Title

_____

FORM 7.2-1 revised 6/2001

INTRA-COMMONWEALTH SHIPMENTS

Transporter Name________________ EPA ID #________________

Address________________ VA Transporter Permit #________________

________________ Phone Number________________

________________ Reporting Year________________

Reported by:________________ Title________________

Report of Hazardous Waste Transportation Activities

Date of Receipt of Shipment	Generator ID Number	Facility ID Number	Date Released to Facility	Manifest Number

FORM 7.2-2 revised 6/2001

SHIPMENTS TO OTHER STATES

Transporter Name________________ EPA ID #________________

Address________________ VA Transporter Permit #________________

________________ Phone Number________________

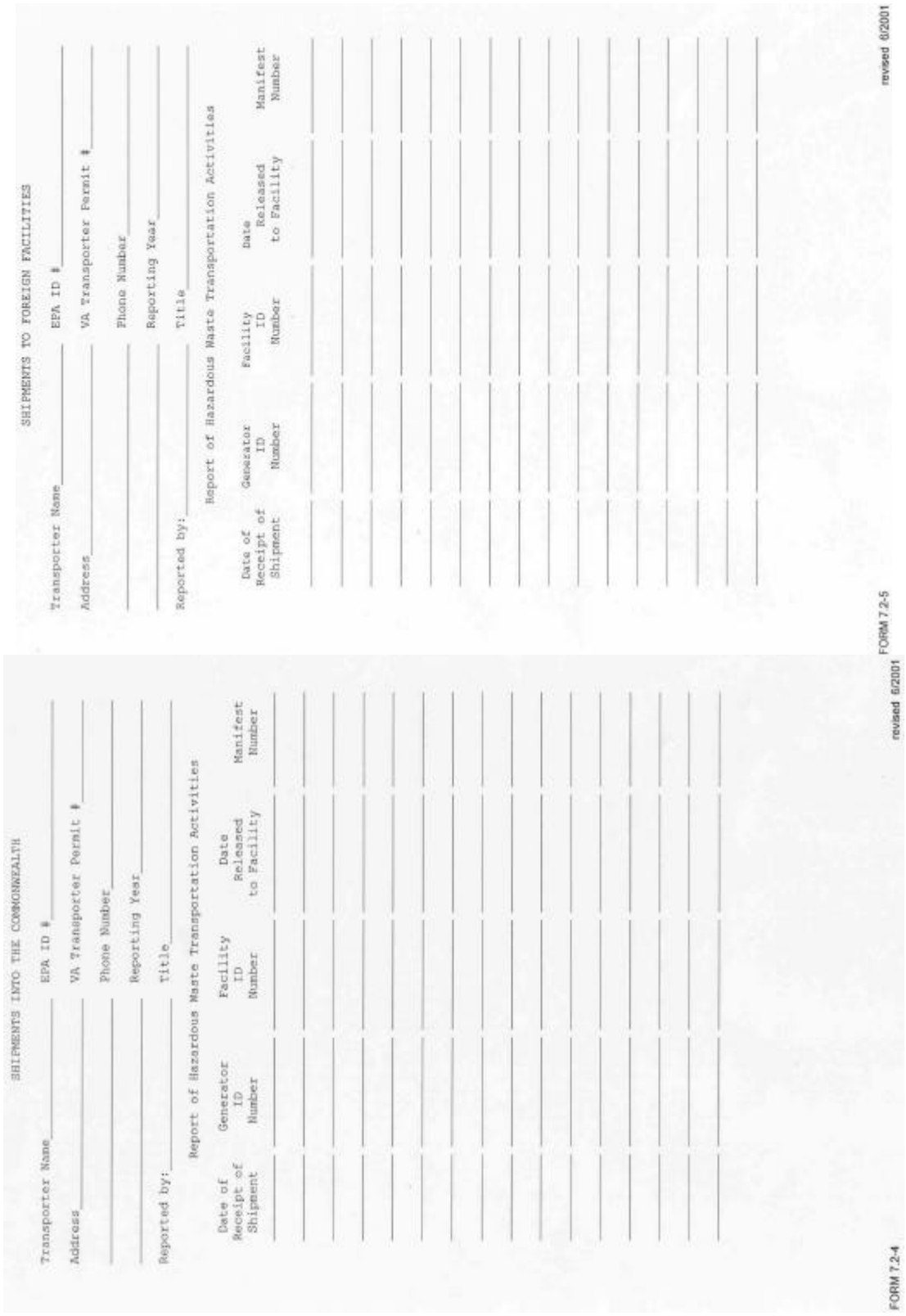
________________ Reporting Year________________

Reported by:________________ Title________________

Report of Hazardous Waste Transportation Activities

Date of Receipt of Shipment	Generator ID Number	Facility ID Number	Date Released to Facility	Manifest Number

FORM 7.2-3 revised 6/2001



SHIPMENTS INTO THE COMMONWEALTH

Transporter Name_____ EPA ID #_____

Address_____ VA Transporter Permit #_____

_____ Phone Number_____

_____ Reporting Year_____

Reported by:_____ Title_____

Report of Hazardous Waste Transportation Activities

Date of Receipt of Shipment	Generator ID Number	Facility ID Number	Date Released to Facility	Manifest Number

FORM 7.2-4 revised 6/2001

SHIPMENTS TO FOREIGN FACILITIES

Transporter Name_____ EPA ID #_____

Address_____ VA Transporter Permit #_____

_____ Phone Number_____

_____ Reporting Year_____

Reported by:_____ Title_____

Report of Hazardous Waste Transportation Activities

Date of Receipt of Shipment	Generator ID Number	Facility ID Number	Date Released to Facility	Manifest Number

FORM 7.2-5 revised 6/2001

VA.R. Doc. No. R00-267; Filed June 21, 2001, 11:39 a.m.

STATE WATER CONTROL BOARD

Title of Regulation: **9 VAC 25-650-10 et seq. Closure Plans and Demonstration of Financial Capability.**

Statutory Authority: §§ 62.1-44.15 and 62.1-44.18:3 of the Code of Virginia.

Public Hearing Date: August 16, 2001 - 2 p.m.
Public comments may be submitted until September 14, 2001.
(See Calendar of Events section for additional information)

Agency Contact: Jon van Soestbergen, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4117, FAX (804) 698-4032 or (804) 698-4021/TTY.

Basis: The basis for the proposed regulation is § 62.1-44.18:3 of the Code of Virginia. The regulation is to require a Virginia Pollution Discharge Elimination System (VPDES) permit, closure plan and demonstration of financial capability to implement the plan for privately owned sewerage treatment systems and sewerage treatment works that discharge more than 1,000 gallons per day and less than 40,000 gallons per day.

Purpose: The unanticipated abandonment of a sewage treatment facility by its owner or operator creates a substantial and imminent threat to public health or the environment because of the facility ceasing operations while still receiving sewage. The State Water Control Board has, therefore, determined that a closure plan and demonstration of financial capability to implement the plan are appropriate for privately owned sewerage systems and sewerage treatment works in order to reduce the potential for such abandonment, or the continued operation of abandoned facilities using public funds.

The proposed regulation will require closure plans and demonstration of financial capability for privately owned sewerage systems and sewerage treatment works that treat domestic sewage generated by privately owned residences. The proposed regulation will ensure that a plan to close or to provide continued service, and sufficient funds to implement that plan, are in place in the event an owner or operator of a privately owned sewerage system or sewerage treatment works abandons the facility. The regulation will also minimize the potential for the expenditure of public funds to close or continue to operate a privately owned facility in the event of abandonment.

Substance: There are two substantive changes from the emergency regulation. The number of years of contract operation required under 9 VAC 25-650-60 has been decreased from five years to two years. Additionally, a waiver provision has been added pursuant to a legislative amendment to § 62.1-44.18:3 of the Code of Virginia. The waiver provisions allows the State Water Control Board to waive the closure plan and financial assurance requirements of the regulation for affected facilities that discharge less than 5,000 gallons per day, provided agreement from the local government is obtained.

Issues: The primary advantage to the public is that those individuals served by privately owned sewerage systems will be ensured, at least temporarily, continued service in the event the owner or operator abandons the facility. Additionally, a plan will be in place to protect public health and the environment in the event of facility abandonment. The primary disadvantage to the public is that there will be an increased cost to the owner or operator of a privately owned sewerage system or sewerage treatment works for providing service to its customers. The owner or operator will be required to develop the closure plan and will be required to obtain a financial assurance mechanism to demonstrate financial capability to implement the plan. It is anticipated that this cost may be passed through to the customers through increased fees, property rents, or other methods.

The primary advantage to the Department of Environmental Quality (the Agency) and to the Commonwealth is that there will be a plan in place to protect human health and the environment that outlines the steps to be taken in the event of abandonment of a privately owned sewerage system or sewerage treatment works. Additionally, funding will be available so that the expenditure of public funds will be minimized in the event such a facility is abandoned. The primary disadvantage to the Agency and to the Commonwealth is that there will be an increased staff workload associated with the review of closure plans and financial assurance documentation submitted by affected facilities.

Locality Particularly Affected: There is no locality particularly affected by the proposed regulation. The Department of Environmental Quality has identified 65 facilities in 44 counties throughout the Commonwealth that will be affected by the regulation. Any new facility meeting the criteria of the regulation, will be subject to the requirements of the regulation regardless of its location within the Commonwealth.

Public Participation: In addition to any other comments, the board is seeking comments on the costs and benefits of the proposal and the impacts of the regulation on farm or forest lands.

Anyone wishing to submit written comments for the public comment file may do so at the public hearing or by mail. Written comments should be signed by the commenter and include the name and address of the commenter. In order to be considered the comments must be received by the close of the comment period. Oral comments may be submitted at the public hearing.

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 25 (98). 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. State Water Control Law (§ 62.1-44.18:3) requires that owners of a private sewerage system or sewerage treatment works file a closure plan and demonstrate financial capability to abate, control, prevent, remove, or contain any substantial or imminent threat to public health or the environment that is reasonably likely to occur if such a facility ceases operations. In accordance with the State Water Control Law, the proposed regulation requires a closure plan and demonstration of financial capability to implement the plan for privately owned sewerage systems or sewerage treatment works that discharge between 1,000 and 40,000 gallons per day. The proposed regulation has been in effect as an emergency regulation since December of 2000.

Estimated economic impact. Prior to the emergency regulations, owners/operators of a private sewerage facility were not required to demonstrate their financial capability to implement a closure plan in the event that the facility is abandoned. The proposed regulation requires that the owners/operators of these facilities submit a closure plan and demonstrate financial capability to implement the plan should the facility cease operations. The closure plan must be approved by DEQ. Regulated facilities include mobile home parks, residential subdivisions, and apartment complexes. Ceasing operations at these facilities is likely to create a public health hazard, as the discharge of pollutants is likely to continue and reach the state waters untreated. To reduce potential health hazards, the owner/operator of the facility is required to submit a closure plan to DEQ. A closure plan identifies the course of action that will be implemented if the facility is abandoned. A closure plan may consist of cessation of the discharge, connection to an alternative facility, transfer of the facility to the local government, contract operation of the abandoned facility by some other entity, or an alternative plan that may be proposed.

The owner/operator of the facility will be required to provide financial assurance to cover the estimated costs of implementing the closure plan. Financial capability may be demonstrated in several ways. First, the owner/operator may choose to establish a fully funded trust. The trustee usually requires a fee to manage the fund that depends on the amount in the fund. The management fee is usually less than one percent. The securities in the fund can earn returns. However, there are opportunity costs involved, as the owner/operator is not free to invest the dollars in other projects that may provide a better return. Thus, the net cost of this method is the fee paid to the trustee and the difference between the potential return that could be earned from an alternative investment and the actual return earned on the fund. Second, the owner/operator may demonstrate financial capability by providing a surety bond. The cost of this method is about one to three percent of the face value of the bond that must cover the estimated cost of the closure plan.[1] For less risky owners/operators, the premium paid to the surety is likely to be lower. The bonding company may require collateral if the owner/operator is very risky. Finally, the owner/operator may fulfill the financial assurance requirements by providing a letter of credit that may be cashed if needed. The cost of the letter of credit depends on the length and the quality of the relationship between the issuing institution and the owner/operator. Letter of credit maintenance fees vary from about 0.75% to 2% of the face amount indicated in the letter.

The proposed regulations will require 65 private sewerage facilities to demonstrate financial capability. The cost of financial assurance to the owners/operators of all of these facilities will depend on the estimated closure costs. Implementation of the closure plan is likely to vary significantly among alternatives based on the facility type, facility condition, and the amount of flow. Closure costs are expected to vary between ten thousand to one hundred thousand dollars.[2] A ballpark figure for the total financial assurance costs can be estimated under a specific set of assumptions. For example, if a closure plan costs $40,000 on average to implement and the mean financial assurance cost is 1.5% of that amount, the total cost of 65 facilities to demonstrate financial assurance is expected to be $39,000 per year. However, this estimate is subject to uncertainty since neither actual closure plan costs nor financial assurance costs are known at this time.

The owner/operator of a private sewerage facility may be able pass some of the financial assurance costs to their tenants. The degree, the owner/operator can pass additional costs depends on the local market conditions for residential real estate. In areas where vacant residential spaces are relatively abundant, the owner/operator is likely to incur most of the burden. Conversely, in areas where the housing market is tight, tenants are likely to incur most of the burden.

Some staff time will be devoted to analyze the plans and financial documents of 65 facilities submitted for approval. DEQ does not have an estimate on the amount of staff time that will be required but expects it to be small. One time staffing needs at the beginning of the program are likely to be relatively more than the ongoing staffing needs.

In cases where the ownership of the facility is transferred, the old and new owners are likely to incur some additional burden. This is because the proposed regulation requires the old owner to notify DEQ at least 120 days prior to the sale of the facility. This requirement has the potential to effectively delay the transfer of ownership for at least four months. The mandatory delay of ownership is likely to interfere with the timely business plans the old and new owners may have. The justification for required notification is to inform the new owner that financial assurance will be required when the facility is bought so that he is aware of the additional costs. It appears that the choice of 120-day notification is arbitrary and could be reduced to the benefit of both the old and the new owner of the facility. Reducing the required number of days prior to sale for notification and still achieving the intended goal of the regulation seems feasible.

[1] Source: DEQ

[2] Source: DEQ

The benefits of the proposed regulation include ensuring that the funds will be available to implement the closure plan if a private sewerage facility is abandoned. Prior to the emergency regulations, if an owner/operator abandons the facility, state funds may have been used to pay for the closure costs. Additionally, under the proposal, some financially unstable owners/operators may be forced to sell their facilities to more financially secure entities due to their higher assurance costs. Some other financially weak entities will be discouraged from buying these facilities because of additional costs. Thus, by ensuring that the funds will be available to implement closure plans and by decreasing the number of owners/operators incapable of paying their share of closure costs, the proposed regulation decreases the likelihood that state funds will be used for that purpose. The case of Queen Annes Court sewage treatment plant may provide an example to illustrate the potential benefits of the proposed regulation. In 1999, the treatment plant was abandoned. Consequently, DEQ paid $32,018 to Hampton Roads Sanitary District to operate the plant for about 10 to 11 months and deactivate the plant after completing a pump station to divert the flow to a public sewer.[3] If financial assurance had been required, state funds would not have been spent.

Ensuring the availability of funds for closure and reducing the number of owners/operators that are not financially strong would likely also reduce delays in facility closure and prevent discharge of untreated pollutants to the state waters. Thus, the proposed regulation has the potential to reduce the facility closure failures and delays which would be beneficial for the environment as well as for third parties that may be subject to potential health risks.

In summary, the benefits of the proposed regulation include the assurance that funds will be ready for the timely closure of an abandoned privately owned sewerage facility. State expenditures on the abandoned facility closure, damage to the environment, and risks to the third parties could potentially be reduced. Demonstration of financial capability will involve net costs for owners/operators. Though it seems likely that the potential benefits exceed the potential costs, there is not enough information to support that conclusively.

Businesses and entities affected. The proposed regulation will affect the owners/operators of 65 privately owned mobile home parks, residential subdivisions, and apartment complexes. If the owner/operator is able to pass financial assurance costs to the tenants, tenants living in these facilities will also be affected in terms of slightly higher rental costs.

Localities particularly affected. The proposed regulation will affect localities throughout the Commonwealth.

Projected impact on employment. Due to higher costs of operating a residential facility with an independent sewerage system, a few owners/operators may be forced to shut down their businesses. This may have a small negative impact on employment; perhaps, a few positions in property management will be eliminated.

Effects on the use and value of private property. The value of the 65 residential facilities that are subject to the proposed regulation may decrease by a small margin due to additional costs.

Some businesses that provide financial assurance for profit may enjoy a small increase in value as their business volume is expected to increase. Private properties where immediate health risks may accrue due to facilities discharging untreated pollutants to adjacent waters may experience a small positive impact on their values. This is because potential buyers are likely to add the discounted value of reduced health risks in the future to property's present value.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The department has reviewed the economic impact analysis prepared by the Department of Planning and Budget and has no comment.

Summary:

The proposed regulation will replace an existing emergency regulation which requires closure plans and demonstration of financial capability for privately owned sewerage systems and sewerage treatment works that treat domestic waste generated by privately owned residences.

Six alternatives were considered in the development of the permanent regulation. Alternative Two was chosen as the basis for the permanent regulation. This alternative limits the regulation to the category of facilities identified in § 62.1-44.18:3 of the Code of Virginia. The permanent regulation will be essentially identical to the existing emergency regulation with the exception of two substantive changes from the emergency regulation: (i) the number of years of contract operation required under 9 VAC 25-650-60 has been decreased from five years to two years and (ii) a waiver provision (9 VAC 25-650-150) has been added pursuant to a legislative amendment to § 62.1-44.18:3 of the Code of Virginia.

CHAPTER 650.
CLOSURE PLANS AND DEMONSTRATION OF FINANCIAL CAPABILITY.

PART I.
DEFINITIONS.

9 VAC 25-650-10. Definitions.

The following words and terms when used in this regulation shall have the following meanings unless the context clearly indicates otherwise:

"Active life" means the length of time a facility discharges to state waters or is subject to regulation under the Virginia Pollution Discharge Elimination System (VPDES) Regulation (9 VAC 25-31-10 et seq.).

"Anniversary date" means the date of issuance of a financial mechanism.

"Assets" means all existing and all probable future economic benefits obtained or controlled by a particular entity.

"Board" means the State Water Control Board.

[3] Source: DEQ

"Ceases operations" means to cease conducting the normal operation of a facility under circumstances in which it is reasonable to expect that such operation will not be resumed by the owner at the facility. The term shall not include the sale or transfer of a facility in the ordinary course of business or a permit transfer in accordance with board regulations. Ceases operations shall include, but not be limited to, the following:

1. Bankruptcy or insolvency of the owner or operator or suspension or revocation of a charter or license to operate the facility or to furnish sewer services;

2. Failure to operate and maintain a facility in accordance with the Operations and Maintenance Manual for the facility, such that a substantial or imminent threat to public health or the environment is created;

3. Failure to comply with the requirements of the VPDES permit for the facility, such that a substantial or imminent threat to public health or the environment is created;

4. Notification of termination of service by a utility providing electricity or other resource essential to the normal operation of the facility.

"Closure plan" means a plan to abate, control, remove, or contain any substantial or imminent threat to public health or the environment that is reasonably likely to occur if a facility ceases operations.

"Current closure cost estimate" means the most recent of the estimates prepared in accordance with the requirements of this chapter.

"Current dollars" means the figure represented by the total of the cost estimate multiplied by the current annual inflation factor.

"CWA" means the Clean Water Act (formerly referred to as the Federal Water Pollution Control Act or Federal Water Pollution Control Act Amendments of 1972) Public Law 92-500, as amended by Public Law 95-217, Public Law 95-576, Public Law 96-483, and Public Law 97-117, 33 USC 1251 et seq.

"Department" means the Virginia Department of Environmental Quality.

"Director" means the Director of the Department of Environmental Quality, or an authorized representative.

"Discharge" when used without qualification means the discharge of a pollutant.

"Facility" means any VPDES point source or treatment works treating domestic sewage or any other facility or activity (including land or appurtenances thereto) that is subject to regulation under the VPDES program.

"Facility closure plan" means a facility closure plan prepared in accordance with 9 VAC 5-585-140.

"Local government" means a municipality, county, city, town, authority, commission, school board, political subdivision of a state, or other special purpose local government which provides essential services.

"Owner or operator" means the owner or operator of any facility or activity subject to regulation under the VPDES program.

"Parent corporation" means a corporation that directly owns at least 50% of the voting stock of the corporation that is the facility owner or operator; the latter corporation is deemed a "subsidiary" of the parent corporation.

"Permit" means an authorization, certificate, license, or equivalent control document issued by the board to implement the requirements of this chapter. For the purposes of this chapter, permit includes coverage issued under a VPDES general permit. Permit does not include any permit which has not yet been the subject of final board action, such as a draft permit or proposed permit.

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

"Point source" means any discernable, defined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, landfill leachate collection system, vessel or other floating craft, from which pollutants may be discharged. This term does not include return flows from irrigated agricultural or agricultural storm water run off.

"Pollutant" means dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials (except those regulated under the Atomic Energy Act of 1954, as amended (42 USC § 2011 et seq.)), heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water. It does not mean:

1. Sewage from vessels; or

2. Water, gas, or other material which is injected into a well to facilitate production of oil or gas, or water derived in association with oil and gas production and disposed of in a well if the well used either to facilitate production or for disposal purposes is approved by the board, and if the board determines that the injection or disposal will not result in the degradation of ground or surface water resources.

"Pollution" means such alteration of the physical, chemical or biological properties of any state waters as will, or is likely to, create a nuisance or render such waters (i) harmful or detrimental or injurious to the public health, safety or welfare, or to the health of animals, fish or aquatic life; (ii) unsuitable with reasonable treatment for use as present or possible future sources of public water supply; or (iii) unsuitable for recreational, commercial, industrial, agricultural, or for other reasonable uses; provided that: (i) an alteration of the physical, chemical, or biological property of state waters, or a discharge or a deposit of sewage, industrial wastes or other wastes to state waters by any owner which by itself is not sufficient to cause pollution, but which, in combination with such alteration of, or discharge or deposit to state waters by other owners, is sufficient to cause pollution; (ii) the discharge

of untreated sewage by any owner into state waters; and (iii) contributing to the contravention of standards of water quality duly established by the board, are "pollution" for the terms and purposes of this chapter.

"Private residence" means any building, buildings, or part of a building owned by a private entity which serves as a permanent residence where sewage is generated. Private residences include, but are not limited to, single family homes, town houses, duplexes, condominiums, mobile homes, and apartments. Private residences do not include hotels, motels, seasonal camps, and industrial facilities that do not also serve as residences.

"Privately owned sewerage system" means any device or system that is:

1. Used in the treatment (including recycling and reclamation) of sewage. This definition includes sewers, pipes, pump stations or other conveyances only if they convey wastewater to a privately owned sewerage system; and

2. Not owned by the United States, a state, or a local government.

"Publicly owned treatment works (POTW)" means any device or system used in the treatment (including recycling and reclamation) of sewage which is owned by a state or municipality. This definition includes sewers, pipes, or other conveyances only if they convey wastewater to a POTW providing treatment.

"Sewage" means the water-carried human wastes from residences, buildings, industrial establishments or other places together with such industrial wastes, underground, surface, storm, or other water, as may be present.

"Special order" means an order of the board issued under the provisions of § 62.1-44.15:1.1 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 likely to occur if the facility ceases operations.

"State waters" means all water, on the surface and under the ground, wholly, or partially within, or bordering the Commonwealth, or within its jurisdiction, including wetlands.

"Treatment works" means any devices and systems used in the storage, treatment, or reclamation of sewage or combinations of sewage and industrial wastes, including pumping, power, and other equipment, and their appurtenances, and any works, including land that will be an integral part of the treatment process, or is used for an integral part of the treatment process, or is used for ultimate disposal of residues resulting from such treatment.

"Virginia Pollution Discharge Elimination System (VPDES) Permit" means a document issued by the board pursuant to 9 VAC 25-31-10 et seq., authorizing, under prescribed conditions, the potential or actual discharge of pollutants from a point source to surface waters and the use or disposal of sewage sludge. Under the approved state program, a VPDES permit is equivalent to an NPDES permit.

PART II.
GENERAL INFORMATION AND LEGISLATIVE AUTHORITY.

9 VAC 25-650-20. Purpose.

The purpose of this regulation is to require owners or operators of certain privately owned sewerage systems that treat sewage from private residences to file with the board a plan to abate, control, remove, or contain any substantial or imminent threat to public health or the environment that is reasonably likely to occur if the facility ceases operations. For the purposes of this regulation, such a plan shall be termed a closure plan. Such plan shall also include the demonstration of financial assurance required in 9 VAC 25-650-30 to implement the plan.

9 VAC 25-650-30. Applicability.

A. This regulation applies to all persons who own or operate permitted or unpermitted privately owned sewerage systems subject to the Virginia Pollution Discharge Elimination System (VPDES) Regulation (9 VAC 25-31-10 et seq.) that treat sewage generated by private residences and discharge more than 1,000 gallons per day and less than 40,000 gallons per day to state waters.

B. Owners or operators of privately owned sewerage systems must demonstrate annually financial assurance in accordance with the requirements of this chapter.

9 VAC 25-650-40. Suspensions and revocations.

Failure to submit a closure plan or to provide or maintain adequate financial assurance in accordance with this regulation shall be a basis for termination of a VPDES permit. Termination of a VPDES permit shall be in accordance with 9 VAC 25-31-410.

PART III.
CLOSURE PLANS AND FINANCIAL ASSURANCE CRITERIA.

9 VAC 25-650-50. General purpose and scope.

A. Any owner or operator of a privately owned sewerage system subject to this regulation shall file with the board a plan to abate, control, prevent, remove, or contain any substantial threat to public health or the environment that is reasonably likely to occur if such facility ceases operations. Such plan shall be referred to as a closure plan. The closure plan shall include a detailed written estimate of the cost to implement the plan. The owner or operator shall file a closure plan and associated cost estimate for the facility with the board concurrently with the owner's or operator's first VPDES permit application for issuance or reissuance for the facility submitted subsequent to [the effective date of this regulation]. Closure plans and cost estimates filed with the board shall be reviewed by the owner or operator and updated as necessary at the end of each VPDES permit term. Revised and updated closure plans shall be filed with the board concurrently with each subsequent VPDES permit application.

B. Closure plans and cost estimates shall be subject to review by the board. The owner or operator shall be notified in writing within 60 days of receipt of the closure plan and cost estimate of the board's decision to approve or disapprove the proposed

closure plan and cost estimate. If the board disapproves the closure plan or cost estimate, the board shall notify the owner or operator as to what measures, if any, the owner or operator may take to secure approval. If the owner or operator submits a closure plan that is not approvable by the board, the board may, at its sole discretion, promulgate a closure plan and cost estimate for the facility, subject to appeal by the owner or operator only as to content under the Virginia Administrative Process Act (§ 9-6.14:1 et seq. of the Code of Virginia).

C. Closure plans shall be implemented when the board has determined, at its sole discretion, that the facility has ceased operations. The owner or operator of a privately owned facility shall notify the board within 24 hours of the facility ceasing operations as defined in this chapter.

D. In order to assure that the costs associated with protecting public health and the environment are to be recovered from the owner or operator in the event that a facility subject to this regulation ceases operation, the owner or operator of such facility shall submit to the board one or a combination of the financial assurance mechanisms described in this chapter. Financial assurance mechanisms shall be in amounts calculated as the inflation-adjusted cost estimate using the procedures set forth in this chapter.

E. In the case of new facilities or increased discharges from existing facilities, the selected financial assurance mechanism or mechanisms shall be filed with the board no less than 90 days prior to the discharge or increased discharge to state waters. In the case of existing facilities with a valid VPDES permit on [the effective date of this regulation], the financial assurance mechanism or mechanisms shall be filed with the board within 10 days of the date of board approval of the closure plan and cost estimate.

F. The board may disapprove the proposed evidence of financial assurance if the mechanism or mechanisms submitted do not adequately assure that funds will be available for implementation of the closure plan. The owner or operator shall be notified in writing of the board's decision to approve or disapprove the proposed mechanism. If the board disapproves the financial assurance mechanism, the board shall notify the owner or operator as to what measures, if any, the owner or operator may take to secure approval.

G. Closure plans, cost estimates, and financial assurance mechanisms shall remain in place for the active life of the facility and for the time required to complete the activities specified in the closure plan.

9 VAC 25-650-60. Closure plans.

A. The owner or operator of a privately owned sewerage system subject to this chapter shall provide a closure plan which abates, controls, prevents, removes, or contains any substantial threat to public health or the environment that is reasonably likely to occur if the facility ceases operations.

B. Closure plans shall be submitted to the board by the owner or operator concurrently with its application for a VPDES permit for the facility or as otherwise required by special order. Existing closure plans filed with the board shall be reviewed by the owner or operator, modified as necessary, and resubmitted to the board concurrently with an owner's or operator's application for a reissued VPDES permit. The submittal shall include a written summary of the results of the review and any modifications to the closure plan.

C. Closure plans shall consist of one or more of the following:

1. The cessation of the discharge of pollutants to state waters, followed by closure of the facility in accordance with the facility closure plan prepared in accordance with 9 VAC 5-585-140 and approved by the Virginia Department of Health. Where no Virginia Department of Health approved facility closure plan exists, one shall be prepared in accordance with the requirements of 9 VAC 5-585-140 and submitted as part of the closure plan.

2. Connection to an alternative treatment works, such as a POTW, including rerouting of all influent flow, followed by closure of the VPDES permitted facility in accordance with the facility closure plan prepared in accordance with 9 VAC 5-585-140 and approved by the Virginia Department of Health. Where no Virginia Department of Health approved facility closure plan exists, one shall be prepared in accordance with the requirements of 9 VAC 5-585-140 and submitted as part of the closure plan.

3. Transfer of the facility to a local government, provided that written agreement of the receiving local government to obtain a VPDES permit and operate and maintain the facility in accordance with the VPDES permit and all other applicable laws and regulations, is obtained and included as part of the closure plan.

4. Contract operation of the facility for a period of two years after initial implementation of the closure plan, regardless of the date of initial implementation. Contract operation shall be by a named private company or other entity licensed to operate wastewater treatment facilities in the Commonwealth of Virginia and licensed to operate the specific facility to which the closure plan applies. A closure plan consisting of or including contract operation shall include a written, signed contract executed by the contract operator, contingent only upon approval of the closure plan by the board. The contract shall specify that the contract operator shall operate the facility for the term of the contract in accordance with the terms and conditions of the owner's or operator's VPDES permit for the facility. The contract shall also specify that the contract operator shall assume, without exception, all responsibilities and liabilities associated with the facility's discharge to state waters and with the owner's or operator's VPDES permit in the event the closure plan is implemented. The owner or operator of the facility and the owner of the private company or entity contracted to operate the facility under the closure plan shall not be the same person.

5. An alternative plan which will abate, control, prevent, remove, or contain any substantial or imminent threat to public health or the environment that is reasonably likely to occur if the facility ceases operations.

D. Closure plans shall designate and authorize a named third party who, upon notification by the board, will implement the closure plan. The closure plan shall include written agreement by the named third party, bearing that person's signature, to implement the closure plan in accordance with the

requirements of the closure plan for the duration of the VPDES permit term. Where the closure plan includes contract operation of the facility, the named third party may be the contract operator.

E. Closure plans may not consist of the transfer or sale of the facility to another private entity which also would be subject to this regulation.

9 VAC 25-650-70. Transfer of ownership or permit.

A. If a privately owned sewerage system subject to this regulation is to be sold or if ownership is to be transferred in the normal course of business, the owner or operator shall notify the board, in written form through certified mail, of such intended sale or transfer at least 120 days prior to such sale or transfer. The notification shall provide the full name, address, and telephone number of the person to whom the facility is to be sold or transferred.

B. Changes in the ownership or operational control of a facility may be made as a minor modification with prior written approval of the board in accordance with 9 VAC 25-31-380, except as otherwise provided in this section. The new owner or operator shall submit a revised permit application no later than 90 days prior to the scheduled change. A written agreement containing a specific date for transfer of permit responsibility between the current and new permittees shall also be submitted to the board. When a transfer of ownership or operational control occurs, the old owner or operator shall comply with the requirements of this chapter until the new owner or operator has demonstrated that he is complying with the requirements of this chapter. The new owner or operator shall demonstrate compliance with this chapter within six months of the date of the change of ownership or operational control of the facility. Upon demonstration to the board by the new owner or operator of compliance with this chapter, the board shall notify the old owner or operator that he or she no longer needs to comply with this chapter as of the date of demonstration.

9 VAC 25-650-80. Cost estimate for facility closure.

A. The owner or operator shall prepare for approval by the board, a detailed written estimate of the cost of implementing the closure plan. The written cost estimate shall be submitted concurrently with the closure plan.

1. The closure plan cost estimate shall equal the full cost of implementation of the closure plan in current dollars.

2. The closure cost estimate shall be based on and include the costs to the owner or operator of hiring a third party to implement the closure plan. The third party may not be either a parent corporation or subsidiary of the owner or operator.

3. The closure cost estimate may not incorporate any salvage value that may be realized by the sale of wastes, facility structures or equipment, land or other facility assets at the time of implementation of the closure plan.

B. During the term of the VPDES permit, the owner or operator shall adjust the implementation cost estimate for inflation within 60 days prior to the anniversary date of the establishment of the financial assurance mechanism used to comply with this chapter. The adjustment may be made by recalculating the implementation cost in current dollars, or by using an inflation factor derived from the most recent Implicit Price Deflator for Gross National Product published by the U.S. Department of Commerce in its Survey of Current Business, as specified below. The inflation factor is the result of dividing the latest published annual deflator by the deflator for the previous year.

1. The first adjustment is made by multiplying the implementation cost estimate by the latest inflation factor. The result is the adjusted implementation cost estimate.

2. Subsequent adjustments are made by multiplying the latest adjusted cost estimate by the latest inflation factor.

C. During the term of the VPDES permit, the owner or operator shall revise the implementation cost estimate concurrently with any revision made to the closure plan which increases the implementation cost. The revised implementation cost estimate shall be adjusted for inflation as specified in subdivisions B 1 and B 2 of this section.

D. The owner or operator may reduce the implementation cost estimate and the amount of financial assurance provided under this section, if it can be demonstrated that the cost estimate exceeds the cost of implementation of the closure plan. The owner or operator shall obtain the approval of the board prior to reducing the amount of financial assurance.

E. The owner or operator shall provide continuous coverage to implement the closure plan until released from financial assurance requirements by the board.

9 VAC 25-650-90. Trust Agreement.

A. An owner or operator of a privately owned sewerage system may satisfy the requirements of this chapter by establishing an irrevocable trust fund that conforms to the requirements of this section and by submitting an originally signed duplicate of the trust agreement to the board. The trustee shall be an entity that has the authority to act as a trustee and whose trust operations are regulated and examined by a federal agency or the State Corporation Commission (Commonwealth of Virginia).

B. The trust agreement shall be irrevocable and shall continue until terminated at the written direction of the grantor, the trustee, and the board, or by the trustee and the board if the grantor ceases to exist. Upon termination of the trust, all remaining trust property, less final administration expenses, shall be delivered to the grantor. The wording of the trust agreement shall be identical to the wording as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted. The trust agreement shall be accompanied by a formal letter of certification of acknowledgement as specified in this chapter.

TRUST AGREEMENT

Trust agreement, the "Agreement," entered into as of [date] by and between [name of the owner or operator], a [name of state] [insert "corporation," "partnership," "association," "proprietorship," or appropriate identification of type of entity], the "Grantor," and [name of corporate trustee], [insert

"Incorporated in the state of _____" or "a national bank"], the "Trustee."

Whereas, the State Water Control Board of the Commonwealth of Virginia has established certain regulations applicable to the Grantor, requiring that an owner or operator of a private sewage treatment facility shall provide assurance that funds will be available when needed for implementation of a closure plan. The attached Schedule A contains the name and address of the facility covered by this [trust agreement or standby trust agreement];

Whereas, the Grantor has elected to establish a [insert either "surety bond," or "letter of credit"] to provide all or part of such financial assurance for implementation of the closure plan for the privately owned sewage treatment facility identified herein and is required to establish a standby trust fund able to accept payments from the instrument (This paragraph is only applicable to the standby trust agreement.);

Whereas, the Grantor, acting through its duly authorized officers, has selected the Trustee to be the trustee under this agreement, and the Trustee is willing to act as trustee;

Now, therefore, the Grantor and the Trustee agree as follows:

Section 1. Definitions. As used in this Agreement:

(a) The term "Grantor" means the owner or operator who enters into this Agreement and any successors or assigns of the Grantor.

(b) The term "Trustee" means the Trustee who enters into this Agreement and any successor Trustee.

Section 2. Identification of the Financial Assurance Mechanism.

This Agreement pertains to the [identify the financial assurance mechanism, either a guarantee, surety bond, or letter of credit, from which the standby trust fund is established to receive payments (This paragraph is only applicable to the standby trust agreement.)].

Section 3. Establishment of Fund.

The Grantor and the Trustee hereby establish a trust fund, the "Fund," for the benefit of the Department of Environmental Quality of the Commonwealth of Virginia. The Grantor and the Trustee intend that no third party have access to the Fund. [The Fund is established initially as a standby to receive payments and shall not consist of any property.] Payments made by the provider of financial assurance pursuant to the Director of the Department of Environmental Quality's instruction are transferred to the Trustee and are referred to as the Fund, together with all earnings and profits thereon, less any payments or distributions made by the Trustee pursuant to this Agreement. The Fund shall be held by the Trustee, IN TRUST, as hereinafter provided. The Trustee shall not be responsible nor shall it undertake any responsibility for the amount or adequacy of, nor any duty to collect from the Grantor as provider of financial assurance, any payments necessary to discharge any liability of the Grantor established by the State Water Control Board.

Section 4. Payment for Implementation of the Closure Plan.

The Trustee shall make payments from the Fund as the Director, Department of Environmental Quality shall direct, in writing, to provide for the payment of the costs of implementation of the closure plan for the facility covered by the financial assurance mechanism identified in this Agreement.

The Fund may not be drawn upon to cover any of the following:

(a) Any obligation of owner or operator under a workers' compensation, disability benefits, or unemployment compensation law or other similar law;

(b) Bodily injury to an employee of owner or operator arising from, and in the course of, employment by the owner or operator;

(c) Bodily injury or property damage arising from the operation, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;

(d) Property damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by owner or operator that is not the direct result of a privately owned sewage treatment facility ceasing operations;

(e) Bodily injury or property damage for which owner or operator is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of § 62.1-44.18:3 of the Code of Virginia.

The Trustee shall reimburse the Grantor, or other persons as specified by the State Water Control Board, from the Fund for implementation of the closure plan in such amounts as the Director of the Department of Environmental Quality shall direct in writing. In addition, the Trustee shall refund to the Grantor such amounts as the Director of the Department of Environmental Quality specifies in writing. Upon refund, such funds shall no longer constitute part of the Fund as defined herein.

Section 5. Payments Comprising the Fund.

Payments made to the Trustee for the Fund shall consist of cash and securities acceptable to the Trustee.

Section 6. Trustee Management.

The Trustee shall invest and reinvest the principal and income of the Fund and keep the Fund invested as a single fund, without distinction between principal and income, in accordance with general investment policies and guidelines which the Grantor may communicate in writing to the Trustee from time to time, subject, however, to the provisions of this Section. In investing, reinvesting, exchanging, selling, and managing the Fund, the Trustee shall discharge his duties with respect to the trust fund solely in the interest of the beneficiaries and with the care, skill, prudence, and diligence under the circumstances then prevailing which persons of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of a like character and with like aims; except that:

(i) Securities or other obligations of the Grantor, or any other operator of the facility, or any of their affiliates as

defined in the Investment Company Act of 1940, as amended, 15 USC § 80a-2(a), shall not be acquired or held, unless they are securities or other obligations of the federal or a state government;

(ii) The Trustee is authorized to invest the Fund in time or demand deposits of the Trustee, to the extent insured by an agency of the federal or state government; and

(iii) Trustee is authorized to hold cash awaiting investment or distribution uninvested for a reasonable time and without liability for the payment of interest thereon.

Section 7. Commingling and Investment.

The Trustee is expressly authorized in its discretion:

(a) To transfer from time to time any or all of the assets of the Fund to any common, commingled, or collective trust fund created by the Trustee in which the Fund is eligible to participate, subject to all of the provisions thereof, to be commingled with the assets of other trusts participating therein; and

(b) To purchase shares in any investment company registered under the Investment Company Act of 1940, 15 USC § 80a-1 et seq., including one which may be created, managed, underwritten, or to which investment advice is rendered or the shares of which are sold by the Trustee. The Trustee may vote such shares in its discretion.

Section 8. Express Powers of Trustee.

Without in any way limiting the powers and discretions conferred upon the Trustee by the other provisions of this Agreement or by law, the Trustee is expressly authorized and empowered:

(a) To sell, exchange, convey, transfer, or otherwise dispose of any property held by it, by public or private sale. No person dealing with the Trustee shall be bound to see to the application of the purchase money or to inquire into the validity or expediency of any such sale or other disposition;

(b) To make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;

(c) To register any securities held in the Fund in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combine certificates representing such securities with certificates of the same issue held by the Trustee in other fiduciary capacities, or to deposit or arrange for the deposit of such securities in a qualified central depository even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depository with other securities deposited therein by another person, or to deposit or arrange for the deposit of any securities issued by the United States Government, or any agency or instrumentality thereof, with a Federal Reserve bank, but the books and records of the Trustee shall at all times show that all such securities are part of the Fund;

(d) To deposit any cash in the Fund in interest-bearing accounts maintained or savings certificates issued by the Trustee, in its separate corporate capacity, or in any other banking institution affiliated with the Trustee, to the extent insured by an agency of the federal or state government; and

(e) To compromise or otherwise adjust all claims in favor of or against the Fund.

Section 9. Taxes and Expenses.

All taxes of any kind that may be assessed or levied against or in respect of the Fund and all brokerage commissions incurred by the Fund shall be paid from the Fund. All other expenses incurred by the Trustee in connection with the administration of this Trust, including fees for legal services rendered to the Trustee, the compensation of the Trustee to the extent not paid directly by the Grantor, and all other proper charges and disbursements of the Trustee shall be paid from the Fund.

Section 10. Advice of Counsel.

The Trustee may from time to time consult with counsel, who may be counsel to the Grantor, with respect to any questions arising as to the construction of this Agreement or any action to be taken hereunder. The Trustee shall be fully protected, to the extent permitted by law, in acting upon the advice of counsel.

Section 11. Trustee Compensation.

The Trustee shall be entitled to reasonable compensation for its services as agreed upon in writing from time to time with the Grantor.

Section 12. Successor Trustee.

The Trustee may resign or the Grantor may replace the Trustee, but such resignation or replacement shall not be effective until the Grantor has appointed a successor trustee and this successor accepts the appointment. The successor trustee shall have the same powers and duties as those conferred upon the Trustee hereunder. Upon the successor trustee's acceptance of the appointment, the Trustee shall assign, transfer, and pay over to the successor trustee the funds and properties then constituting the Fund. If for any reason the Grantor cannot or does not act in the event of the resignation of the Trustee, the Trustee may apply to a court of competent jurisdiction for the appointment of a successor trustee or for instructions. The successor trustee shall specify the date on which it assumes administration of the trust in writing sent to the Grantor and the present Trustee by certified mail 10 days before such change becomes effective. Any expenses incurred by the Trustee as a result of any of the acts contemplated by this Section shall be paid as provided in Section 9.

Section 13. Instructions to the Trustee.

All orders, requests, and instructions by the Grantor to the Trustee shall be in writing, signed by such persons as are designated in the attached Schedule B or such other designees as the Grantor may designate by amendment to Schedule B. The trustee shall be fully protected in acting without inquiry in accordance with the Grantor's orders, requests, and instructions. All orders, requests and

instructions by the State Water Control Board to the Trustee shall be in writing, signed by the Director of the Department of Environmental Quality, and the Trustee shall act and shall be fully protected in acting in accordance with such orders, requests, and instructions. The Trustee shall have the right to assume, in the absence of written notice to the contrary, that no event constituting a change or a termination of the authority of any person to act on behalf of the Grantor or the State Water Control Board hereunder has occurred. The Trustee shall have no duty to act in the absence of such orders, requests, and instructions from the Grantor and/or the State Water Control Board, except as provided for herein.

Section 14. Irrevocability and Termination.

Subject to the right of the parties to amend this Agreement as provided in Section 17, this Trust shall be irrevocable and shall continue until terminated at the written direction of the Grantor and the Trustee, or by the Trustee and the Director of the Department of Environmental Quality, if the Grantor ceases to exist. Upon termination of the Trust, all remaining trust property, less final trust administration expenses, shall be delivered to the Grantor.

Section 15. Immunity and Indemnification.

The Trustee shall not incur personal liability of any nature in connection with any act or omission, made in good faith, in the administration of this Trust, or in carrying out any directions by the Grantor or the State Water Control Board issued in accordance with this Agreement. The Trustee shall be indemnified and saved harmless by the Grantor, from and against any personal liability to which the Trustee may be subjected by reason of any act or conduct in its official capacity, including all expenses reasonably incurred in its defense in the event the Grantor fails to provide such defense.

Section 16. Choice of Law.

This Agreement shall be administered, construed, and enforced according to the laws of the Commonwealth of Virginia.

Section 17. Amendment of Agreement.

This Agreement may be amended by an instrument executed in writing executed by the Grantor, the Trustee, and the Director of the Department of Environmental Quality, Commonwealth of Virginia, or by the Trustee and the Director of the Department of Environmental Quality, Commonwealth of Virginia, if the Grantor ceases to exist.

Section 18. Annual Valuation.

The Trustee will annually, at the end of the month coincident with or preceding the anniversary date of establishment of the Fund, furnish the Grantor and to the Director of the Department of Environmental Quality, Commonwealth of Virginia, a statement confirming the value of the Trust. Any securities in the Fund will be valued at market value as of no more than 30 days prior to the date of the statement. The failure of the Grantor to object in writing to the Trustee within 90 days after the statement has been furnished to the Grantor and the Director of the Department of Environmental Quality, Commonwealth of Virginia will constitute a conclusively binding assent by the Grantor, barring the Grantor from asserting any claim or liability against the Trustee with respect to matters disclosed in the statement.

Section 19. Interpretation.

As used in this Agreement, words in the singular include the plural and words in the plural include the singular. The descriptive headings for each section of this Agreement shall not affect the interpretation or the legal efficacy of this Agreement.

In Witness whereof the parties have caused this Agreement to be executed by their respective officers duly authorized and their corporate seals (if applicable) to be hereunto affixed and attested as of the date first above written. The parties below certify that the wording of this Agreement is identical to the wording specified in 9 VAC 25-650-90 B as such regulations were constituted on the date written above.

[Signature of Grantor]
[Name of the Grantor]
[Title]
Attest:
[Signature of Trustee]
[Name of the Trustee]
[Title]
[Seal]
[Signature of Witness]
[Name of Witness]
[Title]
[Seal]

SCHEDULE A

Name of Facility

Address of facility

Closure Cost Estimate

VPDES Permit Number

C. The irrevocable trust fund, when established, shall be funded for the full required amount of coverage, or funded for part of the required amount of coverage and used in combination with other mechanism(s) that provide the remaining required coverage. Schedule A of the trust agreement shall be updated within 60 days after a change in the amount of the approved cost estimate covered by the agreement.

D. If the value of the trust fund is greater than the required amount of coverage, the owner or operator may submit a written request to the board for release of the excess.

E. If other financial assurance as specified in this chapter is substituted for all or part of the trust fund, the owner or operator may submit a written request to the Director for release of the excess.

F. Within 60 days after receiving a request from the owner or operator for release of funds as specified in subsection D or E of this section, the board will instruct the trustee to release to the owner or operator such funds, if any, that the board determines to be eligible for release and specifies in writing.

G. Whenever the cost estimate changes, the owner or operator shall compare the new estimate with the trustee's most recent annual valuation of the trust agreement. If the value of the agreement is less than the amount of the new cost estimate, the owner or operator shall, within 10 days of the change in the approved cost estimate, deposit a sufficient amount into the trust so that its value after payment at least equals the amount of the new estimate, or obtain other financial assurance as specified in this article to cover the difference. If the value of the trust fund is greater than the total amount of the cost estimate, the owner or operator may submit a written request to the board for release of the amount that is in excess of the cost estimate.

H. After beginning implementation of the closure plan, an owner or operator or any other person authorized to implement the closure plan, may request reimbursement for implementation expenditures by submitting itemized bills to the board. Within 60 after receiving bills for plan implementation activities, the board shall instruct the trustee to make reimbursements in those amounts as the board determines are in accordance with the closure plan or are otherwise justified.

I. The board shall agree to terminate the trust when:

1. The owner or operator substitutes alternate financial assurance as specified in this article; or

2. The board notifies the owner or operator that he is no longer required to maintain financial assurance for the implementation of the closure plan.

9 VAC 25-650-100. Surety Bond.

A. An owner or operator may satisfy the requirements of this chapter by obtaining a surety bond that conforms to the requirements of this section and by submitting an originally signed duplicate of the bond to the board. The surety company issuing the bond shall be licensed to operate as a surety in the Commonwealth of Virginia and be among those listed as acceptable sureties on federal bonds in the latest Circular 570 of the U.S. Department of the Treasury.

B. The surety bond shall be worded as follows, except that instructions in brackets shall be replaced with the relevant information and the brackets deleted.

PERFORMANCE BOND

Date bond executed:_____

Period of coverage:_____

Effective date: _____

Principal: [legal name and address of owner or operator] _____

Type of organization: [insert "individual" "joint venture," "partnership," "corporation," or appropriate identification of type of organization] _____

State of incorporation (if applicable):_____

Surety: [name(s) and business address] _____

Scope of Coverage:

[List the name of and the address where the private sewage treatment facility assured by this mechanism is located. List the coverage guaranteed by the bond: operation, maintenance, and closure of the privately owned sewage treatment facility]

Penal sum of bond: $_____

Surety's bond number: _____

Know All Persons by These Presents, that we, the Principal and Surety(ies), hereto are firmly bound to the Department of Environmental Quality, Commonwealth of Virginia, ("DEQ") in the above penal sum for the payment of which we bind ourselves, our heirs, executors, administrators, successors, and assigns jointly and severally; provided that, where the Surety(ies) are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sums jointly and severally only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each Surety binds itself, jointly and severally with the Principal, for the payment of such sums only as is set forth opposite the name of such Surety, but if no limit of liability is indicated, the limit of liability shall be the full amount of the penal sum.

Whereas said Principal is required under § 62.1-44.18:3 of the State Water Control Law of the Code of Virginia to provide financial assurance to implement a plan to abate, control, prevent, remove, or contain any substantial or imminent threat to public health or the environment that is reasonably likely to occur if such facility ceases operations (closure plan), and Whereas said Principal shall establish a standby trust fund as is required when a surety bond is used to provide such financial assurance;

Now, therefore, the conditions of the obligation are such that if the Principal shall faithfully implement the closure plan in accordance with the Director of the DEQ's instructions to implement the plan for the facility described above, or if the Principal shall provide alternate financial assurance, acceptable to DEQ and obtain the Director's written approval of such assurance, within 60 days after the date the notice of cancellation is received by the Director of the DEQ from the Surety(ies), then this obligation shall be null and void; otherwise it is to remain in full force and effect.

Such obligation does not apply to any of the following:

(a) Any obligation of owner or operator under a workers' compensation, disability benefits, or unemployment compensation law or other similar law;

(b) Bodily injury to an employee of owner or operator arising from, and in the course of, employment by owner or operator;

(c) Bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;

(d) Property damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by owner or operator that is not the direct result of a privately owned sewage treatment facility ceasing operations;

(e) Bodily injury of property damage for which owner or operator of facility is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of § 62.1-44.18:3 of the Code of Virginia.

The Surety(ies) shall become liable on this bond when the Principal has failed to fulfill the conditions described above. Upon notification by the Director of the DEQ that the owner or operator has failed to fulfill the conditions above, the Surety(ies) shall either implement the closure plan or place funds in an amount up to the penal sum into the standby trust fund as directed by the Director of the DEQ under 9 VAC 25-650-140.

Upon notification by the Director of the DEQ that the Principal has failed to provide alternate financial assurance within 60 days after the date the notice of cancellation is received by the Principal from the Surety(ies) or that the DEQ has determined or suspects that the facility has ceased operations, the Surety(ies) shall place funds in an amount not exceeding the aggregate penal sum into the standby trust fund as directed by the Director of DEQ.

The liability of the Surety(ies) shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the penal sum shown on the face of the bond, but in no event shall the obligation of the Surety(ies) hereunder exceed the amount of said penal sum.

The Surety(ies) may cancel the bond by sending notice of cancellation by certified mail to the Principal and to the Director of the DEQ, Commonwealth of Virginia, 629 East Main Street, Richmond, Virginia 23219 provided, however, that cancellation shall not occur (1) during the 120 days beginning on the date of receipt of the notice of cancellation by the Principal and Director of the DEQ as shown on the signed return receipt; or (2) while a compliance procedure is pending.

In Witness Thereof, the Principal and Surety(ies) have executed this Bond and have affixed their seals on the date set forth above.

The persons whose signatures appear below hereby certify that they are authorized to execute this surety bond on behalf of the Principal and Surety(ies) and that the wording of this surety bond is identical to the wording specified in 9 VAC 25-650-100.B as such regulations were constituted on the date this bond was executed.

PRINCIPAL

[Signature(s)]
[Name(s)]
[Title(s)]
[Corporate seal]

CORPORATE SURETY(IES)

[Name and address]
State of Incorporation:
Liability limit: $ _____
[Signature(s)]
[Name(s) and title(s)]
[Corporate seal]

[For every co-surety, provide signature(s), corporate seal, and other information in the same manner as for Surety above.]
Bond premium: $ _____

C. Under the terms of the bond, the surety will become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond.

D. The owner or operator who uses a surety bond to satisfy the requirements of this chapter shall establish a standby trust fund when the surety bond is acquired. Under the terms of the bond, all amounts paid by the surety under the bond will be deposited directly into the standby trust fund in accordance with instructions from the board under 9 VAC 25-650-140. This standby trust fund shall meet the requirements specified in 9 VAC 25-650-120.

E. The bond shall guarantee that the owner or operator or any other authorized person will:

1. Implement the closure plan in accordance with the approved closure plan and other requirements in any permit for the facility;

2. Implement the closure plan following an order to do so issued by the board or by a court.

F. The surety bond shall guarantee that the owner or operator shall provide alternate financial assurance as specified in this article within 60 days after receipt by the board of a notice of cancellation of the bond from the surety.

G. If the approved cost estimate increases to an amount greater than the amount of the penal sum of the bond, the owner or operator shall, within 60 days after the increase, cause the penal sum of the bond to be increased to an amount at least equal to the new estimate or obtain other financial assurance, as specified in this article to cover the increase. Whenever the cost estimate decreases, the penal sum may be reduced to the amount of the cost estimate following written approval by the board. Notice of an increase or decrease in the penal sum shall be sent to the board by certified mail within 60 days after the change.

H. The bond shall remain in force for its term unless the surety sends written notice of cancellation by certified mail to the owner or operator and to the board. Cancellation cannot occur, however:

1. During the 120 days beginning on the date of receipt of the notice of cancellation by the board as shown on the signed return receipt; or

2. While an enforcement procedure is pending.

I. The surety shall provide written notification to the board by certified mail no less than 120 days prior to the expiration date of the bond, that the bond will expire and the date the bond will expire.

J. In regard to implementation of a closure plan either by the owner or operator, by an authorized third party, or by the surety, proper implementation of a closure plan shall be deemed to have occurred when the board determines that the closure plan has been completed. Such implementation shall be deemed to have been completed when the provisions of the facility's approved closure plan have been executed and

the provisions of any other permit requirements or enforcement orders relative to the closure plan have been complied with.

9 VAC 25-650-110. Letter of Credit.

A. An owner or operator may satisfy the requirements of this chapter by obtaining an irrevocable standby letter of credit that conforms to the requirements of this section and by submitting an originally signed duplicate of the letter of credit to the board. The issuing institution shall be an entity that has the authority to issue letters of credit in the Commonwealth of Virginia and whose letter-of-credit operations are regulated and examined by a federal agency or the State Corporation Commission.

B. The letter of credit shall be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted.

IRREVOCABLE STANDBY LETTER OF CREDIT

[Name and address of issuing institution]
Beneficiary:
Director
Department of Environmental Quality (DEQ)
P. O. Box 10009
629 E. Main Street
Richmond, Virginia 23240-0009

Dear Sir or Madam: We hereby establish our Irrevocable Standby Letter of Credit No._____ in your favor, at the request and for the account of [owner or operator name] of [address] up to the aggregate amount of [in words] U.S. dollars, ($[insert dollar amount]), available upon presentation of

(1) your sight draft, bearing reference to this letter of credit, No._____ and

(2) your signed statement reading as follows:

"I certify that the amount of the draft is payable pursuant to regulations issued under authority of § 62.1- 44.18:3 of the Code of Virginia."

This letter of credit may be drawn on to implement the closure plan for the facility identified below in the amount of [in words] $ [insert dollar amount]. [Name of facility and address of the facility assured by this mechanism, and number of hookups served by the system.]

The letter of credit may not be drawn on to cover any of the following:

(a) Any obligation of owner or operator under a workers' compensation, disability benefits, or unemployment compensation law or other similar law;

(b) Bodily injury to an employee of owner or operator arising from, and in the course of, employment by the owner or operator;

(c) Bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;

(d) Property damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by owner or operator that is not the direct result of a privately owned sewage treatment facility ceasing operations;

(e) Bodily injury or property damage for which owner or operator of facility is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of § 62.1-44.18:3 of the Code of Virginia.

This letter of credit is effective as of [date] and shall expire on [date], but such expiration date shall be automatically extended for a period of [at least the length of the original term] on [expiration date] and on each successive expiration date, unless, at least 120 days before the current expiration date, we notify the Director of the DEQ and the owner or operator by certified mail that we have decided not to extend this letter of credit beyond the current expiration date. In the event that the owner or operator is so notified, any unused portion of the credit shall be available upon presentation of your sight draft for 120 days after the date of receipt by the Director of the DEQ and the owner or operator, as shown on the signed return receipt.

Whenever this letter of credit is drawn on under and in compliance with the terms of this credit, we shall duly honor such draft upon presentation to us, and we shall deposit the amount of the draft directly into the standby trust fund of owner or operator in accordance with your instructions.

We certify that the wording of this letter of credit is identical to the wording required in 9 VAC 25-650-110 B as such regulations were constituted on the date shown immediately below.

Attest:
[Signature(s) and title(s) of official(s) of issuing institution]
[Date]

This credit is subject to [insert "the most recent edition of the Uniform Customs and Practice for Documentary Credits, published by the International Chamber of Commerce," or "the Uniform Commercial Code"].

C. An owner or operator who uses a letter of credit to satisfy the requirements of this chapter also shall establish a standby trust fund when the letter of credit is acquired. Under the terms of the letter of credit, all amounts paid pursuant to a draft by the board will be deposited by the issuing institution directly into the standby trust fund in accordance with instructions from the board under 9 VAC 25-650-140. This standby trust fund shall meet the requirements specified in 9 VAC 25-650-120.

D. The letter of credit shall be irrevocable and issued for a period of at least one year in an amount at least equal to the current cost estimate for implementation of the closure plan. The letter of credit shall provide that the expiration date will be automatically extended for a period of at least one year. If the issuing institution decides not to extend the letter of credit beyond the current expiration date it shall, at least 120 days before the expiration date, notify both the owner or operator and the board by certified mail of that decision. The 120-day period will begin on the date of receipt by the board as shown

on the signed return receipt. Expiration cannot occur, however, while an enforcement procedure is pending. If the letter of credit is canceled by the issuing institution, the owner or operator shall obtain alternate financial assurance to be in effect prior to the expiration date of the letter of credit.

E. Whenever the approved cost estimate increases to an amount greater than the amount of credit, the owner or operator shall, within 60 days of the increase, cause the amount of credit to be increased to an amount at least equal to the new estimate or obtain other financial assurance as specified in this article to cover the increase. Whenever the cost estimate decreases, the letter of credit may be reduced to the amount of the new estimate following written approval by the board. The issuing institution shall send the notice of an increase or decrease in the amount of the credit to the board by certified mail within 60 days of the change.

F. Following a determination by the board that the owner or operator has ceased operations at the facility or has failed to implement the closure plan in accordance with the approved plan or other permit or special order requirements, the board will draw on the letter of credit.

G. The owner or operator may cancel the letter of credit only if alternate financial assurance acceptable to the board is substituted as specified in this article or if the owner or operator is released by the board from the requirements of this chapter.

H. The board shall return the original letter of credit to the issuing institution for termination when:

1. The owner or operator substitutes acceptable alternate financial assurance for implementation of the closure plan as specified in this article; or

2. The board notifies the owner or operator that he is no longer required by this article to maintain financial assurance for implementation of the closure plan for the facility.

9 VAC 25-650-120. Standby Trust Agreement.

A. An owner or operator using any one of the mechanisms authorized by 9 VAC 25-650-100 or 9 VAC 25-650-110 shall establish a standby trust fund when the mechanism is acquired. The trustee of the standby trust fund shall be an entity that has the authority to act as a trustee and whose trust operations are regulated and examined by a federal agency or the State Corporation Commission.

B. The standby trust agreement shall be worded identically as specified in 9 VAC 25-650-90 B, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted, and accompanied by a formal certification of acknowledgment as follows.

CERTIFICATE OF ACKNOWLEDGMENT

State of _____
County of _____

On this [date], before me personally came [owner's or operator's representative] to me known, who, being by me duly sworn, did depose and say that she/he resides at [address], that she/he is [title] of [corporation], the corporation described in and which executed the above instrument; that she/he knows the seal of said corporation; that the seal affixed to such instrument is such corporate seal; that is was so affixed by order of the Board of Directors of said corporation; and that she/he signed her/his name thereto by like order.

[Signature of Notary Public]
[Name of Notary Public]
My Commission expires:_____

C. The board will instruct the trustee to refund the balance of the standby trust fund to the provider of financial assurance if the board determines that no additional closure plan implementation costs will occur.

D. An owner or operator may establish one trust fund as the depository mechanism for all funds assured in compliance with this chapter.

9 VAC 25-650-130. Multiple financial mechanisms.

An owner or operator may satisfy the requirements of this chapter by establishing more than one financial mechanism per facility, except that mechanisms guaranteeing performance, rather than payment, may not be combined with other mechanisms.

9 VAC 25-650-140. Drawing on financial assurance mechanism.

A. The board shall require the surety or institution issuing a letter of credit to place up to the limit of funds provided by the financial assurance mechanism, into the standby trust if:

1. The owner or operator fails to establish alternate financial assurance within 60 days after receiving notice of cancellation of the surety bond or letter of credit; or

2. The conditions of subsection B of this section are satisfied.

B. The board may draw on a standby trust fund when the board makes a final determination that a privately owned sewerage system has ceased operation.

9 VAC 25-650-150. Waiver of requirements.

A. The board may waive the filing of the closure plan required pursuant to this chapter for any person who operates a privately owned sewerage system or treatment works subject to this regulation that was permitted prior to January 1, 2001, and discharges less than 5,000 gallons per day upon a finding that such person has not violated any regulation or order of the board, any condition of a permit to operate the facility, or any provision of the State Water Control Law, § 62.1-44.2 et seq. of the Code of Virginia for a period of not less than five years.

B. No waiver shall be approved by the board until after the governing body of the locality in which the facility is located approves the waiver after a public hearing.

C. The board may revoke a waiver at any time for good cause.

9 VAC 25-650-160. Release of the owner or operator from the financial assurance requirements.

A. Where the closure plan results in the termination of discharge to state waters and a VPDES permit for the discharge is no longer required, the board shall verify, within 60 days after receiving certification from the owner or operator that the closure plan has been completed in accordance with the requirements of the approved closure plan, permit or other order, whether the closure plan has been completed. Unless the board has reason to believe that the closure plan has not been implemented in accordance with the appropriate plan or other requirements, he shall notify the owner or operator in writing that he is no longer required to maintain financial assurance for the particular facility. Such notice shall release the owner or operator only from the requirements for financial assurance for the facility; it does not release him from legal responsibility for meeting the facility closure standards. If no written notice of termination of financial assurance requirements or of failure to properly implement the closure plan is received by the owner or operator within 60 days after certifying proper implementation of the closure plan, the owner or operator may request the board for an immediate decision in which case the board shall respond within 10 days after receipt of such request.

B. Where a VDPES permit for the facility is no longer required under State Water Control Law, the board shall notify the owner or operator in writing that he is no longer required to maintain financial assurance for the facility. Such notice shall release the owner or operator only from the requirements for financial assurance for the facility.

9 VAC 25-650-170. Cancellation or renewal by a provider of financial assurance.

A. Except as otherwise provided, a provider of financial assurance may cancel or fail to renew an assurance mechanism by sending a notice of termination by certified mail to the owner or operator. Termination of a surety bond or a letter of credit may not occur until 120 days after the date on which the owner or operator receives the notice of termination, as evidenced by the return receipt.

B. If a provider or financial assurance cancels or fails to renew for reasons other than incapacity of the provider as specified in 9 VAC 25-650-180, the owner or operator shall obtain alternate coverage as specified in this section and shall submit to the board the appropriate original forms listed in 9 VAC 25-650-90, 9 VAC 25-650-100, or 9 VAC 25-650-110 documenting the alternate coverage within 60 days after receipt of the notice of termination. If the owner or operator fails to obtain alternate coverage within 60 days after receipt of the notice of termination, the owner or operator shall immediately notify the board of such failure and submit:

1. The name and address of the provider of financial assurance;

2. The effective date of termination; and

3. A copy of the financial assurance mechanism subject to the termination maintained in accordance with this chapter.

9 VAC 25-650-180. Replenishment of letters of credit or surety bonds.

A. If at any time after a standby trust is funded upon the instruction of the board with funds drawn from a letter of credit or surety bond, and the amount in the standby trust is reduced below the full amount of coverage required, the owner or operator shall by the anniversary date of the financial mechanism from which the funds were drawn:

1. Replenish the value of financial assurance to equal the full amount of coverage required, or

2. Acquire another financial assurance mechanism for the amount by which funds in the standby trust have been reduced.

B. For purposes of the section, the full amount of coverage required is the amount of coverage to be provided by this chapter. If a combination of mechanisms was used to provide the assurance funds which were drawn upon, replenishment shall occur by the earliest anniversary date among the mechanisms.

9 VAC 25-650-190. Incapacity of owners or operators, or financial institution.

A. An owner or operator shall notify the board by certified mail of the commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming the owner or operator as debtor, within 10 days after commencement of the proceeding.

B. An owner or operator who fulfills the requirements of 9 VAC 25-650-50 D by obtaining a trust fund, a letter of credit, or a surety bond, will be deemed to be without the required financial assurance in the event of bankruptcy of the trustee or issuing institution, or a suspension or revocation of the authority of the trustee institution to act as trustee or of the institution issuing a surety bond, or letter of credit to issue such mechanisms. The owner or operator shall establish other financial assurance within 60 days of such event.

9 VAC 25-650-200. Incremental funding.

A. Incremental funding of the amount of financial assurance required may be allowed at the sole discretion of the board for existing facilities discharging in compliance with a current VPDES permit on [the effective date of this regulation]. Incremental funding of the amount of financial assurance required shall not be allowed for new or expanded discharges. Incremental funding of the amount of financial assurance shall not be allowed where a mechanism is already in place. Incremental funding of the amount of financial assurance required shall be considered only upon written request by the owner or operator. The board may allow incremental funding of closure cost estimates under the following conditions:

1. The board determines that closure plan implementation cost estimates are complete and accurate and the owner or operator has submitted a statement from a registered professional engineer so stating; and

2. The facility has been in operation, discharging to state waters, for a period of at least five years prior to [the

effective date of this regulation], in accordance with a VPDES permit issued by the board; and

3. The board finds the facility is substantially in compliance with its VPDES permit conditions, and has been substantially in compliance with its VPDES permit conditions for a period of at least one permit term (five years) prior to the effective date of the owner's or operator's current VPDES permit; and

4. The board determines that the facility is not within five years of the expected facility life and there are no foreseeable factors that will shorten the estimate of facility life (to include facility upgrade or expansion); and

5. A schedule for funding the total amount of the approved cost estimate through the financial assurance mechanism within five years of the initial date required under this regulation is provided by the owner or operator and approved by the board. This period is hereafter referred to as the "pay-in period."

B. Incremental funding shall be, at a minimum, in accordance with the approved schedule as follows:

1. Payments into the financial assurance mechanism shall be made annually during the pay-in period by the owner or operator until the amount of financial assurance equals the total amount of the approved cost estimate, adjusted for inflation.

2. Annual payments into the financial assurance mechanism shall not be less than 20% of the approved inflation-adjusted cost estimate, and shall continue until the amount of financial assurance equals the amount of the total approved cost estimate.

3. In no case shall the pay-in period exceed five years.

4. Incremental funding cost estimates must be adjusted annually to reflect inflation and any change in the cost estimate.

C. The owner or operator shall submit a request for incremental funding of the amount of financial assurance, including documentation justifying the request in accordance with the requirements of this section, to the board in conjunction with the cost estimate submitted in accordance with the requirements of this chapter. The board shall review such requests by the owner or operator and inform the owner or operator of approval or disapproval of the request for incremental funding in conjunction with approval or disapproval of the cost estimate.

9 VAC 25-650-210. Notices to the State Water Control Board.

All requirements of this chapter for notification to the State Water Control Board shall be addressed as follows:

Director	*Director*
Department of	*Department of*
Environmental Quality	*Environmental Quality*
P.O. Box 10009	*629 East Main Street*
Richmond, Virginia 23240-0009	*Richmond, Virginia 23219*

VA.R. Doc. No. R01-50; Filed June 27, 2001, 10:58 a.m.

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TITLE 12. HEALTH

STATE BOARD OF HEALTH

Title of Regulation: **12 VAC 5-430-10 et seq. Transient Lodging and Hotel Sanitation in Virginia (REPEALING).**

Title of Regulation: **12 VAC 5-431-10 et seq. Sanitary Regulations for Hotels.**

Statutory Authority: §§ 35.1-11 and 35.1-13 of the Code of Virginia.

Public Hearing Dates:
August 27, 2001 - 7 p.m. (Charlottesville)
August 29, 2001 - 7 p.m. (Spotsylvania)
September 5, 2001 - 7 p.m. (Williamsburg)
Public comments may be submitted until September 24, 2001.
(See Calendar of Events section for additional information)

Agency Contact: Gary L. Hagy, Director, Division of Food and Environmental Services, Department of Health, P.O. Box 2448, Room 115, Richmond, VA 23218, telephone (804) 225-4022, FAX (804) 225-4003.

Basis: The regulations are authorized and mandated by §§ 35.1-11 and 35.1-13 of the Code of Virginia. The code requires the regulations to provide minimum standards for the following: food preparation and handling; physical plant sanitation; the provision, storage, and cleaning of linens and towels; general housekeeping and maintenance practices; requirements for approved water supply and sewage disposal systems; vector and pest control; swimming pools, saunas, and other facilities, including personnel standards for the operation thereof, ice machines and dispensers of perishable food items; and procedures for obtaining a license.

Purpose: The purpose of the regulations is to ensure that tourists and overnight guests have safe and sanitary lodging accommodations while traveling in the Commonwealth. The minimum standards in the regulations, when followed, protect the lodging public's health, safety and welfare.

Substance: The proposed regulations are updated from the existing regulations that were effective in 1948. The most important revision to the regulations is the removal of the requirement for a minimum annual inspection of hotels. Over the years market competition has nearly made the hotel industry self-regulating. However, there remains a need to identify minimum standards for hotel sanitation.

The regulations include a requirement for automatic ice dispensing machines as opposed to common ice bins. This will prevent contamination of the ice, whether intentional or unintentional, by other guests. Hotels will have two years after the adoption of the regulations to convert to automatic ice dispensing machines. Most hotels have already switched to automatic ice dispensing machines.

Issues: The primary advantage of the regulations is that they set forth standards for sanitary maintenance of hotels. The public expects hotel rooms to be clean and sanitary. These regulations are less intrusive than the previous regulations but they still prescribe minimum acceptable sanitary standards for hotels. Tourism is a major industry in Virginia and it is important that hotels provide healthy and sanitary accommodations for the lodging public. These regulations also give the local health department the freedom to concentrate their resources on programs and facilities that need more thorough scrutiny. No disadvantages to the Commonwealth or public have been identified.

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 25 (98). Section 9-6.14:7.1 G requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. The analysis presented below represents DPB's best estimate of these economic impacts.

Summary of the proposed regulation: The Virginia Department of Health (VDH) is proposing to update its *Sanitary Regulations for Hotels*. These regulations establish minimum sanitary standards for operating hotels, including standards for cleanliness and storage of linens, pest control, solid waste collection and disposal, operation of food service, operation of swimming pools or spas, and general sanitation of the rooms and facility. The proposed regulations also inform potential hotel owners or operators how to obtain permits and variances from the department.

Estimated economic impact. The proposed regulations are divided into three parts: I) General Framework of the Regulation, II) Procedural Regulations, and III) Design, Construction, and Operational Criteria. Part I of the proposed regulation includes an expanded list of definitions and incorporates by reference other legally binding regulations (e.g., Virginia Waterworks Regulations, Swimming Pool Regulations, and Rules and Regulations of the Board of Health Governing Restaurants).

Part II of the proposed regulation establishes how the regulations are to be enforced and the process regarding the issuance of permits and variances. Currently, there are no written instructions or guidelines covering these issues for prospective hotel owners or operators. According to VDH, the procedures defined in the regulation are a written recitation of how the program is currently implemented. Documenting the process and the rights and responsibilities of both the department and the applicant (hotel owners or operators) will likely provide an economic benefit.

Part III includes updated industry standards for the design and operation of a hotel. According to VDH, the majority of provisions in Part III represent current industry standards and will not require any compliance action on the part of hotels. The substantive changes are discussed below.

The proposed regulations require automatic ice dispensers as opposed to common ice bins in order to prevent contamination of the ice, whether intentionally or unintentionally, by other guests. Facilities constructed after the effective date of these regulations would be required to comply with this provision immediately. Existing facilities will have two years after the effective date to change from common ice bins to automatic dispensers or distribute ice to each individual guest in a sanitary pre-filled container. According to VDH, many hotels in Virginia have already switched to automatic ice machines, although they do not have any estimates of exactly how many. The compliance cost for the remaining hotels is estimated to be $2,000 per machine[1]. DPB does not have information regarding any incidents involving contamination of common ice bins. However, the possibility does exist and it can't be known at this time whether current good business practice would lead hotels to convert to automatic ice dispensers even in the absence of this proposed regulation.

In 1996, the General Assembly amended § 35.1-22 of the Code of Virginia so that annual inspections of all hotels by VDH are no longer required. The proposed regulations reflect this change, but specify that random inspections will be conducted each year in addition to inspections upon written complaint of a problem. Allowing VDH discretion in determining a meaningful inspection frequency that focuses more on the establishments that are not clean and sanitary allows local health department to focus resources on higher priority public health programs and functions. There is reason to believe that providing enforcement flexibility for VDH may improve compliance and result in a net economic benefit for Virginia.

The current regulations are very general, requiring only that the *"Premises and all storage rooms of hotels shall be kept orderly and clean and effective vermin, insect, and rodent control shall be maintained throughout the establishment"* (12 VAC 5-430-70). Sections 470 and 480 of the proposed regulation spell out the specific measures hotels must use for the control of solid waste and vermin. The department maintains that the proposed requirements lay out in detail the minimum actions necessary in order for hotels to meet the standards in the current regulations. While the new language doesn't change the actions hotels need to take to comply with the substance of the regulation it does provide useful information, and thus may provide some small economic gain.

Businesses and entities affected. The proposed regulations will apply to all hotels, motels, and bed and breakfast facilities in Virginia. VDH estimates there are 2,000 such facilities in Virginia. The proposed regulations will not apply to boarding houses, timeshares, condominiums, or rental property in resort areas rented on a weekly or monthly basis.

[1] This price estimate is from Scherr's Refrigeration Company in Richmond, VA. It assumes that the facility already owns an icemaker, which is necessary even for common ice bins, and does not reflect any regional price differences or discounts the hotel may be able to negotiate with the supplier. This price also does not include delivery, installation, sales tax, or freight.

Localities particularly affected. The proposed regulations should not uniquely affect any particular localities as they apply statewide.

Projected impact on employment. The proposed regulations are not expected to have any significant impact on employment in the Virginia hotel industry.

Effects on the use and value of private property. With the exception of the automatic ice dispenser provision, the proposed regulations do not substantively change the sanitary standards that hotels must meet. Since it appears that hotels are moving in the direction of installing automatic ice dispensers even in the absence of the new rule, this proposed regulation is not expected to have any impact on the use and value of private property.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The Virginia Department of Health agrees substantially with the observations made and the conclusions drawn in the Department of Planning and Budget's economic impact analysis of the Sanitary Regulations for Hotels (12 VAC 5-431-10 et seq.).

Summary:

The current regulation that establishes minimum sanitary standards in hotels and that has been in effect since 1948 is being repealed. The new regulation includes updated standards for cleanliness and storage of linens, vector control, solid waste collection and disposal, operations of food service, operation of swimming pools or spas, and general sanitation of the rooms and facility. The regulations also provide potential hotel owners or operators with procedures for obtaining a permit to operate a hotel.

The proposed regulations remove the requirement for a minimum annual inspection of hotels. Annual random inspections will be conducted at a percentage of hotels, and inspections will be made in response to complaints. In addition, the proposed regulations require replacement of ice machines with common ice bins with automatic ice dispensing machines within two years of the effective date of the new regulations.

CHAPTER 431.
SANITARY REGULATIONS FOR HOTELS.

PART I.
DEFINITIONS AND GENERAL PROVISIONS.

12 VAC 5-431-10. Definitions.

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

"Agent" means a legally authorized representative for the owner.

"Approved water supply" means a waterworks that has a valid waterworks operation permit from the department or a water supply that is evaluated for compliance with the Private Well Regulations (12 VAC 5-630-10 et seq.), tested, and if found in reasonable compliance with the applicable standards, accepted and approved by the commissioner or the commissioner's designee.

"Bed and breakfast facility" means a residential-type establishment that provides two or more rental accommodations and food service on any single night to a maximum of 12 transient guests for a period of five or more days in any calendar year.

"Commissioner" means the state health commissioner or his designee who has been delegated powers in accordance with subdivision 2 of 12 VAC 5-431-40.

"Department" means the Virginia Department of Health.

"District health department" means a consolidation of local health departments as authorized in § 32.1-31 C of the Code of Virginia.

"Director" means the local health director or his subordinate who has been delegated powers in accordance with subdivision 2 of 12 VAC 5-431-40.

"Division" means the Division of Food and Environmental Services of the Virginia Department of Health.

"Employees" means and includes all maids, porters, and any other persons whose duties include the cleaning of rooms, toilets, or any part of the building, or the rendering of service to guests.

"Hot water" has the meaning as defined by the Virginia Uniform Statewide Building Code.

"Hotel" means any establishment offering to the public for compensation transitory lodging or sleeping accommodations, overnight or otherwise, including but not limited to facilities known by varying nomenclatures or designations as hotels, motels, travel lodges, tourist homes, or hostels and similar facilities by whatever name called that consist of two or more lodging units.

"Local health department" means the department established in each city and county in accordance with § 32.1-30 of the Code of Virginia.

"Lodging unit" means any room that is established and maintained for use as a sleeping area for temporary occupancy.

"Office" means the Office of Environmental Health Services of the Virginia Department of Health.

"Operator" means any person who is responsible for the daily operation of a hotel.

"Owner" means any person who owns, leases, or proposes to own or lease a hotel.

"Permit" means a license to operate a hotel.

"Person" means an association, a corporation, individual, partnership, other legal entity, government, or governmental subdivision or agency.

"Person in charge" means the individual present at a hotel who is responsible for the operation at the time of inspection.

"Sanitary survey" means an investigation or inspection of any condition that may affect public health.

"Sewage" means water-carried and nonwater-carried human excrement and kitchen, laundry, shower, bath, or lavatory wastes separately or together with such underground, surface, storm and other water and liquid industrial wastes as may be present from residences, buildings, vehicles, industrial establishments or other places.

"Sewage disposal system" means a sewerage system or treatment works designed not to result in a point source discharge.

"Sewer" means any sanitary or combined sewer used to convey sewage or municipal or industrial wastes.

"Sewerage system" means pipelines or conduits, pumping stations and force mains and all other construction, devices and appliances appurtenant thereto used for the collection and conveyance of sewage to a treatment works or point of ultimate disposal.

"Single-service articles" means cups, containers, lids, closures, plates, knives, forks, spoons, stirrers, paddles, straws, napkins, wrapping materials, wooden chopsticks, toothpicks and similar articles intended for one-time, one-person use and then discarded.

"Swimming pool" means any structure, basin chamber, or tank, located either indoors or outdoors, containing an artificial body of water intended to be used for swimming, wading, diving or recreational bathing, including spas and hot tubs, and having a water depth of 24 inches or more at any point.

"Transient" means any individual who occupies a lodging unit in a hotel.

"Treatment works" means any device or system used in the storage, treatment, disposal or reclamation of sewage or combinations of sewage and industrial wastes, including but not limited to pumping, power and other equipment and appurtenances, septic tanks, and any works, including land, that are or will be (i) an integral part of the treatment process or (ii) used for the ultimate disposal of residues or effluents resulting from such treatment.

"Variance" means a conditional waiver to a specific regulation granted by the commissioner pursuant to 12 VAC 5-431-100 to a specific owner relating to a specific situation or facility and may be for a specified time period.

"Virginia Uniform Statewide Building Code" means 13 VAC 5-61-11 et seq. of the Virginia Administrative Code.

12 VAC 5-431-20. Purpose of regulations.

These regulations have been promulgated by the State Board of Health to specify the following requirements to protect public health:

1. Criteria for assuring the safe preparation, handling, protection or temperature control for food;

2. Criteria for maintaining physical plant sanitation;

3. Criteria for the storage and cleansing of linens and towels;

4. Criteria for general housekeeping and maintenance;

5. Requirements for approved water and sewage disposal systems;

6. Criteria for vector and pest control;

7. Criteria for ice machines and dispensers of perishable food items; and

8. Procedure for obtaining a license.

12 VAC 5-431-30. Applicability of other Virginia regulations to hotels.

A. The following Virginia regulations shall be applicable to hotels:

1. Rules and Regulations Governing Restaurants (12 VAC 5-420-10 et seq.).

2. Sewage Handling and Disposal Regulations (12 VAC 5-610-20 et seq.).

3. Waterworks Regulations (12 VAC 5-590-10 et seq.).

4. Sewerage Regulations (12 VAC 5-580-10 et seq.).

5. Private Well Regulations (12 VAC 5-630-10 et seq.).

6. Regulations Governing Tourist Establishment Swimming Pools and Other Public Pools (12 VAC 5-460-10 et seq.).

7. Swimming Pool Regulations Governing the Posting of Water Quality Test Results (12 VAC 5-462-10 et seq.).

B. These regulations are in addition to the requirements of the Virginia Uniform Statewide Building Code (13 VAC 5-61-11 et seq.).

12 VAC 5-431-40. Administration of regulations.

These regulations are administered by the following:

1. State Board of Health. The State Board of Health has the responsibility to promulgate, amend and repeal regulations necessary to protect the public health.

2. State Health Commissioner. The State Health Commissioner is the chief executive officer of the State Department of Health. The commissioner has the authority to act for the board when it is not in session (See § 32.1-20 of the Code of Virginia). The commissioner may delegate his powers under these regulations in writing to any subordinate.

3. State Department of Health. The State Department of Health is designated as the primary agent of the board for the purpose of administering these regulations.

4. District or local health department. The district or local health department is responsible for implementing and enforcing the regulatory activities required by these regulations.

12 VAC 5-431-50. Right of entry and inspections.

In accordance with the provisions of § 35.1-5 of the Code of Virginia, the commissioner or his designee shall have the right to enter any property to ensure compliance with these regulations.

PART II.
PROCEDURAL REGULATIONS.

12 VAC 5-431-60. Applicability of Administrative Process Act.

The provisions of the Virginia Administrative Process Act (§ 9-6.14:1 et seq. of the Code of Virginia) shall govern the procedures for rendering all case decisions.

12 VAC 5-431-70. Emergency orders.

The commissioner may, pursuant to § 32.1-13 of the Code of Virginia, issue emergency orders that are necessary to preserve the public health, safety, welfare and environment. Emergency orders arising out of matters governed by these regulations shall state the reasons and factual basis upon which the emergency order is issued. The emergency order shall state the time period for which it is effective.

12 VAC 5-431-80. Enforcement of regulations.

A. Notice. Whenever the commissioner has reason to believe that a violation of Titles 32.1 or 35.1 of the Code of Virginia or any provisions of these regulations has occurred or is occurring, the district or local health department shall so notify the alleged violator. Such notice shall: (i) be in writing, with a request to the owner to respond by providing any pertinent information relating to the issue; (ii) cite the statute, regulation or regulations that are allegedly being violated; and (iii) state the facts which form the basis for believing that the violation has occurred or is occurring. Such notification is not an official finding or case decision nor an adjudication, but may be accompanied by a request that certain corrective action be taken.

B. Orders. Pursuant to the authority granted in §§ 32.1-26 and 35.1-6 of the Code of Virginia, the commissioner may issue orders to require any owner or other person to comply with the provisions of these regulations. The order may require the following:

1. The immediate cessation and correction of the violation;

2. Appropriate remedial action to ensure that the violation does not continue or recur;

3. The submission of a plan to prevent future violations;

4. The submission of an application for a variance; and

5. Any other corrective action deemed necessary for proper compliance with the regulations.

C. Hearing before the issuance of an order. Before the issuance of an order, the commissioner must comply with the requirements of § 35.1-6 of the Code of Virginia.

D. When order effective. All orders issued pursuant to this section shall become effective not less than 15 days after mailing a copy thereof by certified mail to the last known address of the owner or person violating these regulations or the address provided by the applicant on his application to operate a hotel. Violation of an order is a Class 3 misdemeanor. See § 35.1-7 of the Code of Virginia.

E. Compliance. The commissioner may act as the agent of the board to enforce all effective orders and these regulations. Should any person fail to comply with any effective order or these regulations, the commissioner may do any or all of the following:

1. Institute a proceeding to revoke the owner's permit in accordance with 12 VAC 5-

431-320;

2. Request the attorney for the Commonwealth to bring a criminal action; or

3. Request the Attorney General to bring an action for civil penalty, injunction, or other appropriate remedy.

F. Not exclusive means of enforcement. Nothing contained in 12 VAC 5-431-70 or this section shall be interpreted to require the commissioner to issue an order prior to seeking enforcement of any regulation or statute through an injunction, mandamus or criminal prosecution.

12 VAC 5-431-90. Suspension of regulations during disasters.

If in the case of a man-made or natural disaster, the commissioner finds that certain regulations cannot be complied with and that the public health is better served by not fully complying with these regulations, he may authorize the suspension of the application of the regulations for specifically affected localities and institute a provisional regulatory plan until the disaster is abated.

12 VAC 5-431-100. Variances.

A. The commissioner may grant a variance to these regulations by following the appropriate procedures set forth in this section.

B. Requirements for a variance. The commissioner may grant a variance if he finds that the hardship imposed, which may be economic, outweighs the benefits that may be received by the public and that granting such a variance does not subject the public to unreasonable health risks or environmental pollution.

C. Application for a variance. Any owner who seeks a variance shall apply in writing to the local health department. All requests for variances must be made in writing and received by the local health department prior to denial of the hotel permit or within 30 days after such denial. The application for a variance shall include:

1. A citation to the regulation from which a variance is requested;

2. The nature and duration of the variance requested;

3. Any relevant analytical data including result of relevant tests conducted pursuant to the requirements of these regulations;

4. Statements or evidence that establishes that the public health, welfare and environment would not be adversely affected if the variance were granted;

5. Suggested conditions that might be imposed on the granting of a variance that would limit the detrimental impact on the public health and welfare;

6. Other information believed pertinent by the applicant; and

7. Such other information as the district or local health department or commissioner may require.

D. Evaluation of a variance application. The commissioner shall act on any variance request submitted pursuant to subsection C of this section within 60 days of receipt of the request. In evaluating a variance application, the commissioner shall consider such factors as the following:

1. The effect that such a variance would have on the operation of the hotel;

2. The cost and other economic considerations imposed by this requirement;

3. The effect that such a variance would have on protection of the public health, safety, welfare and the environment; and

4. Such other factors as the commissioner may deem appropriate.

E. Disposition of a variance request. The commissioner may grant, modify or deny a variance request.

1. If the commissioner denies a variance request, he shall provide the owner an opportunity to an informal hearing as defined by § 9-6.14:11 of the Code of Virginia. Following this opportunity for an informal hearing, the commissioner may reject any application for a variance by sending a rejection notice to the applicant. The rejection notice shall be in writing and shall state the reasons for the rejection. A rejection notice constitutes a case decision.

2. If the commissioner proposes to grant a variance request, the applicant shall be notified in writing of this decision. Such notice shall identify the variance and the hotel involved and shall specify the period of time for which the variance will be effective. Such notice shall provide that the variance will be terminated when the hotel comes into compliance with the applicable regulation and may be terminated upon a finding by the commissioner that the hotel has failed to comply with any requirements or schedules issued in conjunction with the variance. The effective date of the variance shall be as noted in the variance letter.

3. All variances granted to any hotel may be transferable unless otherwise stated. Each variance shall be attached to the permit to which it is granted. Each variance is revoked when the permit to which it is attached is revoked.

4. No owner may challenge the terms or conditions of a variance after 30 calendar days have elapsed from the receipt of the variance.

12 VAC 5-431-110. Hearing types.

Hearings before the commissioner or his designee shall include any of the following forms depending on the nature of the controversy and the interests of the parties involved:

1. Informal hearings. An informal hearing is a meeting with an employee or director of the district or local health department held in conformance with § 9-6.14:11 of the Code of Virginia.

2. Adjudicatory hearing. An adjudicatory hearing is a formal, public adjudicatory proceeding before the commissioner or a designated hearing officer held in conformance with § 9-6.14:12 of the Code of Virginia.

12 VAC 5-431-120. Request for hearing.

A request for an informal hearing shall be made by sending the request in writing to the district or local health department in the locality where the hotel is located. Requests for hearings shall cite the reason or reasons for the hearing request and the section or sections of these regulations involved and must be received within 30 days of the decision by the district or local health department that led to the hearing request.

12 VAC 5-431-130. Hearing as a matter of right.

Any person or named party whose rights, duties, or privileges have been or may be affected by any case decision made in the administration of these regulations shall have a right to both informal and adjudicatory hearings. The commissioner may require participation in an informal hearing before granting the request for a full adjudicatory hearing. EXCEPTION: No person other than an owner shall have the right to an adjudicatory hearing to challenge the issuance of a permit to operate unless the person can demonstrate at an informal hearing that the minimum standards contained in these regulations have not been applied and that he will be injured in some manner by the issuance of the permit.

12 VAC 5-431-140. Appeals.

A. Any appeal from a denial of a permit to operate a hotel must be made in writing and received by the local health department within 30 days of the date the denial letter was received.

B. Any request for hearing on the denial of an application for a variance pursuant to 12 VAC 5-431-200 E 1 must be made in writing and received within 30 days of receipt of the denial notice.

C. Pursuant to the Administrative Process Act (§ 9-6.14:1 et seq. of the Code of Virginia), an aggrieved owner may appeal a final decision of the commissioner to the appropriate circuit court.

12 VAC 5-431-150. Grandfather clause.

Permits granted to hotels prior to (insert effective date of these regulations) shall remain valid until ownership changes or unless conditions at the hotel change in a manner that would adversely affect the public health, safety, welfare, or environment. Necessary alterations, modifications or repairs to a hotel shall not be grandfathered and shall comply with the version of the Virginia Uniform Statewide Building Codes in effect at the time the changes are made.

12 VAC 5-431-160. Submission of plans, specifications and other data.

Whenever a hotel is constructed or remodeled or whenever an existing structure is converted to use as a hotel, properly

prepared plans and specifications for such construction, remodeling, or conversion shall be submitted to the director for review and approval before construction, remodeling or conversion is begun. The plans and specifications shall detail such items as the layout of the hotel, plans for proposed buildings and structures, the proposed water source and distribution system, and the proposed sewage disposal system. Detailed plans and specifications shall be submitted for the food service establishment and swimming pool, if applicable. The director or the designee shall approve the plans and specifications if they meet the requirements of these regulations. No hotel shall be constructed, remodeled, or converted except in accordance with plans and specifications approved by the director or the designee. The director may waive the requirement for plans for minor modifications and renovations.

Whenever plans and specifications are required to be submitted to and approved by the director or his designee, he shall inspect the hotel prior to its beginning operation to determine compliance with the approved plans and specifications and with the requirements of these regulations.

The director's or designee's approval of any plans or specifications is no guarantee that plans or specifications are without error and the owner shall have final responsibility for the accuracy and completeness of the plan and specifications, including subsequent construction and installation.

12 VAC 5-431-170. Application for a permit.

Any person desiring to operate a hotel shall make written application for a permit on an approved application form at least 30 days prior to the opening of the hotel. As a minimum, such application shall include the name and address of the applicant who intends to operate the hotel, the proposed dates of operation, the number of rooms expected to be served on the busiest day, the type of sewage disposal system to be used, the type of water supply that will service the facility and the signature of the applicant. Upon review of the application, the director may require the applicant to submit such additional information as is required to evaluate the applicant's application for the permit.

12 VAC 5-431-180. Permits.

A. No person shall own, establish, conduct, maintain, manage, or operate any hotel in this Commonwealth unless the hotel is permitted as provided in this section. All permits shall be in the name of the owner or lessee. Permits shall not be issued to newly constructed or extensively remodeled hotels until a certificate of occupancy has been issued by the building official. Only a person who complies with the requirements of these regulations shall be entitled to receive or retain such a permit.

B. Nontransference of hotel permits. Permits issued after (insert date these regulations become effective) shall not be transferable from one person to another or from one location to another. A new owner shall be required to make a written application for a permit. The application forms are obtainable at all local health departments.

C. Conditional permits. A conditional permit authorizes the owner of a hotel to operate the hotel under certain controlled conditions, which may include, but are not limited to, restrictions of the types of food the hotel can handle and type of swimming facility made available for public use.

D. Requirements for posting permits. The permit shall be posted in a place where it is readily observable by the public transacting business with the hotel.

12 VAC 5-431-190. Issuance of a permit.

Prior to the issuance of a permit, the director or his designee shall inspect the hotel to determine compliance with the requirements of these regulations. The department shall issue a permit to the applicant if its inspection reveals that the proposed hotel complies with the requirements of these regulations. The permit shall remain in effect (i.e., is self-renewing) unless otherwise suspended, revoked or surrendered by the owner. Ownership or lessee changes void the permit and the new owner must apply for a new permit.

A permit may be issued for a hotel that substantially complies with the criteria set forth in these regulations. The director shall be responsible for determining what constitutes substantial compliance.

12 VAC 5-431-200. Denial of a permit.

Whenever the department denies a hotel permit it shall, within 10 days of the inspection, send the applicant a written explanation of the reasons why the permit was denied.

12 VAC 5-431-210. Suspension of a permit.

The director may suspend a permit to operate a hotel without an informal conference if the director finds the continued operation constitutes a substantial and imminent threat to the public health. Upon receipt of such notice that a permit is suspended, the permit holder shall cease operation immediately and begin corrective action.

Whenever a permit is suspended, the holder of the permit or the person in charge shall be notified in writing by certified mail or by hand delivery. Upon service of notice that the permit is immediately suspended, the former permit holder shall be given an opportunity to request an informal hearing. If a permit holder wants to request an informal hearing, he must submit a request in writing to the director within 10 working days after he receives notice of the suspension. The written request shall be filed with the local department by the former holder of the permit. If a written request for an informal hearing is not filed within 10 working days, the suspension is sustained. Each holder of a suspended permit shall be afforded an opportunity for an informal hearing within three working days of receipt of a request for an informal hearing. The director may end the suspension at any time if the reasons for suspension no longer exist.

12 VAC 5-431-220. Revocation of a permit.

Prior to revocation, the director shall notify in writing the holder of the permit, or the person in charge, of the specific reason or reasons for which the permit is to be revoked. The permit shall be revoked at the end of the 30 days following

service of such notice unless a written request for an informal conference is filed before then with the director. If no request for an informal conference is filed within the 30-day period, the revocation of the permit shall be final.

12 VAC 5-431-230. Permits issued under prior regulations.

Permits granted prior to (insert effective date of these regulations) shall not require a new permit so long as the ownership of the hotel has not changed and the permit holder otherwise complies with these regulations.

12 VAC 5-431-240. Application after revocation.

Any person whose permit has been revoked may apply for a new permit after complying with these regulations by following the procedures in 12 VAC 5-431-170.

12 VAC 5-431-250. Periodic inspection.

Hotels shall be inspected by the designee of the commissioner. Annual random inspections shall be conducted on a percentage of hotels within each locality. Additional inspections shall be conducted in response to complaints filed with the department that directly affect the health and safety of the public. Further inspections shall be conducted as often as necessary for the enforcement of these regulations. It shall be the responsibility of the operator of a hotel to give the health commissioner or his designee free access to such premises at reasonable times for the purpose of inspection in accordance with § 35.1-5 of the Code of Virginia.

12 VAC 5-431-260. Inspection report.

Whenever an inspection of a hotel is made, the findings shall be recorded on the department's inspection report forms.

The original of the completed inspection report form shall be furnished to the person in charge of the hotel at the conclusion of each inspection. The completed inspection report form, being a public document, shall be made available for public disclosure to any person who requests it according to law.

The inspection report shall state any failure to comply with any time limit for corrections and may result in the closing of the hotel. An opportunity for an informal conference on the inspection findings, a time limit, or both, shall be granted provided that a written request is filed with local health department within 10 days following the inspection or the cessation of operations. When a request for a hearing is received, the procedures outlined in 12 VAC 5-431-120 shall be followed.

Whenever a hotel is required to cease operation under the provisions of 12 VAC 5-431-210, it shall not resume operations until a reinspection shows that conditions responsible for the order to cease operations no longer exists. Following a request for reinspection, it shall be made as soon as possible or within three working days.

12 VAC 5-431-270. Correction of violations.

The completed inspection report form may specify a reasonable period of time for the correction of the violations found. Where a period of time for the correction is specified, the correction shall be accomplished within the period specified and in accordance with the following provisions:

1. Should a substantial and imminent health hazard be declared by the director, including but not limited to substantial fire damage, sewage backing into the food preparation and service areas, lack of refrigeration or lack of water, the operator shall immediately cease operations. Operations shall not be resumed until authorized by the director. Authorization shall not be granted until such violations are corrected.

2. All violations specifying a reasonable period of time for correction shall be corrected as soon as possible, but in any event, within the period of time specified. A follow-up inspection shall be conducted by the director or his designee to confirm the corrections.

PART III.
DESIGN, CONSTRUCTION AND OPERATIONAL CRITERIA.

12 VAC 5-431-280. Supervision.

The operator of a hotel, or his designated representative who is responsible for the premises, shall be available on the premises while it is open for use.

12 VAC 5-431-290. General sanitation.

All buildings, other facilities, equipment fixtures, furnishings and the premises of a hotel shall be kept clean, in good repair, and maintained so as to protect the health, safety, and well-being of persons using those facilities.

12 VAC 5-431-300. Floor requirements.

The floors of all lodging units, hallways, store rooms and all other spaces used or traversed by guests shall be of such construction as to be easily cleaned and shall be kept clean and in good repair. The requirements of this section shall not prevent the use of rugs, carpets, or natural flooring so long as they are clean and in good repair. Abrasive strips for safety purposes may be used wherever deemed necessary to prevent accidents.

12 VAC 5-431-310. Walls and ceiling requirements.

The walls and ceilings of all lodging units, hallways, bathrooms, store rooms and all other spaces used or traversed by guests shall be of such construction as to be easily cleaned, shall be smooth, and shall be kept clean and in good repair. Cleaning of walls and ceilings shall be so done as to minimize the raising of dust and the exposure of guests thereto. Studs, joists, or rafters shall not be left exposed except when suitably finished and kept clean.

12 VAC 5-431-320. Room furnishing requirements.

All equipment, fixtures, furniture, windows, and furnishings, including draperies, curtains, carpets, other floor materials shall be kept clean and free of dust, dirt, vermin, and other contaminants and shall be maintained in good order and repair.

12 VAC 5-431-330. Air volume, heat, light, and ventilation requirements.

The air volume, heat, light, and ventilation of each lodging unit shall be constructed and maintained in accordance with the Virginia Uniform Statewide Building Code.

12 VAC 5-431-340. Box springs, mattresses, bedding and linen requirements.

A. Box springs and mattresses shall be clean and in good repair.

B. Conventional mattress covers or pads shall be used for the protection of mattresses and shall be kept clean and in good repair.

C. All sheets, pillowcases, towels, washcloths, and bathmats shall be kept clean and in good repair, freshly laundered and sanitized between occupants and changed at least once every 7 days if used by the same occupant.

D. When a blanket is placed on the bed, the upper sheet shall be of sufficient length to fold and overlap the top section of the blanket.

E. All clean bedding and linen shall be stored in a clean and dry place.

F. All soiled bedding and linen shall be handled and stored so as not to contaminate clean bedding and laundry.

G. Containers for transporting or storing bedding and linen shall be constructed of impervious materials and shall be smooth and easily cleanable.

H. Laundry storage rooms shall be separated from staff living quarters and be kept in a clean and organized fashion. EXEMPTION: This subsection shall not apply to bed and breakfast facilities.

I. All blankets, quilts, bedspreads, and comforters shall be maintained in a sanitary and good condition.

12 VAC 5-431-350. Bed spacing requirements.

A. Bed arrangements of lodging units shall provide not less than 30 inches clear space between each bed, cot, or bunk.

B. No lodging unit shall contain more than two tiers of beds. When two tiers are used, there shall be at least:

1. Three feet of clear vertical space between tiers of beds and between the top tier and ceiling; and

2. Four feet of space between tiered beds.

C. There shall be sufficient space between the floor and the underside of the beds to facilitate easy cleaning. In lieu of such space, the bed shall have a continuous base or shall be on rollers.

12 VAC 5-431-360. Toilet, lavatory, and bath facilities requirements.

A. The required number of sanitary fixtures shall be in accordance with the Virginia Uniform Statewide Building Code.

B. Toilets, lavatories and bath facilities shall be maintained in a clean and sanitary condition and maintained in good repair.

C. The location and use of all public toilet and bath facilities shall be clearly indicated by appropriate signs.

D. Toilet, lavatory, and bath facilities for hotel patrons located in private homes shall be separate from toilet and bath facilities utilized by the owner or operator of said hotel.

E. All lavatories, bathtubs, and showers shall be provided with hot and cold water, except where otherwise specifically exempted by the department.

F. Toilet and bath facilities shall have:

1. Floors that are finished with a material that is smooth, easily cleanable, impervious to water, and coved to a height of four inches. The use of carpet is prohibited.

2. Shower compartments with walls that are in accordance with the Virginia Uniform Statewide Building Code. An effective water-tight joint between the wall and the floor shall be maintained.

3. Interior finishes that are smooth, easily cleanable, and impervious to water.

4. Where rubber or impervious mats are used, such mats clean and dry between usages.

5. Bathtub and shower stall floors that are finished with nonslip, impervious surfaces or provided with nonslip impervious bath mats.

6. Where glass bath or glass shower doors are used, such doors made of safety glass.

7. Toilet tissue, soap, towels, and a waste receptacle provided.

G. All plumbing installations shall be in accordance with the Virginia Uniform Statewide Building Code.

12 VAC 5-431-370. Solid waste.

A. A minimum of one watertight, nonabsorbent and easily washable waste receptacle shall be provided in each lodging unit. Such receptacle shall be kept clean and in good repair.

B. Solid waste shall be collected daily from rooms and areas used by guests.

C. Solid waste shall be disposed of in accordance with all applicable local ordinances and state laws and regulations.

D. Solid waste shall be stored in either individual garbage containers, bins, or storage vehicles.

E. All such bulk storage containers or vehicles shall:

1. Have tight fitting lids or covers;

2. Be durable, rust resistant, water tight, rodent proof, readily washable, and kept in good repair.

F. Solid waste shall be removed from the hotel's premises at regular intervals. Collection frequency shall be such so as not to create:

1. Vector production and sustenance;

2. Objectionable odors; or

3. Any overflowing of solid waste or other unsanitary condition.

G. Solid Waste shall be transported in accordance with all applicable local ordinances and state law and regulation.

12 VAC 5-431-380. Vector control.

A. Vector control measures shall be employed to prevent vector infestations in or around hotels.

B. Insect and rodent control measures to safeguard public health and to prevent nuisance to the public shall be applied. Developed areas, buildings, and structures shall be maintained free of accumulations of debris.

C. Application of pesticides or rodenticides shall be conducted by a Virginia Department of Agriculture and Consumer Services certified pesticide applicator or under the direct supervision of a Virginia Department of Agriculture and Consumer Services certified applicator.

D. The presence of any rodent, such as mice and rats, reptiles or any insect infestation shall be evidence that sufficient vector control measures have not been implemented at the hotel and shall be considered a violation of these regulations.

12 VAC 5-431-390. Spas, swimming pools, and other swimming facilities.

Any spa, swimming pool, or other swimming facility located at or operated in connection with a hotel shall comply with the department's swimming pool regulations as specified in 12 VAC 5-430-30.

12 VAC 5-431-400. Water supply systems.

A. Water supply systems serving hotels shall comply with the department's Waterworks Regulations or Private Well Regulations as specified in 12 VAC 5-430-30.

B. The water supply distribution system shall be designed, constructed, and maintained in compliance with the Virginia Statewide Uniform Building Code.

C. Water heaters shall have installed an approved ASME pressure relief valve that is accessible for inspection and testing.

D. Where drinking fountains are provided, they shall be of an angle jet type with adequate water pressure at all times.

12 VAC 5-431-410. Sewage disposal.

A. Hotels shall provide an adequate and safe sewerage system.

B. Sewage and waste water shall be disposed of into a public sewerage system or by a sewage system constructed and operated in accordance with applicable laws and regulations of the department.

C. No untreated or partially treated sewage, liquid waste, or septic tank effluent shall be discharged directly or indirectly onto the surface of the ground or into public waters.

12 VAC 5-431-420. Fire safety.

Hotels shall comply with the requirements of the Virginia Statewide Fire Prevention Code (13 VAC 5-51-11 et seq.).

12 VAC 5-431-430. Chemical and physical hazards.

A. Cleaning equipment, supplies, pesticides, rodenticides, chemicals, paints, and other toxic substances shall be kept isolated from guests and stored so as to prevent contamination of clothing, toweling, and bedding materials. All applications of chemicals including, but not limited to, cleaners and disinfectants shall be in accordance with the manufacturers' recommendations.

B. All toxic substances shall be clearly identified and accurately labeled as toxic.

C. Housekeeping carts shall be kept organized such that clean linens, single-service articles, ice buckets, and glassware stored on these units shall be protected from contamination by toilet brushes, soiled linen, cleaning agents, or any other possible sources of contamination.

D. All stairways shall be provided with firmly attached handrails and guardrails in accordance with the Virginia Uniform Statewide Building Code.

E. All boilers and pressure vessels shall be approved and maintained in accordance with the applicable state statutes.

12 VAC 5-431-440. Food services.

A. Eating and drinking establishments, commissaries, mobile units, and vending machines operated in conjunction with a hotel shall be operated in compliance with the Rules and Regulations Governing Restaurants (12 VAC 5-420-10 et seq.).

B. When reusable glassware is provided by the hotel, it must be properly washed, rinsed, and sanitized. An approved three-compartment sink or a commercial dishwashing machine shall be provided in a kitchen or separate room for the purpose of performing this function. Sanitized glassware shall be stored in a clean site that is removed from sources of contamination. A single-service cover is to be placed on the opening of the glassware prior to its removal from the cleaning site. If this cover is removed by the guest, then the glassware is presumed to be soiled and shall be washed and sanitized.

C. Single-service articles shall be properly stored and protected from contamination. The reuse of these items is prohibited.

D. Ice buckets shall be constructed and repaired with safe materials and shall be corrosive resistant, nonabsorbent, nontoxic, smooth, easily cleanable and durable under conditions of normal use. Single-service ice buckets may be used if intended for one use only and if made from clean, sanitary safe materials.

E. When ice buckets are provided by hotels, they must be properly washed, rinsed and sanitized. An approved three-compartment sink or commercial dishwashing machine shall be provided in the kitchen or a separate room for the purpose of performing this function. A food grade liner may be used in

lieu of a three-compartment sink to protect ice from contamination as long as the liner and ice bucket itself are clean and of approved construction. When ice buckets are provided, they must have either an approved lid or a food grade liner available to protect ice from contamination.

F. Bottled or packaged water shall be obtained from an approved source and shall be packaged, handled, sorted and dispensed in a way that protects it from contamination.

G. Any hotel that makes ice available in public areas, including but not limited to lobbies, hallways, and outdoor areas, shall restrict access to such ice in accordance with the following provisions:

1. Newly constructed facilities. After (insert effective date of these regulations), any newly constructed hotel that installs ice-making equipment, and any existing hotel that installs or replaces ice-making equipment, shall install only automatic dispensing, sanitary ice-making and storage equipment in areas accessible to the public. Any such establishment may install open-type bin ice machines in areas not accessible to the public provided they meet the requirement of subdivision 2 of this subsection.

2. Existing facilities. After (insert date two years after effective date of these regulations), any existing hotel that has not converted to automatic dispensing, ice-making and storage shall no longer permit unrestricted public access to open-type ice bins and shall dispense ice to guests only by having employees give out prefilled, individual sanitary containers of ice or by making available prefilled, disposable, closed bags of ice.

H. EXEMPTION: Bed and breakfast facilities are exempt from subsections A and B of this section. Bed and breakfast facilities shall comply with all sections of the Rules and Regulations Governing Restaurants (12 VAC 5-420-10 et seq.) governing semi-public restaurants serving 12 or less recipients of service.

12 VAC 5-431-450. Lodging unit kitchens.

A. Cooking by guests in lodging units that have not been equipped with kitchens or in efficiency-type kitchen facilities that do not conform to the Virginia Statewide Uniform Building Code is prohibited.

B. Kitchen-equipped lodging units shall have:

1. A sink suitable for dishwashing with hot and cold water.

2. A refrigerator capable of maintaining a food temperature of 41°F or less.

3. Utensils and equipment, if supplied, that are easily cleanable, durable, and kept in good repair. Utensils supplied in lodging units shall be washed, rinsed, and sanitized after each occupancy and have a notice stating: "For your convenience, dishes and utensils have been washed and sanitized. If you would like to further sanitize these items, please contact the manager." The sanitizing agent shall be available in the office.

12 VAC 5-431-460. Examination of employees for communicable diseases.

All hotel employees shall submit to such examination or examinations as may be considered necessary by the commissioner when such employees are suspected of having a communicable disease. It shall be the duty of the owner or manager of any hotel to exclude from service in the establishment any employee who is known to be infected with a communicable disease, except in circumstances individually approved by the commissioner.

12 VAC 5-431-470. Pets.

The person operating a hotel may establish and enforce rules designed to prohibit or control pets. No guest shall allow his pet to run at large or be a nuisance.

12 VAC 5-431-480. Posting of rates and Code of Virginia sections.

All operators shall post conspicuously in each lodging unit occupied by transient guests the rates for the room together with §§ 8.01-42.2, 35.1-27 and 35.1-28 of the Code of Virginia in which are prescribed the duties, liability of guests for hotel damage, and limitation of liability of guests for hotel damage from innkeepers.

VA.R. Doc. No. R94-256; Filed June 27, 2001, 10:52 a.m.

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TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF MEDICINE

Title of Regulation: **18 VAC 85-20-10 et seq. Regulations Governing the Practice of Medicine, Osteopathy, Podiatry, and Chiropractic (amending 18 VAC 85-20-131).**

Statutory Authority: §§ 54.1-2400 and 54.1-2956.9 of the Code of Virginia.

Public Hearing Date: August 3, 2001 - 9:30 a.m.
Public comments may be submitted until September 14, 2001.
(See Calendar of Events section for additional information)

Agency Contact: William L. Harp, M.D., Executive Director, Board of Medicine, Southern States Building, 6606 W. Broad Street, 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9908.

Basis: Chapter 24 (§ 54.1-2400 et seq.) of Title 54.1 of the Code of Virginia establishes the general powers and duties of health regulatory boards including the responsibility to promulgate regulations, levy fees, administer a licensure and renewal program, and discipline regulated professionals.

The legal authority to promulgate regulations governing the practice of acupuncture is in § 54.1-2956.9 and in the second enactment clause of Chapter 814 of the 2000 Acts of Assembly, which states: "That the Board of Medicine, in

consultation with the Advisory Board on Acupuncture, shall promulgate regulations, including education and training requirements for doctors of medicine, osteopathy, chiropractic and podiatry who utilize acupuncture, and including the requirement for a standard form recommending a diagnostic examination for provision to the patient by the acupuncturist, to implement the provisions of this act within 280 days of enactment."

Purpose: Chapter 814 eliminated the separate license for physicians who practice acupuncture but mandated that the board establish qualifications necessary to practice with minimal competency. The requirement of 200 hours with 50 of those hours being clinical instruction under supervision by a person legally authorized to practice acupuncture is the least burdensome requirement considered that would continue to protect the public health and safety in seeking acupuncture treatment. Since it would be expected that a practitioner holding a license from the Board of Medicine would have the physiological and medical background necessary to provide acupuncture treatment, the clinical instruction in acupuncture is essential to ensure safe and effective practice.

Substance: 18 VAC 85-20-131 is being amended to comply with a statutory mandate for the board to provide regulations for the education and training required of a doctor of medicine, osteopathy, podiatry or chiropractic in order to be authorized to use acupuncture as a modality of treatment. Current regulations require 200 hours of instruction in order to be authorized to practice acupuncture. The proposed amendment requires that 50 of those hours be in clinical practice under the supervision of someone legally authorized to practice acupuncture.

Issues: The issue involved in the development of this regulation centered on the amount and type of training that was necessary. Doctors of medicine, osteopathy, podiatry and chiropractic receive years of didactic education in subjects such as anatomy, but their training typically does not prepare them to perform acupuncture. For that reason, training in acupuncture treatment and technique has been post-graduate and post-licensure for most practitioners. Courses have been developed by individuals and health education systems to prepare physicians and equip them with the skills and necessary hours of training.

In an effort to standardize that training or to determine comparability and quality, the board sought curriculum information from all providers of acupuncture education for physicians of which it was aware. Only a few responded with course outlines or other information. It appears that there is no national standard, no national credentialing, and no accreditation of programs for physician acupuncturists. Therefore, the board elected to retain the hours requirement but did not add a requirement for any accreditation or board approval of programs.

In the opinion of the Advisory Committee on Acupuncture, it is essential for physicians to receive supervised clinical training in the technique of acupuncture administration. While physicians have experience through their medical training with injections, appropriate and efficacious administration of acupuncture needles requires different knowledge and skills.

The committee debated the necessary hours of training and compromised on 50 hours of supervised clinical experience in addition to the 200 hours of instruction. When the issue was considered by the full Board of Medicine, the 50 hours was included in the 200 hours as sufficient for public protection and minimal competency.

There are no disadvantages to the public, since the total number of hours of acupuncture instruction will remain the same. There may be some advantage to consumers of acupuncture services if the doctor is required to acquire at least 50 hours of clinical experience before practicing acupuncture on a patient.

There are no disadvantages to the agency; the amended regulation does not impose a new responsibility on the board and does not involve additional cost or staff time.

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 25 (98). 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. Chapter 814 of the 2000 Acts of Assembly eliminated the need for individuals licensed to practice medicine, osteopathy, chiropractic, or podiatry to be separately licensed to practice acupuncture and required the Board of Medicine (board) to develop appropriate education, training, and practice guidelines for such practitioners. Under an Administrative Process Act (APA) exemption, the regulatory requirement (consisting only of a fee) for physicians to obtain a secondary license to practice acupuncture was removed. The board already requires 200 hours of instruction for physicians to be authorized to practice acupuncture. In response to the statutory mandate, the board is now proposing to require that 50 of those hours be in clinical practice under the supervision of someone legally authorized to practice acupuncture. The proposed regulation includes a "grandfather clause" that exempts individuals who held a license as a physician acupuncturist prior to July 1, 2000, from the new requirement.

Estimated economic impact. In the opinion of the Board of Medicine's Advisory Committee on Acupuncture, it is essential for physicians to receive supervised clinical training in the technique of acupuncture administration. While physicians have experience through their medical training with injections, appropriate and efficacious administration of acupuncture needles requires different knowledge and skills.

There is no information available on how many hours of acupuncture instruction are typically devoted to clinical practice or if clinical hours are more or less expensive than

other hours of instruction. However, since the total number of hours of acupuncture instruction remains the same, there is not expected to be a significant economic impact on those physicians who choose to become authorized to practice acupuncture. Although there are no readily available studies to confirm that clinical experience improves the quality of services provided, patients of these practitioners may benefit to some extent if their practitioner obtains more experience before practicing acupuncture on patients than without this regulatory requirement.

Businesses and entities affected. According to the Department of Health Professions, currently there are approximately 200 physicians authorized to practice acupuncture. The proposed changes will affect all physicians who choose to become authorized to practice acupuncture after the effective date of this regulation.

Localities particularly affected. The proposed regulatory change is not expected to uniquely affect any particular localities.

Projected impact on employment. The proposed regulatory change in not expected to have any impact on employment.

Effects on the use and value of private property. The proposed regulatory change is not expected to have any effects on the use and value of private property.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The Board of Medicine concurs with the analysis of the Department of Planning and Budget for 18 VAC 85-20-10 et seq.

Summary:

The proposed amendments replace emergency regulations establishing that of the 200 hours of acupuncture training required for doctors of medicine, osteopathy, podiatry and chiropractic to practice acupuncture, 50 hours must be in clinical practice.

18 VAC 85-20-131. Requirements to practice acupuncture.

A. To be qualified to practice acupuncture, licensed doctors of medicine, osteopathy, podiatry, and chiropractic shall first have obtained at least 200 hours of instruction in general and basic aspects of the practice of acupuncture, specific uses and techniques of acupuncture, and indications and contraindications for acupuncture administration. *After (insert the effective date of this regulation), at least 50 hours of the 200 hours of instruction shall be clinical experience supervised by a person legally authorized to practice acupuncture in any jurisdiction of the United States. Persons who held a license as a physician acupuncturist prior to July 1, 2000, shall not be required to obtain the 50 hours of clinical experience.*

B. A podiatrist may use acupuncture only for treatment of pain syndromes originating in the human foot.

VA.R. Doc. No. R01-28, Filed June 26, 2001, 3:52 p.m.

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TITLE 20. PUBLIC UTILITIES AND TELECOMMUNICATIONS

STATE CORPORATION COMMISSION

REGISTRAR'S NOTICE: The State Corporation Commission is exempt from the Administrative Process Act in accordance with § 9-6.14:4.1 A 2 of the Code of Virginia, which exempts courts, any agency of the Supreme Court, and any agency which by the Constitution is expressly granted any of the powers of a court of record.

Title of Regulation: **20 VAC 5-312-10 et seq. Rules Governing Retail Access to Competitive Energy Services (amending 20 VAC 5-312-10 and 20 VAC 5-312-80).**

Statutory Authority: §§ 12.1-13 and 56-35.8 of the Code of Virginia.

Summary:

The State Corporation Commission has initiated a proceeding to establish rules to govern electricity customer minimum stay periods, Case No. PUE010296, Commonwealth of Virginia, At the relation of the State Corporation Commission, Ex Parte: In the matter of establishing rules and regulations pursuant to the Virginia Electric Utility Restructuring Act for customer minimum stay periods. In its May 15, 2001, Order Establishing Procedural Schedule in this case, the commission directed the commission staff to invite representatives of interested parties to participate in a work group to assist the staff in determining whether, and what, minimum stay periods are necessary for the start of retail access in Virginia. The commission ordered staff to conduct an investigation and file its report proposing rules governing minimum stay periods, with input from the work group, on or before June 26, 2001.

The proposed rule governing electricity customer minimum stay periods comprises a new defined term and rule that amends the recently adopted regulations by Final Order on June 19, 2001, Case No. PUE010013, that will become effective on August 1, 2001 as new Chapter 312 (20 VAC 5-312-10 et seq.) of Title 20 of the Virginia Administrative Code. The proposal pertains to the period an electricity customer is required to remain with the local distribution company upon return to capped rate service following receipt of electricity supply service from a competitive service provider. The proposal is presented as a defined term "minimum stay period" in 20 VAC 5-312-10 and as a new subsection Q in 20 VAC 5-312-80.

Copies of the proposed minimum stay period are available on the State Corporation Commission's website at http://www.state.va.us/scc/caseinfo/orders.htm or may be obtained from the Clerk of the State Corporation Commission. Written comments and requests for hearing on the proposed minimum stay period should be submitted to the State Corporation Commission, Document Control Center, P.O. Box 2118, Richmond, VA 23219-2118, on or before July 23, 2001. All written comments should reference Case No. PUE010296.

Agency Contact: David R. Eichenlaub, Division of Economics and Finance, State Corporation Commission, 1300 East Main Street, Fourth Floor, Richmond, Virginia 23219, telephone (804) 371-9295 or e-mail deichenlaub@scc.state.va.us.

20 VAC 5-312-10. Applicability; definitions.

A. These regulations are promulgated pursuant to the provisions of the Virginia Electric Utility Restructuring Act (§ 56-576 et seq. of the Code of Virginia) and to the provisions of retail supply choice for natural gas customers, § 56-235.8 of the Code of Virginia. The provisions in this chapter apply to suppliers of electric and natural gas services including local distribution companies and competitive service providers,, and govern the implementation of retail access to competitive energy services in the electricity and natural gas markets, including the conduct of market participants. The provisions in this chapter shall be applicable to the implementation of full or phased-in retail access to competitive energy services in the service territory of each local distribution company.

B. The following terms when used in this chapter shall have the following meanings, unless the context clearly indicates otherwise:

"Affiliated competitive service provider" means a competitive service provider that is a separate legal entity that controls, is controlled by, or is under common control of, a local distribution company or its parent. For the purpose of this chapter, any unit or division created by a local distribution company for the purpose of acting as a competitive service provider shall be treated as an affiliated competitive service provider and shall be subject to the same provisions and regulations.

"Aggregator" means a person licensed by the State Corporation Commission that, as an agent or intermediary, (i) offers to purchase, or purchases, electricity or natural gas supply service, or both, or (ii) offers to arrange for, or arranges for, the purchase of electricity supply service or natural gas supply service, or both, for sale to, or on behalf of, two or more retail customers not controlled by or under common control with such person. The following activities shall not, in and of themselves, make a person an aggregator under this chapter: (i) furnishing legal services to two or more retail customers or competitive service providers; (ii) furnishing educational, informational, or analytical services to two or more retail customers, unless direct or indirect compensation for such services is paid by a competitive service provider supplying electricity or natural gas, or both; (iii) furnishing educational, informational, or analytical services to two or more competitive service providers; (iv) providing default service under § 56-585 of the Code of Virginia; (v) conducting business as a competitive service provider licensed under 20 VAC 5-312-40; and (vi) engaging in actions of a retail customer, acting in common with one or more other such retail customers, to issue a request for proposal or to negotiate a purchase of electricity supply service or natural gas supply service, or both, for consumption by such retail customers.

"Billing party" means a person that renders a consolidated or separate bill directly to a retail customer for competitive energy services, aggregation services, or distribution services, or both.

"Bill-ready" means the consolidated billing practice in which the nonbilling party calculates each retail customer's billing charges for services provided and forwards such charges to the billing party for inclusion on the consolidated bill.

"Business day" means any calendar day or computer processing day in the Eastern United States time zone in which the general office of the applicable local distribution company is open for business with the public.

"Competitive energy service" means the retail sale of electricity supply service, natural gas supply service, any other competitive service as provided by legislation and approved by the State Corporation Commission as part of retail access by an entity other than the local distribution company as a regulated utility. For the purpose of this chapter, competitive energy services include services provided to retail customers by aggregators.

"Competitive service provider" means a person, licensed by the State Corporation Commission, that sells or offers to sell a competitive energy service within the Commonwealth. This term includes affiliated competitive service providers, as defined above, but does not include a party that supplies electricity or natural gas, or both, exclusively for its own consumption or the consumption of one or more of its affiliates. For the purpose of this chapter, competitive service providers include aggregators.

"Competitive transition charge" means the wires charge, as provided by § 56-583 of the Code of Virginia, that is applicable to a retail customer that chooses to procure electricity supply service from a competitive service provider.

"Consolidated billing" means the rendering of a single bill to a retail customer that includes the billing charges of a competitive service provider and the billing charges of the local distribution company.

"Customer" means retail customer.

"Distribution service" means the delivery of electricity or natural gas, or both, through the distribution facilities of the local distribution company to a retail customer.

"Electricity supply service" means the generation of electricity, or when provided together, the generation of electricity and its transmission to the distribution facilities of the local distribution company on behalf of a retail customer.

"Electronic Data Interchange" (EDI) means computer-to-computer exchange of business information using common standards for high volume electronic transactions.

"Local Distribution Company" means an entity regulated by the State Corporation Commission that owns or controls the distribution facilities required for the transportation and delivery of electricity or natural gas to the retail customer.

"Minimum stay period" means the minimum period of time a customer who requests electricity supply service from the local distribution company, pursuant to § 56-582 D of the Code of Virginia, after a period of receiving electricity supply

service from a competitive service provider, is required to use such service from the local distribution company.

"Natural gas supply service" means the procurement of natural gas, or when provided together, the procurement of natural gas and its transportation to the distribution facilities of a local distribution company on behalf of a retail customer.

"Non-billing party" means a party that provides retail customer billing information for competitive energy services or regulated service to the billing party for the purpose of consolidated billing.

"Person" means any individual, corporation, partnership, association, company, business, trust, joint venture, or other private legal entity, and the Commonwealth or any city, county, town, authority or other political subdivision of the Commonwealth.

"Price-to-compare" means the portion of the electric local distribution company's regulated rate applicable to electricity supply service less the competitive transition charge rate or the portion of the natural gas local distribution company's regulated rate applicable to natural gas supply service.

"Rate-ready" means the consolidated billing practice in which the nonbilling party provides rate information to the billing party to calculate and include the nonbilling party's charges on the consolidated bill.

"Residential customer" means any person receiving retail distribution service under a residential tariff of the local distribution company.

"Retail access" means the opportunity for a retail customer in the Commonwealth to purchase a competitive energy service from a licensed competitive service provider seeking to sell such services to that customer.

"Retail customer" means any person that purchases retail electricity or natural gas for his or her own consumption at one or more metering points or nonmetered points of delivery located within the Commonwealth.

"Separate billing" means the rendering of separate bills to a retail customer for the billing charges of a competitive service provider and the billing charges of the local distribution company.

"Transmission provider" means an entity regulated by the Federal Energy Regulatory Commission that owns or operates, or both, the transmission facilities required for the delivery of electricity or natural gas to the local distribution company or retail customer.

"Virginia Electronic Data Transfer Working Group" (VAEDT) means the group of representatives from electric and natural gas local distribution companies, competitive service providers, the staff of the State Corporation Commission, and the Office of Attorney General whose objective is to formulate guidelines and practices for the electronic exchange of information necessitated by retail access.

20 VAC 5-312-80. Enrollment and switching.

A. A competitive service provider may offer to enroll a customer upon: (i) receiving a license from the State Corporation Commission; (ii) receiving EDI certification as required by the VAEDT or completing other data exchange testing requirements as provided by the local distribution company's tariff approved by the State Corporation Commission, including the subsequent provision of a sample bill as required by 20 VAC 5-312-20 L; and (iii) completing registration with the local distribution company.

B. A competitive service provider may enroll, or modify the services provided to, a customer only after the customer has affirmatively authorized such enrollment or modification. A competitive service provider shall maintain adequate records allowing it to verify a customer's enrollment authorization. Examples of adequate records of enrollment authorization include: (i) a written contract signed by the customer; (ii) a written statement by an independent third party that witnessed or heard the customer's verbal commitments; (iii) a recording of the customer's verbal commitment; or (iv) electronic data exchange, including the Internet, provided that the competitive service provider can show that the electronic transmittal of a customer's authorization originated with the customer. Such authorization records shall contain the customer's name and address; the date the authorization was obtained; the name of the product, pricing plan, or service that is being subscribed; and acknowledgment of any switching fees, minimum contract terms or usage requirements, or cancellation fees. Such authorization records shall be retained for at least 12 months after enrollment and shall be provided within five business days upon request by the customer or the State Corporation Commission.

C. A competitive service provider shall send a written contract to a customer prior to, or contemporaneously with, sending the enrollment request to the local distribution company.

D. Upon a customer's request, a competitive service provider may re-enroll such customer at a new address under the existing contract, without acquiring new authorization records, if a competitive service provider is licensed to provide service to the customer's new address.

E. The local distribution company shall advise a customer initiating new service of the customer's right and opportunity to choose a competitive service provider.

F. In the event that multiple enrollment requests are submitted regarding the same customer within the same enrollment period, the local distribution company shall process the first one submitted and reject all others for the same enrollment period.

G. Except as otherwise provided by the local distribution company’s tariff approved by the State Corporation Commission, the competitive service provider shall submit an enrollment request to the local distribution company at least 15 days prior to the customer’s next scheduled meter reading date for service to be effective on that meter reading date. For an enrollment request received less than 15 days prior to the customer’s next scheduled meter reading date, service shall be effective on the customer’s subsequent meter reading date, except as provided by subsection H of this section.

H. A competitive service provider may request, pursuant to the local distribution company's tariff, a special meter reading, in which case the enrollment may become effective on the

date of the special meter reading. The local distribution company shall perform the requested special meter reading as promptly as working conditions permit.

I. Upon receipt of an enrollment request from a competitive service provider, the local distribution company shall, normally within one business day of receipt of such notice, mail notification to the customer advising of the enrollment request, the approximate date that the competitive service provider's service commences, and the caption and statement as to cancellation required by 20 VAC 5-312-70 C 8. The customer shall have until the close of business on the tenth day following the mailing of such notification to advise the local distribution company to cancel such enrollment without penalty.

J. In the event a competitive service provider receives a cancellation request within the cancellation period provided by 20 VAC 5-312-70 C 8 or 20 VAC 5-312-70 D, it shall notify, by any means specified by the VAEDT or as otherwise provided by the local distribution company's tariff approved by the State Corporation Commission, the local distribution company of the customer's cancellation in order to terminate the enrollment process.

K. In the event the local distribution company receives notice of a cancellation request from a competitive service provider or a customer within the cancellation period provided by 20 VAC 5-312-70 C 8 or 20 VAC 5-312-70 D, the local distribution company shall terminate the enrollment process by any means specified by the VAEDT or as otherwise provided by the local distribution company's tariff approved by the State Corporation Commission.

L. In the event a customer terminates a contract beyond the cancellation period as provided by 20 VAC 5-312-70 C 8 and 20 VAC 5-312-70 D, the competitive service provider or the local distribution company shall provide notice of termination other party by any means specified by the VAEDT or as otherwise provided by the local distribution company's tariff approved by the State Corporation Commission.

M. If a competitive service provider terminates an individual contract for any reason, including expiration of the contract, the competitive service provider shall provide notice of termination to the local distribution company by any means specified by the VAEDT or as otherwise provided by the local distribution company's tariff approved by the State Corporation Commission and also shall send written notification of such termination, for reasons other than non-payment, to the customer at least 30 days prior to the date that service to the customer is scheduled to terminate. A competitive service provider shall send written notification to the customer for termination for non-payment at least 15 days prior to the date that service to such customer is scheduled to terminate.

N. If the local distribution company is notified by a competitive service provider that the competitive service provider will terminate service to a customer, the local distribution company shall respond to the competitive service provider by any means specified by the VAEDT or as otherwise provided by the local distribution company's tariff approved by the State Corporation Commission to acknowledge (i) receipt of the competitive service provider's notice, and (ii) the date that the competitive service provider's service to the customer is scheduled to terminate. Additionally, the local distribution company shall send written notification to the customer, normally within five business days, that it was so informed and describe the customer's opportunity to select a new supplier. Absent the designation of a default service provider as determined by the State Corporation Commission pursuant to § 56-585 of the Code of Virginia, the local distribution company shall inform the affected customer that if the customer does not select another competitive service provider, the local distribution company shall provide the customer's electricity supply service or natural gas supply service.

O. If a competitive service provider decides to terminate service to a customer class or to abandon service within the Commonwealth, the competitive service provider shall provide at least 60 days advanced written notice to the local distribution company, to the affected customers, and to the State Corporation Commission.

P. If the local distribution company issues a final bill to a customer, the local distribution company shall notify, by any means specified by the VAEDT or as otherwise provided in the local distribution company's tariff approved by the State Corporation Commission, the customer's competitive service provider.

Q. The local distribution company may require a 12-month minimum stay period for electricity customers with an annual peak demand of 300 kW or greater. Such customers that return to capped rate service provided by the local distribution company as a result of a competitive service provider's abandonment of service in the Commonwealth may choose another competitive service provider at any time without the requirement to remain for the minimum stay period of 12 months.

VA.R. Doc. No. R01-242; Filed June 27, 2001, 11:34 a.m.

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REGISTRAR'S NOTICE: The State Corporation Commission is exempt from the Administrative Process Act in accordance with § 9-6.14:4.1 A 2 of the Code of Virginia, which exempts courts, any agency of the Supreme Court, and any agency which by the Constitution is expressly granted any of the powers of a court of record.

The distribution list that is referenced as Appendix A in the following order is not being published. However, the list is available for public inspection at the State Corporation Commission, Document Control Center, Tyler Building, 1st Floor, 1300 East Main Street, Richmond, Virginia 23219, from 8:15 a.m. to 5 p.m., Monday through Friday; or may be viewed at the Virginia Code Commission, General Assembly Building, 2nd Floor, 910 Capitol Street, Richmond, Virginia 23219, during regular office hours.

Title of Regulation: **20 VAC 5-400-10 et seq. Telecommunications (repealing 20 VAC 5-400-10 through 20 VAC 5-400-60, 20 VAC 5-400-100 through 20 VAC 5-400-170, 20 VAC 5-400-190, and 20 VAC 5-400-200.)**

20 VAC 5-401-10 et seq. Rules Governing the Provision of Network Interface Devices.

20 VAC 5-403-10 et seq. Rules Governing Small Investor-Owned Telephone Utilities.

20 VAC 5-409-10 et seq. Rules Governing the Sharing or Resale of Local Exchange Service (Shared Tenant Service).

20 VAC 5-411-10 et seq. Rules Governing the Certification of Interexchange Carriers.

20 VAC 5-413-10 et seq. Rules Governing Disconnection of Local Exchange Telephone Service.

20 VAC 5-415-10 et seq. Rules Governing Telecommunications Relay Service.

20 VAC 5-419-10 et seq. Procedural Rules for Implementing §§ 251 and 252 of the Telecommunications Act of 1996, 47 USC §§ 251 and 252.

20 VAC 5-421-10 et seq. Rules Governing Exemption from Providing Physical Collocation Pursuant to § 251(C)(6) of the Telecommunications Act of 1996.

Statutory Authority: § 12.1-13 of the Code of Virginia.

Summary:

The State Corporation Commission is taking regulatory action regarding certain regulations relating to telecommunications currently contained in Chapter 400 of Title 20 of the Virginia Administrative Code (VAC).

Amendment or repeal is required to bring these regulations into conformance with the requirements of the Virginia Register Form, Style and Procedure Manual. In several instances, the regulations must be updated to reflect changes in the Code of Virginia enacted by the General Assembly, orders subsequently issued by the commission, or changes in federal law. In two cases, the existing regulations need not be codified as regulations in the VAC.

The proposed regulations are merely housekeeping changes; ministerial changes only are being proposed. The substantive content of the regulations is not proposed to be changed. Issues contained within these regulations, which were previously addressed in proceedings before the commission, are not being reopened for consideration.

The following regulations are proposed for repeal:

1. Regulation governing telephone cooperative rate applications, 20 VAC 5-400-10. Chapter 252 of the 1998 Acts of Assembly rescinded the commission's jurisdiction over the rates, service quality, and types of service offerings of telephone cooperatives.

2. Experimental plan for alternative regulation of Virginia telephone companies, 20 VAC 5-400-50. This regulation was superseded by a subsequent regulation, Modified plan for alternative regulation of Virginia local exchange telephone companies, 20 VAC 5-400-100.

3. Modified plan for alternative regulation of Virginia local exchange telephone companies, 20 VAC 5-400-100. This regulation has been superseded by plans for alternative regulation that are individually tailored for each local exchange company, and which need not appear in the VAC.

4. Investigation of the resale or sharing of intrastate Wide Area Telephone Service, 20 VAC 5-400-110. This regulation, among other things, states that services provided by resellers of intrastate WATS are not the type intended to be subject to regulation under the principles enunciated in VEPCO v. SCC, 219 Va. 894 (1979). It need not be published as a regulation in the VAC.

5. Interim Order respecting investigation of competition for intraLATA, interexchange telephone service, 20 VAC 5-400-120. The commission in Commonwealth of Virginia ex rel., State Corporation Commission ex parte: In the matter of implementation of toll dialing parity pursuant to provisions of 47 USC § 251(b)(3), Case No. PUC970009, 1999 SCC Ann. Rpts. 232 (April 14, 1999), eliminated the necessity for this regulation as each local exchange company is now required to provide intraLATA presubscription.

6. Order relating to compensation by interLATA carriers to local exchange carriers for incidental traffic, 20 VAC 5-400-130. This regulation was superseded by Rules governing the certification of interexchange carriers, 20 VAC 5-400-60.

7. Investigation of the resale or sharing of foreign exchange and dedicated channel services, 20 VAC 5-400-140. This regulation concluded the investigation of whether resellers of interexchange telecommunications service using dedicated channels should be treated differently from those reselling or sharing intrastate WATS. It need not be in the form of a regulation, or published in the VAC.

8. Investigation of deregulation of telephone company billing and collection services, 20 VAC 5-400-150. This regulation was superseded by rules governing Disconnection of local exchange telephone service, 20 VAC 5-400-151.

9. Rulemaking concerning treatment of telephone company simple inside wiring, 20 VAC 5-400-160. The commission's Final Order in Commonwealth of Virginia ex rel., State Corporation Commission ex parte: Rulemaking concerning treatment of telephone company simple inside wiring, Case No. PUC860045, 232 1997 SCC Ann. Rpts. (December 11, 1997), deregulated inside wire maintenance and superseded this regulation.

The following existing regulations will be amended and renumbered:

1. Rules Governing the Provision of Network Interface Devices, 20 VAC 5-401-10 et seq. (existing 20-VAC 5-400-20).

2. Rules Governing Small Investor-Owned Telephone Utilities, 20 VAC 5-403-10 et seq. (existing 20 VAC 5-400-30).

3. Rules Governing the Sharing or Resale of Local Exchange Service (Shared Tenant Service), 20 VAC 5-409-10 et seq. (existing 20 VAC 5-400-40).

4. Rules Governing the Certification of InterLATA, Interexchange Carriers, 20 VAC 5-411-10 et seq. (existing 20 VAC 5-400-60).

5. Rules Governing Disconnection of Local Exchange Telephone Service, 20 VAC 5-413-10 et seq. (existing 20 VAC 5-400-151).

6. Rules Governing Telecommunications Relay Service, 20 VAC 5-415-10, et seq. (existing 20 VAC 5-440-170).

7. Procedural Rules for the Implementation of §§ 251 and 252 of the Telecommunications Act of 1996, 20 VAC 5-419-10 et seq. (existing 20 VAC 5-400-190).

8. Rules Governing Exemption from Providing Physical Collocation, 20 VAC 5-421-10 et seq. (existing 20 VAC 5-400-200).

Certain existing regulations are not proposed for revision in this matter: Regulation governing service standards for local exchange telephone companies; penalty, 20 VAC 5-400-80; Regulations for payphone service and instruments, 20 VAC 5-400-90; and Rules governing the offering of competitive local exchange telephone service, 20 VAC 5-400-180. These regulations are being, or soon will be, amended in separate proceedings before the commission.

Agency Contact: Katharine A. Hart, State Corporation Commission, Office of General Counsel, P.O. Box 1197, Richmond, VA 23218-1197, telephone (804) 371-9671 or e-mail khart@scc.state.va.us.

AT RICHMOND, JUNE 26, 2001

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

CASE NO. PUC010122

Ex Parte: In the matter of
updating certain regulations
relating to telecommunications

ORDER FOR NOTICE AND COMMENT OR REQUESTS FOR HEARING

The State Corporation Commission ("Commission") has determined that certain of its regulations relating to telecommunications, issued under the Commission's regulatory authority pursuant to Title 56 of the Code of Virginia ("Code") and contained in Chapter 400 of Title 20 ("Chapter 400") of the Virginia Administrative Code ("VAC"), require amendment or repeal.

Some such amendment or repeal is required to bring these regulations into conformance with the Virginia Register Form, Style and Procedure Manual issued by the Virginia Code Commission (the "Code Commission"). Stylistic, editorial, clarifying, or organizational changes are proposed to be made. The Commission also proposes to renumber the regulations to more accurately reflect the system of numbering used by the Code Commission. As proposed, each regulation will have its own chapter number. In several instances, the regulations must be updated to reflect changes in the Code enacted by the General Assembly, orders subsequently issued by the Commission, or changes in federal law. In two cases, the existing regulations need not be codified as regulations in the VAC.

Both the regulations that are proposed for repeal and that are proposed for amendment appear in Attachment 1 hereto in the order in which they currently are published in the VAC incorporating the changes described below. The attached proposed regulations are merely housekeeping changes; ministerial changes are being proposed only. The substantive content of the regulations is not proposed to be changed. Issues contained within these regulations, which were previously addressed in proceedings before the Commission, are not being reopened for consideration.

The following regulations are proposed for repeal:

(i) Regulation governing telephone cooperative rate applications, 20 VAC 5-400-10. Chapter 252 of the 1998 Acts of Assembly rescinded the Commission's jurisdiction over the rates, service quality, and types of service offerings of telephone cooperatives.

(ii) Experimental plan for alternative regulation of Virginia telephone companies, 20 VAC 5-400-50. This regulation was superseded by a subsequent regulation, Modified plan for alternative regulation of Virginia local exchange telephone companies, 20 VAC 5-400-100.

(iii) Modified plan for alternative regulation of Virginia local exchange telephone companies, 20 VAC 5-400-100. This regulation has been superseded by plans for alternative regulation that are individually tailored for each local exchange company, and which need not appear in the VAC.

(iv) Investigation of the resale or sharing of intrastate Wide Area Telephone Service, 20 VAC 5-400-110. This regulation, among other things, states that services provided by resellers of intrastate WATS are not the type intended to be subject to regulation under the principles enunciated in VEPCO v. SCC, 219 Va. 894 (1979). It need not be published as a regulation in the VAC.

(v) Interim Order respecting investigation of competition for intraLATA, interexchange telephone service, 20 VAC 5-400-120. The Commission in Commonwealth of Virginia ex rel., State Corporation Commission ex parte: In the matter of implementation of toll dialing parity pursuant to provisions of 47 U.S.C. § 251(b)(3), Case No. PUC970009, 1999 S.C.C. Ann. Rpts. 232 (April 14, 1999), eliminated the necessity for this regulation as each local exchange company is now required to provide intraLATA presubscription.

(vi) Order relating to compensation by interLATA carriers to local exchange carriers for incidental traffic, 20 VAC 5-400-130. This regulation was superseded by Rules governing the certification of interexchange carriers, 20 VAC 5-400-60.

(vii) Investigation of the resale or sharing of foreign exchange and dedicated channel services, 20 VAC 5-400-

140. This regulation concluded the investigation of whether resellers of interexchange telecommunications service using dedicated channels should be treated differently from those reselling or sharing intrastate WATS. It need not be in the form of a regulation, or published in the VAC.

(viii) Investigation of deregulation of telephone company billing and collection services, 20 VAC 5-400-150. This regulation was superseded by rules governing Disconnection of local exchange telephone service, 20 VAC 5-400-151.

(ix) Rulemaking concerning treatment of telephone company simple inside wiring, 20 VAC 5-400-160. The Commission's Final Order in Commonwealth of Virginia ex rel., State Corporation Commission ex parte: Rulemaking concerning treatment of telephone company simple inside wiring, Case No. PUC860045, 232 1997 S.C.C. Ann. Rpts. (December 11, 1997), deregulated inside wire maintenance and superseded this regulation.

The existing regulations, not identified for repeal, will be amended and renumbered as follows:

(i) Rules Governing the Provision of Network Interface Devices, 20 VAC 5-401-10 et seq. (existing 20-VAC 5-400-20).

(ii) Rules Governing Small Investor-Owned Telephone Utilities, 20 VAC 5-403-10 et seq. (existing 20 VAC 5-400-30).

(iii) Rules Governing the Sharing or Resale of Local Exchange Service (Shared Tenant Service), 20 VAC 5-409-10 et seq. (existing 20 VAC 5-400-40).

(iv) Rules Governing the Certification of InterLATA, Interexchange Carriers, 20 VAC 5-411-10 et seq. (existing 20 VAC 5-400-60).

(v) Rules Governing Disconnection of Local Exchange Telephone Service, 20 VAC 5-413-10 et seq. (existing 20 VAC 5-400-151).

(vi) Rules Governing Telecommunications Relay Service, 20 VAC 5-415-10, et seq. (existing 20 VAC 5-440-170).

(vii) Procedural Rules for the Implementation of §§ 251 and 252 of the Telecommunications Act of 1996, 20 VAC 5-419-10 et seq. (existing 20 VAC 5-400-190).

(viii) Rules Governing Exemption from Providing Physical Collocation, 20 VAC 5-421-10 et seq. (existing 20 VAC 5-400-200).

Certain existing regulations are not proposed for revision in this matter: Regulation governing service standards for local exchange telephone companies; penalty, 20 VAC 5-400-80; Regulations for payphone service and instruments, 20 VAC 5-200-90; and Rules governing the offering of competitive local exchange telephone service, 20 VAC 5-400-180. These regulations are being, or soon will be, amended in separate proceedings before the Commission.

NOW UPON CONSIDERATION of the proposed regulations found in Attachment 1 hereto, the Commission is of the opinion and finds that public notice should be given of the attached proposed regulations and that interested persons should be afforded an opportunity to file written comments or to request a hearing on the proposed amendments or the proposed repeals.

Accordingly, IT IS ORDERED THAT:

(1) This matter shall be docketed and assigned Case No. PUC010122.

(2) A copy of this Order and Attachment 1 hereto shall forthwith be made available for public review between the hours of 8:15 a.m. and 5:00 p.m., Monday through Friday, at the State Corporation Commission's Document Control Center, located on the first floor of the Tyler Building, 1300 East Main Street, Richmond, Virginia. This Order and Attachment 1 hereto shall also be made available for access by the public on the Commission's website, http://www.state.va.us/scc/caseinfo/orders.htm.

(3) The Commission's Division of Information Resources shall forward this Order and Attachment 1 hereto to the Registrar of Regulations for publication in the Virginia Register of Regulations.

(4) On or before July 16, 2001, the Commission's Division of Information Resources shall publish the following notice once as classified advertising in newspapers of general circulation throughout the Commonwealth:

NOTICE TO THE PUBLIC OF THE AMENDMENT OR REPEAL OF CERTAIN TELECOMMUNICATIONS REGULATIONS PUBLISHED IN THE VIRGINIA ADMINISTRATIVE CODE
CASE NO. PUC010122

On June 26, 2001, the State Corporation Commission ("Commission") entered an Order in Case No. PUC010122 in which the Commission determined that certain of its regulations relating to telecommunications, issued under the Commission's regulatory authority pursuant to Title 56 of the Code of Virginia ("Code") and contained in Chapter 400 of Title 20 of ("Chapter 400") of the Virginia Administrative Code ("VAC"), require amendment or repeal.

Some such amendment or repeal is required to bring these regulations into conformance with the Virginia Register Form, Style and Procedure Manual issued by the Virginia Code Commission. Stylistic, editorial, clarifying or organizational changes are proposed to be made. The Commission also proposes to renumber the regulations to more accurately reflect the system of numbering used by the Code Commission. As proposed, each regulation will have its own chapter number. In several instances, the regulations must be updated to reflect changes in the Code enacted by the General Assembly, orders subsequently issued by the Commission, or changes in federal law. In two cases, the existing regulations need not be codified as regulations in the VAC.

The regulations proposed by the Commission are merely housekeeping changes. The substantive content of the regulation is not proposed to be changed. Issues contained within these regulations, which were previously

addressed in proceedings before the Commission, are not being reopened for consideration.

A copy of the Commission's Order, together with Attachment 1 which contains the proposed regulations to be amended or repealed, may be reviewed between the hours of 8:15 a.m. and 5:00 p.m., Monday through Friday, at the State Corporation Commission's Document Control Center, located on the first floor of the Tyler Building, 1300 East Main Street, Richmond, Virginia. Interested persons may also obtain a copy of the Order and Attachment 1 from the Commission's website, http://www.state.va.us/scc/caseinfo/orders.htm.

On or before July 16, 2001, any interested person who wishes to comment on the proposed regulations may file an original and fifteen (15) copies of written comments with Joel H. Peck, Clerk of the Commission, State Corporation Commission, P.O. Box 2118, Richmond, Virginia 23218. The comments shall set forth the individual's interest in the proceeding and shall refer to Case No. PUC010122. Comments must specifically pertain to the proposed ministerial amendments or repeals, not substantive issues already decided by the Commission in previous rulemaking proceedings.

On or before July 30, 2001, any interested person who wishes to request a hearing on the proposed regulations may file an original and fifteen (15) copies of a written request with the Clerk of the Commission at the address set forth above. The requests for hearing shall set forth the individual's interest in the proceeding and shall refer to Case No. PUC010122. Any request for hearing shall state in detail the reasons why the issues cannot be adequately addressed in written comments. Should no sufficient request for hearing be filed, the Commission may proceed upon the papers filed herein and without scheduling a hearing at which testimony would be received.

THE DIVISION OF COMMUNICATIONS OF THE STATE CORPORATION COMMISSION.

(5) The Commission's Division of Information Resources shall promptly file with Joel H. Peck, Clerk of the Commission, State Corporation Commission, P.O. Box 2118, Richmond, Virginia 23218, proof of the publication of the notice as required by Ordering Paragraph (4) above.

(6) On or before July 30, 2001, interested persons wishing to comment on the proposed regulations may file an original and fifteen (15) copies of written comments with the Clerk of the Commission at the address set forth in Ordering Paragraph (5) above. The comments shall set forth the individual's interest in the proceeding and shall refer to Case No. PUC010122. Comments must specifically pertain to the proposed ministerial amendments or repeals, not substantive issues already decided by the Commission in previous rulemaking proceedings.

(7) On or before July 30, 2001, interested persons wishing to request a hearing on the proposed regulations shall file an original and fifteen (15) copies of a written request with the Clerk of the Commission at the address set forth in Ordering Paragraph (5) above. Any request for hearing shall set forth the individual's interest in the proceeding and shall refer to Case No. PUC010122. Any request for hearing shall state in detail the reasons why the issues cannot be adequately addressed in written comments. Should no sufficient request for hearing be filed, the Commission may proceed upon the papers filed herein and without scheduling a hearing at which testimony would be received.

(8) This matter is continued for further orders of the Commission.

AN ATTESTED COPY HEREOF shall be served by the Clerk of the Commission to: all local exchange carriers certificated in Virginia as set out in Appendix A; all interexchange carriers certificated in Virginia as set out in Appendix B; John F. Dudley, Senior Assistant Attorney General, Division of Consumer Counsel, Office of Attorney General, 900 East Main Street, Second Floor, Richmond, Virginia 23219; and the Commission's Divisions of Communications, Public Utility Accounting, and Economics and Finance.

CHAPTER 400.
TELECOMMUNICATIONS.

20 VAC 5-400-10. ~~Regulation governing telephone cooperative rate applications.~~ *(Repealed.)*

~~A. Telephone cooperatives subject to regulation by the State Corporation Commission shall file all tariffs stating a change in their rates, tolls, charges, or rules and regulations of service with the Division of Communications of the State Corporation Commission in advance of the notice to the public required in subsection B below.~~

~~B. Telephone cooperatives subject to regulation by the State Corporation Commission shall complete notice to the public 30 days prior to the effective date of changes in the telephone cooperatives' rates, tolls, charges, or rules and regulation of service. The telephone cooperatives' notice to the public shall at a minimum use the following format to the extent applicable:~~

~~NOTICE TO THE PUBLIC OF (INCREASES IN, CHANGES IN) (RATES, TOLLS, CHARGES, RULES AND REGULATIONS OF SERVICE) OF (INSERT NAME OF COOPERATIVE)~~

~~(Insert name of cooperative) seeks to change its (rates, tolls, charges) on file with the State Corporation Commission, effective for service rendered on and after (effective date). As a result of this change, (insert name of cooperative) expects its (rates, tolls, charges) to produce an additional _____ in gross annual revenues, representing an increase of _____% in total revenues.~~

~~(If applicable) The cooperative also proposes to change the following portions of its rules and regulations of service.~~

~~(Summarize changes).~~

~~An interested party may review (Insert name of cooperative)'s proposed changes during regular business hours at any cooperative office where consumer bills may be paid and at the Commission's Division of~~

~~Communications located on the 9th Floor of the Tyler Building, 1300 East Main Street, Richmond, Virginia.~~

~~Any interested party may file written comments in support of or objecting to the proposed changes with the Division of Communications, State Corporation Commission, P.O. Box 1197, Richmond, Virginia 23218. Such comments must be filed with the Division of Communications on or before (Name date 10 days before the effective date of tariff, year).~~

~~(NAME OF TELEPHONE COOPERATIVE)~~

~~Telephone cooperatives shall mail the foregoing notice to any person subject to the change of rate, toll, charge, rule and regulation, including other common carriers utilizing the Cooperatives' facilities when proposed changes directly affect other common carriers.~~

~~C. If the Commission receives protests or objections filed by or on behalf of 20 or more persons subject to any cooperative's schedules stating a change of rate, toll, charge, rules and regulations, it may suspend the enforcement of any or all of the proposed rates, tolls, charges, rules and regulations for a period not exceeding 150 days from the date of filing. Notice of the suspension shall be given by Commission order to the telephone cooperative prior to the expiration of the 30 days' notice to the public.~~

~~D. If the Commission receives 20 or more protests or objections to the changes of a rate, toll, charge, rules and regulation, which is filed by or on behalf of 20 or more persons subject to same, an order will be issued by the Commission setting a date by which the cooperative shall file an application which shall contain the information set forth in subsection E below.~~

~~E. An application by a telephone cooperative for a rate increase filed pursuant to subsection D hereof shall include:~~

~~1. The name and post office address of the applicant and the name and post office address of its counsel (if any).~~

~~2. A clear description of the proposed tariff changes, and an explanation of why the changes were made as well as the revenue impact, if any, of these changes.~~

~~3. All direct testimony by which the applicant expects to support the proposed tariff changes. In lieu of prefiling direct testimony, the cooperative may submit an affidavit which certifies that the information in the application is correct and that the cooperative adopts the information contained in the schedules as its evidence in support of the application.~~

~~4. Exhibits consisting of Schedules 1 through 14 shall be submitted with the cooperative's direct testimony or affidavit adopting the information contained in the schedules.~~

~~5. Exhibits consisting of additional schedules may be submitted with the cooperative's direct testimony. Such schedules shall be identified as Schedule 15 et seq.~~

~~6. All applications shall be filed in the original and 15 copies with the exception of Schedule 11. Two copies of Schedule 11 shall be filed directly with the Commission's Division of Public Utility Accounting. Additional copies of Schedule 11 shall be made available to other parties upon request. An application shall not he deemed filed unless all information required by the rules and accompanying schedules are filed in conformity with the rules and schedule instructions.~~

~~7. The selection of a test period is up to the applicant. However, the use of overlapping test periods will not be allowed.~~

~~8. The cooperative shall serve a copy of the information required in this subsection E, subdivisions 1 through 3 upon the Commonwealth's Attorney and Chairman of the Board of Supervisors of each county (or equivalent officials in the counties having alternate forms of government) in this State affected by the proposed change and upon the mayor or manager and the attorney of every city and town (or on equivalent officials in towns and cities having alternate forms of government) in this Commonwealth affected by the proposed change. The cooperative shall also serve each such official with a statement that a copy of the complete application may be obtained at no cost by making a request therefor orally or in writing to a specified cooperative officer or location. In addition, the cooperative shall serve a copy of its complete application upon the Division of Consumer Counsel, Office of the Attorney General of Virginia. All such service specified by this section shall be made either by (i) personal delivery or (ii) by first class mail, to the customary place of business or the residence of the person served.~~

~~F. Telephone cooperatives shall maintain their books in accordance with the Uniform System of Accounts, and shall file an annual operating report with the State Corporation Commission.~~

APPENDIX A. *(Repealed.)*

(Note: All text in Appendix A is proposed for repeal but is not shown as stricken text in this proposal.)

CHAPTER 401.
RULES GOVERNING THE PROVISION OF NETWORK INTERFACE DEVICES.

~~20 VAC 5-400-20. Regulation governing the provision of network interface devices.~~ *20 VAC 5-401-10. Definitions and applicability.*

~~A. The~~ "Network termination interface" or "standard demarcation device," ~~hereinafter~~ referred to as a "network interface device" or "NID, ~~shall be defined as~~" *means* a device which readily permits the disconnection of all Customer Premises Wiring, ~~hereinafter~~ referred to as "CPW," from the telephone company network and provides access to the telephone company network through an industry registered jack, of a type provided for in ~~FCC regulation~~ *47 CFR* Part 68 for testing purposes.

~~B. New installations for telephone service using outside NIDs effective as of May 1, 1984.~~ *This chapter is applicable to all installations for telephone service on and after May 1, 1984, which use outside NIDs.*

~~**Subdivisions 1 through 4 apply to** ***20 VAC 5-401-20.***~~ **Simple one- or two-line installations in single or duplex residence or business structures.**

~~1.~~ *A.* All wiring on the customer's premises that is connected to the telephone network shall connect to the telephone company network through the telephone company-provided NID.

~~2.~~ *B.* Maintenance of the NID shall be the responsibility of the telephone company *installing the NID*.

~~3.~~ *C. 1.* The NID used for the termination of CPW shall be located outside the customer premises unless an outside location is impractical or the customer requests that it be located inside the premises.

2. When the NID is located inside the premises, it shall be located at a point closest to the protector that is convenient to the customer. Any additional cost associated with placing the NID inside when requested by the customer shall be at customer expense.

~~4.~~ *D.* The telephone company shall instruct the customer as to the location, purpose and use of the NID.

~~**Subdivisions 5 through 8 apply to** ***20 VAC 5-401-30.***~~ **Simple one- and two-line installations in multi-story or multi-occupancy buildings, campuses, malls, etc.**

~~5.~~ *A.* All wiring on the customer's premises that is connected to the telephone network shall connect to the telephone company network through the NID.

~~6.~~ *B.* Maintenance of the NID shall be the responsibility of the telephone company *installing the NID*.

~~7.~~ *C. 1.* The NID shall be located at a point between the CPW and the telephone company network. This location may be the telephone equipment room, wiring closet, inside or outside the customer premises, or other designated location that is accessible to the customer.

2. If a customer requests that the NID be placed in a location which is other than that selected by the *telephone* company and which conforms to the criteria set out in this ~~rule~~ *section*, the customer must pay any additional expense associated with so placing the NID.

~~8.~~ *D.* The telephone company shall instruct the customer as to the location, purpose and use of the NID.

~~**Subdivisions 9 through 12 apply to** ***20 VAC 5-401-40.***~~ **Simple one- and two-line residence and business installations.**

~~These rules govern~~ *A. This section governs* when a NID is installed on visits to the customer premises for reasons other than the initial installation of telephone service by a network installer-repair person.

~~9.~~ *B.* A NID shall be installed on all maintenance visits to the customer premises by a network installer-repair person. The NID must be installed in a location accessible to the customer. The only exceptions to this ~~rule~~ *section* are as follows:

~~a.~~ *1.* For residential customers who subscribe to an optional wire maintenance plan, ~~providing~~ *provided* all existing telephone sets are modular.

~~b.~~ *2.* For residential customers who subscribe to an optional wire maintenance plan with all or some hard-wired telephone sets, ~~providing~~ *provided* there is no maintenance visit charge for troubles located in hard-wired telephone sets.

~~c.~~ *3.* Where no access to *the telephone* company station protector exists.

~~d.~~ *4.* Where excessive work load, including labor force shortage, excessive troubles, storms, strikes, emergencies, or acts of God would make it not feasible for *the telephone* company to immediately install a NID.

~~e.~~ *5.* A suitable NID is not available in the marketplace to accommodate the existing installation.

~~10.~~ *C.* It will be the telephone company's decision whether to place the NID inside or outside the customer premises. This decision should be the one that will best accommodate the installation of the NID at the least cost to the telephone company.

~~11.~~ *D.* The maintenance of the NID shall be the responsibility of the telephone company.

~~12.~~ *E.* If the customer requests that the NID be placed in a location other than the location selected by the telephone company *and which conforms to the criteria set out in this section*, any additional cost to the telephone company will be at customer expense.

~~13.~~ *F.* The telephone company shall instruct the customer as to the location, purpose and use of the NID.

~~**Subdivisions 14 through 16 apply to the** ***20 VAC 5-401-50.***~~ **Termination of all telephone company network facilities in all new multi-story, multi-occupancy buildings, campuses, malls, etc.~~, beginning construction after May 1, 1986.~~**

A. Beginning construction shall be deemed to occur when the telephone companies have initial contact with the architect ~~and/~~or owners ~~respecting a building~~*, or both*.

~~14.~~ *B.* The telephone company network facilities will terminate inside the building at a point of minimum penetration to the building. This location will be arranged through the building owner or architect. Normally, this location will be the same location as the termination for riser, house, or building distribution cable.

~~15. The telephone company will not be responsible for the provision of telephone riser, house or building distribution cable as a regulated service. This section does not restrict the telephone company from installing riser, house or building distribution cable under contract.~~

~~16.~~ *C. 1.* The telephone company shall terminate the telephone network facilities at an appropriate telephone company-provided NID.

2. The NID shall permit premises wiring to be readily connected or disconnected from the telephone company network facilities.

D. 1. The telephone company will not be responsible for the provision of telephone riser, house, or building distribution cable as a regulated service.

2. This section does not restrict the telephone company from installing riser, house, or building distribution cable under contract.

CHAPTER 403.
RULES GOVERNING SMALL INVESTOR-OWNED TELEPHONE UTILITIES.

~~**20 VAC 5-400-30. Regulation governing small investor-owned telephone utilities.**~~ ***20 VAC 5-403-10. Applicability.***

A. ~~The following regulation~~ *This chapter* applies to any *small* investor-owned public utility (other than a cooperative) ~~having a gross annual operating revenue not in excess of $10 million and owning, managing or controlling plant or equipment or any part thereof within the Commonwealth for the conveyance of telephone messages, either directly or indirectly to or for the public~~ *as defined by Chapter 19 (§ 56-531 et seq.) of Title 56 of the Code of Virginia*. ~~Hereafter~~ These companies shall be referred to as "small telephone companies" or "applicant."

B. Small telephone companies should perform their own tariff justification analysis in-house prior to changing their rates, tolls, charges, fees, rules, or regulations ~~(hereinafter~~, collectively referred to as "tariffs."~~)~~. As a part of its in- house tariff justification, small telephone companies should consider whether the tariff change is necessary and whether ~~such~~ *the* change is dictated by the cost of providing the tariffed service. All tariff changes of small telephone companies must be "just and reasonable" as that standard is defined in § 56-235.2 of the Code of Virginia.

C. This ~~section~~ *chapter* applies when any small telephone company subject to ~~the act~~ *Chapter 19 (§ 56-531 et seq.) of Title 56 of the Code of Virginia* changes any rate, toll, charge, fee, rule, or regulation applicable to any customer ~~(~~or customers~~)~~ and this change results in increased rates paid by that customer ~~(~~or customers~~)~~. Changes not increasing customer rates may be done in the traditional manner without application of this ~~section~~ *chapter*.

~~**B.**~~ ***20 VAC 5-403-20. Timing of filing of tariff changes.***

Small telephone companies shall file all changes in their tariffs with the Division of Communications of the State Corporation Commission at least 15 days in advance of the notice to the public required ~~in subsection C below~~ *by 20 VAC 5-403-30*.

~~**C.**~~ ***20 VAC 5-403-30. Notice.***

Small telephone companies shall complete notice to its customers 30 days prior to the effective date of changes in its tariffs. This notice shall at a minimum use the following format to the extent applicable:

NOTICE OF (INCREASES IN, CHANGES IN) RATES, TOLLS, CHARGES, RULES AND REGULATIONS OF SERVICE OF (INSERT NAME OF SMALL TELEPHONE COMPANY)

(Insert name of telephone company) plans to change its (tariffs) on file with the State Corporation Commission, effective for service rendered on and after (effective date). As a result of this change, (insert name of telephone company) expects its (tariffs) to produce an additional $_____ in gross annual operating revenues, representing an increase of _____% in local operating revenues.

(If applicable) The telephone company also proposes to change the following portions of its rules and regulations of service: (Summarize changes).

Any interested party may review (insert name of small investor-owned telephone utility) proposed changes during regular business hours at the telephone company office where consumer bills may be paid and at the commission's Division of Communications located on the 9th Floor of the Tyler Building, 1300 East Main Street, Richmond, Virginia.

Any interested party may file written comments in support of or objecting to the proposed changes, or requests for hearing, with the Division of Communications, State Corporation Commission~~, P.O. Box 1197, Richmond, Virginia 23218~~. Requests for hearing must state the reason for the request. Such comments or requests must be filed with the Division of Communications on or before (name date 10 days before the effective date of tariff).

(NAME OF SMALL TELEPHONE COMPANY)

Small telephone companies shall mail the foregoing notice to any customer subject to the tariff change, including other common carriers utilizing the utilities' facilities when the proposed changes directly affect other common carriers.

20 VAC 5-403-40. State Corporation Commission action.

~~D.~~ *A.* Whenever the lesser of 5.0% or 150 customers subject to a small investor-owned telephone utility's tariffs file a protest or objection to any change in ~~any~~ *a* schedule of that utility's tariffs, or if the commission acts on its own motion to investigate the utility's tariffs, the commission may suspend the enforcement of any or all of the proposed tariffs for a period not exceeding 150 days from the date of the filing of the revised tariff. Notice of the suspension shall be given by the commission to the small telephone company prior to the expiration of the 30 days' notice to the public.

~~E.~~ *B.* Whenever the lesser of 5.0% or 150 customers subject to a small investor-owned telephone utility's tariffs file a protest or objection to any change in ~~any~~ *a* schedule of that utility's tariffs, or if the commission, acting on its own motion, determines to investigate the utility's change in a tariff, an order will be issued by the commission setting a date by which the telephone utility shall file an application which shall contain the information set forth in ~~subsections F or G below~~ *20 VAC 5-403-50 and 20 VAC 5-403-60*, as applicable. This order shall also specify a filing schedule for applicant, protestants, and staff and shall establish a hearing date.

20 VAC 5-403-50. Contents of application for a rate increase by a company having more than $3 million in

gross annual operating revenue, or which is a subsidiary of a telecommunications company.

~~F.~~ *A.* An application for a rate increase filed pursuant to ~~subsection E hereof~~ *this chapter* by a small telephone company, having more than $3 million in gross annual operating revenue, or which is a subsidiary of a telecommunications company~~, (a telecommunications company is~~ *which means* a corporation which owns, manages, or controls any plant or equipment for the conveyance of voice or data messages, either directly or indirectly to or for the public~~),~~ shall include:

1. The name and post office address of the applicant and the name and post office address of its counsel (if any);

2. A clear description of the proposed tariff changes, and a narrative explaining why an increase in rates is needed, as well as the overall percentage increase in rates proposed;

3. All direct testimony by which the applicant expects to support the rate increase. In lieu of prefiling direct testimony, the applicant may submit an affidavit which certifies that the information in the application is correct and that the applicant adopts the information contained in the schedules as its evidence in support of the application.

4. Exhibits consisting of Schedules 1 through 16 shown in the Appendix to ~~these rules~~ *this chapter* shall be submitted with the applicant's direct testimony or affidavit adopting the information contained in the schedules.

5. Exhibits consisting of additional schedules may be submitted with the applicant's direct testimony. Such schedules shall be identified as Schedule 17 et seq.

~~6.~~ *B.* All applications shall be filed in an original and 15 copies with the exception of Schedule 12. Two copies of Schedule 12 shall be filed directly with the commission's Division of Public Utility Accounting. Additional copies of Schedule 12 shall be made available to parties upon request. An application shall not be deemed filed with the commission for the purposes of §§ 56-238 and 56-240 of the Code of Virginia, unless all information required ~~by the rules and accompanying schedules are~~ *is* filed in conformity with ~~these rules and schedule instructions~~ *this chapter and accompanying schedules*.

~~7.~~ *C.* The selection of a test period is up to the applicant. However, the use of overlapping test periods shall not be permitted.

~~8.~~ *D. 1.* The applicant shall serve a copy of the information required in subdivisions ~~F1~~ *A 1* and ~~F2~~ *A 2 of this section* upon the Commonwealth's Attorney and Chairman of the Board of Supervisors of each county (or equivalent officials in counties having alternate forms of government) in this Commonwealth affected by the proposed rate increase and upon the mayor or manager and the attorney of every city and town (or on equivalent officials in towns and cities having alternate forms of government) in this Commonwealth affected by the proposed rate increase.

2. The applicant shall also serve each such official with a statement that a copy of the complete application may be obtained at no cost by making a request ~~therefor~~ *either* orally or in writing to a specified officer of *the* applicant.

~~In addition,~~ *3. The* applicant shall serve a copy of its complete application upon the Division of Consumer Counsel, Office of the Attorney General ~~of Virginia~~.

4. All service specified by this section shall be made either by (i) personal delivery, or (ii) by first-class mail, postage prepaid, to the customary place of business or the residence of the person served.

20 VAC 5-403-60. Contents of an application for a rate increase by a small telephone company having less than $3 million in gross annual operating revenues and which is not a subsidiary of a telecommunications company.

~~G.~~ *A.* An application for a rate increase filed pursuant to ~~subsection E hereof~~ *this chapter* by a small telephone company, having less than $3 million in gross annual operating revenues and which is not a subsidiary of a telecommunications company as that term is defined in ~~subsection F above~~ *20 VAC 5-403-50 A*, need only file exhibits consisting of Schedules 1 - 4, and 7 - 16, shown in the Appendix to this ~~section~~ *chapter*, but shall otherwise comply with the requirements of ~~subsection F~~ *20 VAC 5-403-50*.

B. A company having less than $3 million in gross annual operating revenue and which is not a subsidiary of a telecommunications company may use its ~~SCC~~ *State Corporation Commission* Annual Operating Report filed with the commission as the data base for its Capital Structure and Cost of Capital Statement (Schedule 1). Schedules 9 and 10 for these companies should reflect total company, per books amounts. Jurisdictional separations included in columns 2 and 3 of Schedules 9 and 10 are not required for these companies.

~~H.~~ 20 VAC 5-403-70. Exemptions.

Small investor-owned telephone companies subject to the Small Investor-Owned Telephone Utility Act, (§ 56-531 et seq. of the Code of Virginia), shall be exempt, for all purposes, from ~~the Rules Governing Utility Rate Increase Applications and Annual Informational Filings, adopted in Case No. PUE850022 (20 VAC 5-200-30) and~~ *this chapter* as ~~they~~ *it* may be modified from time to time.

APPENDIX

Schedule 1
Capital Structure and Cost of Capital Statement

Instructions: This schedule shall state the amount of each capital component per balance sheet, the amount for ratemaking purposes, the percentage weight in the capital structure, the component cost, and the weighted capital cost, using the format of the attached schedule. This information shall be provided for the test period. In Part A, the test period information should be compatible with the SCC Annual Operating Report. The methodology used in constructing the capital structure should be consistent with that approved in the applicant's last rate case. If the applicant wishes to use a different methodology (including a change in cost of equity) in constructing its capital structure in a rate application, it may

prepare an additional schedule labelled as Schedule 1(a) explaining the methodology used and justifying any departure from applicant's last rate case.

The amounts and costs for short-term debt, revolving credit agreements, and similar arrangements shall be based on a 13-month average over the test year, or, preferably, a daily average during the test year, if available. All other test period amounts are end-of-year. The component weighted cost rates equal the product of each component's capital structure weight for ratemaking purposes times its cost rate. The weighted cost of capital is equal to the sum of the component weighted cost rates.

Schedule 1
Capital Structure and Cost of Capital Statement

Test Period

A. Capital Structure Per Balance Sheet ($)

Short-Term Debt

Customer Deposits

Other Current Liabilities

Long-Term Debt

Common Equity

Investment Tax Credits

Other Tax Deferrals

Other Liabilities

Total Capitalization

B. Capital Structure Approved for Ratemaking Purposes ($)

Short-Term Debt

Long-Term Debt

Job Development Credits

Cost-Free Capital

Common Equity

Total Capitalization

C. Capital Structure Weights for Ratemaking Purposes (%)

Short-Term Debt

Long-Term Debt

Job Development Credits

Cost-Free Capital

Common Equity

Total Capitalization (100%)

D. Component Capital Cost Rates (%)

Short-Term Debt

Long-Term Debt

Job Development Credits

Cost-Free Capital

Common Equity (Authorized)

E. Component Weighted Cost Rates (%)

Short-Term Debt

Long-Term Debt

Job Development Credits

Cost-Free Capital

Common Equity (Authorized)

Weighted Cost of Capital

Schedule 2
Schedule of Bonds, Mortgages, Other Long-Term Debt, and Cost-Free Capital

Instructions: Provide a description of each issue, amount outstanding, percentage of total capitalization, and annualized cost based on the embedded cost rate. These data shall support the debt cost contained in Schedule 1. Provide a detailed breakdown of all cost free capital items contained in Schedule 1.

Schedule 3
Schedule of All Short-Term Debt, Revolving Credit Agreements and Similar Arrangements

Instructions: Provide data and explain the methodology used to calculate the cost and balance contained in Schedule l for short term debt, revolving credit agreements and similar arrangements.

Schedule 4
Stockholders Annual Report

Instructions: Provide a copy of the most recent stockholders' annual report and SEC Form 10K (if SEC Form 10K is available).

Schedule 5
Company Profitability and Capital Markets Data

Instructions: This schedule shall be prepared by companies having more than $3 million in gross annual operating revenue which are not a subsidiary of a telecommunications company, using the definitions provided below and the format of the attached schedule. These companies shall provide data for the two most recent calendar years plus the test period. This information shall be compatible with the latest Stockholders' Annual Reports (including any restatements).

Definitions

$$\text{Return on Year End Equity*} = \frac{\text{Earnings Available for Common Stockholders}}{\text{Year-End Common Equity}}$$

Return on Average Equity* = Earnings Available for Common Stockholders / The Average of Year-End Equity for the Current & Previous Year

Earnings Per Share (EPS) = Earnings Available for Common Shareholders / Average No. Common Shares Outstanding

Dividends Per Share (DPS) = Common Dividends Paid Per Share During the Year

Payout Ratio = DPS/EPS

Average Market Price** = (Yearly High + Yearly Low Price)/2 (if known)

_____

* Job Development Credits shall not be included as part of equity capital nor shall a deduction be made from earnings for a capital charge on these Job Development Credits.

** An average based on monthly highs and lows is also acceptable. If this alternative is chosen, provide monthly market prices and sufficient data to show how the calculation was made.

Schedule 5

Company Profitability and Capital Market Data ~~19~~____ ~~19~~____ Test Period

A. Ratios

Return on Year-End Equity

Return on Average Equity

Earnings Per Share

Dividends Per Share

Payout Ratio

Market Price of Common Stock:

Year's High

Year's Low

Average Price

B. External Funds Raised

External Funds Raised - All Sources (itemized)

Dollar Amount Raised

Coupon Rate (if applicable)

Rating Service (if applicable)

Average Offering Price (for Stock)

Schedule 6
Coverage Ratios and Cash Flow Profile Data

Instructions: This schedule shall be prepared using the definitions and instructions given below and using the format of the attached schedule for the past two calendar years plus the test period.

- Interest (lines 3, 4, 5) shall include amortization of discount expense and premium on debt without deducting an allowance for borrowed funds used during construction.

- Income taxes (line 2) include federal and state income taxes (in Virginia gross receipts tax should be considered State income tax).

- Earnings before interest and taxes (line 6) equals net income plus income taxes plus total interest = (line 1) + (line 2) + (line 5).

- IDC (line 8), where applicable, is total IDC - allowance for borrowed and other funds.

- Cash flow generated (line 14) = (line 1) + (line 9) + (line 10) + (line 11) + (line 12) - (line 8) - (line 13).

- Construction expenditures (line 15) is net of IDC.

Coverage definitions for Schedule 6

Pre-Tax Interest Coverage = Earnings before Interest & Taxes / Interest = line 6 / line 5

Common Dividend Coverage = Cash Flow Generated / Common Dividends = line 14 / line 16

Coverage of Construction Expenditures = Cash Flow Generated / Construction = line 14 / line 15

Schedule 6

Coverage Ratios and Cash Flow Data ~~19~~____ ~~19~~____ Test Period

Interest Coverage Ratios

a. Pre-Tax Method

Cash Flow Coverage Ratios

a. Common Dividend Coverage

b. Cash Flow Coverage of Construction Expenditures

Data for Interest Coverage

1. Net Income

2. Income Taxes

3. Interest on Mortgages

4. Other Interest

5. Total Interest

6. Earnings Before Interest and Taxes

7. Estimated Rental Interest Factor (SEC)

Data for Cash Flow Coverage

1. Net Income

8. Interest During Construction (IDC)

9. Amortization

10. Depreciation

11. Change in Deferred Taxes

12. Change in Investment Tax Credits

13. Preferred Dividends Paid

14. Cash Flow Generated

15. Construction Expenditures

16. Common Dividends Paid

Schedule 7
Comparative Balance Sheets

Instructions: Provide a comparative balance sheet for the test period and the corresponding 12 month period immediately preceding the test period.

Schedule 8
Comparative Income Statement

Instructions: Provide a comparative income statement for the test period and the 12 month period immediately preceding the test period.

Schedule 9
Rate of Return Statement

Instructions: Use the format of the attached schedule. Column 1 should state the Applicant's total Company per books results for the test period. Non-jurisdictional amounts will be shown in Column 2, and Column 3 will reflect Virginia jurisdictional amounts. Adjustments to test period per books results shall be shown in Column 4. These adjustments shall be explained in Schedule 11. If a calendar year test period is used, Column 1 can be prepared from information filed by Applicant in its annual report to the commission. If a calendar year test period is used, operating revenue line items can be found in Schedule 34 at page 58 of the Annual Report. "Depreciation and Amortization" is set forth on Line 23 of Schedule 35 at page 60 of the Annual Report. "Operating and Maintenance Expense" can be derived by subtracting the amount of depreciation and amortization expense from total operating expenses (Schedule 35, line 68). Interest on customer deposits must be calculated from Applicant's books. Column 6 should show the increase requested by Applicant.

Schedule 9 Test Period Rate of Return Statement

Total Company Per Books	Virginia Non-Jurisdic. Amounts	Jurisdic. Amounts	Amounts Adjustments	Effect of After Adjustments	After Proposed Increase	Proposed Increase
Col. (1)	Col. (2)	Col.(3)	Col. (4)	Col. (5)	Col. (6)	Col. (7)
Operating Revenues						
Local Service						
Toll Service						
Access Charges						
Miscellaneous						
Less: Uncollectible						
Total Revenues						
Operating Expenses						
Operating and Maintenance Expense						
Depreciation and Amortization						
Income Taxes						
Taxes Other than Income Taxes						
Gain/Loss on Property Disposition						
Total Expenses						
Operating Income						
Less: Charitable Donations						
Interest Expense on Customer Deposits						
Net Operating Income - Adjusted						

Plus: Other Income (Expense)

Less: Interest Expense

Preferred Dividend Expense

JDC Capital Expense

Income Available for Common Equity

Allowance for working capital

Net Utility Plant

Total Rate Base

Total Capital for Ratemaking

Common Equity Capital

Rate of Return Earned on Rate Base

Rate of Return Earned on Common Equity

Schedule 10
Statement of Net Original Cost of Utility Plant and Allowances for Working Capital for the Test Year

Instructions: This schedule should be constructed using the ratemaking policies, procedures, and guidelines last prescribed for Applicant by the commission. The schedule should indicate all property held for future use by account number and the date of the planned use should be shown. In a footnote, applicant should identify the amount of plant and working capital devoted to non-regulated business activities, if any. Such plant shall not be included in the rate base. Applicants should use the format described below. The unamortized balance of investment tax credits shall be deducted from the rate base if the telephone company is subject to Option 1 treatment under I.R.S. Code § 46(f). Column (4) adjustments should be explained and detailed in Schedule 11. Columns (2) and (3) only apply to companies with over $3,000,000 in gross annual operating revenues which are subsidiaries of telecommunications companies.

Schedule 10

NET ORIGINAL COST OF UTILITY PLANT AND ALLOWANCES

Total Company Per Books	Non-Jurisdic. Amounts	Jurisdic. Amounts	Adjustments	Amounts After Adjustments
Col. (1)	Col. (2)	Col. (3)	Col.(4)	Col. (5)
Telephone Plant in Service				
Telephone Plant under construction				
Property held for future use				
Gross Plant				
Less: Reserve for Depreciation				
Net Telephone Plant				
Allowance for Working Capital				
Materials and supplies (13 month average)				
Cash (20 days of O&M expenses)				
Total Allowance for Working Capital				
Other Rate Base Deductions:				
Customer Deposits				
Deferred Federal Income Taxes				
Customer Advances for Construction				
Option 1 Investment Tax Credits				

Total Other Rate Base Deductions

Rate Base

Schedule 11
Explanation of Adjustments to Book Amounts

Instructions: All ratemaking adjustments to test period operations (test period and proforma) are to be fully explained in a supporting schedule to the Applicant's Schedules 9 and 10. Such adjustments shall be numbered sequentially beginning with operating revenues. Supporting data for each adjustment, including the details of its calculation, should be provided. Examples of adjustments include:

1. Adjustments to annualize changes occurring during the test period.

2. Adjustments to reflect known and certain changes in wage agreements and payroll taxes occurring in the test period and proforma period (the 12- month period following the test period).

3. Adjustments to reflect depreciation and property taxes based on end-of-period plant balances.

4. Adjustments relating to other known changes occurring during the test period or proforma period.

5. Amounts relating to known and certain changes in company operations that take place in the proforma period can be adjusted through the end of the rate year. The rate year shall be defined as the 12 months following the effective date of new rates. The proforma period shall be defined as the 12 months immediately following the test year.

Schedule 12
Working Papers

Instructions: Provide detailed work papers and supporting schedules of all proposed adjustments. Two copies of this exhibit shall be filed with the commission's ~~Division~~ *Divisions* of *Public Utility* Accounting and *Economics and* Finance. Copies shall be provided to other parties on request. Each schedule shall identify sources of all data. Data shall be clearly identified as actual or estimated.

Schedule 13
Revenue and Expense Schedule

Instructions: The Applicant shall provide information about revenues by primary account (consumer classification) and operating and maintenance expenses by primary account during the test period.

The Applicant shall also provide a detailed explanation of all revenue and expense item increases and decreases of more than 10% during the test period as compared to the 12-month period immediately preceding the test period. Worksheets used to compute the percentage change should be available for review upon request.

Schedule 14
Explanation of Proposed Revenue Requirement Calculation

Instructions: Provide a schedule describing the methodology used to determine the revenue requirement shown on Schedule 9, Column 6.

Schedule 15
Additional Revenues

Instructions: Show the calculations of the additional gross revenues and percentage increases by customer classes that would be produced by the new rates during the test period.

Schedule 16
Statement of Compliance

Instructions: Include the following statement signed by the person(s) sponsoring the application:

I, (Name of Sponsoring Party), (Title), affirm that this application complies with the commission's rules for small investor-owned telephone utilities' applications for increases in rates, and I further affirm that the schedules filed to support the application comply with the instructions for the schedules set forth in the Appendix to those rules.

_____ ___
(Signature of Sponsoring Party)
(Date)

~~20 VAC 5-400-40. Rules governing sharing or resale of local exchange service (shared tenant service).~~

CHAPTER 409.
RULES GOVERNING SHARING OR RESALE OF LOCAL EXCHANGE SERVICE (SHARED TENANT SERVICE).

20 VAC 5-409-10. Shared tenant service permissible.

A. The tariffs of Virginia local exchange companies shall not prohibit any persons from subscribing to local exchange business telecommunications ~~service~~ *services* and facilities and privately reoffering those communication services and facilities to persons or entities occupying buildings or facilities that are within specifically identified contiguous property areas (even if the contiguous area is intersected by public thoroughfares or rights-of-way) and are either*:* (i) under common ownership, which is either the same owners, common general partners, or common principal equity investor*;* or (ii) within a common development which is either an office or commercial complex, a shopping center, an apartment or condominium or cooperative complex, an airport, a hotel or motel, a college or university, or a complex consisting of mixed uses of the types ~~heretofore~~ described *above*, but not to include residential subdivisions consisting of single-family detached dwellings.

B. Such private reoffering shall ~~hereinafter~~ be referred to as "shared tenant service."

~~B. To the extent that a shared tenant service system would not meet the requirements of subsection A of this section, the person or persons desiring to provide the shared tenant service system shall have the right to petition the Commission to obtain a waiver of that Rule. Notice of this petition shall be given to the local exchange telephone company serving the area proposed to be affected by the proposal and to any other persons designated by the Commission. The Commission may grant any such petition upon finding that the public interest is thereby served.~~

20 VAC 5-409-20. Applicability.

~~C.~~ *A.* This ~~shared tenant service section~~ *chapter* shall apply only to those shared tenant service systems sharing more than 16 access lines or more than 32 stations.

B. Sharing of smaller systems shall not be prohibited by local exchange companies, and shall be governed by joint user tariffs where in effect.

20 VAC 5-409-30. Waiver of requirements.

A. To the extent that a shared tenant service system would not meet the requirements of 20 VAC 5-409-10, the person or persons desiring to provide the shared tenant service system shall have the right to petition the commission to obtain a waiver of 20 VAC 5-409-10.

B. Notice of this waiver petition shall be given to local exchange telephone companies serving the area proposed to be affected by the proposal and to other persons as may be designated by the commission.

C. The commission may grant a waiver petition upon finding that the public interest would be served.

20 VAC 5-409-40. Local exchange carrier obligations.

~~D.~~ *A.* Local exchange companies providing service to shared tenant service providers may charge for the resale of local business service based upon the number of calls to the extent permitted by the terms of § 56-241.2 of the Code of Virginia.

B. Nothing in ~~these shared tenant service rules~~ *this chapter* shall be construed to authorize or to preclude treatment by local exchange companies of shared tenant service providers as a separate class of customers for the purpose of establishing rates and regulations of service.

C. Where tariffs providing for ~~such~~ charges based on the number of calls are not in effect at the time service is applied for, local exchange companies shall provide service to shared tenant service providers for the resale of local business service at the flat rates that apply to other business PBX (Private Branch Exchange) customers.

20 VAC 5-409-50. Shared tenant service provider obligations.

~~E.~~ *A.* Shared tenant service shall not be offered to the general public other than the offering of properly tariffed coin service.

~~F.~~ *B.* Providers of shared tenant service are business customers. On behalf of their residential and business end users, such providers may subscribe to residential and business directory listings, respectively, at the rates established for such additional listings by the local exchange ~~company~~ *carrier*.

C. Providers of shared tenant service need not partition switches to allocate trunks among tenants or subscribers.

D. Shared tenant service providers receiving service under joint user tariffs of local exchange companies as of October 7, 1986, may continue to receive such joint user service at existing locations as long as each location remains with that same provider.

20 VAC 5-409-60. Right to request and right to serve.

~~G.~~ *A.* Local exchange companies shall have both the right and the obligation to serve any requesting subscriber located within their certificated service territory.

~~H.~~ *B.* Any end user within a shared tenant service building or facility has the right to subscribe to service directly from the certificated local exchange ~~company~~ *carrier*.

~~I. Providers of shared tenant service need not partition switches to allocate trunks among tenants or subscribers.~~

~~J. Shared tenant service providers receiving service under joint user tariffs of local exchange companies as of the effective date of these rules may continue to receive such joint user service at those existing locations as long as each such location remains with that same provider.~~

~~K.~~ 20 VAC 5-409-70. Rates and charges.

All rates and charges in connection with shared tenant service, and all repairs and rearrangments behind the minimum point of ~~penetration~~ *entry* of the local exchange ~~company's~~ *carrier's* facilities or behind the interface between company owned and customer owned equipment and including the shared tenant service provider's switch, will be the responsibility of the person owning or controlling the facilities behind ~~such~~ *the* minimum point of ~~penetration~~ *entry* or interface and are not regulated by the ~~Virginia~~ State Corporation Commission.

20 VAC 5-400-50. ~~Experimental plan for alternative regulation of Virginia telephone companies.~~ *(Repealed.)*

~~The objective of this plan is to determine to the extent possible, the degree of competitive freedom that local telephone companies may be afforded that is consistent with the overall public interest and with the duty of such companies to provide economical telephone services of a monopoly nature:~~

~~1. The plan will be implemented for a four-year trial period beginning January 1, 1989, and will be optional with the individual companies.~~

~~2. An initial rate reduction will be part of the plan, based upon March 31, 1988, Annual Informational Filings (AIFs), a subsidiary capital structure, and a range of return on equity of 12%-14%.~~

~~3. Should a company elect to proceed under the plan, it must file a letter of intent to participate, specifying rate reductions with appropriate tariffs and a rate of return statement supporting the reduction attached. Should a company later desire to end its participation, it may do so,~~

with leave of the Commission upon a showing of good cause. Any company granted permission to terminate the plan will thereafter be subject to traditional rate base/rate of return regulation on a prospective basis. The Commission retains the right to terminate a company's participation in a plan, in whole or in part, on its own motion, or upon complaint, if it finds good cause to do so, including a determination that any practices under the plan are abusive or detrimental to the public interest. In this regard, the Commission intends to monitor closely all aspects of a company's performance under the plan.

4. The plan will be evaluated in the fourth year.

5. During the four years the plan is in effect, any changes found to be necessary to the policies and procedures established under this plan will be given prospective effect only.

6. Services will be classified into categories as shown on Appendix A according to the following definitions:

"Actually competitive" means services for which there are readily available, functionally equivalent substitutes of at least equivalent quality.

"Potentially competitive" means services which persons other than Local Exchange Companies (LECs) are capable of providing, but which do not conform to the definitions of actually competitive.

"Discretionary" means services which can be provided only by the LECs, but which are optional, nonessential enhancements to basic communications.

"Basic" means services which, due to their nature or legal/regulatory restraints, only the LECs can provide.

7. Services listed on Appendix A as potentially competitive, discretionary, or basic, together with all other existing services of a company not identified on Appendix A as actually competitive will remain subject to current regulatory oversight, modified, however, by subsequent subdivision 9.

8. The rate base, costs and revenues from the actually competitive services enumerated in Appendix A will be transferred below the line for AIF purposes, and will not be subject to price regulation.

9. Potentially competitive services, as defined in Appendix A, and excluding access services, will be allowed flexible tariff status with the right to adjust rates for such services on an expedited basis subject to Commission notification. Prices may be increased or decreased at the company's discretion. Tariffs must be filed at least 30 days prior to the effective date, which is consistent with current tariff filing procedures. Filings which include rate reductions must include supporting data demonstrating the rate is not below long run incremental cost.

10. Tariffs shall continue to be filed for all services except actually competitive services.

11. Services and capabilities of a monopoly nature that are essential components of competitive services must be offered on an unbundled basis in the tariffs. When these services and capabilities are used by competitive services, the associated revenue of these monopoly components will be attributed to monopoly operations based on the tariff rates. For actually competitive services, essential monopoly components not now individually offered must be unbundled by tariff filings within 90 days of a company's adoption of this plan.

12. All current services not subject to regulation will continue in an unregulated status.

13. Prior Commission approval will be required to introduce any rates, charges and conditions that vary according to customers' geographic location.

14. Rate regrouping due to growth in access lines will continue in order to avoid rate discrimination between similarly sized exchanges.

15. For purposes of the staff's monitoring during the experimental trial period, the company shall initially file with the staff, under proprietary protection, current price lists for services, except Yellow Pages, in the actually competitive category. Such lists shall be updated at the end of each year during the trial period.

16. Solely for monitoring purposes, the company shall file a per books rate of return statement, under proprietary protection, for the aggregate of all its services except Customer Premise Equipment (CPE). The Commission will monitor separately the financial results from actually competitive services. Initially, these filing and monitoring requirements will be met on a quarterly basis, and subsequently may be required less frequently if appropriate. Annually, the company shall file a non-proprietary AIF, based upon the rate base, costs and revenues of potentially competitive, discretionary, and basic services. The rate of return statement will reflect per books results, making adjustments for:

a. Investment Tax Credits (ITC) capital expense and its associated tax savings;

b. Restatements from Generally Accepted Accounting Principles (GAAP) to regulatory accounting;

c. Removal of out-of-period revenue and expense amounts that relate to occurrences prior to the implementation of the trial plan; and,

d. Removal of out-of-period amounts that are a direct result of the plan, and as agreed upon and reported by the Task Force Financial Monitoring Subcommittee.

17. In the event the company seeks any increase in the prices of any basic or discretionary services during the trial period, the company must file a rate application conforming to the rules adopted in Case No. PUE850022.

a. The financial results in this filing will include rate base, costs, and revenues from services in potentially competitive, discretionary, and basic service categories.

b. In addition, all rate base, costs, and revenues from services in the actually competitive category, except CPE, will be imputed to regulated financial results and considered in determining the company's revenue need.

c. The circumstances surrounding the need for an increase may affect continuing participation in the plan; however, a requested rate increase would not necessarily preclude on-going participation.

18. During the trial period, the company's approved return on equity will be set at a range of 12% to 14%. For purposes of monitoring during the plan, return on equity and return on rate base will be calculated by using a 13-month average common equity and a 13-month average rate base number.

19. During the plan years all rates except actually competitive rates will become interim rates subject to subdivision 20.

20. If the company is found to have earned in excess of the authorized range of return on potentially competitive, basic, and discretionary services in the year preceding, an appropriate refund will be made with interest. If such a condition is not found to exist, the Commission, upon motion by the company, will order that the interim rates for the previous year be made permanent. All actions in this paragraph will be taken only after notice and opportunity for hearing.

21. Service quality results shall be filed by the local exchange companies on a quarterly or monthly basis as directed by the staff.

a. These reports may be expanded to include results not contained in the present service reports.

b. Companies will report on the following seven categories of service:

(1) Commission complaints per 1000 access lines per year

(2) Trouble reports per 100 access lines

(3) Percent repeated trouble reports

(4) Service observation results

(5) Business office accessibility

(6) Repair service accessibility

(7) Service orders completed within five working days

c. Companies will also file reports showing results related to service provided to interexchange carriers as follows:

(1) On time performance

(2) Outage duration

(3) Blocking below the tandem

d. The staff will analyze service results and take immediate action to resolve any service quality problems.

22. The costs associated with services in the actually competitive category must be determined by a cost allocation methodology.

a. During the first quarter of the first year the plan is in effect, the staff and all companies, along with other interested parties, shall negotiate uniform generic cost allocation guidelines and principles for separating out actually competitive accounts.

b. The Commission will then seek comments on the results of these negotiations, modified as deemed appropriate, in a docketed and properly noticed proceeding.

c. Generic cost allocation guidelines and principles, modified as appropriate, will then be adopted by the Commission.

d. Using these guidelines, companies will file their own specific cost allocation plans for the services in the actually competitive category. These plans are subject to review by the staff and will be subject to appropriate revisions in a docketed and properly noticed proceeding.

e. During each succeeding year of the plan after the first year, the cost allocations arrived at initially will be monitored and adapted to changing conditions by agreement between the staff and the company, and interested parties as necessary.

23. Upon the request of the staff, the company will file such other information with respect to any services or practices of the company as may be required of public service companies under current Virginia law, or any amendments thereto.

24. Thirty days prior to offering a new service, the company shall notify in writing the staff, the Attorney General, and all certificated interexchange carriers of the new service offering.

a. Simultaneous with such notification, the company shall designate the service category into which the new service is classified.

b. Any interested party shall be afforded an opportunity, by timely petition to the Commission, to propose that the new service be classified in a different category; however, the filing of such petition shall not result in postponement of the new service offering.

c. Any such proceeding to determine the proper classification of a new service offering shall be completed within 90 days following the effective date of the new service offering.

d. This provision also applies to the reclassification of existing services.

25. Interexchange Carriers' (IXC) access charges are not included in the categories of services set out in this plan for pricing purposes. Pricing for such services will be considered separately in accordance with the procedures adopted in Case No. PUC870012. However, for purposes of the initial rate reduction called for by subdivision 2, IXC access charges may be reduced as long as no access charge prices fall beneath incremental costs as determined in Case No. PUC870012. For all other purposes, access services will be included in the categories as shown on Appendix A.

26. Within six months following the conclusion of the third year of the plan's adoption, each company will prepare and

~~submit to the Commission a detailed, written report which is satisfactory to the Commission, and which describes and documents the perceived effects of the plan - benefits and detriments - upon the company and upon its customers, for both regulated and unregulated goods, services and equipment of whatever nature and wherever sold, used or provided.~~

~~The purpose to be served by this report is to provide an informed basis upon which the Commission can design and execute subsequent policy and predicate future action in appropriate response to the competitive and technological forces which are then identified as impacting the field of communications and information transfer.~~

~~MARKET CLASSIFICATIONS OF LEC SERVICES~~

~~Appendix A~~

~~Actually Competitive~~	~~Potentially Competitive~~
~~1. Yellow Page Advertising~~	~~1. Bulk Private Line~~
~~2. Customer Premises Equipment~~	~~2. Bulk Special Access~~
~~3. Inside Wiring~~	~~3. Operator Call Completion Services~~
~~4. CENTREX Intercom & Features~~	~~4. 3-Way Calling~~
~~5. Billing & Collection (Processing, Rendering Inquiry)~~	~~5. Call Forwarding~~
~~6. Mobile Service~~	~~6. Time-of-Day Service~~
~~7. Paging Services~~	~~7. Weather Forecast Service~~
~~8. Speed Calling~~	~~8. C.O. Data Sets~~
~~9. Apartment Door Answering~~	~~9. Toll Restriction~~
~~10. C.O. LANs~~	

~~Discretionary~~	~~Basic~~
~~1. Non-list & Non-pub Numbers~~	~~1. Access to Switched Network (DTLs)~~
~~2. Preferred (Vanity) Numbers~~	~~2. Exchange Usage~~
~~3. Additional Listings & Bold Type~~	~~3. Switched Access~~
~~4. Operator Verification & Interrupt~~	~~4. MTS/WATS/800~~
~~5. Call Waiting~~	~~5. Basic Service Charges~~
~~6. Remote (Fixed) Call Forwarding~~	~~6. Optional Calling Plans~~
~~7. DTMF Signaling (Touch-Tone, U-Touch)~~	~~7. CENTREX Exchange Access & Usage~~
~~8. B & C Security Functions~~	~~8. B & C With DNP~~
~~9. Special Billing Numbers~~	~~9. ANI & Recording~~
~~10. Referral Service (Customized Intercept) Line~~	~~10. Directory Assistance~~
~~11. Transfer Arrangements~~	~~11. Maintenance Visit (Trouble Isolation)~~
~~12. Exclusion~~	~~12. "Single" Private & Special Access~~
~~13. Call Restrictions~~	~~13. Operator Service - Emergency & Troubles~~
~~14. Make Busy Arrangements~~	~~14. Intercept (Standard)~~
~~15. Break Rotary Hunt~~	~~15. White Page Listing~~
	~~16. List Service~~
	~~17. Number Screening (Selective Class of Call Screening)~~
	~~18. FX Service~~
	~~19. Public and Semi Public Telephone Service~~
	~~20. IXC Coinless Telephone Service~~
	~~21. Four-wire Service Terminating Arrangements~~
	~~22. Concentrator-Identifier Equipment~~
	~~23. Emergency Number "911" Service~~
	~~24. Public Data Network~~
	~~25. Direct Inward Dialing~~
	~~26. Extended Area Calling~~
	~~27. Hunting Arrangements~~
	~~28. PBX Night, Sunday, etc. Arrangements~~
	~~29. Split Supervisor Drops~~
	~~30. Identified Outward Dialing~~

~~20 VAC 5-400-60. Rules governing the certification of interexchange carriers.~~

~~A. Purpose. These rules are promulgated pursuant to §§ 56-265.4:4, 56-481.1 and 56-482.1 of the Code of Virginia and are effective July 1, 1984, as modified on August 7, 1989, in this chapter, and on October 1, 1995, in 20 VAC 5-400-120.~~

CHAPTER 411.
RULES GOVERNING THE CERTIFICATION OF INTEREXCHANGE CARRIERS.

20 VAC 5-411-10. Filing of application.

~~B.~~ An original and 15 copies of ~~applications~~ *an application* for ~~certificates~~ *a certificate* of public convenience and necessity *to operate as an interexchange carrier* shall be filed with the Clerk of the State Corporation Commission~~, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23216,~~ and shall contain all the information and exhibits required ~~herein~~ *by this chapter*.

20 VAC 5-411-20. Notice of application.

~~C.~~ *A.* Notice of the application shall be given to each existing interexchange carrier; the Division of Consumer Counsel, Office of the Attorney General; and to each local exchange carrier~~, and shall be provided to governmental officials as required by the Commission in its initial order setting the case for hearing~~.

B. Each applicant shall publish notice in newspapers having general circulation throughout the Commonwealth in a form to be prescribed by the commission.

20 VAC 5-411-30. Application requirements.

A. Applicants shall attest that they will abide by the provisions of § 56-265.4:4 B of the Code of Virginia.

B. Applicants shall submit information which identifies the applicant including (i) its name, address and telephone *number*, (ii) its corporate ownership, (iii) the name, address, and telephone *number* of its corporate parent or parents, if any, (iv) a list of its officers and directors or, if applicant is not a corporation, a list of its principals and their directors ~~if said principals are corporations~~, and (v) the names, addresses, and telephone numbers of its legal counsel.

~~D.~~ *C.* Each incorporated applicant for a certificate shall demonstrate that it is authorized to do business in the Commonwealth as a public service company.

~~E.~~ *D.* Applicants shall be required to show their financial, managerial, and technical ability to render interexchange ~~telecommunication service.~~ *telecommunications services as follows:*

~~(i)~~ *1.* As a minimum requirement, a showing of financial ability shall be made by attaching *the* applicant's most recent stockholder's annual report and its most recent SEC (Securities and Exchange Commission) Form 10-K or, if the company is not publicly traded, its most recent financial statements*.*

~~(ii)~~ *2.* To demonstrate managerial experience, each applicant shall attach a brief description of its history of providing interexchange ~~telecommunication service~~ *telecommunications services* and shall list the geographic areas in which it has been and is currently *being* provided. Newly created companies shall list the experience of each principal *or* officer in order to show its ability to provide service.

~~(iii)~~ *3.* Technical abilities shall be indicated by a description and map of the applicant's owned or leased facilities within the Commonwealth. An additional map should be filed showing the applicant's points of presence within its proposed service area.

E. Each application for a certificate to provide interexchange telecommunications services shall include the carrier's proposed initial tariffs, rules, regulations, terms and conditions. If the commission finds those tariffs reasonable, they shall be approved with the granting of the certificate. Any subsequent request to increase rates shall be submitted pursuant to Chapter 10 (§ 56-232 et seq.) of Title 56 of the Code of Virginia, unless the requesting carrier has been granted authority by the commission to set rates and charges pursuant to § 56-481.1 of the Code of Virginia.

F. Any applicant desiring to have rates based upon competitive factors shall petition the commission to be granted such authority pursuant to the provision of § 56-481.1 of the Code of Virginia. This petition may be included in the applicant's petition for a certificate of public convenience and necessity. The commission shall consider the criteria set out in § 56-481.1 of the Code of Virginia in making any determination that interexchange telecommunications services will be provided on a competitive basis.

20 VAC 5-411-40. Abandonment or discontinuation of service.

~~F.~~ No interexchange carrier shall abandon or discontinue service, or any part ~~thereof,~~ *of service* established under provisions of § 56-265.4:4 of the Code of Virginia*,* except with the approval of the commission, and ~~upon such~~ *under the* terms and conditions as the commission may prescribe.

20 VAC 5-411-50. Reports to State Corporation Commission.

~~G.~~ *A.* Each interexchange carrier annually shall file a current financial report with the commission, shall maintain Virginia books, and shall maintain such books in accordance with generally accepted accounting principles~~, and, in any event~~, as shall be required by the commission to facilitate its assessment of all taxes and to facilitate the performance of its regulatory responsibilities.

B. Carriers shall file with the commission on a monthly basis~~,~~ a report showing monthly usage of local exchange telephone services and facilities as required by §§ 56-482.1 and 56-482.2 of the Code of Virginia.

20 VAC 5-411-60. Suspension or revocation of certificate.

~~H.~~ *A.* No carrier shall unreasonably discriminate among subscribers requesting service. Any finding of ~~such~~ discrimination shall be grounds for suspension or revocation of the certificate of public convenience and necessity granted by the commission.

B. Excessive subscriber complaints against an interexchange carrier, which the commission has found to be meritorious, may also be grounds for suspension or revocation of the carrier's certificate of public convenience and necessity.

C. In all proceedings pursuant to this ~~Subsection H~~ *section*, the commission shall give notice to the carrier of the allegations against it and provide the carrier with an opportunity to be heard concerning those allegations prior to the suspension or revocation of the carrier's certificate of public convenience and necessity.

~~I. Each application for a certificate to provide interexchange telecommunication service shall include the carrier's proposed initial tariffs, rules, regulations, terms and conditions. If the commission finds those tariffs reasonable, they shall be approved with the granting of the Certificate. Any subsequent request to increase rates shall be submitted pursuant to Chapter 10 (§ 56-232 et seq.) of Title 56 of the Code of Virginia, unless the requesting carrier has been~~

~~granted authority by the commission to set rates and charges pursuant to § 56-481.1 of the Code of Virginia.~~

~~J. Any carrier desiring to have rates based upon competitive factors shall petition the commission to be granted such authority pursuant to the provision of § 56-481.1 of the Code of Virginia. Such petition may be filed simultaneously with the applicant's petition for a certificate of public convenience and necessity. The commission shall consider the criteria set out in § 56-481.1 of the Code of Virginia in making any determination that interexchange telecommunication service will be provided on a competitive basis.~~

20 VAC 5-411-70. State Corporation Commission authority to set rates.

~~K.~~ Should the commission ever determine, after notice to the public and any affected interexchange carriers and after an opportunity is afforded for any interested party to be heard, that competition, although previously found by the commission to exist, has ceased to exist among interexchange carriers, it may, pursuant to § 56-241 of the Code of Virginia, require that the rates of such carriers be determined pursuant to Chapter 10 (§ 56-232 et seq.) of Title 56 of the Code of Virginia.

20 VAC 5-411-80. Proposed rate increases.

~~L.~~ *A.* Carriers shall give notice of proposed rate increases to subscribers by (i) billing inserts furnished at least two weeks prior to the increase, ~~or~~ (ii) publication for two consecutive weeks as display advertising in newspapers having general circulation in the area served by the carrier with the last publication appearing at least two weeks prior to the increase, or (iii) direct written notification to each affected subscriber at least two weeks prior to the increase.

B. The notice shall state the subscribers' existing rates, the proposed rates and the percentage change between the two.

C. Rate revisions which result in no increase to ~~any subscriber~~ *subscribers* may be implemented without notice.

20 VAC 5-411-90. Exclusion.

~~M.~~ These rules shall not apply to domestic cellular radio telecommunications carriers.

20 VAC 5-400-100. ~~Modified plan for alternative regulation of Virginia local exchange telephone companies.~~ *(Repealed.)*

~~A. The experimental plan, originally effective January 1, 1989, will be modified as set forth herein, will be effective January 1, 1994, as the modified plan, and will constitute an alternative to regulation under Chapter 10 (§ 56-232 et seq.) of Title 56 of the Code of Virginia for those Virginia telephone companies not regulated pursuant to Chapter 16 (§ 56-485 et seq.) or 19 (§ 56-531 et seq.) of Title 56.~~

~~B. A local exchange company ("LEC" or "company") participating in the Experimental plan on December 31, 1993, shall be deemed to be continuing to participate in this modified plan (hereinafter "plan") effective January 1, 1994. Should a company later desire to end its participation, it may do so with leave of the Commission upon a showing of good cause. Any company granted permission to exit the plan will thereafter be subject to traditional regulation pursuant to Chapter 10 (§ 56-232 et seq.) of Title 56 of the Code of Virginia on a prospective basis or to another alternative form of regulation as approved pursuant to § 56-235.5 of the Code of Virginia. The Commission retains the right to terminate a company's participation in the plan on its own motion, or upon complaint, if it finds good cause to do so, such as a finding that a practice under the plan is abusive or detrimental to the public interest.~~

~~C. While this plan is in effect, any changes found to be necessary will be given prospective effect only.~~

~~D. Services will be classified into categories as shown on Appendix A according to the following definitions:~~

~~"Competitive" means at a minimum, services for which there are readily available substitutes which reasonably meet customer needs and for which competition in the marketplace effectively regulates the price for such services.~~

~~"Discretionary" means services which can be provided only by the LECs, but which are optional, nonessential enhancements to basic communications, or services which others are capable of providing but which do not conform to the competitive services definition.~~

~~"Basic" means services which are not discretionary and, due to their nature or legal/regulatory restraints, only the LECs can provide.~~

~~Yellow Pages advertising will continue to be treated as competitive for all purposes of this plan, but 25 % of Yellow Pages' advertising income available for common equity will be attributed to noncompetitive services.~~

~~E. Services listed on Appendix A as discretionary or basic, together with all other existing services of a company not identified on Appendix A as competitive, will remain subject to current regulatory oversight, modified, however, by subsection G, below.~~

~~F. The rate base, costs, and revenues from Competitive services will be transferred below the line for AIF (Annual Informational Filing) purposes and will be not subject to price regulation.~~

~~G. Individual Case Basis (ICB) or custom service package contract pricing is allowed for services other than Basic when the LEC demonstrates that a competitive alternative, as defined in subsection D, exists for an individual customer, but where the service does not otherwise fully satisfy the requirements of subsection D.~~

~~1. Conditions of subsection I must be met,~~

~~2. A copy of any ICB or custom service package contract must be timely filed under proprietary protection with the Commission's Division of Communications, and~~

~~3. Any such filing must include supporting data demonstrating that the rate is above long-run incremental cost.~~

~~H. Tariffs shall continue to be filed for all discretionary and basic services; and for any competitive service that is also~~

offered, pursuant to a Virginia intrastate tariff, by another company is certificated by this Commission.

I. Services and/or capabilities of a monopoly nature that are components of competitive services must be offered on an unbundled basis in the tariffs. When these services and/or capabilities are used by competitive services, revenues shall be attributed to noncompetitive operations based on the tariff rates and quantities used. The requirements of this subsections must be satisfied at the time a service is determined to be competitive.

J. Any service that is lawfully, preemptively deregulated by the Federal Communications Commission (FCC) will not be subject to regulation. Services in this category as of January 1, 1994, are Customer Premises Equipment and Complex Inside Wire. This Commission retains full regulatory authority over any service that is not lawfully, preemptively deregulated, including competitive services that fall under the FCC's Part 64 rules.

K. Rate regrouping due to growth in access lines will continue in order to avoid rate discrimination between similarly sized exchanges.

L. For purposes of assuring that competition is an effective regulator of the price of competitive services, the staff shall monitor these services on a periodic basis, at a minimum, annually.

Solely for annual monitoring purposes, each company shall file a per books rate-of- return statement, under proprietary protection, for the aggregate of all of its services, except for any service that is lawfully, preemptively deregulated by the FCC consistent with subsection M, below. Annually, total company, total service results will be monitored in order to provide the Commission with a complete picture of each company's operating results.

M. Annually, each company shall file a nonproprietary AIF based upon the rate base, revenues, and expenses of all services, excluding those which are competitive except Part 64 services that have not been lawfully, preemptively deregulated by the FCC. Return on rate base and return on common equity will be calculated by using a 13-month average rate base and a 13-month average common equity amount. For AIF purposes, a company should not include a cash allowance for working capital unless the Commission has ordered the company to use the results of a comprehensive lead lag study. The AIF shall include a capital structure and cost of capital statement, a rate-of-return statement, and a rate base statement, together with other information as required by the staff or the Commission. The capital structure shall be determined in accordance with subsection O, below, on a per-books basis. The rate-of-return statement will also reflect per-books results, making adjustments for:

1. Investment Tax Credits (ITC) capital expense and its associated tax savings;

2. Restatements from Generally Accepted Accounting Principles (GAAP) to regulatory accounting;

3. Removal of out-of-period revenue and expense amounts that relate to occurrences prior to January 1, 1989, the implementation of the experimental plan;

4. Removal of out-of-period amounts that are a direct result of the plan.

N. In the event a company seeks an increase in the price of any basic service, or any basic service combined with price changes for discretionary or other basic services, that results in an increase in overall regulated operating revenues, the company must file a rate application conforming to the rules governing general rate case applications for telephone companies. The revenue limitation provisions of § 56-235.4 of the Code of Virginia would apply.

1. The financial results in this filing will include rate base, expenses, and revenues from all services, excluding any service lawfully, preemptively deregulated by the FCC.

2. In the event a cash working capital allowance is sought, a comprehensive lead lag study is required. This study should include a balance sheet analysis.

3. The circumstances surrounding the need for an increase may affect continuing participation in the plan; however, a requested rate increase would not necessarily preclude ongoing participation. However, a company may not participate in the plan and receive a rate increase if the return on equity as determined in subdivision N1 is above the bottom of the allowed return-on-equity range.

In the event a company seeks a change in the price of basic and/or discretionary services that does not result in an increase in overall regulated operating revenues, it must proceed pursuant to the Commission approval and customer notification provisions of §§ 56-237.1 and 56-237.2 of the Code of Virginia.

In the event a company seeks an increase in any discretionary service that results in an increase in overall operating revenues, it must proceed pursuant to the Commission approval and customer notification provisions of §§ 56-237.1 and 56-237.2 of the Code of Virginia. Any hearing resulting from § 56-237.2 of the Code of Virginia must conform to the rules governing general rate case applications for telephone companies, including subdivisions 1, 2, and 3 above. In addition, the revenue limitation provisions of § 56-235.4 of the Code of Virginia would apply.

O. The allowed return on equity will be determined annually for the upcoming calendar year based on an average (rounded to the nearest one hundredth of the 30- Year Treasury bond yield, adjusted to constant maturity, for the months of September, October, and November, as reported in the Federal Reserve Statistical Release H.15 (519) (or by its successor, should it be changed), plus a risk premium range as set forth in the table below.

TREASURY BOND RATE	RISK PREMIUM
0 -- 2.49	6.5 -- 8.5
2.50 -- 3.49	6.0 -- 8.0
3.50 -- 4.49	5.5 -- 7.5
4.50 -- 5.49	5.0 -- 7.0
5.50 -- 6.49	4.5 -- 6.5

6.50 -- 7.49	4.0 -- 6.0
7.50 -- 8.49	3.5 -- 5.5
8.50 -- 9.49	3.0 -- 5.0
9.50 -- 10.49	2.5 -- 3.5
10.50 -- 11.49	2.0 -- 4.0
11.50 -- 12.49	1.5 -- 3.5
12.50 -- 13.49	1.0 -- 3.0
13.50 -- 14.49	.5 -- 2.5
14.50 -- AND ABOVE	0 -- 2.0

The overall cost of capital will be based upon the local exchange company's 13-month average capital structure and cost of senior capital, together with the allowed return on equity range.

P. All rates, except those for competitive services, are interim rates until the Commission declares that they are no longer subject to refund. If a company is found to have earned in excess of the authorized range of return on basic and discretionary services in the year preceding, an appropriate refund will be made with interest consistent with the top of the return on equity range. Under appropriate circumstances, and upon motion by the company, the Commission will order that the interim rates for the previous year are no longer subject to refund. All actions in this subdivision will be taken only after notice and opportunity for hearing.

Q. Reports of service quality results shall be filed by the local exchange companies on a quarterly or monthly basis as directed by the staff.

1. These reports shall conform to service rules adopted by the Commission by Final Order of June 10, 1993, in Case No. PUC930009, Commonwealth of Virginia, ex rel. State Corporation Commission Ex Parte: In the matter of Adopting Rules Governing Service Standards for Local Exchange Telephone Companies (20 VAC 5-400-80).

2. These reports may be expanded to include results not contained in the present service reports.

3. Companies will also file reports showing results related to service provided to interexchange carriers as follows:

a. On-time performance

b. Outage duration

c. Blocking below the tandem

4. The staff will analyze all such service results and take immediate action to resolve any service quality problems.

R. The Commission's cost allocation principles and guidelines (Exhibits A and B of the Order in Case No. PUC890014, dated July 21, 1989) and the Orders of April 17, 1990; June 26, 1990; and June 19, 1991; in Case No. PUC890014, are incorporated herein by reference. Costs and revenues associated with Competitive services, except Part 64 services, must be determined by detailed allocation methods that conform to these principles and guidelines. These detailed allocation methods will be monitored and revised when necessary as an administrative function of the staff of the Division of Communications. Part 64 services should have their costs and revenues determined by the FCC's Part 64 procedures as long as the results are accurate and reasonable.

S. Upon the request of the staff, a company will file such other information with respect to any services or practices of the company that may be required of public service companies under current Virginia law, or any amendments thereto.

Any company that fails to provide, timely and accurately, data required by the regulation, including answers to any staff request for data or information necessary for the execution of this regulation, shall be subject to a Rule to Show Cause hearing for such failure. The Commission will monitor closely all aspects of each company's performance under the regulation.

T. Thirty days prior to offering a new service or reclassifying an existing service, a company shall notify in writing the staff, the Attorney General, and all certificated interexchange carriers of the new or reclassified offering and shall provide appropriate documentation to the staff. The Commission may suspend the proposed effective date if the documentation supporting the classification is insufficient.

1. Simultaneous with such notification, the company shall designate the service category into which the service is classified.

2. If the proposed service category is competitive, notice must be given to all affected parties, and a hearing must be conducted.

3. Any interested party shall be afforded an opportunity, by timely petition to the Commission, to propose that the service be classified in a different category: however, the filing of such petition shall not result in the postponement of any new service offering.

4. Any such proceeding to determine the proper classification of a service offering shall be completed within 90 days following the effective date of the service offering, except that if the proposed classification is Competitive, the proceeding must be completed within 120 days.

U. Interexchange Carriers' access charges are not included in the categories of services set out in this plan for pricing purposes. Pricing for such services will be considered separately in accordance with procedures adopted in Case No. PUC870012. In re: Investigation of the appropriate methodology to determine intrastate access service costs and as implemented in Case No. PUC880042, Ex Parte: In re, investigation of pricing methodologies for intrastate access service. For all other purposes, access services will be included in the categories as shown on Appendix A below.

APPENDIX A.
MARKET CLASSIFICATIONS OF LEC SERVICES

Competitive

1. Yellow Pages Advertising
2. Non-preemptively deregulated Customer Premises Equipment
3. Simple Inside Wiring
4. CENTREX Intercom & Features (CENTREX INTELLILINQ - BRI[1]) [6]

5. Billing & Collection (Processing, Rendering, Inquiry)
6. Paging Services
7. Speed Calling
8. Apartment Door Answering [1]
9. C.O. LANs [6]
10. Home intercom [1]
11. Uniform Call Distribution [1]
12. Business Market Hotline [1]
13. Data Paths [2]
14. TI Access [4]
15. Switched Data Service [4]
16. Part 64 Services

Discretionary

1. Non-list & Non-pub. Numbers
2. Preferred (Vanity) Numbers
3. Additional Listings & Bold Type
4. Verification With Call Interrupt
5. Call Waiting
6. Remote Call Forwarding
7. DTMF Signalling [6]
8. B&C Security Functions
9. Special Billing Numbers
10. Referral Service
11. Transfer Arrangements
12. Exclusion
13. Toll/Call Blocking (All Types) [6]
14. Make Busy Arrangements
15. Break Rotary Hunt
16. Return Call [6]
17. Priority Call [6]
18. Select Forward [6]
19. Call Block [6]
20. Caller ID [6]
21. Call Trace [6]
22. IDENTA RING [6]
23. Connect Request sm [1]
24. High Capacity Digital Hand-off Service [6]
25. Appointment Request [1]
26. Anonymous Call Rejection [6]
27. INTELLILINQ PRI [1]
28. Centrex DID Intercept Service [1]
29. Bulk Private Line
30. Bulk Special Access
31. Operator Call Completion Services
32. Three-Way Calling
33. Time-of-Day Service
34. Weather Forecast Service
35. C.O. Data Sets
36. Pay-Per-View [1,4]
37. Repeat Call [6]
38. Intercom Extra [1]
39. Digital Data Service [1]
40. ULTRA FORWARD [6]
41. Switched Multi-Megabit Data Service [1]
42. Switched Redirect Service [1]
43. CENTREX Extend Service [1]
44. FDDI/FNS [1]
45. Frame Relay Service [1]
46. 10 Mbps Ethernet [2]
47. Cancel Call Waiting [6]
48. United SwitchLink sm [3]
49. United SwitchLink smPlus [2]
50. Call Forwarding - (Busy, No Answer, Fixed, Automatic) [6]
51. Digital Cross Connect [2]
52. Busy Study/Traffic Assessment [2]
53. Telecommunications Service Priority
54. Message Waiting Indicator [6]
55. Detail Message Billing [4,5]
56. Enhanced Service Provider [4]
57. GTE Datalink Service [5]
58. ControlLink Digital Channel Service [4]
59. Automatic Meter Reading [4]

1. Basic Access to Switched Network (DTLs)
2. Exchange Usage
3. Switched Access
4. MTS/WATS/800
5. Basic Service Charges
6. Optional Calling regulations
7. CENTREX Exchange Access & Usage
8. Billing & Collecting (DNP, ANI, & Recording)
9. Directory Assistance
10. Maintenance Visit (Trouble Isolation)
11. "Single" Private Line & Special Access (Excluding Digital Data Service) [1]
12. Operator Service - Emergency & Troubles
13. Intercept (Standard)
14. White Pages Listing
15. List Service
16. Number Screening
17. FX Service
18. Public and Semi-Public Telephone Service
19. IXC Coinless Telephone Service
20. Four-Wire Service Terminating Arrangements
21. Concentrator - Identifier Equipment
22. Emergency Number "911" Service
23. Public Data Network
24. Direct Inward Dialing
25. Extended Area Calling
26. Hunting Arrangements
27. PBX Night, Sunday, Etc., Arrangements
28. Split Supervisor Drops
29. Identified Outward Dialing
30. Dial Tone Line 800 Service [6]
31. Switched 56 Kilobit Service
32. Line Status Verification
33. Shared Tenant Service
34. Enhanced Business Service Access [3,4]
35. Enhanced Business Service - Features [4]
36. Service Performance Guarantee [6]
37. Directory Connect Plus [5]
38. Automatic Line Service [4]
39. Home Business Service [1]

[1] C&P

[2] Centel

[3] United

[4] GTE-VA

[5] GTE-South

[6] May be offered by an LEC under a different name

20 VAC 5-400-110. ~~Investigation of the resale or sharing of intrastate Wide Area Telephone Service ("WATS").~~ *(Repealed.)*

~~On May 2, 1983, Hearing Examiner Stewart E. Farrar filed a report, which summarized the comments of the interested parties, and which made the findings and recommendations:~~

~~1. The resale or sharing of WATS by an intrastate WATS resale carrier is lawful under Virginia law.~~

~~2. WATS resellers will own, manage or control plant within the Commonwealth for the conveyance of telephone messages either directly or indirectly to or for the public and for the furnishing of telephone service, in the words of §§ 56-232 and 56-265.1(b) of the Code of Virginia. Such resellers therefore fit the definition of a public utility set forth in those statutes.~~

~~3. However, it does not appear, at the present time, that WATS resellers will possess any of the characteristics of natural monopolies, nor will the industry in which such firms operate have long-run monopoly tendencies. On the contrary, the market is likely to be highly competitive, with low capital requirements for firms entering the business. Customers will have a wide variety of firms from which they may obtain long distance services of all types.~~

~~4. Therefore, based on currently available indications, the services provided by such firms will not be of the type intended to be subject to regulation, under the principles enunciated in Vepco v. SCC, 219 Va. 894 (1979).~~

~~5. The Commission should retain the option of reexamining the tentative conclusions reached in paragraphs 3 and 4 above at any time, either on its own motion or that of outside parties, and should be prepared to assert its full utility regulatory authority over resale firms should those conclusions prove erroneous, for any reason, in the future.~~

~~The Hearing Examiner further recommended that the Commission enter an order consistent with his findings. No exceptions or objections to this report were filed.~~

~~On March 21, 1983, the Commission's staff filed its report with the Hearing Examiner. In reaching his conclusions concerning resale of intrastate WATS, the Hearing Examiner reviewed the Federal Communications Commission's treatment of interstate resale as well as the treatment of the subject by Virginia's sister states. He summarized the parties' comments and found there was no specific legal prohibitions against resale of WATS. The Hearing Examiner noted that entry in the resale field did not seem to entail the long-run economies of scale characteristic of monopolies. Relying on the principles set forth inVirginia Electric and Power Co. v. State Corporation Commission, the Hearing Examiner concluded that although resellers seemed to fit the definition of a "public utility", the services likely to be provided by resellers would not be of the type devoted to public service and therefore not the type subject to regulation. Virginia Electric and Power Co. v. State Corporation Commission, 219 Va. 894, 902 (1979).~~

~~In Virginia Electric and Power Co. v. State Corporation Commission, the Supreme Court considered whether we could exclude Vepco's outdoor lighting service from Vepco's rate-making structure. Id., 219 Va. 894, 896 (1979). In affirming our exclusion of Vepco's outdoor lighting service from Vepco's rate-making structure, the Supreme Court recognized our authority to determine which duties of a public utility were public duties and subject to regulation and which were not, and implicitly recognized that only the natural monopoly aspect of Vepco's public utility business required the benefits of regulation. SeeVirginia Electric and Power Co. v. State Corporation Commission, 219 Va. 894, 902 (1979). See also Commonwealth, ex rel. Nat'l Electrical Contractors Ass'n, Inc., et al. v. Vepco, Case No. 19338, 1978 SCC 74, 80. Applying this analysis to the structure likely to emerge in the resale industry, the Hearing Examiner has concluded that resellers would not provide services of the type intended to be subject to regulation.~~

~~Based upon the analysis and findings of the Hearing Examiner, we agree that the services provided by resellers of intrastate WATS will most probably not be the type intended to be subject to regulation, under the principles enunciated in Virginia Electric and Power Co. v. State Corporation Commission;~~

~~Accordingly,~~

~~IT IS ORDERED:~~

~~1. That the findings of the Hearing Examiner set out above be adopted;~~

~~2. That there being nothing further to be done in this case, the papers filed herein be committed to the file for ended causes.~~

20 VAC 5-400-120. ~~Interim order respecting investigation of competition for intraLATA, interexchange telephone service.~~ *(Repealed.)*

~~INTERIM ORDER~~

~~Since the comments submitted and the oral argument presented in December 16, 1985, the Commission has continued to observe and consider long distance telecommunications developments within Virginia. These observations present a seemingly irreconcilable dilemma. While the Commission inalterably favors competition among interexchange carriers, we cannot support a form of partial competition where one participant is denied entry to a market open to all others. We refer to the MFJ's (Modification of Final Judgment) prohibition on any Bell Operating Company's (BOC's) offering interLATA (and thus interstate) service. This prohibition means that among all Virginia's exchange and interexchange telephone companies only the Chesapeake and Potomac Telephone Company of Virginia (C&P) is barred from seeking interLATA business, a restriction which impedes competition. To lend balance to this condition, there is now a clear requirement that only local companies can provide intraLATA service and only interexchange carriers can provide interLATA service in Virginia. This places C&P on the same footing as every other local company for intraLATA service. It cannot seek additional revenue from the interLATA market but its intraLATA revenues are shielded from invasion by other carriers. If however, the intraLATA market of C&P were opened to competition, its toll revenues would be exposed to severe erosion while it was denied the opportunity~~

to replace those revenues by entering the markets of invading competitors. This hobbling of C&P while other carriers move about unfettered does not comport with our notion of a "level playing field." And because of this impediment, our vision of full and fair competition throughout Virginia is not yet a reality.

Unfortunately, we do not anticipate an early end to the restriction imposed upon C&P. Two recent opinions from the divestiture court, U.S. v. AT&T, Civil Action No. 820192, slip opinion at p. 8 (D.D.C. January 13, 1986) and slip opinion at p. 19 (D.D.C. February 26, 1986) indicate little intention of relaxing the prohibition. While we respect the Court's concern for potentially anti-competitive behavior, we believe circumstances have changed sufficiently since 1982 to consider exchanging the flat prohibition for strong safeguards to assure a free competitive market. Safeguards appear to have worked with other telecommunications holding companies bearing a resemblance to the divested Regional Bell Holding Companies (RBHCs). A prime example of this is U.S. Sprint, the partnership between GTE Corporation and United Telecommunications, Inc. which will combine their two long distance arms, GTE Sprint Communications and U.S. Telecom, Inc.

In 1983, the U. S. Department of Justice (DOJ) challenged the acquisition and merger of Southern Pacific's "Sprint" long distance service into GTE. DOJ & GTE reached an agreement which was tendered to the U.S. District Court, District of Columbia, as a consent decree. On December 13, 1984, Judge Harold H. Greene entered his opinion approving the consent decree with some reservations, United States v. GTE Corp. 603 F. Supp. 730 (D.D.C. 1984). Judge Greene was concerned that GTE, with its 17 operating companies providing local exchange service, might show favoritism to GTE Sprint's interexchange service. GTE was comparable in size to any of the seven newly spun-off RBHCs. However, due to the geographic dispersion of the General Telephone operating companies and other factors, he did not prohibit GTE from entering the interLATA market, 603 F. Supp. 730 at 736-737.

With the formation of U. S. Sprint, the possibilities of anti-competitive favoritism increase. United Telecommunications has nine operating companies providing local exchange service in 19 states. Those operating companies together with the 17 of GTE could potentially have an economic incentive to favor the inter-exchange service offered by their partnership, U. S. Sprint. The combined size of United Telecommunications & GTE Corporation should exceed any of the seven Bell holding companies. It would seem that if separate subsidiaries and oversight can prevent subsidies or favoritism among these going concerns, such safeguards would be equally effective for a newly created interLATA carrier owned by any of the RBHCs.

Our concern that all telephone companies have the same marketing opportunities is consistent with the General Assembly's intent when it adopted House Bills No. 483 and 870 in 1984. As we pointed out in our June 29, 1984 Final Order in case No. PUC840017, 1984 S.C.C. 326:

The General Assembly desired to make the transition from regulated, monopoly long distance service to competitive service in a manner that was entirely fair and evenhanded, showing favoritism to neither existing carriers nor to proposed carriers. This intent is clearly evinced in the final sentence of Section 56-481.1: "The Commission is authorized to promulgate any rules necessary to implement this provision; provided that any such rules so promulgated shall be uniformly applicable to all telephone companies subject to the provisions of this section."(emphasis added) The Commission has adhered strictly to this principle .. Thus, all carriers are free to compete on a "level playing field" with no artificial or contrived restraints or advantages.

When one carrier (C&P) is prohibited from competing in a certain (interLATA) market, this is clearly an artificial and contrived restraint that gives advantages to competing carriers. Until this restraint, is lifted by the courts, it will be impossible to have a level playing field in Virginia.

Moreover, the National Telecommunications and Information Administration asserts that the interLATA restriction can be removed or substantially modified once "equal access" is implemented by the BOCs, NTIA Special Publication 85-16,Issues in Domestic Telecommunications: Directions for National Policy (U. S. Dept. of Commerce, July, 1985) at p. 44. The MFJ requires that this be 90% complete by September l, 1986. That goal will be easily achieved in Virginia and should present no problem throughout the rest of the nation. We agree with the NTIA that the restriction should be revisited and that BOCs should be allowed, at a minimum, to resell the interLATA services of other carriers.

We recognize Bell Atlantic, after unfavorable rulings for other RBHCs, has no present plans to petition the divestiture court for a waiver to get into the InterLATA market. However, we believe conditions in Virginia differ from other Bell Atlantic and RBHC states. The Virginia legislature and this Commission have a strong record of promoting free competition in the telecommunications industry. Mindful of this, we believe the court may look more favorably on a waiver request by C&P of Virginia standing apart from its parent, Bell Atlantic. We would support such a request, and we encourage C&P to follow through.

Perhaps with the creation of U. S. Sprint and the accounting safeguards that the F.C.C. has fashioned in Computer Inquiry III allowing A.T.&T. and the RBHCs to offer "enhanced service," there is hope that controls may be devised that will permit the RBHCs to carry interLATA traffic free of anti-competitive practices. In the meantime, the Commission believes that all Virginia local exchange companies should prepare for eventual intraLATA competition. We adopt the three phase approach urged by the Staff Position Report of December 2, 1985. Phase One, which we are maintaining, will retain the LATAs as the exclusive service territory of the LECs. During this phase, the LECs shall prepare to meet competition by reconfiguring their toll tariffs and by developing cost allocations and accounting methodologies that will assure against any cross subsidy between regulated and competitive ventures.

Phase One will also be used to further study the impact on local exchange rates that might result from transferring intraLATA revenues, expenses, and investment below-the-line or that might result from loss of intraLATA traffic to other carriers. The Commission is not unmindful that

intraLATA revenues currently provide a contribution that offsets some of the costs of local service and helps maintain affordable local rates. Removing that contribution by loss of traffic or by transfer below the line would assert pressure for increased local rates. During Phase One we can study how significant that pressure would be and whether any local rate increase would be counterbalanced by lower intraLATA toll rates.

Phase One will continue until we are assured that the loss of intraLATA revenues will not be detrimental to rates for local service and until the RBHCs or C&P are allowed to participate in the interLATA market. Because the Commission cannot predict when these events will occur, this docket will remain open. All parties will be notified of further proceedings to determine the end of Phase One and the beginning of Phase Two when all interexchange rates will be set competitively, intraLATA as well as interLATA.

20 VAC 5-400-130. Order relating to compensation by interLATA carriers to local exchange carriers for incidental traffic. ***(Repealed.)***

FINAL ORDER

This docket was instituted in 1983 for the primary purpose of considering the impact on Virginia toll service of (i) the divestiture of American Telephone and Telegraph Company and (ii) the Federal Communications Commission's decision implementing access charges in place of interstate toll settlements. While access charge tariffs may continue to change, the general principles are fairly well established and need no further investigation in this case. The only issue remaining to be determined in this docket is one introduced as a result of the Commission's Final Order and Opinion in Applications of Southern Tel. of Virginia, Inc. et al., 1984 SCC Ann. Rep. 333 (August 22, 1984). That opinion and order established an interim compensation plan for interexchange carriers who do not block intraLATA traffic. The order stated that the interim plan ". . . will be reviewed in the Commission's generic access charge docket Case No. PUC830020. Any LECs (local exchange carrier) or ICs (interexchange carrier) desiring to alter the plan in the future may submit appropriate motions to the Hearing Examiner in that docket.", 1984 SCC Ann. Rep. 333, 337.

Pursuant to that opinion and order, MCI Telecommunications Corporation of Virginia ("MCIT-V") filed a Motion to Reexamine the plan on February 28, 1986. The Commission's Senior Hearing Examiner established a procedural schedule and conducted an evidentiary hearing September 10 and 11, 1986. Counsel appearing at the hearing were Warner F. Brundage, Jr., Esquire, and Christopher W. Savage, Esquire, for C&P Telephone Company of Virginia ("C&P"); William F. Marmon, Jr., Esquire and Hullihen W. Moore, Esquire, for MCIT-V; Rita A. Barman, Esquire, and Steven W. Pearson, Esquire, for US Sprint Communications Company - Virginia ("US Sprint"); Roger A. Briney, Esquire and Kathryn E. Thiel, Esquire, for AT&T Communications Corporation of Virginia ("AT&TC-V"); Richard D. Gary, Esquire on behalf of 15 small local exchange companies; Anthony Gambardella, Esquire, on behalf of the Office of the Attorney General, Division of Consumer Counsel; and Robert M. Gillespie, Esquire, on behalf of the Commission's staff.

Briefs were filed October 24, 1986 and the Examiner issued his report March 20, 1987. Exceptions to the Examiner's report were filed by the Division of Consumer Counsel, U S Sprint, C&P, AT&TC-V and MCIT-V.

The Commission will note two corrections to the Examiner's Report. The last sentence of the second paragraph on the first page states that access charges were originally made effective on July 1, 1984. They were actually effective January 1, 1984. At page 13 of the Examiner's report, the first sentence of the second paragraph states that the IC would develop its gross intraLATA revenue per conversation minute. Rather, it is the LEC which would develop its gross intraLATA revenue per conversation minute.

Having considered the record developed herein, the briefs, the report of the Hearing Examiner, and the exceptions filed thereto, the Commission is of the opinion that the recommendations and conclusion of the Examiner should be adopted. Accordingly,

IT IS THEREFORE ORDERED:

1. That ICs may compensate LECs for incidental intraLATA traffic pursuant to mutual settlement between the two parties;

2. In the event that a settlement of compensation cannot be agreed upon, compensation shall be paid according to the plan and formula attached hereto as Appendix A. That plan and formula encompass all incidental intraLATA traffic rather than only the traffic emanating from Feature Groups A and B. Wherever possible, actual data should be used in the plan and formula. Assumptions may be used if both parties agree; and

3. That there being nothing further to come before the Commission, this docket shall be dismissed and the record developed herein placed in the file for ended causes.

Lacy, CHAIRMAN, concurring in part and dissenting in part:

I concur with the majority in regard to the preferred method of determining compensation to be paid a local exchange company (LEC) by an interexchange carrier (IC) for unauthorized carriage of intrastate intraLATA calls. As stated by the majority, the preferred method of compensation is an amount agreed on between the local exchange company and the interexchange carrier. Although not specifically noted in the opinion, I remind the parties that such agreements must be reached on an arms-length basis and are subject to Commission review if the circumstances deem such review appropriate.

I disagree with the majority regarding the configuration of the compensation formula to be used. At the present time only the LEC is authorized to carry intraLATA traffic. The compensation plan was not intended to be, nor should it be utilized as, a punitive measure for incidental intraLATA traffic carried by the IC. Rather, it should leave the LEC and IC in as nearly as possible the same position as if the unauthorized call were made over the facilities of the LEC. It is clear from the record that the development of a compensation formula

which fairly represents the amounts which should be recovered by an LEC and no more can become complicated and administratively burdensome. Certainly, administrative ease is a factor which should be considered in designing such a formula. With the option of settlement now available in addition to blocking the unauthorized traffic, it becomes more important that the compensation formula be as precise as possible.

The compensation formula will now be expanded to cover intraLATA conversation minutes carried by ICs from all sources. The primary basis for the expansion is due to intraLATA calls carried over special services such as "Vnet" and SDN (software defined network), services unavailable when the compensation plan was adopted in 1984. Whether the failure to employ technical capabilities to block intraLATA calls on the SDN or "Vnet" type of service is driven by business decision or technological impediments, is irrelevant. These special services are designed for and sold to the sophisticated business customer. Logic compels the conclusion that this type of customer, in the absence of the new special service offerings of the ICs, would at a minimum utilize the WATS offerings of the LEC to minimize their telecommunications costs. Therefore, since unauthorized intraLATA traffic handled by these special services is included in determining the number of conversation minutes for which the LEC should be compensated, the factors utilized to determine the amount of compensation which the LEC would receive had they carried the call should include revenues from the service offering which logically would be employed in the absence of the ICs special services. Therefore, in my opinion, the revenue factor identified as R in the majority's formula and the message toll service conversation minutes identified as W, should also include revenues and minutes, respectively, related to the LEC's WATS service.

Considerable attention was directed at inclusion of the LEC's avoided cost as a factor. Precision in the formula and theoretical consistency supports use of a factor recognizing the savings to the LEC realized by not incurring a cost to handle the intraLATA call. The evidence in this record was insufficient to develop an accurate avoided cost factor. Should experience indicate the need for further refinement of the formula in the future, the issue of avoided cost should be addressed.

Some of the ICs argued that the formula should include a deduction from the payment amount equal to the amount received by an LEC for billing and collection services on unauthorized intraLATA calls. While I do not believe this adjustment is appropriate, I disagree with the Hearing Examiner's basis for rejection. If the LEC had carried the call, it would have incurred a cost to bill and collect for that call. Likewise, it incurs a cost to bill and collect for the IC. Revenue to cover that cost must be received by the LEC in either event. As it is being directly recovered from the cost- causer IC carrying the intraLATA call, outside the formula at present, I believe there is no need to further complicate the formula at this time. There are circumstances when the billing and collection for the unauthorized call are handled by the IC directly. In those instances there is no revenue component to be deducted from payment and, based on the above discussion, "avoided cost" is not sufficiently developed for accurate inclusion in the formula at this time.

A. COMPENSATION PLAN

Applicability: This plan applies to unauthorized intraLATA communications traffic carried by interLATA carriers. Unauthorized traffic is defined by the Commission's orders in Case PUC850035.

This plan is to be used in situations where the interLATA carrier(s) (ICs) and local exchange carrier(s) (LECs) do not develop mutually agreeable methods of (i) providing payment to the LEC(s) for unauthorized intraLATA traffic, or (ii) diverting the traffic to the LEC's network. This plan consists of the following steps:

METHOD:

1. Each individual IC will develop the conversation minutes of unauthorized intraLATA calling by study or analysis of monthly billing records and will restudy to update at least every three months. The method for study and analysis may be either an analysis of all billing records from the involved exchanges or by a statistical study with a minimum sample of 5.0% of the calls from involved exchanges. Where sampling is employed, the IC must present its sampling plan and technique to the Commission's Division of Economics and Finance for acceptability of confidence levels and validity.

(NOTE) The calculations in 2 through 4, below, will reflect the LEC's total Virginia Access Service to all ICs.

2. The LEC will determine the sum of: Switched Access revenue; plus, Special Access revenue from services which are capable of carrying unauthorized intraLATA communications.

3. The LEC will determine the total access minutes by adding Switched Access minutes to the estimated Special Access minutes produced by multiplying 1/2 of the channel terminations, associated with Special Access services capable of carrying unauthorized intraLATA communications, times 3,200 minutes.

4. The LEC will determine the Access Charge credit for each intraLATA conversation minute by dividing the amount from 2, above, by the amount from 3, above, then multiplying by 2.177.

5. The LEC will determine the percentage of their billed intraLATA revenue which is considered uncollectible.

6. The LEC will develop a factor by dividing the amount from 1, above, by the amount from 3, above. This factor will be used for the other two months of the three month study cycle to determine the amount corresponding to 1, above. An IC may choose to determine the minutes in 1, above, every month, instead of having the LEC use this factor.

7. The LEC will develop its gross intraLATA revenue per conversation minute by dividing its total customer-dialed MTS revenue by the associated conversation minutes. This amount will be developed monthly.

8. The IC's monthly payment to the LEC will be developed by first subtracting 4, above, from 7, above, and reducing the resulting amount for the uncollectible amount produced by applying the percentage from 5, above; then, this adjusted per minute amount is multiplied by the minutes from 1, above, or the surrogate amount as computed by using the factor from 6, above.

9. Subject to appropriate protective agreements for proprietary information, the LECs, through the Virginia Telephone Association, will be allowed to audit the IC's data used to derive the unauthorized minutes in 1, above, and the ICs will be allowed to audit the LEC's data used to derive the average revenue and access charges per minute of use. The Commission staff will also assume audit responsibility. The Commission's Division of Communications, with any necessary assistance from the Division of Public Utility Accounting will review the IC's and LEC's data and computations as they deem necessary. Upon request from either the ICs or LECs, specific figures or data may be reviewed and results reported by the staff. This does not preclude an IC or LEC from retaining an outside auditor to audit the others' books if agreeable to the owner of the applicable data.

10. The LECs shall not be required to place the compensation plan in their tariffs.

COMPENSATION PLAN

Formula For Payment Determination

Definitions

Let:

U = unauthorized intraLATA conversation minutes from all sources

S = intrastate Switched Access revenues

A = intrastate Special Access revenues from services capable of carrying unauthorized intraLATA traffic

M = intrastate Switched Access minutes

R = revenues from intraLATA, intrastate message toll service

W = intraLATA, intrastate message toll service conversation minutes

N = ratio of uncollectible intraLATA revenues to gross intraLATA revenues

T = number of Special Access channel terminations of services capable of carrying unauthorized intraLATA traffic

Access Charge Credit (E)

E = 2.177 [(S+A) / (M+(T/2) (3200))]

Payment Amount (P)

P = U [(R / W) E) (1-N)]

20 VAC 5-400-140. Investigation of the resale or sharing of foreign exchange and dedicated channel services. *(Repealed.)*

FINAL ORDER

On March 8, 1985, the Commission initiated this proceeding by issuing its Order of Publication of Proposed Investigation. The object was to determine whether resellers of interexchange telecommunications service using dedicated channels should be treated differently from those persons reselling or sharing intrastate Wide Area Telephone Service (WATS).

On April 19, 1985, William Irby of the Commission's staff filed a report pointing out a number of problems that might affect the status of both facility-based carriers and resellers. In light of that, the Commission entered its Order Expanding Investigation on June 21, 1985, and invited the parties to respond to any or all of seven issues listed in the order. Because that order of June 21 did not receive distribution to all parties, an order was entered September 4, 1985, inviting additional comments on the seven issues and a staff reply to those comments. Responses were duly received from 11 interested parties. On November 8, 1985, Senior Utility Specialist Larry J. Cody filed a report that summarized the comments and offered an analysis of each of the seven issues. In addition, Mr. Cody proposed two rules for interexchange resale carriers. This docket has been inactive since the filing of that report.

The Commission has held this docket open to continue to assess the economic forces affecting the resale of interexchange services. The advent of strong competition between the major facility-based interexchange carriers has affected the market niche filled by resellers. Resellers were able to flourish when there was a large disparity between bulk priced services such as private lines and WATS and the retail priced Message Telephone Service (MTS). Resellers were able to purchase large blocks of bulk services from certificated interexchange carriers and then re-offer them to firms at a price that was considerably less than those firms would pay for MTS from the large carriers.

Now, however, the large certificated interexchange carriers are repricing their services to attract the small and middle-sized firms that had served as the customers of resellers. The price disparity between bulk priced dedicated channels or WATS type services and MTS has narrowed. Moreover, resellers have had to subscribe to service under the access service tariffs of local exchange carriers so that their costs of doing business have increased. The resulting squeeze between rising costs and declining prices has hurt the profitability of resellers. Consequently, many small resale firms have merged or have been bought out by larger companies. Only by obtaining economies of scope and scale can resellers hope to retain their market niche and show profitability. One consequence of the shrinking and consolidation of the resale market has been a lessening of the need for the Commission to address inequities that in 1985 appeared to favor resellers to the disadvantage of certificated facility-based carriers.

The Commission is now of the opinion that it need not impose any additional rules or regulations upon interexchange resellers. Resellers of WATS should continue to operate in the manner authorized by our Final Order in Case No. PUC830005, entered June 7, 1983, that is, they will not be subject to Commission regulation and will not be required to obtain certificates of public convenience and necessity. Resellers making use of dedicated channels should enjoy the same status as WATS resellers. The bulk of interexchange services will be provided by the facility-based certificated interexchange carriers. Resellers that have the ingenuity and efficiency to cultivate a market niche will serve the public interest by promoting the wide-spread use of economically priced telecommunications services. That service will complement rather than impede the services offered by the certificated interexchange carriers. The public will also benefit from the enhanced services and pricing alternatives that resellers can offer.

The Commission appreciates the comments filed by each party in this docket. Those comments and the two reports filed by the Commission staff provided many economic insights that the Commission has used in evaluating the development of the resale market.

While the Commission does not desire to continue to retain this as an open docket, it will not hesitate to institute a new proceeding upon the complaint of any person that resellers are acting contrary to the Code of Virginia or contrary to public interest. Accordingly,

IT IS THEREFORE ORDERED that this docket be closed and the record developed herein be placed in the file for ended causes.

20 VAC 5-400-150. Investigation of deregulation of telephone company billing and collection services. *(Repealed.)*

INTERIM ORDER

By order entered April 17, 1987, the Commission invited comments from Virginia's local exchange carriers ("LECs"), interexchange carriers ("IXCs") and the public concerning possible deregulation of telephone company billing and collection services. Comments were filed by interested parties on or before May 15, 1987 and a report was submitted by the Division of Communications June 26, 1987. An order inviting responses was entered September 29, 1987, instructing any party that desired a hearing to request same on or before October 12, 1987. The only response to that order was filed by the Chesapeake & Potomac Telephone Company of Virginia (C&P) asking that the Commission either issue an interim order setting forth its tentative resolution of the issues or provide an opportunity for additional pleadings replying to the comments of other parties and to the Staff's report. Having considered that request, the Commission is of the opinion that it should do both, announcing its tentative conclusions in this order and allowing the parties additional time for replies. Accordingly,

IT IS THEREFORE ORDERED THAT:

A. Until further Order of the Commission:

1. Billing and collection service shall remain a regulated activity;

2. LECs shall continue to file tariffs for their billing and collection services, even though the tariffs may represent individually negotiated billing and collection agreements with IXCs;

3. LECs may continue to terminate service to subscribers who fail to pay for long distance services provided by a certificated IXC and billed by the LEC, but may not do so while the customer has a bona fide dispute with the IXC for whom the LEC is billing;

4. LECs shall not discriminate in the quality of like services offered to IXCs, but may offer different pricing and packaging of the services;

5. LECs may not deny billing and collection service to any requesting, certificated IXC unless authorized by the Commission; and

6. LECs may collect deposits for IXCs but only upon criteria established by the IXCs.

B. All parties herein may respond to these interim findings and conclusions as well as to comments of other parties and to the staff report on or before February 22, 1988.

20 VAC 5-400-151. Disconnection of local exchange telephone service.

CHAPTER 413.
RULES GOVERNING DISCONNECTION OF LOCAL EXCHANGE TELEPHONE SERVICE.

20 VAC 5-413-10. Disconnection for failure to pay.

A. A Local Exchange Company *Carrier* ("LEC") may terminate local exchange service only for a customer's failure to pay for noncompetitive services billed on behalf of the LEC when the *local exchange* services are in tariffs on file with the Virginia State Corporation Commission and there is no bona fide dispute concerning such *the* services. After intraLATA dialing parity has been implemented, a LEC may not terminate local exchange service for a customer's failure to pay for the LEC's intraLATA toll services.

20 VAC 5-413-20. Notice.

B. *A.* LECs shall indicate on customers' monthly bills either those items for which service may be terminated or those items for which service may not be terminated for failure to pay and shall include an explanation, by footnote or otherwise, that local telephone service may not be terminated for failure to pay for certain services.

B. The form of this notification must receive prior approval from the commission's Division of Communications.

C. LEC White Pages telephone directories published more than 60 days after the date of the order adopting this section shall include an explanation of the services for which local exchange service may be terminated for failure to pay.

20 VAC 5-413-30. Access to other interexchange carriers.

~~D.~~ A LEC billing on behalf of an interexchange carrier may, together with the interexchange carrier, block a customer's access to the interexchange carrier when the toll charges of the interexchange carrier have not been paid by that customer; but the LEC may not block that customer's access to other interexchange carriers for such nonpayment.

20 VAC 5-413-40. Payment credit.

~~E.~~ Customer payments that are less than the total bill balance shall be credited first to any noncompetitive tariffed services, with any remainder credited to any other charges on the bill.

20 VAC 5-400-160. ~~Rulemaking concerning treatment of telephone company simple inside wiring.~~ *(Repealed.)*

~~INTERIM ORDER~~

~~On October 21, 1986, the Virginia Telephone Association (VTA) on behalf of Virginia local exchange companies (LECs) filed an application asking the Commission to initiate a generic investigation concerning the deregulation of simple inside wiring, the maintenance of all inside wiring, and the future ownership of inside wiring once it has been expensed or fully amortized. On November 12, 1986, the Commission entered an order initiating the requested rulemaking and inviting comments. Nine of Virginia's 20 LECs submitted comments. On September 4, 1987, the Commission's Division of Communications submitted its report recommending a three-phase approach to the ultimate deregulation of inside wiring.~~

~~The Commission agrees with the staff's recommendation that Phase I be implemented. This is an appropriate first step in light of the uncertainty surrounding the Federal Communications Commission's (FCC) Memorandum Opinion and Order in Case No. CC79-105 released November 21, 1986 and the appeals that were taken from that order to the District of Columbia Circuit Court of Appeals, NARUC, et al. v. FCC et al. Case No. 86-1678 (and consolidated cases 880 F2d. 422 (1989)). Regardless of the outcome of the FCC's reconsideration of its preemption Memorandum Opinion and Order or the appeals taken from it, all Virginia LECs should unbundle inside wire maintenance from their basic monthly access rates. Accordingly,~~

~~IT IS THEREFORE ORDERED:~~

~~1. That on or before June 30, 1988, all Virginia LECs who have not done so file tariff revisions for Commission staff consideration to establish an optional inside wire monthly maintenance charge. The minimum charge shall be no lower than the Company's estimated inside wire maintenance cost, and the maximum charge can be established at a level deemed appropriate by the Company. In order that the unbundling be accomplished without effecting a rate increase to subscribers, monthly local exchange rates shall be reduced by the amount the Company has set for its monthly inside wire maintenance charge. If a company elects to decrease monthly rates by an amount less than the wire maintenance charge, rate increase procedures must be followed.~~

~~2. That Central Telephone Company of Virginia, GTE South, and United Inter-Mountain Telephone submit to the staff cost data to support the tariff revisions required by one above. This cost data should contain as a minimum the total company (unseparated) embedded fully distributed 1987 costs using Separations Manual allocation techniques, broken down into the most detailed level of account or subaccount maintained by the Company.~~

~~3. That the small companies who have not unbundled wire maintenance submit to the staff 1987 cost data based on their estimated percent of total repairs of station equipment expense attributable to inside wire maintenance expense, together with reasonable allocations of overhead expense and supporting investment costs.~~

~~4. That each company file with the tariff revisions its intended notification to subscribers of the availability and cost of optional inside wire maintenance, and provide a ballot on which the subscriber can indicate that (i) he or she desires to subscribe to the company's inside wire maintenance program and pay the applicable price or that (ii) he or she chooses not to subscribe and will assume the risk of providing his or her own inside wire maintenance. The Company shall show inside wire maintenance charges as a separate line item on the monthly bills of those subscribers opting for the service; and~~

~~5. The companies may proceed with implementation upon staff notification.~~

~~6. That the Commission shall enter further orders advising LECs and other interested parties of developments from the federal appeal and further proceedings necessary to implement additional phases leading to ultimate regulatory treatment of inside wire maintenance.~~

~~20 VAC 5-400-170. In the matter of implementing dual-party relay service pursuant to Article 5 (§ 56-484.4 et seq.) of Chapter 15 of Title 56 of the Code of Virginia.~~

~~INITIAL ORDER~~

~~The 1990 Session of the Virginia General Assembly enacted statutes providing for the establishment of a dual-party relay service in Virginia. Those statutes have been codified as Article 5 (§ 56-484.4 et seq.) of Chapter 15 of Title 56 of the Code of Virginia. Pursuant to Article 5, a contract has been awarded to AT&T to operate the relay center in Norton, Virginia. The Commission has opened this docket to address~~

CHAPTER 415.
RULES GOVERNING TELECOMMUNICATIONS RELAY SERVICE.

20 VAC 5-415-10. Applicability.

This chapter applies to the assessment, collection, and disbursements of the rate surcharges authorized by § 56-484.6 of the Code of Virginia. ~~Accordingly,~~

~~IT IS THEREFORE ORDERED:~~

~~1. That this matter is hereby docketed and assigned Case No. PUC900029;~~

20 VAC 5-445-20. Imposition and collection of surcharge.

~~2. That~~ *A.* Commencing with telephone service rendered on and after ~~November 15, 1990~~ *September 1, 1998*, each Virginia local exchange ~~company~~ *carrier* (*"*LEC*"*) shall impose a ~~$.10~~ *$.16* per month surcharge on each access line or equivalent centrex access line and shall continue ~~such~~ *the* surcharge monthly until further order of the commission.

B. Direct distance dialed calls placed through the Relay Center shall receive at least a 40% day time discount and at least a 60% evening, night, weekend, and holiday discount.

C. Customers shall be notified of the surcharge by a bill insert and the surcharge shall be identified on each customer bill as the "Virginia Relay Center surcharge~~;~~."

D. Virginia LECs should place information facilitating use of the Relay Center in their published white pages directories.

~~3. That~~ *E.* Each Virginia LEC, on ~~December 15, 1990~~ *October 1, 1998,* and monthly thereafter, shall, pursuant to instructions from the Director of the Division of Public Service Taxation, pay over to the commission's Division of Public Service Taxation the funds collected from the surcharge, less a ~~3.0%~~ *2.0%* commission as authorized by § 56-484.6 B of the Code of Virginia~~;~~*.*

~~4. That~~ *F.* The commission shall make payments to the provider of the relay service pursuant to the terms and conditions of the provider's contract and shall make any other payments necessary to operate the Relay Center~~;~~.

~~5. That,~~ *G.* Beginning in January, 1991, the commission's Division of Communications shall monitor the monthly expenses associated with providing ~~dual-party~~ *telecommunications* relay service to assure that the revenue received from the LECs is sufficient to cover the costs of the service~~;~~.

~~6. Direct distance dialed calls placed through the Relay Center shall receive at least a 40% daytime discount and at least a 60% evening, night, weekend, and holiday discount;~~

~~7. Virginia LECs should place information facilitating use of the Relay Center in their next published white pages directories; and~~

~~8. That this matter is continued generally and this docket shall remain open to address any additional concerns in the operation of the dual-party relay service.~~

~~20 VAC 5-400-190. Virginia State Corporation Commission Procedural Rules for Implementing §§ 251 and 252 of the Telecommunications Act of 1996, 47 USC §§ 251 and 252.~~

~~A. Preliminary matters.~~

CHAPTER 419.
PROCEDURAL RULES FOR IMPLEMENTING §§ 251 AND 252 OF THE TELECOMMUNICATIONS ACT OF 1996, 47 USC §§ 251 AND 252.

20 VAC 5-419-10. General procedure.

~~1.~~ *A.* Any reference in ~~these procedural rules~~ *this chapter* to "interested parties" shall initially refer to the service list attached to the Order Prescribing Notice and Inviting Comments entered in ~~this~~ Case~~,~~ *No.* PUC960059. Any other person who wishes to be included on this service list as an "interested party" under this ~~section~~ *chapter* may file such a request with the Clerk of the State Corporation Commission ~~("commission")~~. A master list shall be kept by the clerk ~~of the Commission~~ and shall be updated as necessary. ~~Any~~ *A* reference in this ~~section~~ *chapter* to service upon interested parties shall ~~subsequently~~ mean service on all parties included on this master service list as updated by the clerk's office, unless this service list has been modified in accordance with ~~subdivisions B3, C5, and D3 of~~ this ~~section~~ *chapter*. Any reference in this ~~section~~ *chapter* to a person shall include a person or an entity.

~~2. Any~~ *B. An* arbitration request which has issues resolved through negotiations, but not filed as a separate agreement, will be considered as one proceeding through the arbitration procedure set out in ~~subsection C of this section~~ *20 VAC 5-419-30*. The resolved portions of the agreement shall be reviewed under 47 USC § 252(e)(2)(A), and arbitrated portions of the agreement shall be reviewed under 47 USC § 252(e)(2)(B). ~~Any~~ *An* arbitration request having issues resolved through negotiations and filed as a separate agreement will be considered as two proceedings. The separate negotiated agreement shall be considered under ~~subsection B of this section~~ *20 VAC 5-419-20* and any unresolved issues will be considered under ~~subsection C of this section~~ *20 VAC 5-419-30*.

~~3.~~ *C.* The commission may deviate from the provisions of this ~~section~~ *chapter* as it deems necessary to fulfill its obligations under 47 USC §§ 251 and 252.

~~4.~~ *D.* The filing of an arbitration request shall not preclude the parties from continuing negotiations on unresolved issues. Those issues that are resolved after an arbitration request has been filed with the commission shall be considered negotiated provisions, subject to appropriate notice requirements under the proposed arbitration procedures.

~~5.~~ *E.* To the extent there is conflict between this ~~section~~ *chapter* and the State Corporation Commission's Rules of Practice and Procedure (~~5 VAC 5-10-10 et seq.) (hereinafter referred to as "Practice and Procedure Rules"~~ *5 VAC 5-20-10 et seq.*), this ~~section~~ *chapter* shall control.

~~6.~~ *F.* No provision of this ~~section~~ *chapter* shall interfere with the commission's power to direct a hearing examiner to consider any issue or issues which arise during these proceedings.

~~7.~~ *G.* The provisions of this ~~section~~ *chapter* which require the filing of supporting documentation or evidence shall require strict compliance. Failure to file supporting documentation or evidence as required by this ~~section~~ *chapter* may result in denial of the relief sought by the party failing to comply, or in a decision adverse to that party's position on the merits.

~~8.~~ *H.* The commission may, in its discretion, order an evidentiary hearing to address issues that arise in these proceedings or may deny a hearing request when a hearing is not necessary to resolve the issues at hand. The commission may also consolidate proceedings or common issues from two or more proceedings.

~~B.~~ *20 VAC 5-419-20.* Agreements arrived at through negotiation.

The following procedure shall be observed when parties who have negotiated and entered into a binding agreement for interconnection, services, or network elements under 47 USC § 252(a)(1) submit their voluntarily negotiated agreement for review by the commission under 47 USC § 252(e):

1. The parties shall file the agreement with the commission and on or before that same day shall serve a notice of filing, which describes the terms and conditions of the agreement or a copy of the negotiated agreement itself, on all interested parties and the commission staff, in accordance with ~~Practice and Procedure Rule 5:13 (5 VAC 5-10-390)~~ *5 VAC 5-20-140*. If a person specifically requests a copy of the negotiated agreement, the parties shall promptly serve a copy of the agreement on the person making the request.

2. Within 21 days of the filing of the negotiated agreement, any person may submit comments regarding the agreement. ~~Such~~ *These* comments shall include all supporting documentation. The comments shall be limited to the criteria for review under 47 USC § 252(e)(2)(A). ~~Any~~ *A* request for hearing must be filed with the comments. Absent a showing of good cause for a hearing, the commission may review the negotiated agreement without a hearing. Any person filing comments or a request for hearing, or both, shall, on or before the date of filing of such comments or request, serve a copy on the parties to the negotiation and the commission staff in accordance with ~~Practice and Procedure Rule 5:13 (5 VAC 5-10-390)~~ *5 VAC 5-20-140*. Upon the request of ~~any other~~ *another* person, a person shall promptly serve a copy of the comments or request for hearing, or both, on the persons making the request.

3. After the deadline for comments or requests for hearing, the service list for the case shall be limited to the parties to the negotiations, the commission staff and any persons filing comments or requests for hearing, or both (~~hereinafter referred to as~~ "modified service list").

4. Within 35 days of the filing of the negotiated agreement, the parties to the negotiated agreement may file a response to any comments filed. ~~Such a~~ *This* response shall include all supporting documentation, and shall be served on the modified service list and the commission staff, on or before the filing date, in accordance with ~~Practice and Procedure Rule 5:13 (5 VAC 5-10-390)~~ *5 VAC 5-20-140*.

~~C.~~ *20 VAC 5-419-30.* Agreements arrived at through compulsory arbitration.

The following procedure shall be followed when a party to a negotiation petitions the commission to arbitrate any unresolved issues under 47 USC § 252(b):

1. Any party to a negotiation may petition ("petitioning party") the commission to arbitrate any unresolved issue in accordance with the deadlines set out in 47 USC § 252(b)(1). The arbitration request shall be filed as a petition, including all supporting documentation, and must conform with 47 USC § 252(b)(2). Along with its petition, the petitioning party shall file any request for hearing along with any prefiled direct testimony and all materials it will rely on to support its case at the hearing, including all evidence it intends to present. In its petition, the petitioning party shall certify its compliance with the duty to negotiate in good faith provision of 47 USC § 251(c)(1). In addition to its obligation to serve a copy of the petition on the other party or parties to the negotiation, the petitioning party shall serve a notice of filing which describes the contents of the arbitration petition or a copy of the petition itself on all interested parties and the commission staff, on or before the same day it is filed with the commission, in accordance with ~~Practice and Procedure Rule 5:13 (5 VAC 5-10-390)~~ *5 VAC 5-20-140*. If a person specifically requests a copy of the petition, the petitioning party shall promptly serve a copy of the petition on the person making the request.

2. Within 25 days after the petition requesting arbitration is filed with the commission, the nonpetitioning party to the negotiation ("responding party") may file a response and any additional information as provided under 47 USC§ 252(b)(3). In addition, with its response, if a request for hearing was filed by the petitioning party, the responding party shall file any prefiled direct testimony and all materials it will rely on to support its case at the hearing, including all evidence it intends to present. If no request for hearing was filed by the petitioning party, the responding party may file, with its response, a request for hearing along with any prefiled direct testimony and all materials it will rely on to support its case at the hearing, including all evidence it intends to present. The response shall include any supporting documentation and shall be served on the petitioning party and commission staff, and a notice of filing which describes the contents of the response or a copy of the response itself shall be served on all interested parties, on or before the date the response is filed with the commission, in accordance with ~~Practice and Procedure Rule 5:13 (5 VAC 5-10-390)~~ *5 VAC 5-20-140*. If a person specifically requests a copy of the response, the responding party shall promptly serve a copy of the response on the person making the request. If no timely request for hearing is received, the commission may arbitrate the unresolved issues and review the resolved issues without a hearing.

3. Comments on the petition and response may be filed no more than 45 days after the petition is filed with the commission. Comments relating to unresolved issues in the petition shall be limited to the standards for reviewing arbitrated agreements under 47 USC § 252(c) and 47 USC § 252(e)(2)(B). Comments relating to the issues resolved in the negotiation which is the subject of the arbitration petition shall be limited to the standards for reviewing negotiated agreements under 47 USC § 252(e)(2)(A). Comments shall include all supporting documentation.

4. If a hearing request has been filed by either the petitioning or the responding party, ~~any~~ *a* person wishing to participate in the hearing shall file, by the deadline for filing comments, a notice of participation which shall contain (i) a precise statement of the party's interest in the proceeding; (ii) a full and clear statement of the facts which the interested party is prepared to prove by competent

evidence, the proof of which will warrant the relief sought; and (iii) a statement of the specific relief sought and legal basis therefor. Along with the notice of participation, the person wishing to participate in the hearing shall also file all supporting documentation, including testimony and evidence it will rely on to support its position at the hearing. ~~Any~~ *A* person filing comments or a notice of participation, or both, shall, on or before the day of the filing, serve a copy on the petitioning and responding parties and the commission staff in accordance with ~~Practice and Procedure Rule 5:13 (5 VAC 5-10-390)~~ *5 VAC 5-20-140*. Upon the request of ~~any other~~ *another* person, a person filing comments or a notice of participation, or both, shall promptly serve a copy of the comments or notice on the person making the request. In addition, if the responding party filed a hearing request, the petitioning party's prefiled direct testimony, if any, and all materials it will rely on to support its case at the hearing, including all evidence it intends to present shall be filed and served on the responding party and the commission staff by the deadline for filing comments by persons.

5. After the deadline for comments or notices of participation, the service list for the case shall be the modified service list, limited to the parties to the arbitration petition, the commission staff and any persons filing comments or notices of participation, or both.

6. Nine months or sooner after the request for interconnection, services, or network elements was received by the incumbent local exchange ~~company~~ *carrier*, the commission shall issue its decision resolving the unresolved issues. In its order, the commission shall provide a deadline for the parties to the negotiation to provide the commission with a formalized agreement.

7. The parties shall submit the formalized agreement as an agreement adopted by arbitration for commission review under 47 USC § 252(e), in compliance with the deadlines set by the commission. On or before submission of the formalized agreement, the parties will serve a copy of the agreement on the parties on the modified service list, and the commission staff, in accordance with ~~Practice and Procedure Rule 5:13 (5 VAC 5-10-390)~~ *5 VAC 5-20-140*.

8. Within 10 days after the formalized agreement is filed with the commission, any person may file comments on the agreement. Such comments shall be limited to the grounds for rejection as listed in 47 USC § 252(e)(2) and shall include all supporting documentation. Simultaneously with their filing, comments shall be served on the parties to the agreement and the commission staff by next day delivery, and to the parties on the modified service list, in accordance with ~~Practice and Procedure Rule 5:13 (5 VAC 5-10-390)~~ *5 VAC 5-20-140*.

9. Within 15 days after the formalized agreement is filed with the commission, any party to the agreement may file reply comments in direct response to ~~any~~ comments filed under subdivision 7 of this subsection. Such reply shall include all supporting documentation, and shall be served on the modified service list and the commission staff, on or before the filing date, in accordance with ~~Practice and Procedure Rule 5:13 (5 VAC 5-10-390)~~ *5 VAC 5-20-140*.

~~D.~~ *20 VAC 5-419-40.* Statement of generally available terms.

The following procedure shall be followed when a Bell Operating Company ("BOC") files a statement of generally available terms and conditions:

1. The BOC shall, on or before the day the statement is filed with the Clerk of the Commission, serve a notice of filing which generally describes the terms and conditions of the statement or a copy of the statement itself on all interested parties in accordance with ~~Practice and Procedure Rule 5:13 (5 VAC 5-10-390)~~ *5 VAC 5-20-140*. If a person specifically requests a copy of the statement, the BOC shall promptly serve a copy of the statement on the person making the request. The BOC shall, on or before the date of filing, serve a copy of the statement on the commission staff in accordance with ~~Practice and Procedure Rule 5:13 (5 VAC 5-10-390)~~ *5 VAC 5-20-140*. The filing shall include a detailed explanation of how the statement complies with 47 USC § 252(d) and 47 USC § 251 and the regulations thereunder, and shall include all supporting documentation.

2. Comments may be filed within 21 days of the filing of the statement. Comments shall be limited to whether the statement complies with 47 USC § 252(d) and 47 USC § 251 and the regulations thereunder, and shall include all supporting documentation. Any request for hearing shall be filed with the comments. The commission will grant a hearing request only if good cause is shown. Comments or requests for hearing, or both, shall, on or before the date of filing, be served upon the BOC and the commission staff in accordance with ~~Practice and Procedure Rule 5:13 (5 VAC 5-10-390)~~ *5 VAC 5-20-140*. Upon the request of any other person, a person shall promptly serve a copy of the comments or request for hearing, or both, on the person making the request.

3. After the deadline for comments or requests for hearing has passed, the service list for the case shall be the modified service list, limited to the BOC, the commission staff, and ~~an~~ *any* persons filing comments or requests for hearing, or both.

~~20 VAC 5-400-200. Procedural rules governing exemption from providing physical collocation pursuant to § 251(c)(6) of the Telecommunications Act of 1996.~~

CHAPTER 421.
RULES GOVERNING EXEMPTION FROM PROVIDING PHYSICAL COLLOCATION PURSUANT TO §§ 251(C)(6) OF THE TELECOMMUNICATIONS ACT OF 1996.

20 VAC 5-421-10. Procedure; exemption request.

A. ~~1.~~ The incumbent local exchange carrier (ILEC) shall submit an original and 15 copies of its application requesting exemption to provide physical collocation with the Clerk of the State Corporation Commission ~~(commission), c/o Document Control Center, 1300 East Main Street, P.O. Box 2118, Richmond, Virginia 23218~~. Three copies of the floor plan required ~~in subdivision B 2 of this section~~ *by 20 VAC 5-421-20 B* shall be provided to the commission's Division of Communications.

~~2.~~ *B.* The ILEC shall file an exemption request only when no physical collocation space is available at the ILEC's ~~premise~~ *premises*.

~~3.~~ *C. 1.* The ILEC shall file an application requesting exemption to provide physical collocation at any ~~premise~~ *premises* within 30 days of a denial to a carrier of space as described in subdivision 2 of this subsection.

2. If the exhaustion of space is determined outside of a denial to a carrier, the ILEC shall file its application within 45 days of such a determination.

~~4. A carrier that has been denied an amount of space or a specific collocation arrangement in a premise where some physical collocation space or alternative arrangements are still available may initiate a complaint with the commission in accordance with its Rules of Practice and Procedure (5 VAC 5-10-10 et seq.).~~

~~5.~~ *D. 1.* The ILEC shall furnish written notice of any request for exemption of physical collocation to all certificated local exchange carriers and interexchange carriers in Virginia.

2. The ILEC shall provide a copy of the application to interested parties upon request.

3. The ILEC shall also make available any proprietary information provided under ~~subsection B of this section~~ *20 VAC 5-421-20* to interested parties in a timely manner and pursuant to a confidentiality agreement.

E. A carrier that has been denied an amount of space or a specific collocation arrangement in an ILEC's premises where some physical collocation space or alternative arrangements are still available may initiate a complaint with the commission in accordance with its Rules of Practice and Procedure (5 VAC 5-20-10 et seq.).

~~6.~~ *F. 1.* The ILEC shall provide a tour of any ~~premise~~ *premises* to a carrier that has been denied collocation space or arrangement.

2. In addition, the ILEC shall schedule tours of ~~a premise~~ *its premises* for interested parties and commission staff once an exemption request has been filed with the commission.

3. These tours shall be provided in a timely manner; however, the ILEC may coordinate any tours between the parties in order to minimize any disruption at the ~~premise~~ *premises*.

~~7.~~ *G. 1.* Any ILEC which has been granted an exemption to provide physical collocation at any ~~premise~~ *premises* shall file a status report yearly from the date the exemption was granted. The report shall identify any changes to the previously provided documentation required in ~~subsection B of this section~~ *20 VAC 5-421-20*.

2. An ILEC shall notify the commission of any material changes that will make space available at ~~an~~ *any* exempt ~~premise~~ *premises* within 30 days of a determination that the change will occur.

20-VAC 5-421-20. Contents of exemption request.

~~B. 1. Any~~ *A. A* request submitted by an ILEC for an exemption from physical collocation shall specifically identify the ~~premise~~ *premises* (including exchange, wire center, CLLI code, brief description, V&H coordinates, and address) where the exemption is requested, the expected duration of the exemption, and the criteria for which the request is being made, i.e., space limitation and/or technical reason.

~~2.~~ *B.* The ILEC shall submit current*,* clearly labeled floor plans/diagrams of the ~~premise~~ *premises* of at least a 1/8"=1' scale which, at a minimum, identifies the following:

~~a.~~ *1.* Equipment *that is* in use and its function, i.e., mechanical, power, switching, transmission, etc.

~~b.~~ *2.* Equipment *that is* being phased out, *is* not in use ~~and/or~~*, or is being* stored.

~~c.~~ *3.* Space reserved by the ILEC for future use as of the preparation date of the floor plan/diagram.

~~(1)~~ *a.* Within six months (imminent equipment placement).

~~(2)~~ *b.* After six months but within two years.

~~(3)~~ *c.* After two years.

~~d.~~ *4.* Physical collocation space.

~~e.~~ *5.* Administrative and other nonequipment space.

~~3.~~ *C.* For ~~any~~ equipment ~~being phased out, not in use and/or stored,~~ identified in subdivision ~~2 b~~ *B 2* of this subsection, the ILEC shall provide the expected retirement and removal date or dates.

~~4.~~ *D.* For ~~any~~ space reserved in subdivision ~~2 c~~ *B 3* of this subsection, the ILEC shall include the specific use or uses for which it is planned. In addition, for space reserved for more than two years, the ILEC shall specify the timeframes reserved and provide a detailed explanation of why alternative space (i.e., building additions, expected retirements, rearrangements) would not accommodate future space needs.

~~5.~~ *E.* For collocation space identified in subdivision ~~2 d~~ *B 4* of this subsection, the ILEC shall identify the amount of space utilized by each available type of collocation arrangement. In addition, the ILEC shall identify the amount of space utilized and/or reserved by each carrier.

~~6.~~ *F.* The ILEC shall submit a detailed description and analysis of ~~any~~ *all* equipment rearrangements, administrative space relocation*,* and~~/or~~ building expansion plans, including timelines of each project for the premise in which the exemption is requested.

~~7.~~ *G.* The ILEC shall provide a detailed description of ~~any~~ efforts or plans to avoid space exhaustion in the ~~premise~~ *premises* for which the exemption is requested. Such description should include the proposed timeline of ~~any such~~ *these* plans and estimation of the duration of the exemption.

~~8.~~ *H.* To the extent that an ILEC claims that space is unavailable due to security or access constraints, an explanation of ~~any~~ efforts the ILEC has undertaken to overcome such constraints shall be submitted.

VA.R. Doc. No. R01-243; Filed June 27, 2001, 11:29 a.m.

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REGISTRAR'S NOTICE: The State Corporation Commission is exempt from the Administrative Process Act in accordance with § 9-6.14:4.1 A 2 of the Code of Virginia, which exempts courts, any agency of the Supreme Court, and any agency which by the Constitution is expressly granted any of the powers of a court of record.

The distribution lists that are referenced as Appendices A through C in the following order are not being published. However, these lists are available for public inspection at the State Corporation Commission, Document Control Center, Tyler Building, 1st Floor, 1300 East Main Street, Richmond, Virginia 23219, from 8:15 a.m. to 5 p.m., Monday through Friday; or may be viewed at the Virginia Code Commission, General Assembly Building, 2nd Floor, 910 Capitol Street, Richmond, Virginia 23219, during regular office hours.

Title of Regulation: **20 VAC 5-423-10 et seq. Rules Governing the Discontinuance of Local Exchange Telecommunications Services Provided by Competitive Local Exchange Carriers.**

Statutory Authority: § 12.1-13 of the Code of Virginia.

Summary:

The proposed regulations establish the specific duties of both Competitive Local Exchange Carriers (CLECs) and incumbent local exchange carriers before local exchange service in Virginia may be discontinued by any CLEC. The commission believes that the adoption of rules is necessary to help prevent the potential disruption of customer service when a CLEC discontinues service.

Agency Contact: Katie Cummings, Division of Communications, State Corporation Commission, 1300 E. Main Street, Richmond, Virginia 23219, telephone (804) 371-9101 or e-mail kcummings@scc.state.va.us.

AT RICHMOND, JUNE 20, 2001

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

CASE NO. PUC010128

Ex Parte: In the matter of
establishing rules governing
the discontinuance of local
exchange telecommunications services
provided by competitive local
exchange carriers

ORDER FOR NOTICE AND COMMENT OR REQUESTS FOR HEARING

To date, the State Corporation Commission ("Commission") has granted certificates to over 200 competitive local exchange carriers ("CLECs") authorizing the provision of telecommunications services within the Commonwealth of Virginia. Not all of these companies presently provide service to Virginia customers in the Commonwealth of Virginia. However, recently a number of those providing service in Virginia, or their corporate parents, have filed for protection under the United States Bankruptcy Code.[1] The Commission is concerned that the consequences of such action by a CLEC may adversely impact or disrupt service to consumers in Virginia. We have previously promulgated Rules Governing the Offering of Competitive Local Exchange Service, 20 VAC 5-400-180 ("Local Rules"). Section D 7 of the Local Rules states that:

> [n]o new entrant providing local exchange telephone service shall abandon or discontinue local exchange service without the approval of the commission, and upon such terms as the commission may prescribe.

In light of the increasing financial difficulties many CLECs are facing, the Commission is of the opinion and finds that it should establish a proceeding to adopt specific rules governing the discontinuance of local exchange telecommunications services provided by CLECs. Accordingly, the Commission requested its Staff to develop a set of proposed rules establishing specific duties for CLECs and incumbent local exchange carriers ("ILECs") to follow before local exchange service is discontinued by any CLEC. The proposed Rules Governing the Discontinuance of Local Exchange Telecommunications Services Provided by Competitive Local Exchange Carriers ("Proposed Rules") are shown as Attachment A to this Order. The Commission's Division of Information Resources is directed to forward the Proposed Rules to the Registrar of Virginia for publication in the Virginia Register of Regulations and to make the Proposed Rules available on the Commission's website. Interested persons should be permitted to comment, propose modifications or supplements to, or request a hearing on the Proposed Rules.

In addition, the Commission requests comments from interested parties on the following questions:

1. Should the Commission adopt a contingency plan that requires the ILEC as the carrier of last resort to take back the CLEC's customers if a CLEC discontinues service? If so, under what circumstances, i.e., in only emergency situations or only for resale customers?

2. If the Commission requires the ILEC to take back the CLEC's customers, what additional rules are necessary?

   a. Should there be some transitional period after the customer has been provided service by the ILEC (i.e., 30 days) whereby the customer has to formally subscribe to the ILEC's service or it will be disconnected by the ILEC? How should notice of such a requirement and possible disconnection be given to customers?

   b. What tariffed rates would apply to the services provided by the ILEC during the transition period, i.e., tariffed rates of the ILEC or the CLEC?

[1] See *In re: Investigation of Provision of Service of PICUS Communications of Virginia, Inc.*, Case No. PUC000325, Order Terminating Investigation, issued February 15, 2001; *In re: Application of Northpoint Communications of Virginia, Inc., For cancellation of certificates*, Case No. PUC010097, Final Order issued April 19, 2001; and *In re: Application of Teligent Services, Inc., For approval to discontinue local exchange service in the Richmond Standard Metropolitan Statistical Area*, Case No. PUC010112, Order Granting Motion for Emergency Relief and Petition for Reconsideration, issued May 22, 2001.

3. Should the Commission implement an allocation procedure to distribute CLEC customers to other CLECs in case of discontinuance of service? If so, how should such a plan be developed and implemented?

a. How should CLECs be included in such an allocation procedure? Should CLECs that only want to provide service to some customers or in a specific service area be included?

b. Should a CLEC that does not offer like services or charges higher rates than the discontinuing CLEC be permitted to have customers allocated to it?

c. Should the discontinuing CLEC be required to share its customer information with other CLECs in order for those CLECs to offer service to customers before they are disconnected?

4. What action by this Commission, if any, is needed to ensure that CLECs that have discontinued service in Virginia relinquish their NXXs in order to conserve numbering resources?

5. What action by this Commission, if any, is needed to ensure that collocation space in an ILEC's premise used or reserved by a CLEC that has discontinued service be made available for use by other CLECs?

Pending the adoption of final rules in this proceeding, the Commission suggests that any CLEC desiring to discontinue service or cease operations in Virginia should use the Proposed Rules for guidance in requesting authority to discontinue service pursuant to 20 VAC 5-400-180 D 7.

Accordingly, IT IS ORDERED THAT:

(1) This matter is docketed and assigned Case No. PUC010128.

(2) The Commission's Division of Information Resources shall forward the Proposed Rules to the Registrar of Virginia for publication in the Virginia Register of Regulations.

(3) On or before June 22, 2001, the Commission's Division of Information Resources shall make a downloadable version of the Proposed Rules available for access by the public at the Commission's website, http://www.state.va.us/scc/caseinfo/orders.htm. The Clerk of the Commission shall make a copy of the Proposed Rules available for public inspection and provide a copy of the Proposed Rules, free of charge, in response to any written request.

(4) Interested persons wishing to comment, propose modifications or supplements to, or request a hearing on the Proposed Rules shall file an original and fifteen (15) copies of such comments, proposals, or requests with the Clerk of the Commission, State Corporation Commission, P.O. Box 2118, Richmond, Virginia 23218, on or before July 30, 2001, making reference to Case No. PUC010128.

(5) On or before July 1, 2001, the Commission's Division of Information Resources shall publish the following notice as classified advertising in newspapers of general circulation throughout the Commonwealth of Virginia.

NOTICE TO THE PUBLIC OF A PROCEEDING TO ADOPT RULES GOVERNING THE DISCONTINUANCE OF LOCAL EXCHANGE TELECOMMUNICATIONS SERVICES PROVIDED BY COMPETITIVE LOCAL EXCHANGE CARRIERS, CASE NO. PUC010128

Recognizing that the financial difficulties facing some competitive local exchange carriers ("CLECs") may impact the provision of continuous local exchange telephone service to consumers in Virginia, the State Corporation Commission ("Commission") now proposes rules to govern the discontinuance of local exchange telecommunications services provided by CLECs. Accordingly, the Commission has proposed rules ("Proposed Rules") establishing the specific duties for CLECs and incumbent local exchange carriers to follow before local exchange telecommunications services are discontinued by any CLEC.

Interested parties may obtain a copy of the Proposed Rules by visiting the Commission's website, http://www.state.va.us/scc/caseinfo/orders.htm, or by requesting a copy from the Clerk of the Commission. The Clerk's office will provide a copy of the Proposed Rules to any interested party, free of charge, in response to any written request for one. The Proposed Rules will also be forwarded to the Office of the Registrar of Regulations for publication in the Virginia Register of Regulations.

Any person desiring to comment in writing or request a hearing on the Proposed Rules may do so by directing such comments or requests for hearing on or before July 30, 2001, to the Clerk of the Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218. Comments and requests for hearing must refer to Case No. PUC010128. Requests for hearing shall state with specificity why such concerns cannot be adequately addressed in written comments.

If no requests for hearing are received, a formal hearing with oral testimony may not be held and the Commission may make its decisions administratively, based upon papers filed in this proceeding.

VIRGINIA STATE CORPORATION COMMISSION

(6) This matter is continued for further orders of the Commission.

AN ATTESTED COPY hereof shall be sent by the Clerk of the Commission to: John F. Dudley, Senior Assistant Attorney General, Division of Consumer Counsel, Office of Attorney General, 900 East Main Street, Second Floor, Richmond, Virginia 23219; all local exchange carriers certificated in Virginia as set out in Appendix A; all interexchange carriers certificated in Virginia as set out in Appendix B; all other telecommunications carriers in Virginia as set out in Appendix C; Virginia Cable Telecommunications Association, 1001 East Broad Street, Suite 210, Richmond, Virginia 23219; Virginia Telephone Industry Association, 11 South 12th Street, Suite 310, Richmond, Virginia 23219; and the Commission's Office of General Counsel and Divisions of Communications and Economics and Finance.

CHAPTER 423.
RULES GOVERNING THE DISCONTINUANCE OF LOCAL EXCHANGE TELECOMMUNICATIONS SERVICES PROVIDED BY COMPETITIVE LOCAL EXCHANGE CARRIERS.

20 VAC 5-423-10. Definitions.

The words and terms defined in 20 VAC 5-400-180 A shall have application to this chapter. In addition, the following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise:

"Bankruptcy petition" is the document that initiates a bankruptcy case under Title 11 of the United States Code (11 USC § 101 et seq.) and refers to either Chapter 7 for liquidation or Chapter 11 for reorganization of the debtor. The term includes both voluntary and involuntary bankruptcy petitions.

"Certificate" is the authority granted by the commission to a telephone utility to operate in the state pursuant to § 56-265.4:4 of the Code of Virginia.

"Competitive local exchange carrier" or "CLEC" shall have the same meaning as "new entrant" as defined in accordance with the Rules Governing the Offering of Competitive Local Exchange Telephone Service (20 VAC 5-400-180 A).

"Discontinuance" is a permanent cessation of telephone operations by a CLEC to its customers or the termination of individual local exchange telecommunications service offerings to its customers.

"Grandfathered customers" means the continuation of service to current customers of a service or feature that has been obsoleted.

"Incumbent local exchange carrier" or "ILEC" shall have the same meaning as "incumbent local exchange telephone company" or "incumbent" as defined in accordance with the Rules Governing the Offering of Competitive Local Exchange Telephone Service (20 VAC 5-400-180 A).

"Obsolete a service" is the discontinuance of a service or feature to new customers.

"Resale" occurs when a CLEC purchases telecommunications services on a wholesale basis from the ILEC and resells those services to its customers.

"Unbundled network element" or "UNE" includes the various physical and functional elements of an ILEC's network offered to CLECs on an unbundled basis as a requirement of the Telecommunications Act of 1996 (47 USC § 251(c)(3)).

20 VAC 5-423-20. Requirements for discontinuance.

A. A CLEC intending to cease operations and discontinue the provision of all local exchange telecommunications services in Virginia shall file a formal petition for authority to do so with the commission. The petition shall provide:

1. The number of affected customers and types of service offerings provided;

2. A description of customer notification efforts by the CLEC and copies of any written notice or notices sent or proposed to be sent to the CLEC's customers;

3. A full explanation of the reasons for the proposed discontinuance of operations, including any plan to transfer the CLEC's customers to other carriers; and

4. A request for cancellation of the petitioning CLEC's certificate or certificates to provide local exchange telecommunications services and, if applicable, interexchange telecommunications services upon the approval for discontinuance of the CLEC's local exchange operations. If cancellation of the certificate or certificates is not requested, a concise statement of why the commission should not cancel the certificate or certificates should be given.

B. Customers shall be provided at least 30 days' notice prior to disconnection of service.

C. The CLEC shall provide a toll-free number that customers may call with inquiries prior to the discontinuance of local exchange service.

D. The commission shall determine if sufficient notice has been provided to customers and shall prescribe any additional notice requirements it deems necessary.

20 VAC 5-423-30. Requirements for partial discontinuance.

A. A CLEC intending to partially discontinue local exchange telecommunications services on a geographic basis, by functional type (e.g., resale) or by class (e.g., residential), shall file a formal petition for authority to do so with the commission. The petition shall provide:

1. The number of affected customers and types of service offerings provided;

2. A full explanation of the reasons for partial discontinuance of service, including any plans to transfer the CLEC's affected customers to other services or carriers; and

3. The proposed tariff revisions with a proposed effective date.

B. Customers shall be provided at least 30 days' notice of the proposed discontinuation of service. The commission shall prescribe the actual notice and its form; however, a CLEC may include the proposed notice with its petition.

20 VAC 5-423-40. Requirements to withdraw a tariffed service offering.

A. A CLEC intending to withdraw a tariffed service offering currently provided to existing customers shall file a formal petition for approval with the commission. The petition shall provide:

1. The number of affected customers;

2. A full explanation of the reasons the CLEC proposes to withdraw the service offering, including a description of any alternative service offerings available from the CLEC; and

3. The proposed tariff revisions with a proposed effective date.

B. Customers shall be provided at least 30 days' notice prior to the proposed effective date of the withdrawal of service. The commission shall prescribe the actual notice and its form; however, the CLEC may file a proposed notice in its petition.

C. A CLEC intending to withdraw a tariffed service offering not currently provided to any existing customers shall file its proposed tariff administratively with the Division of Communications. The CLEC shall provide an attestation with the proposed tariff that it has no customers currently subscribing to the service offering.

20 VAC 5-423-50. Requirements to obsolete a tariffed service offering.

A. A CLEC intending to obsolete a tariffed service offering and to grandfather it to its current customers without restriction of those customers' ability to retain that service shall provide at least 30 days' written notice to the affected customers.

The CLEC shall file its proposed tariff revisions with the Division of Communications at least 30 days prior to the proposed effective date and include a copy of the notice that was sent or will be sent to customers.

The commission may require a CLEC to obtain approval to obsolete a tariffed service offering filed in accordance with this section if it determines that notice to customers was not adequate or that approval is required to protect the public interest.

B. A CLEC that proposes to obsolete a tariffed service offering and to grandfather current customers in a manner that restricts those customers' ability to retain the service shall be required to obtain approval from the commission in the same manner as for withdrawal of tariffed service in 20 VAC 5-423-40 currently provided to existing customers.

20 VAC 5-423-60. Administrative cancellation of certificates.

A CLEC that is found to have ceased providing local exchange telecommunications services to its customers in Virginia without providing proper notice to the commission and to its customers under 20 VAC 5-423-20 shall be in violation of this chapter, and each of its operating certificates may be administratively cancelled.

20 VAC 5-423-70. Bankruptcy requirements.

A CLEC that is the subject of a bankruptcy petition shall provide to the commission a complete copy of the bankruptcy petition and any plan filed under Chapter 11 of the Bankruptcy Code. Within seven days of a bankruptcy petition being filed by or against a CLEC or its corporate parent, the CLEC shall provide written notice of such bankruptcy petition to the commission. The written notice shall include the following information and be updated as necessary:

1. Whether the CLEC currently provides service offerings to customers in Virginia and the number of its customers and types of services provided;

2. The name, address, and telephone number of any trustee in bankruptcy; and

3. A proposed plan to notify the CLEC's customers of potential discontinuation of their local exchange telecommunications services as a result of the bankruptcy petition.

20 VAC 5-423-80. Duties of ILECs.

A. An ILEC shall not, for nonpayment of charges by the CLEC to the ILEC, disconnect services provided to a CLEC that could reasonably be expected to result in disconnection of the CLEC's customers without approval of the commission.

B. An ILEC proposing to disconnect a CLEC's resale customers shall file, if there is no pending proceeding commenced by the CLEC under this chapter, a formal petition with the commission requesting approval at least 30 days prior to the proposed date of disconnection. The petition shall provide:

1. The number of CLEC resale customers to be disconnected and the proposed disconnection date;

2. The amount claimed to be owed to the ILEC by the CLEC;

3. A description of any efforts that the ILEC and the CLEC have taken to prevent disconnection or disruption of service to the CLEC's customers; and

4. Any proposal to notify or transfer the CLEC's resale customers to the ILEC or to other carriers.

C. An ILEC proposing to disconnect other service offerings (e.g., UNEs) to a CLEC shall file, if there is no pending proceeding commenced by the CLEC under this chapter, a formal petition with the commission requesting approval at least 30 days prior to the proposed date of disconnection. The formal petition shall provide:

1. A description and quantification of the service offerings to the CLEC to be disconnected;

2. The amount claimed to be owed by the CLEC to the ILEC; and

3. A description of any efforts that the ILEC and the CLEC have taken to prevent disconnection or disruption of service to the CLEC's customers.

D. The ILEC shall make every effort to assist in the expedient and timely transfer of any customer of a CLEC that is discontinuing local exchange telecommunications services to that customer's new carrier. To prevent the disruption of service to customers in such circumstances, the ILEC shall be required to implement expedited ordering procedures for the customer's new CLEC to follow.

VA.R. Doc. No. R01-233; Filed June 22, 2001, 3:52 p.m.

FINAL REGULATIONS

For information concerning Final Regulations, see Information Page.

Symbol Key

Roman type indicates existing text of regulations. *Italic type* indicates new text. Language which has been stricken indicates text to be deleted. [Bracketed language] indicates a change from the proposed text of the regulation.

TITLE 5. CORPORATIONS

STATE CORPORATION COMMISSION

REGISTRAR'S NOTICE: The State Corporation Commission is exempt from the Administrative Process Act in accordance with § 9-6.14:4.1 A 2 of the Code of Virginia, which exempts courts, any agency of the Supreme Court, and any agency which by the Constitution is expressly granted any of the powers of a court of record.

Title of Regulation: **5 VAC 5-30-10 et seq. Uniform Commercial Code Filing Rules (CLK010068).**

Statutory Authority: §§ 8.9A-526 and 12.1-13 of the Code of Virginia.

Effective Date: July 1, 2001.

Summary:

The regulation prescribes Uniform Commercial Code filing and search requirements, forms, fees, record acceptance criteria, limitations on duties and responsibilities of the filing office, and data maintenance and provision rules.

Agency Contact: Robert Lindsey, Clerk's Office, State Corporation Commission, John Tyler Building, 1300 E. Main Street, 10th Floor, Richmond, VA 23219, telephone (804) 371-9424.

AT RICHMOND, JUNE 26, 2001

COMMONWEALTH OF VIRGINIA, ex. rel.

STATE CORPORATION COMMISSION

CASE NO. CLK010068

Ex Parte: In re Uniform Commercial Code Filing Rules

ORDER ADOPTING A REGULATION

By order entered herein on May 15, 2001, the Commission directed that notice be given of a proposed regulation entitled "Uniform Commercial Code Filing Rules," § 5 VAC 5-30-10 et seq. of the Administrative Code, implementing Title 8.9A of the Code of Virginia which becomes effective July 1, 2001. Notice of the proposed regulation was published in the *Virginia Register* on June 4, 2001, and the Clerk's Office gave notice of the proposed regulation to various attorneys and corporate filing and search organizations by mail on May 18, 2001, as shown by a Certificate of Mailing filed among the papers in this case. Interested parties were afforded the opportunity to file written comments in favor of or against the proposal, and written requests to be heard, on or before June 18, 2001, and a hearing date was reserved in the event a request for a hearing was made.

One person filed comments on the proposed regulation and, as a result, various clarifying and linguistic changes were made. The Commission staff also suggested certain technical and linguistic changes, which the Commission accepted. No request for a hearing was made and, therefore, no hearing was convened. The Commission was also advised that a new filing system for Uniform Commercial Code records ("UCC records") will be put in place in the Clerk's Office later this year, which will necessitate amendments to the proposed regulation.

The proposed regulation, as revised, is designed to implement the provisions of Title 8.9 A of the Code of Virginia which relate to the filing various UCC records and the maintenance of a searchable record system for such filings. The Commission, having considered the record and the proposed regulation as modified, concludes that the proposal properly effectuates applicable statutory provisions, and that the proposed regulation as modified should be adopted on an interim basis pending implementation of the new Clerk's Office UCC record system.

THEREFORE, IT IS ORDERED THAT:

(1) The proposed regulation as modified entitled "Uniform Commercial Code Filing Rules", attached hereto, is adopted effective July 1, 2001.

(2) The proposed regulation, as modified and adopted, shall be transmitted for publication in the *Virginia Register*.

(3) The Clerk's Office shall send copies of the regulation as adopted to these persons identified on the Certificate of mailing filed in this case.

(4) This case is continued generally on the Commission's docket.

CHAPTER 30.
UNIFORM COMMERCIAL CODE FILING RULES.

PART I.
GENERAL PROVISIONS.

5 VAC 5-30-10. Scope.

This chapter governs the filing and handling of records in the Clerk's Office of the State Corporation Commission pursuant to Title 8.9A of the Code of Virginia. Each provision of this regulation is severable from all other provisions. [~~*In the event of conflict between a provision of this regulation and any provision of the Code of Virginia, the Code of Virginia will apply. Statutory references in this regulation refer to sections of the Code of Virginia.*~~]

5 VAC 5-30-20. Definitions.

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

"Active record" means a UCC record that has not reached the one-year anniversary of its lapse date.

"Amendment" means a UCC record that amends the information contained in a financing statement. Amendments include (i) assignments and (ii) continuation and termination statements.

"Assignment" means an amendment that assigns all or a part of a secured party's power to authorize an amendment to a financing statement.

"Continuation statement" shall have the meaning prescribed by § 8.9A-102(a)(27) of the Code of Virginia.

"Correction statement" means a UCC record that indicates that a financing statement is inaccurate or wrongfully filed.

"File number" shall have the meaning prescribed by § 8.9A-519(b) of the Code of Virginia.

"Filing office" means the Clerk's Office of the State Corporation Commission.

"Filing officer" means the Clerk of the State Corporation Commission.

"Filing officer statement" means a statement entered into the filing office's information system to correct an error by the filing office.

"Financing statement" shall have the meaning prescribed by § 8.9A-102(39) of the Code of Virginia.

"Inactive record" means a UCC record that has reached the first anniversary of its lapse date.

"Individual" means a [~~*human being, or a decedent in the case of a debtor that is such decedent's estate*~~ *natural person, living or deceased*].

"Initial financing statement" means a UCC record containing the information required to be in an initial financing statement and that causes the filing office to establish the initial record of existence of a financing statement.

"Organization" means a legal person that is not an individual.

"Remitter" means a person who tenders a UCC record to the filing officer for filing, whether the person is a filer or an agent of a filer responsible for tendering the record for filing. "Remitter" does not include a person responsible merely for the delivery of the record to the filing office, such as the postal service or a courier service but does include a service provider who acts as a filer's representative in the filing process.

"Secured party of record" shall have the meaning prescribed by § 8.9A-511 of the Code of Virginia.

"Termination statement" shall have the meaning prescribed by § 8.9A-102(a)(79) of the Code of Virginia.

"UCC" means the Uniform Commercial Code (§ 8.9A-101 et seq. of the Code of Virginia).

"UCC record" means an initial financing statement, an amendment, [~~*an assignment or a continuation, termination*~~ *and a*] *correction or filing officer statement, and shall not be deemed to refer exclusively to paper or paper-based writings.*

5 VAC 5-30-30. General filing and search requirements.

A. UCC records may be tendered for filing at the filing office as follows:

1. [*By*] *personal delivery, at the filing office street address,*

2. [*By*] *courier delivery, at the filing office street address, or*

3. [*By*] *postal delivery, to the filing office mailing address.*

B. The filing time for a UCC record delivered by these methods is [~~*when*~~ *the time*] *the UCC record is date-and-time stamped by the filing office even though the UCC record may not yet have been accepted for filing and may be subsequently rejected.*

C. UCC search requests may be delivered to the filing office by any of the means by which UCC records may be delivered to the filing office. A search request for a debtor named on an initial financing statement may be made on the initial financing statement form if the form is accepted and the relevant search fee is also tendered.

5 VAC 5-30-40. Forms, fees, and payments.

A. Forms.

1. The filing office shall only accept forms for UCC records that conform to the requirements of this chapter.

2. The forms set forth in § 8.9A-521 of the Code of Virginia shall be accepted.

3. A form for the relevant filing of a UCC record approved by the International Association of Corporation Administrators on or after [~~*April 23*~~ *July 28*]*, 1998, shall be accepted.*

4. The filing officer may approve additional forms for acceptance, including forms promulgated by the International Association of Corporation Administrators.

B. Fees.

1. The fee for filing and indexing a UCC record communicated on paper is $20.

2. The fee for a UCC search request communicated on paper is $7.00.

3. The fee for UCC search copies is $1.00 for each of the first two pages and 50¢ for each additional page. The fee for affixing the seal of the commission to a certificate is $1.00.

C. Methods of payment. Filing fees and fees for services provided under this regulation may be paid by the following methods:

1. Payment in cash shall be accepted if paid in person at the filing office.

2. Personal checks, cashier's checks and money orders made payable to the State Corporation Commission or Treasurer of Virginia shall be accepted for payment if

drawn on a bank acceptable to the filing office or if the drawer is acceptable to the filing office.

D. Overpayment and underpayment policies.

1. The filing officer shall notify the remitter of the amount of any overpayment exceeding $24.99 and send the remitter the appropriate procedure and form for requesting a refund. The filing officer shall refund an overpayment of $24.99 or less only upon the written request of the remitter. A request for a refund shall be delivered to the filing office within 12 months from the date of payment.

2. Upon receipt of a UCC record with an insufficient fee, the filing officer shall return the record to the remitter with a notice stating the deficiency and shall retain the filing fee.

3. If a filer requests a name search at the time a UCC record is filed, the name searched will be the debtor name as set forth on the form. If the remitter furnishes the appropriate fee for filing but omits the search fee, the UCC record will be filed subject to 5 VAC 5-30-50 and the search will not be performed.

E. Federal liens. A notice of lien, certificate and other notice affecting a federal tax lien or other federal lien [~~*filed in*~~ *presented to*] *the filing office pursuant to the provisions of the Uniform Federal Lien Registration Act (§ 55-142.1 et seq.* [*of the Code of Virginia*] *) shall be treated as the most analogous UCC record unless the Uniform Federal Lien Registration Act or federal law provides otherwise.*

PART II.
RECORD REQUIREMENTS.

5 VAC 5-30-50. Acceptance and refusal of records.

A. The duties and responsibilities of the filing officer with respect to the administration of the UCC are ministerial. In accepting for filing or refusing to file a UCC record pursuant to this chapter, the filing officer does none of the following:

1. Determine the legal sufficiency or insufficiency of a record;

2. Determine that a security interest in collateral exists or does not exist;

3. Determine that information in the record is correct or incorrect, in whole or in part; or

4. Create a presumption that information in the record is correct or incorrect, in whole or in part.

B. The first day on which a continuation statement may be filed is the day of the month corresponding to the date upon which the related financing statement would lapse in the sixth month preceding the month in which the financing statement would lapse. If there is no such corresponding date, the first day on which a continuation statement may be filed is the last day of the sixth month preceding the month in which the financing statement would lapse. The last day on which a continuation statement may be filed is the date upon which the financing statement lapses. [*If the lapse date falls on a Saturday, Sunday or other day on which the filing office is not open, then the last day on which a continuation statement may be filed is the last day the filing office is open prior to the lapse date.*]

C. Except as provided in 5 VAC 5-30-40 D, if the filing officer finds grounds to refuse a UCC record, the filing officer shall return the record to the remitter and shall retain the filing fee.

D. Nothing in this chapter prevents a filing officer from communicating to a filer or a remitter that the filing officer noticed apparent potential defects in a UCC record, whether or not it was filed or refused for filing. However, the filing officer is under no obligation to do so and may not, in fact, have the resources to do so or to identify such defects. The responsibility for the legal effectiveness of filing rests with filers and remitters and the filing office bears no responsibility for such effectiveness.

E. If a secured party or a remitter demonstrates to the satisfaction of the filing officer that a UCC record that was refused for filing should not have been refused, the filing officer shall file the UCC record as provided in this chapter with a filing date and time assigned when the record was originally tendered for filing. The filing officer shall also file a filing officer statement that states the effective date and time of filing, which shall be the date and time the UCC record was originally tendered for filing.

PART III.
RECORD FILING AND SEARCHES.

5 VAC 5-30-60. Filing and data entry procedures.

A. The filing office may correct errors of its personnel in the UCC information management system at any time. If the correction occurs after the filing officer has issued a certification [*,*] *the filing officer shall file a filing officer* [~~*correction*~~] *statement in the UCC information management system identifying the record to which it relates, the date of the correction, and explaining the nature of the corrective action taken. The record shall be preserved as long as the record of the initial financing statement is preserved in the UCC information management system.*

B. An error by a filer or remitter is the responsibility of that person. It can be corrected by filing an amendment or [*it can be disclosed by filing*] *a correction statement pursuant to § 8.9A-518 of the Code of Virginia.*

C. 1. A UCC record tendered for filing shall designate whether a name is a name of an individual or an organization. If the name is that of an individual, the first, middle and last names and any suffix shall be given.

2. Organization names are entered into the UCC information management system exactly as set forth in the UCC record, even if it appears that multiple names are set forth in the record or if it appears that the name of an individual has been included in the field designated for an organization name.

3. The filing office will only accept forms that designate separate fields for individual and organization names and separate fields for first, middle, and last names and any suffix. Such forms diminish the possibility of filing office error and help assure that filers' expectations are met. However, filers should be aware that the inclusion of names

in an incorrect field or failures to transmit names accurately to the filing office might cause filings to be ineffective.

D. The filing officer shall take no action upon receipt of a notification, formal or informal, of a bankruptcy proceeding involving a debtor named in the UCC information management system.

5 VAC 5-30-70. Search requests and reports.

A. The filing officer maintains for public inspection a searchable index for all records of UCC documents. The index shall provide for the retrieval of all filed records by the name of the debtor and by the file number of the initial financing statement.

B. Search requests shall contain the following information:

1. The name of the debtor to be searched, specifying whether the debtor is an individual or organization. A search request will be processed using the [*exact*] *name* [~~*in the exact form*~~ *provided by the requestor*].

2. The name and address of the person to whom the search report is to be sent.

3. The appropriate fee shall be enclosed, payable by a method described herein.

C. If a filer requests a search at the time a UCC record is filed the name searched will be the debtor name as set forth on the form. The requesting party shall be the remitter of the UCC record, and the search request shall be deemed to request a search that would retrieve all financing statements filed on or prior to the date the UCC record is filed.

D. Search requests may contain any of the following information:

1. A request that copies of records found in the search be included with the search report,

2. A request to limit the copies of records by restricting the search to a [~~*city*~~ *locality*] *or a filing date or a range of filing dates, or*

3. Instructions on the mode of delivery desired, if other than by ordinary mail, which request shall be honored if the requested mode is available to the filing office.

E. Search results are produced by the application of standardized search logic to the name presented to the filing officer. [~~*Human judgment plays a role in determining the results of the search.*~~] *The following requirements apply to searches:*

1. There is no limit to the number of matches that may be returned in response to the search criteria.

2. No distinction is made between upper and lower case letters.

3. Punctuation marks and accents are disregarded.

4. [~~*"Ending Noise Words" are disregarded. Such words "Noise words"*~~] *include, but are not limited to, "an," "and," "for," "of," and "the."* [*The word "the" always will be disregarded and other noise words appearing anywhere except at the beginning of an organization name will be disregarded.*] *Certain business words are modified to a standard abbreviation: company to "co," corporation to "corp," limited to "ltd," incorporated to "inc."*

[~~*5. The word "the" at the beginning of the search criteria is disregarded.*~~

~~*6.*~~ *5.*] *All spaces are disregarded.*

[~~*7.*~~ *6.*] *After using the preceding subdivisions to modify the name to be searched, the search will reveal names of debtors that are contained in unlapsed* [*or all initial*] *financing statements in an alphabetical list.*

F. Reports created in response to a search request shall include the following:

1. The date the report was generated.

2. Identification of the name searched.

3. Identification of each unlapsed initial financing statement [*or all initial financing statements*] *filed on or prior to the report date and time corresponding to the search criteria, by name of debtor, by identification number, and by file date and file time.*

4. For each initial financing statement on the report, a listing of all related UCC records filed by the filing officer on or prior to the report date.

5. Copies of all UCC records revealed by the search and requested by the [~~*searcher*~~ *requestor*].

G. During the statutory transition period of July 1, 2001, to July 1, 2006, the filing office may provide access to a database that produces search results beyond exact name matches. The supplemental database shall not be considered part of the standard search logic and shall not constitute an official search of the filing office.

VA.R. Doc. No. R01-203; Filed June 27, 2001, 11:33 a.m.

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TITLE 9. ENVIRONMENT

STATE WATER CONTROL BOARD

REGISTRAR'S NOTICE: The following regulations filed by the State Water Control Board are exempt from the Administrative Process Act in accordance with § 9-6.14:4.1 C 12 of the Code of Virginia, which exempts general permits issued by the State Water Control Board pursuant to the State Water Control Law (§ 62.1-44.2 et seq.) and Chapters 24 (§ 62.1-242 et seq.) and 25 (§ 62.1-254 et seq.) of Title 62.1 of the Code of Virginia if the board: (i) provides a Notice of Intended Regulatory Action in conformance with the provisions of § 9-6.14:7.1 B; (ii) following the passage of 30 days from the publication of the Notice of Intended Regulatory Action, forms a technical advisory committee composed of relevant stakeholders, including potentially affected citizens groups, to assist in the development of the general permit; (iii) provides notice and receives oral and written comment as provided in § 9-6.14:7.1 F; and (iv) conducts at least one public hearing on the proposed general permit.

Title of Regulation: **9 VAC 25-660-10 et seq. Virginia Water Protection General Permit for Impacts Less than One-Half of an Acre.**

Statutory Authority: §§ 62.1-44.15 and 62.1-44.15:5 of the Code of Virginia.

Effective Date: October 1, 2001.

Summary:

The regulation addresses a new requirement in § 62.1-44.15:5 of the Code of Virginia to develop a general permit for activities causing wetland impacts of less than one-half acre. Numerous changes have been made throughout the final regulation. Most of these involve clarification of definitions, the distinction between the general permit regulation and an authorization approved under the general permit, and that the permits do not apply to tidal waters. The procedures for data searches pertaining to threatened and endangered species have been modified. Certain exclusions, special conditions, and a limit on impacts to intermittent stream channels have been added to conform to the other general permits. The evaluation of compensatory mitigation options, including compensation ratios, have been clarified. A notice of planned change section has been added, and the section on general permit modification has been deleted, to establish the correct procedure for modifying general permit authorizations.

Summary of Public Comments and Agency's Response: A summary of comments made by the public and the agency's response may be obtained from the promulgating agency or viewed at the office of the Registrar of Regulations.

Agency Contact: Ellen Gilinsky, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4375 or e-mail egilinsky@deq.state.va.us.

CHAPTER 660.
VIRGINIA WATER PROTECTION GENERAL PERMIT FOR IMPACTS LESS THAN ONE-HALF OF AN ACRE.

9 VAC 25-660-10. Definitions.

The words [*~~,~~ and*] *terms* [*~~, and provisions~~*] *used in this chapter shall have the meanings defined in the State Water Control Law (§ 62.1-44.2 et seq. of the Code of Virginia) and the Virginia Water Protection (VWP) Permit Regulation (9 VAC 25-210-10 et seq.) unless the context clearly indicates otherwise or unless* [*otherwise*] *indicated below.*

[*"Bank protection" means measures employed to stabilize channel banks and combat existing erosion problems. Such measures may include the construction of riprap revetments, sills, rock vanes, beach nourishment, breakwaters, bulkheads, groins, spurs, levees, marsh toe stabilization, anti-scouring devices, and submerged sills.*

"Bioengineering method" means a biological measure incorporated into a facility design to benefit water quality and minimize adverse effects to aquatic resources, to the maximum extent practicable, for long-term aquatic resource protection and improvement.

"Channelization" means the alteration of a stream channel by widening, deepening, straightening, cleaning or paving certain areas.]

"Cross-sectional [*~~sketch~~ drawing*]*" means a graph or plot of ground elevation across a waterbody or a portion of it, usually along a line perpendicular to the waterbody or direction of flow.*

"FEMA" means [*the*] *Federal Emergency Management Agency.*

"Histosols" means organic soils that are often called mucks, peats, or mucky peats. The list of histosols in the Commonwealth includes, but is not limited to, the following soil series: Back Bay, Belhaven, Dorovan, Lanexa, Mattamuskeet, Mattan, Palms, Pamlico, Pungo, Pocaty, and Rappahannock. Histosols are identified in the Hydric soils list generated by [*~~USDA~~ the United States Department of Agriculture's*] *Natural Resources Conservation Service.*

"Impacts" means results caused by human-induced activities conducted in surface waters [*~~, such as filling, dumping, dredging, excavating, permanent flooding or impounding or any other new activities on or after October 1, 2001, including draining, that significantly alter or degrade existing acreage or functions of the surface waters~~ as specified in § 62.1-44.15:5 D of the Code of Virginia*] *.*

[*"Independent utility" means a test to determine what constitutes a single and complete project. A project is considered to have independent utility if it would be constructed absent the construction of other projects in the project area. Portions of a multi-phase project that depend upon other phases of the project do not have independent utility. Phases of a project that would be constructed even if the other phases are not built can be considered as separate single and complete projects with independent utility.*]

"Less than one-half of an acre" means 0.00 to 0.49 acre, rounded to the second decimal place.

"Perennial stream" means a stream that has flowing water year round in a typical year. For the purpose of this chapter, a surface water body (or stream segment) having a drainage area of at least 320 acres (1/2 square mile) is a perennial stream, unless field conditions clearly indicate otherwise.

[*~~"Registration statement" means a form of preconstruction application or notification.~~*]

"Single and complete project" means the total project proposed or accomplished by one person [*and which has independent utility*]*. For linear projects, the "single and complete project" (i.e., a single and complete crossing) will apply to each crossing of a separate* [*surface*] *water* [*~~of the United States~~*] *(i.e., a single waterbody) and to multiple crossings of the same waterbody at separate and distinct locations. However, individual channels in a braided stream or river, or individual arms of a large, irregularly-shaped wetland, lake, etc. are not separate waterbodies.* [*~~A project is considered to have independent utility if it would be constructed absent the construction of other projects in the project area. Portions of a multi-phase project that depend upon other phases of the project do not have independent utility. Phases of a project that would be constructed even if~~*

~~the other phases are not built can be considered as separate single and complete projects with independent utility.~~]

"State programmatic general permit" means a [~~type of~~] *general permit issued by the Department of the Army* [~~and founded on an existing state, local or federal agency program that is designed to avoid duplication with another federal, state or local program provided it has been determined that the environmental consequences of the action are individually and cumulatively minimal~~ *in accordance with 33 CFR Part 32S that is founded on a state program and is designed to avoid duplication between the federal and state programs*].

"Up to one-tenth of an acre" means 0.00 to 0.10 acre, rounded to the second decimal place.

[*"Utility line" means any pipe or pipeline for the transportation of any gaseous, liquid, liquifiable or slurry substance, for any purpose, and any cable, line, or wire for the transmission for any purpose of electrical energy, telephone, and telegraph messages and radio and television communication. The term "utility line" does not include activities that drain a surface water to convert it to an upland, such as drainage tiles or french drains; however, it does apply to pipes conveying drainage from another area.*]

9 VAC 25-660-20. Purpose; delegation of authority; effective date of VWP general permit.

A. The purpose of this chapter is to establish VWP General Permit Number WP1 under the [~~VWPP~~ *VWP permit program*] *regulation to govern* [~~activities that impact~~ *impacts to*] *less than one-half of an acre of* [*nontidal*] *surface waters* [~~(~~] *including* [~~wetlands), with a maximum~~ *up to*] *125 linear feet of perennial stream channel* [*and up to 1,500 linear feet of nonperennial stream channel*]. *Applications for coverage under this VWP general permit shall be processed for approval, approval with conditions, or denial by the board.*

B. The director, or [~~an authorized representative~~ *his designee*], *may perform any act of the board provided under this chapter, except as limited by § 62.1-44.14 of the Code of Virginia.*

[~~C. In issuing this VWP general permit, the board has not taken into consideration the structural stability of the proposed structure(s).~~

~~D.~~ *C.*] *This VWP general permit regulation will become effective on* [*October 1, 2001,*] *and will expire* [~~three years after the effective date. For any covered activity, this VWP general permit is effective upon compliance with all the provisions of 9 VAC 25-660-30 and the receipt of this VWP general permit~~ *on October 1, 2006*].

[~~E. For each individual activity requiring notification, coverage will continue for a maximum of three years from the date of authorization of coverage under this VWP general permit to an individual person or applicant.~~

D. Authorization to impact surface waters under this VWP general permit is effective upon compliance with all the provisions of 9 VAC 25-660-30. Notwithstanding the expiration date of this general permit regulation, authorization to impact surface waters under this VWP general permit will continue for a maximum of three years.]

9 VAC 25-660-30. Authorization to impact surface waters.

A. Any person governed by this VWP general permit is authorized to impact less than one-half of an acre of surface waters [~~(~~] *including* [~~wetlands), with a maximum of~~ *up to*] *125 linear feet of perennial stream channel* [*and up to 1,500 linear feet of nonperennial stream channel*], *provided that the person submits notification as required in 9 VAC 25-660-50 and 9 VAC 25-660-60, remits the required application processing fee (9 VAC 25-20-10 et seq.), complies with the limits and other requirements of 9 VAC 25-660-100, receives approval from the board, and provided that:*

1. The applicant shall not have been required to obtain a VWP individual permit under the VWP permit regulation (9 VAC 25-210-10 et seq.) for the proposed project impacts. The applicant, at his discretion, may seek a VWP individual permit, or coverage under another [*applicable*] *VWP general permit, in lieu of coverage under this VWP general permit.*

2. Impacts [*result from a single and complete project*], *including all attendant features both temporary and permanent* [~~, are part of a single and complete project~~].

[*a. Where a road segment (i.e., the shortest segment of a road with independent utility that is part of a larger project) has multiple crossings of surface waters (several single and complete projects), the board may, at its discretion, require a VWP individual permit.*

b. For the purposes of this chapter, when an interchange has multiple crossings of surface waters, the entire interchange shall be considered the single and complete project.

3. The stream impact criterion applies to all components of the project, including any structures and stream channel manipulations. Stream channel manipulations (e.g., tie-ins or cleanout) may not exceed 100 linear feet on the upstream or downstream end of a stream crossing.]

[~~3.~~ *4.*] *Compensatory mitigation for unavoidable impacts is provided in the form of the purchase or use of mitigation bank credits or a contribution to an approved in-lieu fee fund.*

[~~4. Compensatory mitigation for unavoidable impacts is provided at a 2:1 replacement to loss ratio.~~]

B. Only activities in nontidal waters may qualify for coverage under this VWP general permit.

C. The board waives the requirement for coverage under a VWP general permit for activities that occur in an isolated wetland of minimal ecological value as defined in 9 VAC 25-210-10. [*Any person claiming this waiver bears the burden to demonstrate that he qualifies for the waiver.*]

D. Receipt of this VWP general permit does not relieve any permittee of the responsibility to comply with any other applicable federal, state or local statute, ordinance or regulation.

[*E. In issuing this VWP general permit, the board has not taken into consideration the structural stability of the proposed structure or structures.*]

[~~E.~~ F.] Coverage under a nationwide or regional permit promulgated by the U.S. Army Corps of Engineers [(USACE)] , and for which the board has issued [~~or waived~~] § 401 certification existing as of [~~the effective date of this chapter~~ October 1, 2001] , shall constitute coverage under this VWP general permit [~~until such time as~~ unless] a state programmatic general permit is approved for the covered activity or impact. [Notwithstanding any other provision, activities authorized under a nationwide or regional permit promulgated by the USACE and certified by the board in accordance with 9 VAC 25-210-130 do not need to obtain coverage under this VWP general permit unless a state programmatic general permit is approved for the covered activity or impact.]

9 VAC 25-660-40. [~~**Prohibitions**~~ **Exceptions to coverage**]**.**

A. [Authorization for coverage under] this VWP general permit will not apply in the following areas:

1. [~~Wetland areas~~ Wetlands] composed of 10% or more of the following species (singly or in combination) in any stratum: Atlantic white cedar (Chamaecyparis thyoides), bald cypress (Taxodium distichum), water tupelo (Nyssa aquatica), or overcup oak (Quercus lyrata). Percentages [~~may~~ shall] be based on [either basal area or] percent [~~aerial~~ areal] cover.

2. [~~Wetland areas~~ Wetlands] underlain by histosols.

3. Nontidal wetlands adjacent to tidal waters.

4. 100-year floodplains as identified by FEMA's flood insurance rate maps or FEMA-approved local floodplain maps.

5. Surface waters with federal or state listed or proposed threatened or endangered species or proposed or designated critical habitat.

B. [Authorization for coverage under] this VWP general permit cannot be used in combination with [authorizations for coverage under] other VWP general permits to impact greater than one-half of an acre of nontidal surface waters, [~~including~~ up to] 125 linear feet of perennial stream channel [or up to 1,500 linear feet of nonperennial stream channel]. [~~The use of~~] More than one [authorization for coverage under this] VWP [~~General Permit WP1~~ general permit] for a single and complete project is prohibited, except when the cumulative impact to surface waters does not exceed the [~~above mentioned limit~~ limits specified in this subsection].

C. The activity to impact surface waters shall not have been prohibited by state law [~~,~~ or] regulations [~~or policies~~] , nor shall it contravene [~~the~~ applicable] Water Quality Standards (9 VAC 25-260-5 et seq.) [~~, as amended or adopted by the board~~].

D. The board shall deny coverage under this VWP general permit to any applicant [~~conducting~~ for] activities [~~which the board determines~~ that] cause, may reasonably be expected to cause, or may be contributing to a violation of water quality standards, including discharges or discharge-related activities that are likely to adversely affect aquatic life, or for activities [~~which the board determines~~] that together with other existing or proposed impacts to wetlands will cause or contribute to a significant impairment of state waters or fish and wildlife resources.

[E. This VWP general permit does not authorize activities that cause more than minimal changes to the peak hydraulic flow characteristics, increase flooding, or cause more than minimal degradation of the water quality of any stream.]

[~~E.~~ F.] This VWP general permit may not be used for:

1. Any stormwater management facility that is located in perennial streams or in waters designated as oxygen or temperature impaired;

2. The construction of an irrigation impoundment on a perennial stream;

3. Any water withdrawal activities;

4. The location of animal feeding operations or waste storage facilities in state waters;

[~~5. Restoration, creation or any fill in perennial streams in association with the establishment of a mitigation bank.~~

~~6.~~ 5.] The pouring of wet concrete or the use of tremie concrete or grout bags in state waters, unless the [~~concrete or grout bags is contained within a cofferdam(s)~~ area is contained within a cofferdam or the work is performed in the dry];

[~~7.~~ 6.] Dredging or maintenance dredging;

[~~8. Disposal of dredge materials or the~~ 7.] Return flow discharges from dredge disposal sites;

[~~9.~~ 8.] The construction of new ski areas or oil and gas wells;

[~~10. The construction of marine railways.~~

~~11.~~ 9.] The taking of threatened or endangered species [~~.~~ in accordance with the following:]

a. Pursuant to § 29.1-564 of the Code of Virginia: " [~~Taking, transportation, sale, etc., of endangered species is prohibited.~~] The taking, transportation, processing, sale or offer for sale within the Commonwealth of any fish or wildlife appearing on any list of threatened or endangered species published by the [~~U.S.~~ United States] Secretary of the Interior pursuant to the provisions of the federal Endangered Species Act of 1973 (P.L. 93-205), or any modifications or amendments thereto, is prohibited except as provided in § 29.1-568."

b. Pursuant to § 29.1-566 of the Code of Virginia and 4 VAC 15-20-130 B and C, the taking, transportation, processing, sale, or offer for sale within the Commonwealth of any state-listed endangered or threatened species is prohibited except as provided in § 29.1-568 of the Code of Virginia.

9 VAC 25-660-50. Notification.

A. Notification to the board will be required prior to construction, as follows:

1. [An application for] proposed impacts greater than one-tenth of an acre of surface waters shall be [~~reported by the~~

~~applicant to DEQ~~ submitted] via [~~the entire~~ a] registration statement [~~(~~that includes all information pursuant to] 9 VAC 25-660-60 [~~)~~] .

2. [~~For~~ Proposed] impacts up to one-tenth of an acre [~~,~~ ~~items~~ shall be reported via a registration statement that includes only the following information: subdivisions] 1 through [~~9, 11~~ 8, 13] , 15 [~~, 16, 17~~] and [~~19~~ 20] of [~~the registration statement (~~] 9 VAC 25-660-60 B [~~) shall be provided~~].

[~~B. All notifications shall include documentation from the Virginia Department of Game and Inland Fisheries, and the Virginia Department of Conservation and Recreation's Division of Natural Heritage indicating the presence of any federal or state proposed or listed threatened and endangered species or proposed or designated critical habitat.~~

B. A Joint Permit Application (JPA) or Virginia Department of Transportation Interagency Coordination Meeting Joint Permit Application (VDOT IACM JPA) may serve as the registration statement provided that all information required pursuant to 9 VAC 25-660-60 is included and that the first page of the form is clearly marked indicating the intent to have the form serve as the registration statement for this VWP general permit.]

C. The [~~DEQ~~ board] will determine whether the proposed activity requires coordination with the United States Fish and Wildlife Service, the Virginia Department of Conservation and Recreation [, the Virginia Department of Agriculture and Consumer Services] and the Virginia Department of Game and Inland Fisheries [regarding the presence of any federal or state proposed or listed threatened and endangered species or proposed or designated critical habitat. Based upon consultation with these agencies, the board may deny coverage under this general permit].

9 VAC 25-660-60. Registration statement.

A. Registration statements shall be filed with the board as follows:

1. The [~~person~~ applicant] shall file a complete registration statement as described in 9 VAC 25-660-50 for a VWP General Permit WP1 for impacts to surface waters [~~for~~ of] less than one-half [of] an acre, including [~~a maximum of~~ up to] 125 linear feet of perennial stream channel [and up to 1,500 linear feet of nonperennial stream channel], which will serve as a notice of intent for coverage under this VWP general permit.

2. Any [~~person~~ applicant] proposing an activity under this VWP general permit [~~shall~~ is advised to] file the required registration statement at least 45 days prior to the date planned for the commencement of the activity to be regulated by the VWP general permit. [VDOT may use its monthly IACM process for submitting registration statements.]

[~~3. Any person conducting an activity without a VWP permit, who qualifies for coverage under this VWP general permit, shall file the registration statement immediately upon discovery of the unpermitted activity.~~]

B. The required registration statement shall contain the following information:

1. The applicant's name, mailing address, telephone number and, if applicable, fax number;

2. The authorized agent's (if applicable) name, mailing address, telephone number and, if applicable, fax number;

3. The existing VWP permit number (if applicable);

4. The name of the project, purpose of project, and a description of the activity;

5. The name of [~~water body(ies)~~ the water body or water bodies] or receiving stream, as applicable;

6. The hydrologic unit code (HUC) for the project area;

7. The name of the city or county where the project is located;

8. Latitude and longitude (to the nearest second) from a central location within the project limits;

9. A detailed location map (e.g., a United States Geologic Survey topographic quadrangle map) of the project area. The map should be of sufficient detail such that the site may be easily located for site inspection;

10. The appropriate appendices from the [~~Joint Permit Application~~ JPA];

11. [The] project plan view. All plan view sketches should include, at a minimum, north arrow, scale, existing structures, existing contours, proposed contours (if available), limit of [~~jurisdictional~~ surface water] areas, direction of flow, ordinary high water, impact limits, [and] location and dimension of all proposed structures in impact areas. Cross-sectional drawings, with the [~~above~~] information [in this subdivision] , may be required for certain projects to demonstrate minimization of impacts;

12. [~~Wetland Impact Information for both permanent and temporary impacts, including a description of the impact, the impact area (in square feet or acres), and the wetland classification based on Cowardin classification system or similar terminology.~~ (Reserved.)]

13. Surface water impact information (wetlands, streams, or open water) for both permanent and temporary impacts, including a description of the impact, and the impact area (in square feet, linear feet or acres). Wetland impacts should be quantified according to their Cowardin classification or similar terminology;

14. [~~This subdivision intentionally left blank;~~ (Reserved.)]

[~~13.~~ 15.] A description of the measures taken during project design and development both to avoid and minimize impacts to surface waters to the maximum extent practicable as required by 9 VAC 25-210-115 A;

[~~14.~~ 16.] A description of the intended compensation for unavoidable impacts, including:

a. Any [~~wetland~~] compensation plan proposing to include contributions to [an] in-lieu fee [~~programs~~ fund] shall include proof of the willingness of the entity to

accept the donation and documentation of how the amount of the contribution was calculated [~~.~~*; and*]

b. Any [~~*wetland*~~] *compensation plan proposing the purchase of* [~~*wetland*~~ *mitigation*] *banking credits shall include:*

(1) The name of the proposed [~~*wetland*~~] *mitigation bank* [~~*within the same or adjacent hydrologic unit code within the same river watershed with available credits*~~];

(2) The number of credits proposed to be purchased; and

(3) Certification from the bank owner of the availability of credits;

[~~*15. An aerial photo or scale map that clearly shows the property boundaries, location of surface waters including all wetland boundaries, limits of Chesapeake Bay Resource Protection Area(s) (RPAs), if applicable, and all surface water impacts at the site. A copy of the Corps of Engineers' delineation confirmation, including wetland data sheets, shall also be provided at the time of application. If written confirmation is not available at the time of application, verbal confirmation must be provided and the written confirmation submitted during the VWP general permit review. Additional state or local requirements may apply if the project is located within an RPA.*~~

17. A delineation map of the geographic area of a delineated wetland for all wetlands on the site, in accordance with 9 VAC 25-210-45, including the wetlands data sheets, and the latitude and longitude (to the nearest second) of the center of the wetland impact area. Wetland types should be noted according to their Cowardin classification or similar terminology. A copy of the USACE delineation confirmation, or other correspondence from the USACE indicating their approval of the wetland boundary, shall also be provided at the time of application, or if not available at that time, as soon as it becomes available during the VWP permit review. The delineation map should also include the location of all impacted and non-impacted streams, open water and other surface waters on the site. The approximate limits of any Chesapeake Bay Resource Protection Areas (RPAs) should be shown on the map, as other state or local requirements may apply if the project is located within an RPA.]

[~~*16.*~~ *18.*] *A copy of the FEMA flood insurance rate map or FEMA-approved local floodplain map for the project site;*

[~~*17. Documentation from the Virginia Department of Game and Inland Fisheries, and the Virginia Department of Conservation and Recreation's Division of Natural Heritage regarding the presence of any federal or state proposed or listed threatened and endangered species or proposed or designated critical habitat.*~~

~~*18.*~~ *19.*] *The appropriate application processing fee for a VWP general permit (9 VAC 25-20-10 et seq.)* [~~.~~ *; and*]

[~~*19.*~~ *20.*] *The following certification:*

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system or those persons directly responsible for gathering the information, the information submitted is to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false information including the possibility of fine and imprisonment for knowing violations."

C. The registration statement shall be signed in accordance with 9 VAC 25-210-100. If an agent is acting on behalf of an applicant, the applicant shall submit an authorization of the agent that includes the signatures of both the applicant and the agent.

D. Upon receipt of a complete registration statement, coverage under this VWP general permit shall be approved, approved with conditions, or denied within 45 days. If the board fails to act within 45 days, coverage under this VWP general permit shall be deemed approved.

1. In evaluating the registration statement, the board shall make an assessment of the impacts associated with the project in combination with other existing or proposed impacts. Coverage under this VWP general permit shall be denied if the cumulative impacts will cause or contribute to a significant impairment of state waters or fish and wildlife resources.

2. The board may place additional conditions on a project in order to approve [~~*the use of*~~ *authorization under*] *this VWP general permit. However, these conditions must be consistent with the VWP* [~~*P*~~ *permit program*] *regulation and may not override or conflict with the existing conditions of this VWP general permit related to impacts and compensatory mitigation.*

E. Incomplete registration statement. Where a registration statement is [~~*considered*~~] *incomplete, the board may require the submission of additional information* [~~*after a registration statement has been filed,*~~] *and may suspend processing* [~~*of any registration statement*~~] *until such time as the applicant has supplied* [*the*] *missing or deficient information and the* [~~*board considers the*~~] *registration statement* [*is*] *complete. Further, where the applicant becomes aware that he omitted one or more relevant facts from a registration statement, or submitted incorrect information in a registration statement or in any report to the board, he shall immediately submit such facts or the correct information.*

9 VAC 25-660-70. Mitigation.

A. For the purposes of this VWP general permit, the board shall assume that the purchase or use of mitigation bank credits or a contribution to an in-lieu fee fund is ecologically preferable to practicable on-site [~~*and/or*~~ *or*] *off-site individual compensatory mitigation options* [*, and no further demonstration is necessary*].

[~~*B. Credits or units of wetland mitigation shall be calculated according to the following ratios:*~~

~~*1. One mitigation bank credit equals one unit of wetland mitigation.*~~

~~2. The monetary equivalent of one acre of wetland creation or restoration in the form of a payment to a wetland trust fund equals one unit of wetland mitigation.~~

B. Compensatory mitigation for unavoidable wetland impacts is provided at a 2:1 replacement to loss ratio.

C. Compensatory mitigation for unavoidable stream impacts is provided at a 1:1 replacement to loss ratio.

D. Compensation for open water impacts may be required, as appropriate, to protect state waters and fish and wildlife resources from significant impairment.]

[~~C.~~ *E.*] *In order for contribution to an in-lieu fee fund to be an acceptable form of compensatory mitigation, the fund must be approved for use by the board according to the provisions of 9 VAC 25-210-115 E.*

[~~D.~~ *F.*] *The use of mitigation banks for* [~~*mitigating*~~ *compensating*] *project impacts shall be deemed appropriate if the bank is operating in accordance with the provisions of § 62.1-44.15:5 E* [*of the Code of Virginia*] *and 9 VAC 25-210-115* [*F*] *and the applicant provides verification to* [~~*DEQ*~~ *the board*] *of purchase or debiting of the required amount of credits.*

9 VAC 25-660-80. [~~Modification~~ Notice of planned changes].

[*A.*] *Authorization under this VWP general permit may be modified* [~~*provided the total impacts to surface waters for a single and complete project are less than one-half of an acre, including 125 linear feet of perennial stream channel, when any of the following developments occur:*~~

~~*1. When additions or alterations have been made to the project which require the application of VWP general permit conditions that differ from those of the existing VWP general permit or are absent from it;*~~

~~*2. When new information becomes available about the operation or activity covered by the VWP general permit which was not available at the time of VWP general permit coverage and would have justified the application of different VWP permit conditions at that time;*~~

~~*3. When a change is made in the promulgated standards or regulations on which the VWP general permit was based;*~~

~~*4. When it becomes necessary to change final dates in schedules due to circumstances over which the permittee has little or no control such as acts of God, materials shortages, etc. However, in no case may a compliance schedule be modified to extend beyond any applicable statutory deadline of the Act;*~~

~~*5. When changes occur which are subject to "reopener clauses" in the VWP general permit;*~~

subsequent to issuance if the permittee determines that additional wetland and stream impacts are necessary, provided that the cumulative increase in acreage of wetland impacts is not greater than 1/4 acre and the cumulative increase in stream impacts is not greater than 50 linear feet, and provided that the additional impacts are fully mitigated.

B. The permittee shall notify the board in advance of the planned change, and the modification request shall be reviewed according to all provisions of this regulation.]

9 VAC 25-660-90. Notice of termination.

When all permitted activities requiring notification under 9 VAC 25-660-50 A 1 have been completed, the permittee shall submit a notice of termination within 30 days of final completion. The notice shall contain the following information:

1. Name, mailing address and telephone number of the [~~*applicant*~~ *permittee*]*;*

2. Name and location of the activity;

3. The VWP permit authorization number; [*and*]

4. The following certification:

"I certify under penalty of law that all activities authorized by a VWP general permit have been completed. I understand that by submitting this notice of termination, that I am no longer authorized to perform activities in [~~*wetlands*~~ *surface waters*] *in accordance with the VWP general permit, and that performing activities in* [~~*wetlands*~~ *surface waters*] *is unlawful where the activity is not authorized by a VWP permit. I also understand that the submittal of this notice does not release me from liability for any violations of this VWP general permit."*

9 VAC 25-660-100. VWP general permit.

Any applicant whose registration statement [~~*is*~~ *has been*] *accepted by the board* [~~*will receive the following VWP general permit and shall comply with the requirements in it and be subject to all requirements of the VWP permit regulation, 9 VAC 25-210-10 et seq.*~~ *shall be subject to the following requirements*]*:*

VWP General Permit No. WP1

[*Authorization*] *effective date:*

[*Authorization*] *expiration date:*

VWP GENERAL PERMIT FOR IMPACTS [~~*OF*~~] *LESS THAN ONE-HALF OF AN ACRE UNDER THE VIRGINIA WATER PROTECTION PERMIT AND THE VIRGINIA STATE WATER CONTROL LAW*

Based upon an examination of the information submitted by the applicant and in compliance with § 401 of the Clean Water Act as amended (33 USC § 1341) and the State Water Control Law and regulations adopted pursuant thereto, the board has determined that there is a reasonable assurance that the activity authorized by this VWP general permit, if conducted in accordance with the conditions set forth herein, will protect instream beneficial uses and will not violate applicable water quality standards. The board finds that the effect of the impact, together with other existing or proposed impacts to wetlands, will not cause or contribute to a significant impairment of state waters or fish and wildlife resources.

[~~*In compliance with*~~ *Subject to*] *the provisions of the Clean Water Act, as amended, and pursuant to the State Water*

Control Law and regulations adopted pursuant to it, [~~citizens of the Commonwealth of Virginia are~~ the permittee is] authorized to impact less than one-half of an acre of [nontidal] surface waters [~~(~~] including [~~wetlands),with a maximum of~~ up to] 125 linear feet of perennial stream channel [and up to 1,500 linear feet of nonperennial stream channel] [~~, within the boundaries of the Commonwealth of Virginia, except in those areas specifically named or excluded in board regulations or policies which prohibit such impacts~~].

Permittee:

Address:

Activity Location:

Activity Description:

The authorized activity shall be in accordance with this cover page, Part I - Special Conditions, Part II - Mitigation, Monitoring and Reporting, and Part III - Conditions Applicable to All VWP [General] Permits, as set forth herein.

_____ _____

Director, Department of Environmental Quality Date

Part I. Special Conditions.

A. Authorized activities.

[~~1. Any additional impacts to surface waters associated with this project may require modification of this VWP general permit and additional compensatory mitigation.~~

~~2.~~ 1. This permit authorizes impacts to less than one-half of an acre of nontidal surface waters, including up to 125 linear feet of perennial stream channel, and up to 1,500 linear feet of nonperennial stream channel, according to the information provided in the applicant's approved registration statement.

2. Any additional impacts to surface waters associated with this project shall require either a notice of planned change in accordance with 9 VAC 25-660-80, or another VWP permit application.

3.] The activities authorized by this VWP general permit must commence and be completed within three years of the date of this authorization.

B. Reapplication. Application for continuation of coverage under this VWP general permit or a new VWP permit may be necessary if any portion of the authorized activities or any VWP general permit requirement has not been completed within three years of the date of authorization. Application consists of an updated or new registration statement.

C. Overall project conditions.

1. The construction or work authorized by this VWP general permit shall be executed in a manner so as to minimize any adverse impact on instream beneficial uses as defined in § 62.1-10(b) of the Code of Virginia.

2. No activity may substantially disrupt the movement of aquatic life indigenous to the water body [, including those species that normally migrate through the area, unless the primary purpose of the activity is to impound water. Culverts placed in streams must be installed to maintain low flow conditions]. No activity may cause more than minimal adverse effect on navigation. Furthermore, the activity must not impede the passage of normal or expected high flows and the structure or discharge must withstand expected high flows.

3. Wet or uncured concrete shall be prohibited from entry into flowing surface waters.

4. [~~No fill in surface waters may consist of unsuitable materials (e.g., trash, debris, car bodies, asphalt).~~] All fill material shall be clean and free of contaminants in toxic concentrations or amounts in accordance with all [~~Department of Environmental Quality (DEQ) Regulations~~ applicable laws and regulations].

5. Erosion and sedimentation controls shall be designed in accordance with the [~~current~~] Virginia [~~Department of Conservation and Recreation (DCR)~~] Erosion and Sediment Control Handbook, Third Edition, 1992. These controls shall be placed prior to clearing and grading and maintained in good working order to minimize impacts to state waters. These controls shall remain in place until the area stabilizes.

6. Any exposed slopes and streambanks must be stabilized immediately upon completion of the project at each water body. All denuded areas shall be properly stabilized in accordance with the [~~current DCR~~ Virginia] Erosion and Sediment Control Handbook, Third Edition, 1992.

7. All construction, construction access (e.g., cofferdams, sheetpiling, and causeways) and demolition activities associated with this project shall be accomplished in [~~such~~] a manner that minimizes construction [~~and/or~~ or] waste materials from entering surface waters to the maximum extent practicable, unless authorized by this VWP general permit.

8. No machinery may enter flowing waters, unless authorized by this VWP general permit.

9. Heavy equipment in temporarily impacted wetland areas shall be placed on mats, geotextile fabric, or other suitable measures to minimize soil disturbance to the maximum extent practicable.

10. All nonimpacted [~~wetlands~~ surface waters] within the project or right-of-way limits that are within 50 feet of any clearing, grading, [~~and/or~~ or] filling activities shall be clearly flagged or marked for the life of the construction activity within that area. The permittee shall notify all contractors that these marked areas are [~~wetlands~~ surface waters] where no [~~excavation or filling is~~ activities are] to occur.

11. Temporary disturbances to wetlands during construction shall be avoided and minimized to the maximum extent practicable. All temporarily disturbed wetland areas shall be restored to pre-construction conditions and planted or seeded with appropriate wetland vegetation according to cover type (emergent, scrub/shrub, or forested). The permittee shall [~~ensure that all~~ take all appropriate measures to promote revegetation of] temporarily disturbed wetland areas [~~revegetate~~] with

wetland vegetation by the second year post-disturbance. All temporary fills shall be removed in their entirety and the affected area returned to [~~the~~] pre-existing contours.

12. All materials (including fill, construction debris, and excavated and woody materials) temporarily stockpiled in wetlands shall be placed on mats or geotextile fabric, immediately stabilized to prevent entry into state waters, managed such that leachate does not enter state waters, and completely removed within 30 days following completion of that construction activity. Disturbed areas shall be returned to original contours, stabilized within 30 days following removal of the stockpile, and restored to the original vegetated state.

13. Continuous flow of perennial springs shall be maintained by the installation of spring boxes, french drains, or other similar structures [~~approved by DEQ~~].

14. The permittee shall employ measures to prevent spills of fuels or lubricants into state waters.

15. [The permittee shall conduct his activities in accordance with any] time-of-year restrictions [~~imposed~~ recommended] by the Department of Game and Inland Fisheries [~~of~~ or] the Virginia Marine Resources Commission [~~shall be strictly adhered to~~].

16. Immediately downstream of the construction area, water quality standards [~~(9 VAC 25-260-5 et seq.)~~] shall not be violated as a result of the construction activities.

[17. Untreated stormwater runoff shall be prohibited from directly discharging into any surface waters. Appropriate best management practices shall be deemed suitable treatment prior to discharge into state waters.]

D. Road crossings.

1. Access roads [~~must~~ shall] be constructed [~~so that the length of the road minimizes~~ to minimize] the adverse effects on surface waters to the maximum extent practicable and [~~is~~ to follow] as near as possible [~~to~~] preconstruction contours and elevations. Access roads constructed above preconstruction contours and elevations in surface waters must be properly bridged or culverted to maintain surface flows.

2. At crossings of perennial streams, pipes and culverts shall be countersunk a minimum of six inches to provide for the re-establishment of a natural stream bottom and a low flow channel. Countersinking is not required for existing pipes or culverts that are being maintained or extended.

3. Installation of [~~pipes and~~] road crossings shall occur in the dry via the implementation of cofferdams, sheetpiling, stream diversions, or other [~~means acceptable to DEQ~~ similar structures].

4. All state waters temporarily affected by the construction of a road crossing shall be restored to their original elevations immediately following the construction of that particular crossing.

5. If stream channelization or relocation is required, all work in surface waters shall be done in the dry, unless authorized by this VWP general permit, and all flows shall be diverted around the channelization or relocation area until the new channel is stabilized. This work shall be accomplished by leaving a plug at the inlet and outlet ends of the new channel during excavation. Once the new channel has been stabilized, flow shall be routed into the new channel by first removing the downstream plug and then the upstream plug. The new stream channel shall be constructed following the typical sections submitted with the application. A low flow channel shall be constructed within the channelized or relocated area. The centerline of the low flow channel shall meander, to the extent possible, to mimic natural stream morphology. The rerouted stream flow must be fully established before construction activities in the old streambed can begin.

E. Utility lines.

1. All utility line work in surface waters shall be performed in [~~such~~] a manner [~~as to minimize~~ that minimizes] disturbance, and the area must be returned to its original contours and stabilized, unless authorized by this VWP general permit.

2. Material resulting from trench excavation may be temporarily sidecast [~~(up to three months)~~] into wetlands [not to exceed a total of 90 days], provided the material is not placed in a manner such that it is dispersed by currents or other forces. [~~DEQ may extend the period of temporary sidecasting not to exceed a total of 180 days, where appropriate.~~]

3. The trench for a utility line cannot be constructed in [~~such~~] a manner [~~as to drain~~ that drains] wetlands (e.g., backfilling with extensive gravel layers creating a french drain effect).

[~~4. Untreated stormwater runoff shall be prohibited from directly discharging into any state waters. Appropriate best management practices shall be deemed suitable treatment prior to discharge into state waters.~~]

F. [~~Shoreline~~ Bank] stabilization.

1. Riprap bank stabilization shall be of an appropriate size and design in accordance with the [~~most recent edition of the~~] Virginia [~~Department of Conservation and Recreation's Sediment and~~] Erosion [and Sediment] Control Handbook [, Third Edition, 1992].

2. Riprap apron for all outfalls shall be designed in accordance with the [~~most recent edition of the~~] Virginia [~~Department of Conservation and Recreation's Sediment and~~] Erosion [and Sediment] Control Handbook [, Third Edition, 1992].

[~~3. For shoreline protection activities, the area (in square feet) of surface water impact may not exceed four times the length (in linear feet) of the activity (e.g., a maximum of 400 square feet in surface waters for a 100-foot long bulkhead).~~

~~4. Bulkhead repair and replacement shall not exceed four feet channelward of existing functional bulkheads. The filling of wetlands behind freestanding bulkheads is prohibited.~~

~~5.~~ 3.] For [~~shoreline~~ bank] protection activities, the structure and backfill shall be placed as close to the shoreline as practicable. No material shall be placed in excess of the minimum necessary for erosion protection.

[~~6.~~ 4.] All [~~shoreline~~ bank] erosion [control] structures shall be located [~~so as~~] to eliminate or minimize impacts to vegetated wetlands to the maximum extent practicable.

[~~7.~~ 5.] Asphalt and materials containing asphalt or other toxic substances shall not be used in the construction of submerged sills or breakwaters.

[6. Redistribution of existing stream substrate for the purpose of erosion control is prohibited.

7. All material removed from the stream substrate shall be disposed of in an approved upland area.]

G. Stormwater management facilities.

1. [~~The~~] Stormwater management facilities shall be designed in accordance with best management practices and watershed protection techniques (i.e., vegetated buffers, siting considerations to minimize adverse effects to aquatic resources, bioengineering methods incorporated into the facility design to benefit water quality and minimize adverse effects to aquatic resources) that provide for long-term aquatic resources protection and enhancement, to the maximum extent practicable.

2. Compensatory mitigation for unavoidable impacts shall not be allowed within maintenance areas of stormwater management facilities.

3. Maintenance excavation shall [~~be in accordance with an approved maintenance plan and shall~~] not exceed the original contours of the facility, as approved and constructed.

4. Maintenance within stormwater management facilities will not require mitigation provided that the maintenance is accomplished in designated maintenance areas as indicated in the maintenance plan.

Part II. Mitigation, Monitoring and Reporting.

A. [~~In order to qualify for this VWP general permit,~~ Compensatory mitigation. The permittee shall provide] appropriate and practicable compensatory mitigation [~~will be required~~] for all [~~wetland~~] impacts meeting the conditions outlined in this VWP general permit. The types of compensatory mitigation options that may be considered under this VWP general permit include:

1. Purchases of credits from approved [~~wetland~~] mitigation banks [~~are~~ meeting the requirements of 9 VAC 25-210-115 F] in accordance with 9 VAC 25-660-70 and provided that all impacts are compensated at a 2:1 ratio [~~.~~ ; or]

2. Contributions to an in lieu fee [~~program~~ fund] approved [~~by DEQ~~ in accordance with 9 VAC 25-210-115 E] and dedicated to the achievement of no net loss of wetland acreage and function, provided that all impacts are compensated at a 2:1 ratio.

B. The permittee shall [~~make provisions to monitor for any spills of petroleum products or other materials during the construction process. These provisions shall be sufficient to detect and contain the spill and notify the appropriate authorities~~ submit documentation within 60 days of VWP general permit issuance that the USACE has debited the required mitigation credits from the mitigation bank ledger or that the fund contribution has been received] .

[~~C. The permittee shall submit documentation within 60 days of VWP general permit issuance that the Corps of Engineers has debited the required mitigation credits from the mitigation bank ledger or that the fund contribution has been received.~~

~~D. DEQ shall be notified in writing by certified letter at least 10 days prior to the start of any activities authorized by this VWP general permit. The notification shall include identification of the impact area at which work will occur and a projected schedule for completing work at each permitted impact area.~~

~~E. The permittee shall notify DEQ in writing when unusual or potentially threatening conditions are encountered which require debris removal or involve potentially toxic substances. Measures to remove the obstruction, material, or toxic substance or to change the location of any structure are prohibited until approved by DEQ.~~

~~F. The permittee shall report any fish kills or spills of oil or fuel immediately upon discovery. If spills or fish kills occur between the hours of 8:15 a.m. to 5 p.m. Monday through Friday, DEQ shall be notified at (insert appropriate DEQ office phone number;) otherwise, the Department of Emergency Management shall be notified at 1-800-468-8892.~~

~~G. Written communications required by this VWP general permit shall be submitted to (insert the appropriate DEQ office address.) Please include the VWP general permit number on all correspondence.~~

C. Construction monitoring.

1. Photo stations shall be established to document the construction aspects of project activities within impact areas as authorized by this permit. Photographs should document the pre-construction conditions, activities during construction, and post-construction conditions within one week after completion of construction. Photographs shall be taken during construction at the end of the first, second and twelfth months of construction and then annually for the remainder of the construction project. Photographs are not necessary during periods of no activity within impact areas.

2. The permittee shall make provisions to monitor for any spills of petroleum products or other materials during the construction process. These provisions shall be sufficient to detect and contain the spill and notify the appropriate authorities.

3. Stream bottom elevations at road crossings shall be measured at the inlet and outlet of the proposed structure and recorded prior to construction and within one week after the completion of construction. This requirement shall only apply to those streams not designated as intermittent or those streams not designated in association with stream channelization.

4. Monitoring of water quality parameters shall be conducted during rerouting of the live streams through the new channels in the following manner:

a. A sampling station shall be located upstream and immediately downstream of the relocated channel;

b. Temperature, pH and dissolved oxygen (D.O.) measurements shall be taken once every half hour for at least three readings at each station prior to opening the new channels; and

c. After opening the new channel, temperature, pH and D.O. readings shall be taken once every half hour for at least three readings at each station within 24 hours of opening the new channel.

D. Reporting.

1. Written communications required by this VWP general permit shall be submitted to the appropriate Department of Environmental Quality (DEQ) office. The VWP general permit authorization number shall be included on all correspondence.

2. The board shall be notified in writing by certified letter at least 10 days prior to the start of construction activities authorized by this VWP general permit. The notification shall include identification of the impact area at which work will occur and a projected schedule for completing work at each permitted impact area.

3. After construction begins, construction monitoring reports shall be submitted to the board within 30 days of each monitoring event. The reports shall include, at a minimum, the following:

a. A written statement regarding when work started in the identified impact area, where work was performed, what work was performed, and what work was completed.

b. Properly labeled photographs (to include date and time, name of the person taking the photograph, a brief description, and VWP permit number) showing representative construction activities (including, but not limited to, flagging nonimpact wetland areas, site grading and excavation, installation and maintenance of erosion and sediment controls, culvert installation, bridge and ramp construction, dredging, dredge disposal, etc.).

4. The permittee shall submit a notice of termination within 30 days of final completion in accordance with 9 VAC 25-660-90.

5. The permittee shall notify the board in writing when unusual or potentially complex conditions are encountered that require debris removal or involve a potentially toxic substance. Measures to remove the obstruction, material, or toxic substance or to change the location of any structure are prohibited until approved by the board.

6. The permittee shall report any fish kills or spills of oil or fuel immediately upon discovery. If spills or fish kills occur between the hours of 8:15 a.m. to 5 p.m., Monday through Friday, the appropriate DEQ regional office shall be notified; otherwise, the Department of Emergency Management shall be notified at 1-800-468-8892.

7. Violations of state water quality standards shall be reported within 24 hours to the appropriate DEQ office.

~~H.~~ *8.*] *All submittals required by this VWP general permit shall contain the following signed certification statement:*

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violation."

Part III. Conditions Applicable to All VWP [*General*] *Permits.*

A. Duty to comply. The permittee shall comply with all conditions of the VWP [*general*] *permit. Nothing in this VWP general permit shall be construed to relieve the permittee of the duty to comply with all applicable federal and state statutes, regulations and toxic standards and prohibitions. Any VWP* [*general*] *permit noncompliance is a violation of the Clean Water Act and State Water Control Law, and is grounds for enforcement action, VWP* [*general*] *permit* [*authorization*] *termination, revocation,* [~~*modification,*~~] *or denial of a* [~~*VWP permit*~~] *renewal application.*

B. Duty to mitigate. The permittee shall take all reasonable steps to minimize or prevent any impacts in violation of the VWP general permit which may have a reasonable likelihood of adversely affecting human health or the environment.

C. Reopener. This VWP general permit [*authorization*] *may be reopened to modify* [~~*the*~~ *its*] *conditions* [~~*of the VWP general permit*~~] *when the circumstances on which the previous VWP general permit* [*authorization*] *was based have materially and substantially changed, or special studies conducted by the* [~~*department*~~ *board*] *or the permittee show material and substantial change since the time the VWP general permit* [*authorization*] *was issued and thereby constitute cause for VWP general permit* [~~*modification or*~~ *authorization*] *revocation and reissuance.*

D. Compliance with state and federal law. Compliance with this VWP general permit constitutes compliance with the VWP permit requirements of the State Water Control Law. Nothing in this VWP general permit shall be construed to preclude the institution of any legal action under or relieve the permittee from any responsibilities, liabilities, or other penalties established pursuant to any other state law or regulation or under the authority preserved by § 510 of the Clean Water Act.

E. Property rights. Coverage under this VWP general permit does not convey any property rights in either real or personal property, or any exclusive privileges, nor does it authorize any injury to private property or any invasion of personal property rights, nor any infringement of federal, state or local laws or regulations.

F. Severability. The provisions of this VWP general permit [*authorization*] *are severable.*

G. Right of entry. The [~~*applicant and/or*~~] *permittee shall allow* [~~*authorized state and federal representatives*~~ *the board or its agents*]*, upon the presentation of credentials, at reasonable times and under reasonable circumstances:*

1. To enter the permittee's property, public or private, and have access to, inspect and copy any records that must be kept as part of the VWP general permit conditions;

2. To inspect any facilities, operations or practices (including monitoring and control equipment) regulated or required under the VWP general permit;

3. To sample or monitor any substance, parameter or activity for the purpose of assuring compliance with the conditions of the VWP general permit or as otherwise authorized by law.

For the purpose of this section, the time for inspection shall be deemed reasonable during regular business hours. Nothing contained herein shall make an inspection time unreasonable during an emergency.

H. Transferability of VWP [~~*permits*~~ *general permit authorization*]*. This VWP general permit* [*authorization*] *may be transferred to another person by a permittee if:*

1. The current permittee notifies the board within 30 days of the transfer of the title to the facility or property;

2. The notice to the board includes a written agreement between the existing and [~~*proposed*~~ *new*] *permittee containing a specific date of transfer of VWP general permit* [*authorization*] *responsibility, coverage and liability* [~~*between them*~~ *to the new permittee*]*, or that the* [~~*seller*~~ *existing permittee*] *will retain such responsibility, coverage, or liability, including liability for compliance with the requirements of any enforcement activities related to the permitted activity; and*

3. The board does not notify the existing and [~~*proposed*~~ *new*] *permittee of* [~~*the board's*~~ *its*] *intent to modify or revoke and reissue the VWP general permit* [*authorization*] *within the 30-day time period.*

On the date of the VWP general permit [*authorization*] *transfer, the transferred VWP general permit* [*authorization*] *shall be as fully effective as if it had been issued directly to the new permittee.*

[~~*I. VWP permit modification. The permittee shall notify Department of Environmental Quality of any modification of this activity and shall demonstrate in a written statement to the department that said modification will not violate any conditions of this VWP general permit. If such demonstration cannot be made, the permittee shall apply for a modification of this VWP general permit. This VWP general permit may be modified when any of the following developments occur:*~~

~~*1. When additions or alterations have been made to the affected facility or activity which require the application of VWP general permit conditions that differ from those of the existing VWP general permit or are absent from it, provided the total project impacts for a single and complete project are less than one-half of an acre and are fully mitigated;*~~

~~*2. When new information becomes available about the operation or activity covered by the VWP general permit which was not available at VWP general permit issuance and would have justified the application of different permit conditions at the time of VWP general permit issuance;*~~

~~*3. When a change is made in the promulgated standards or regulations on which the VWP general permit was based;*~~

~~*4. When it becomes necessary to change final dates in schedules due to circumstances over which the permittee has little or no control such as acts of God, materials shortages, etc. However, in no case may a compliance schedule be modified to extend beyond any applicable statutory deadline of the CWA; and*~~

~~*5. When changes occur that are subject to "reopener clauses" in the VWP general permit.*~~

I. Notice of planned change. Authorization under this VWP general permit may be modified subsequent to issuance if the permittee determines that additional wetland and stream impacts are necessary, provided that the cumulative increase in acreage of wetland impacts is not greater than 1/4 acre and the cumulative increase in stream impacts is not greater than 50 linear feet, and provided that the additional impacts are fully mitigated. The permittee shall notify the board in advance of the planned change, and the modification request will be reviewed according to all provisions of this regulation.]

J. VWP [*general*] *permit* [*authorization*] *termination. This VWP general permit authorization is subject to termination. Causes for termination are as follows:*

1. Noncompliance by the permittee with any condition of the VWP general permit;

2. The permittee's failure in the application or during the VWP general permit [*authorization*] *issuance process to disclose fully all relevant facts or the permittee's misrepresentation of any relevant facts at any time;*

3. The permittee's violation of a special or judicial order; and

4. A determination by the board that the permitted activity endangers human health or the environment and can be regulated to acceptable levels by VWP general permit [*authorization*] *modification or termination.*

K. Civil and criminal liability. Nothing in this VWP general permit shall be construed to relieve the permittee from civil and criminal penalties for noncompliance.

L. Oil and hazardous substance liability. Nothing in this VWP general permit shall be construed to preclude the institution of legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject under § 311 of the Clean Water Act or §§ 62.1-44.34:14 through 62.1-44.34:23 of the State Water Control Law.

M. [*Duty to cease or confine activity. It shall not be a defense for a permittee in an enforcement action that it would have*

been necessary to halt or reduce the activity for which a VWP permit has been granted in order to maintain compliance with the conditions of the VWP permit.

N. Duty to provide information.

1. The permittee shall furnish to the board any information which the board may request to determine whether cause exists for modifying, revoking, reissuing and terminating the VWP permit, or to determine compliance with the VWP permit. The permittee shall also furnish to the board, upon request, copies of records required to be kept by the permittee.

2. Plans, specifications, maps, conceptual reports and other relevant information shall be submitted as required by the board prior to commencing construction.

O. Monitoring and records requirements.

1. Monitoring of parameters, other than pollutants, shall be conducted according to approved analytical methods as specified in the VWP permit. Analysis of pollutants will be conducted according to 40 CFR Part 136 (2000), Guidelines Establishing Test Procedures for the Analysis of Pollutants.

2. Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.

3. The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart or electronic recordings for continuous monitoring instrumentation, copies of all reports required by the VWP permit, and records of all data used to complete the application for the VWP permit, for a period of at least three years from the date of the expiration of a granted VWP permit. This period may be extended by request of the board at any time.

4. Records of monitoring information shall include:

a. The date, exact place and time of sampling or measurements;

b. The name of the individuals who performed the sampling or measurements;

c. The date and time the analyses were performed;

d. The name of the individuals who performed the analyses;

e. The analytical techniques or methods supporting the information such as observations, readings, calculations and bench data used;

f. The results of such analyses; and

g. Chain of custody documentation.

P.] *Unauthorized discharge of pollutants. Except in compliance with this VWP general permit, it shall be unlawful for the permittee to:*

1. Discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances;

2. Excavate in a wetland;

3. Otherwise alter the physical, chemical, or biological properties of state waters and make them detrimental to the public health, to animal or aquatic life, to the uses of such waters for domestic or industrial consumption, for recreation, or for other uses; or

4. On and after October 1, 2001, conduct the following activities in a wetland:

a. New activities to cause draining that significantly alter or degrade existing wetland acreage or functions;

b. Filling or dumping;

c. Permanent flooding or impounding; or

d. New activities that cause significant alteration or degradation of existing wetland acreage or functions.

DOCUMENTS INCORPORATED BY REFERENCE

Virginia Erosion and Sediment Control Handbook, Third Edition, 1992, Department of Conservation and Recreation.

NOTICE: The forms used in administering 9 VAC 25-660-10 et seq. Virginia Water Protection General Permit for Impacts Less than One-Half of an Acre are not being published due to the number of pages; however, the name of each form is listed below. The forms are available for public inspection at the Department of Environmental Quality, 629 E. Main Street, Richmond, Virginia, or at the office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia.

FORMS

[*Department of Environmental Quality Water Division Permit Application Fee (eff. 8/01).*

Joint Permit Application for Activities in Waters and Wetlands of the Commonwealth of Virginia (eff. 8/01).

Virginia Water Protection General Permit Registration Statement (eff. 8/01).]

VA.R. Doc. No. R00-195; Filed June 13, 2001, 10:55 a.m.

* * * * * * * *

Title of Regulation: **9 VAC 25-670-10 et seq. Virginia Water Protection General Permit for Facilities and Activities of Utility and Public Service Companies Regulated by the Federal Energy Regulatory Commission or the State Corporation Commission and Other Utility Line Activities.**

Statutory Authority: §§ 62.1-44.15 and 62.1-44.15:5 of the Code of Virginia.

Effective Date: October 1, 2001.

Summary:

The regulations address a new requirement in § 62.1-44.15:5 of the Code of Virginia to develop a general permit for wetland impacts resulting from the activities of utility projects.

Agency Contact: Copies of the regulation may be obtained from Ellen Gilinsky, Department of Environmental Quality,

P.O. Box 10009, Richmond, VA 23229, telephone (804) 698-4375.

CHAPTER 670.
VIRGINIA WATER PROTECTION GENERAL PERMIT FOR FACILITIES AND ACTIVITIES OF UTILITY AND PUBLIC SERVICE COMPANIES REGULATED BY THE FEDERAL ENERGY REGULATORY COMMISSION OR THE STATE CORPORATION COMMISSION AND OTHER UTILITY LINE ACTIVITIES.

9 VAC 25-670-10. Definitions.

The words and terms used in this chapter shall have the meanings defined in the State Water Control Law (§ 62.1-44.2 et seq. of the Code of Virginia) and the Virginia Water Protection (VWP) Permit Regulation (9 VAC 25-210-10 et seq.) unless the context clearly indicates otherwise or unless [*otherwise*] *indicated below.*

[*"Bank protection" means measures employed to stabilize channel banks and combat existing erosion problems. Such measures may include the construction of riprap revetments, sills, rock vanes, beach nourishment, breakwaters, bulkheads, groins, spurs, levees, marsh toes stabilization, anti-scouring devices, and submerged sills.*]

"Channelization" means the alteration of a stream channel by widening, deepening, straightening, cleaning or paving certain areas.

[*"Cross-sectional sketch" means a graph or plot of ground elevation across a waterbody or a portion of it, usually along a line perpendicular to the waterbody or direction of flow.*]

"Emergent wetland" means a class of wetlands characterized by erect, rooted, herbaceous plants growing in water or on a substrate that is at least periodically deficient in oxygen as a result of excessive water content, excluding mosses and lichens. This vegetation is present for most of the growing season in most years and are usually dominated by perennial plants.

"FEMA" means Federal Emergency Management Agency.

"Forested wetland" means a class of wetlands characterized by woody vegetation that is six meters (20 feet) tall or taller. These areas normally possess an overstory of trees, an understory of trees or shrubs, and an herbaceous layer.

"Impacts" means results caused by human-induced activities conducted in surface waters, [~~*such as filling, dumping, dredging, excavating, permanent flooding or impounding or any other new activities on or after October 1, 2001, including draining, that significantly alter or degrade existing acreage or functions of the surface waters*~~ *as specified in § 62.1-44.15:5 D of the Code of Virginia*].

[*"Independent utility" means a test to determine what constitutes a single and complete project. A project is considered to have independent utility if it would be constructed absent the construction of other projects in the project area. Portions of a multi-phase project that depend upon other phases of the project do not have independent utility. Phases of a project that would be constructed even if the other phases are not built can be considered as separate single and complete projects with independent utility.*

"Perennial stream" means a stream that has flowing water year round in a typical year. For the purpose of this chapter, a surface water body (or stream segment) having a drainage area of at least 320 acres (1/2 square mile) is a perennial stream, unless field conditions clearly indicate otherwise.]

[~~*"Permanent impact" means the filling of a wetland or surface water such that it becomes an upland; the draining of a wetland such that it becomes an upland; or the permanent flooding of a vegetated wetland. This includes, for example, such activities as the construction of access roads or the construction of foundations for substations buildings or the placement of utility lines in surface waters or wetlands at a grade above the original ground surface.*~~

~~*"Registration statement" means a form of preconstruction application or notification.*~~]

"Scrub-shrub wetland" means a class of wetlands dominated by woody vegetation less than six meters (20 feet) tall. The species include tree shrubs, young trees, and trees or shrubs that are small or stunted because of environmental conditions.

"Single and complete project" means the total project proposed or accomplished by one person [*and which has independent utility*]. *For linear projects, the "single and complete project" (i.e., a single and complete crossing) will apply to each crossing of a separate* [*surface*] *water* [~~*of the United States*~~] *(i.e., a single waterbody) and to multiple crossings of the same waterbody at separate and distinct locations. However, individual channels in a braided stream or river, or individual arms of a large, irregularly-shaped wetland, lake, etc. are not separate waterbodies.* [~~*A project is considered to have independent utility if it would be constructed absent the construction of other projects in the project area. Portions of a multi-phase project that depend upon other phases of the project do not have independent utility. Phases of a project that would be constructed even if the other phases are not built can be considered as separate single and complete projects with independent utility.*~~]

"State programmatic general permit" means a [~~*type of*~~] *general permit issued by the Department of the Army* [~~*and founded on an existing state, local or federal agency program that is designed to avoid duplication with another federal, state or local program provided it has been determined that the environmental consequences of the action are individually and cumulatively minimal*~~ *in accordance with 33 CFR Part 32S that is founded on a state program and is designed to avoid duplication between the federal and state programs*].

"Temporary impact" means [~~*construction*~~ *an impact caused by*] *activities in* [~~*wetlands and*~~] *surface waters* [*, including wetlands,*] *in which the ground is restored to its preconstruction contours and elevations, without significantly affecting wetland functions and values.*

"Up to one-tenth of an acre" means 0.00 to 0.10 acre, rounded to the second decimal place.

"Up to [~~*two acres*~~ *one acre*]*" means 0.00 to* [~~*2.0 acres*~~ *1.0 acre*]*, rounded to the second decimal place.*

"Utility line" means any pipe or pipeline for the transportation of any gaseous, liquid, liquifiable or slurry substance, for any purpose, and any cable, line, or wire for the transmission for any purpose of electrical energy, telephone, and telegraph messages and radio and television communication. The term utility line does not include activities which drain a [~~*wetland*~~ *surface water*] *to convert it to an upland, such as drainage tiles or french drains; however, it does apply to pipes conveying drainage from another area.*

9 VAC 25-670-20. Purpose; delegation of authority; effective date of VWP general permit.

A. The purpose of this chapter is to establish VWP General Permit Number WP2 under the VWP permit regulation to govern impacts related to the construction and [~~*operation*~~ *maintenance*] *of utility lines. Applications for coverage under this VWP general permit shall be processed for approval, approval with conditions, or denial by the board.*

B. The director, or [~~*an authorized representative*~~ *his designee*]*, may perform any act of the board provided under this chapter, except as limited by § 62.1-44.14 of the Code of Virginia.*

[~~*C. In issuing this VWP general permit, the board has not taken into consideration the structural stability of the proposed structure(s).*~~

~~*D.*~~ *C.*] *This VWP general permit regulation will become effective* on [*October 1, 2001,*] and *will expire* [~~*five years after the effective date. For any covered activity, this VWP general permit is effective upon compliance with all the provisions of 9 VAC 25-670-30 and the receipt of this VWP general permit*~~ *on October 1, 2006*]*.*

[~~*E. For each individual activity requiring notification, coverage will continue for a maximum of three years from the date of authorization of coverage under this VWP general permit to an individual person or applicant.*~~

D. Authorization to impact surface waters under this VWP general permit is effective upon compliance with all the provisions of 9 VAC 25-670-30. Notwithstanding the expiration date of this general permit regulation, authorization to impact surface waters under this VWP general permit will continue for a maximum of three years.]

9 VAC 25-670-30. Authorization to impact surface waters.

A. Any person governed by this VWP general permit is authorized to impact up to one acre of [*nontidal*] *surface waters* [~~*(including wetlands)*~~ *, including up to 500 linear feet of perennial stream channel and up to 1,500 linear feet of nonperennial stream channel,*] *for facilities and activities of utilities and public service companies regulated by the Federal Energy Regulatory Commission or the State Corporation Commission and other utility line activities provided that the person submits notification as required in 9 VAC 25-670-50 and 9 VAC 25-670-60, remits the required application processing fee (9 VAC 25-20-10 et seq.), complies with the limitations and other requirements of 9 VAC 25-670-100, receives approval from the board, and provided that:*

1. The applicant shall not have been required to obtain a VWP individual permit under the VWP permit regulation (9 VAC 25-210-10 et seq.) for the proposed project impacts. The applicant, at his discretion, may seek a VWP individual permit or coverage under another [*applicable*] *VWP general permit in lieu of this VWP general permit.*

2. Impacts [*result from a single and complete project*]*, including all attendant features both temporary and permanent* [~~*, are part of a single and complete project*~~].

[~~*a. Activities authorized include:*~~

~~*(1) The construction, maintenance or repair of utility lines, including outfall structures and the excavation, backfill or bedding for utility lines provided there is no change in preconstruction contours;*~~

~~*(2) The construction, maintenance or expansion of a substation facility or pumping station associated with a power line or utility line;*~~

~~*(3) The construction or maintenance of foundations for overhead utility line towers poles or anchors, provided the foundations are the minimum size necessary and separate footings for each tower leg (rather than a single pad) are used where feasible;*~~

~~*(4) The construction of access roads for the construction or maintenance of utility lines including overhead power lines and utility line substations, provided the activity in combination with any substation does not exceed the threshold limit of this VWP general permit;*~~

~~*b.*~~ *a.*] *Where a utility line has multiple crossings of surface waters (several single and complete projects) with more than minimal impacts, the board may at its discretion require* [~~*an*~~ *a VWP*] *individual* [~~*VWPP*~~ *permit*] *for the project.*

[*b. Where an access road segment (i.e., the shortest segment of a road with independent utility that is part of a larger project) has multiple crossings of surface waters (several single and complete projects), the board may, at its discretion, require a VWP individual permit.*

~~*3. Permanent impacts from a single and complete project do not exceed one acre of surface waters in total; and*~~

~~*4. Compensatory mitigation is provided for unavoidable permanent impacts whenever the permanent impact for any single and complete project is greater than one-tenth of an acre.*~~

~~*5.*~~ *3.*] *Compensatory mitigation for unavoidable impacts is provided in the form of any one or combination of the following: creation, restoration, the purchase or use of mitigation bank credits, or a contribution to an approved in-lieu fee fund.* [*Compensation may incorporate*] *preservation of wetlands or preservation or restoration of upland buffers adjacent to state waters* [~~*may be acceptable*~~] *when utilized in conjunction with creation, restoration or mitigation bank credits.*

[*4. The stream impact criterion applies to all components of the project, including any structures and stream channel manipulations. Stream channel manipulations (e.g., tie-ins*

or cleanout) may not exceed 100 linear feet on the upstream or downstream end of a stream crossing.]

[~~6. Compensatory mitigation for unavoidable impacts of one-tenth of an acre or greater is provided at the following compensation to loss ratios:~~

~~Emergent wetlands 1:1~~
~~Scrub/shrub wetlands 1.5:1~~
~~Forested wetlands 2:1~~
~~Open water (ponds, lakes, etc.) 1:1 (in-kind or out-of-kind)~~

~~7.~~ 5.] When functions and values of surface waters are permanently adversely affected, such as for conversion of forested to emergent wetlands in permanently maintained utility right-of-ways, mitigation will be required to reduce and minimize the adverse effects of the project to surface waters. Permanently maintained access corridors no wider than 20 feet will be allowed without compensatory mitigation.

[B. Activities that may be authorized under this VWP general permit include the following:

1. The construction, maintenance or repair of utility lines, including outfall structures and the excavation, backfill or bedding for utility lines provided there is no change in preconstruction contours;

2. The construction, maintenance or expansion of a substation facility or pumping station associated with a power line or utility line;

3. The construction or maintenance of foundations for overhead utility line towers, poles or anchors, provided the foundations are the minimum size necessary and separate footings for each tower leg (rather than a single pad) are used where feasible; and

4. The construction of access roads for the construction or maintenance of utility lines including overhead power lines and utility line substations, provided the activity in combination with any substation does not exceed the threshold limit of this VWP general permit.]

[~~B.~~ C.] The board waives the requirement for coverage under a VWP general permit for activities that occur in an isolated wetland of minimal ecological value, as defined in 9 VAC 25-210-10. [Any person claiming this waiver bears the burden to demonstrate that he qualifies for the waiver.]

[~~C.~~ D.] Receipt of this VWP general permit does not relieve any permittee of the responsibility to comply with any other applicable federal, state or local statute, ordinance or regulation.

[E. In issuing this VWP general permit, the board has not taken into consideration the structural stability of the proposed structure or structures.]

[~~D.~~ F.] Coverage under a nationwide or regional permit promulgated by the U.S. Army Corps of Engineers [(USACE)], and for which the board has issued [~~or waived~~] § 401 certification existing as of the effective date of this chapter, shall constitute coverage under this VWP general permit [~~until such time as~~ unless] a state programmatic general permit is approved for the covered activity or impact. [Notwithstanding any other provision, activities authorized under a nationwide or regional permit promulgated by the USACE and certified by the board in accordance with 9 VAC 25-210-130 do not need to obtain coverage under this VWP general permit unless a state programmatic general permit is approved for the covered activity or impact.]

9 VAC 25-670-40. [~~**Prohibitions**~~ **Exceptions to coverage**]**.**

A. [Authorization for coverage under] this VWP general permit will not apply in the following areas:

1. [~~Wetland areas~~ Wetlands] composed of 10% or more of the following species (singly or in combination) in any stratum: Atlantic white cedar (Chamaecyparis thyoides), bald cypress (Taxodium distichum), water tupelo (Nyssa aquatica), or overcup oak (Quercus lyrata). Percentages [~~may~~ shall] be based upon [either basal area, or] percent [~~aerial~~ areal] cover.

2. Surface waters with federal or state listed or proposed threatened or endangered species or proposed or designated critical habitat.

B. [Authorization for coverage under] this VWP general permit cannot be used in combination with [authorizations for coverage under] other VWP [~~general~~] permits to impact greater than one acre [of nontidal surface waters, or more than 500 linear feet of perennial stream channel or more than 1,500 linear feet of nonperennial stream channel]. [~~The use of~~] More than one [authorization for coverage under this] VWP [~~General Permit WP2~~ general permit] for a [single and complete] project is prohibited, except when the cumulative impact to surface waters does not exceed the [~~acreage limit of the VWP general permit with the highest specified acreage limit~~ above mentioned limits].

C. The activity to impact surface waters shall not have been prohibited by state law [~~,~~ or] regulations [~~or policies~~], nor shall it contravene [~~the~~ applicable] Water Quality Standards (9 VAC 25-260-5 et seq.) [~~, as amended or adopted by the board~~].

D. The board shall deny coverage under this VWP general permit to any applicant [~~conducting~~ for] activities [~~which the board determines~~ that] cause, may reasonably be expected to cause, or may be contributing to a violation of water quality standards, including discharges or discharge-related activities that are likely to adversely affect aquatic life, or for activities [~~which the board determines~~] that together with other existing or proposed impacts to wetlands will cause or contribute to a significant impairment of state waters or fish and wildlife resources.

E. This VWP general permit [~~may not be used for any water withdrawal activities~~ does not authorize activities that cause more than minimal changes to the peak hydraulic flow characteristics, increase flooding, or cause more than minimal degradation of the water quality of any stream] .

F. This VWP general permit may not be used for:

1. Any stormwater management facility;

2. Any water withdrawal activity;

3. The pouring of wet concrete or the use of tremie concrete or grout bags in state waters, unless the area is contained within a cofferdam or the work is performed in the dry;

4. Dredging or maintenance dredging;

5. The taking of threatened or endangered species in accordance with the following:

[~~F.~~ *a.*] *Pursuant to § 29.1-564 of the Code of Virginia: "* [~~*Taking, transportation, sale, etc., of endangered species is prohibited.*~~] *The taking, transportation, processing, sale or offer for sale within the Commonwealth of any fish or wildlife appearing on any list of threatened or endangered species published by the* [~~*U.S.*~~ *United States*] *Secretary of the Interior pursuant to the provisions of the federal Endangered Species Act of 1973 (P.L. 93-205), or any modifications or amendments thereto, is prohibited except as provided in § 29.1-568."*

[~~*F.*~~ *b.*] *Pursuant to § 29.1-566 of the Code of Virginia and 4 VAC 15-20-130 B and C, the taking, transportation. processing, sale or offer for sale within the Commonwealth of any state-listed endangered or threatened species is prohibited except as provided in § 29.1-568 of the Code of Virginia.*

9 VAC 25-670-50. Notification.

A. Notification to the board is not required for utility line activities that have only temporary impacts [~~*and that*~~ *provided they*] *do not involve mechanized land clearing of forested wetlands.*

[~~*B. Notification to the board is required for permanent impacts up to one-tenth of an acre and for mechanized land clearing in forested wetlands. In lieu of the complete registration statement, the applicant shall submit only the information required in subdivisions B 1 through 10, 14, 16 and 17 of 9 VAC 25-670-60 prior to commencing the activity.*~~

~~*C. Notification to the board will be required prior to construction for permanent impacts greater than one-tenth of an acre of wetlands and shall be reported by the applicant to DEQ via the entire registration statement in 9 VAC 25-670-60.*~~

B. Notification to the board will be required prior to construction, as follows:

1. An application for proposed permanent impacts greater than one-tenth of an acre of surface waters shall be submitted via a registration statement that includes all information pursuant to 9 VAC 25-670-60.

2. Proposed permanent impacts up to one-tenth of an acre, shall be reported via a registration statement that includes only the following information: subdivisions 1 through 8, 13, 15 and 20 of 9 VAC 25-670-60 B.

C. A Joint Permit Application (JPA) or Virginia Department of Transportation Interagency Coordination Meeting Joint Permit Application (VDOT IACM JPA) may serve as the registration statement provided that all information required pursuant to 9 VAC 25-670-60 is included and that the first page of the form is clearly marked indicating the intent to have the form serve as the registration statement for this VWP general permit.]

D. The [~~*DEQ*~~ *board*] *will determine whether the proposed activity requires coordination with the United States Fish and Wildlife Service, the Virginia Department of Conservation and Recreation* [*, the Virginia Department of Agriculture and Consumer Services*] *and the Virginia Department of Game and Inland Fisheries* [*regarding the presence of any federal or state proposed or listed threatened and endangered species or proposed or designated critical habitat. Based upon consultation with these agencies, the board may deny coverage under this general permit*] *.*

9 VAC 25-670-60. Registration statement.

A. Registration statements shall be filed with the board, as follows:

1. The applicant shall file a complete registration statement as described in 9 VAC 25-670-50 for a VWP General Permit WP2 [*for impacts to surface waters resulting from activities of utilities*]*, which will serve as a notice of intent for coverage under* [~~*the*~~ *this*] *VWP general permit.*

2. Any applicant proposing an activity under this VWP general permit [~~*shall*~~ *is advised to*] *file the required registration statement at least 45 days prior to the date planned for the commencement of the activity to be regulated by the VWP general permit.* [*The VDOT may use its monthly IACM process for submitting registration statements.*]

[~~*3. Any person conducting an activity without a VWP permit, who qualifies for coverage under this VWP general permit, shall file the registration statement immediately upon discovery of the unpermitted activity.*~~]

B. The required registration statement shall contain the following information:

1. The applicant's name, mailing address, telephone number and fax number (if applicable);

2. The authorized agent's (if applicable) name, mailing address, telephone number and fax number (if applicable);

3. The existing VWP permit number (if applicable);

4. The name of the project, purpose of project, and a description of the activity;

5. The name of [*the*] *water* [~~*body(ies), if*~~ *body or water bodies as*] *applicable;*

6. The hydrologic unit code (HUC) for the project area;

7. The name of the city or county where the project is located;

8. Latitude and longitude, to the nearest second, from a central location within the project limits;

9. A detailed location map (e.g., a United States Geologic Survey topographic quadrangle map) of the project area. The map should be of sufficient detail such that the site may be easily located for site inspection;

[*10. The appropriate appendices from the JPA;*]

[~~*10.*~~ *11.*] *Project plan view. All plan view sketches should include, at a minimum, north arrow, scale, existing*

structures, existing [~~*contours*~~] *and proposed contours (if available), limit of* [~~*jurisdictional*~~ *surface water*] *areas, direction of flow, ordinary high water, impact limits,* [*and*] *location and dimension of all proposed structures in impact areas.* [*Cross-sectional sketches, with the above information, may be required for certain projects to demonstrate minimization of impacts;*]

[~~*11. Wetland impact information, including a description of the impact, the impact area (in square feet or acres), and the wetland classification based on the Cowardin classification system or similar terminology.*~~]

12. [~~*This subdivision intentionally left blank;*~~ *(Reserved.)*

13. Surface water impact information (wetlands, streams, or open water) for both permanent and temporary impacts, including a description of the impact, and the impact area (in square feet, linear feet or acres). Wetland impacts should be quantified according to their Cowardin classification or similar terminology;

14. Functional values assessment for impacts to wetlands greater than one acre. The functional assessment shall consist of a narrative description of the existing wetland functions and values and the impact that the project will have on these functions and values;]

[~~*12.*~~ *15.*] *A description of the measures taken during project design and development both to avoid and minimize impacts to surface waters to the maximum extent practicable, as required by 9 VAC 25-210-115 A;*

[~~*13.*~~ *16.*] *A description of the intended compensation for unavoidable impacts* [~~.~~ *, including:*]

a. A conceptual compensatory mitigation plan, at a minimum, must be submitted, and shall include: the goals and objectives in terms of replacement of wetland or stream acreage and function; a location map, including latitude and longitude (to the nearest second) at the center of the site; a hydrologic analysis, including a draft water budget based on expected monthly inputs and outputs which will project water level elevations for a typical [*year, a*] *dry* [*year*] *and* [*a*] *wet year; groundwater elevation data, if available, or the proposed location of groundwater monitoring wells to collect* [~~*this*~~ *these*] *data; wetland delineation sheets, maps* [~~*and a jurisdictional determination from the Corps of Engineers*~~] *for existing wetland areas on the proposed* [~~*site(s)*~~ *site or sites*]*; a conceptual grading plan; a conceptual planting scheme, including suggested plant species, zonation and acreage of each vegetation type proposed; a proposed soil preparation and amendment plan addressing both topsoil and subsoil conditions; and a draft design of any water control structures.*

b. Applicants proposing to [~~*mitigate*~~ *compensate*] *off-site,* [~~*to*~~ *including*] *purchase* [*or use of*] *mitigation bank credits, or* [~~*to contribute*~~ *contribution*] *to an in-lieu fee* [~~*program*~~ *fund*] *shall* [*first*] *discuss the feasibility of on-site compensatory mitigation. If on-site compensatory mitigation is practicable, applicants must provide documentation as to why the proposed off-site compensatory mitigation* [~~*, mitigation banking, or in-lieu fee fund contribution*~~] *is ecologically preferable. The evaluation should include, but not be limited to, the following assessment criteria: water quality benefits, hydrologic source, hydrologic regime, watershed,* [~~*wetlands*~~ *surface water*] *functions and values, vegetation type, soils, impact acreage, distance from impacts, timing of compensation* [~~*vs.*~~ *versus*] *impacts, acquisition, constructability, and cost.*

c. Any [~~*wetland compensation plan proposing to include contributions to in-lieu fee programs shall include proof of the willingness of the entity to accept the donation and the assumptions or documentation of how the amount of the contribution was calculated*~~ *applicant proposing compensation involving stream restoration shall submit a plan that includes goals and objectives in terms of water quality benefits; location map, including the latitude and longitude at the center of the site; the proposed stream segment restoration locations, including plan view and cross-section sketches; the stream deficiencies that need to be addressed; the restoration measures to be employed, including proposed design flows and types of instream structures; and a proposed construction schedule*] *.*

[*d. Any compensation plan proposing to include contributions to an in-lieu fee fund shall include proof of the willingness of the entity to accept the donation and documentation of how the amount of the contribution was calculated.*]

[~~*d.*~~ *e.*] *Any* [~~*wetland*~~] *compensation plan proposing the purchase of* [~~*wetland*~~ *mitigation*] *banking credits shall include:*

(1) The name of the proposed [~~*wetland*~~] *mitigation bank* [~~*within the same or adjacent hydrologic unit code within the same river watershed with available credits*~~]*;*

(2) The number of credits proposed to be purchased or used; and

(3) Certification from the bank owner of the availability of credits.

[~~*e. A final compensatory mitigation plan may be submitted, if available.*~~

~~*(1) The final compensatory mitigation plan shall include: narrative description of the plan including goals and objectives, site location, existing and proposed grade, schedule for compensatory mitigation site construction, source of hydrology and a water budget (nontidal sites only) for typical and driest years, mean tidal range (tidal sites only), proposed mean low water and mean high water elevations (tidal sites only), plant species, planting scheme indicating expected zonation, planting schedule, an abatement and control plan for undesirable plant species, soil amendments, all structures and features considered necessary for the success of the plan, and number and locations of panoramic photographic stations and ground water monitoring wells (or tide gages, for tidal sites). Rooted seedlings or cuttings should originate from a local nursery or be adapted to local conditions. Vegetation*

~~should be native species common to the area, should be suitable for growth in local wetland conditions, and should be from areas approximately 200 miles from the project site.~~

~~(2) The final compensatory mitigation plan shall include protection of state waters (including compensatory mitigation areas and nonimpact state waters) within the project boundary in perpetuity. These areas shall be surveyed or platted within 120 days of final plan approval, and the survey or plat shall be recorded in accordance with the requirements of this section. Any restrictions, protections, or preservations, or any similar instrument provided as part of the compensatory mitigation plan, shall state that no activity will be performed on the property in any area designated as a compensatory mitigation area or nonimpact state water, with the exception of maintenance or corrective action measures authorized by DEQ. Unless specifically authorized by DEQ through the issuance of a VWP individual permit, modification of this VWP general permit, or waiver thereof, this restriction applies to ditching, land clearing or the discharge of dredge or fill material. Such instrument shall contain the specific phrase "ditching, land clearing or discharge of dredge or fill material" in the limitations placed on the use of these areas. The protective instrument shall be recorded in the chain of title to the property. Proof of recordation shall be submitted within 60 days of survey or plat approval. This requirement is to preserve the integrity of compensatory mitigation areas and to ensure that additional impacts to state waters do not occur.~~

~~(3) If the final compensatory mitigation plan is submitted prior to authorization for coverage under this VWP general permit, however, it is not deemed complete until after the authorization, the board shall review the plan and approve, approve with modifications or disapprove within 45 days of the completeness determination.~~

~~14. An aerial photo or scale map which clearly shows the property boundaries, location of surface waters including all wetland boundaries, and all surface water impacts at the site. A copy of the Corps of Engineers' delineation confirmation, including wetland data sheets, shall also be provided at the time of application. If written confirmation is not available at the time of application, verbal confirmation must be provided and the written confirmation submitted during the VWP general permit review. Where the proposed work involves the discharge of fill material into surface water or wetlands resulting in permanent above grade fills within the 100-year flood plain, the notification must include documentation demonstrating that the proposed work complies with the appropriate FEMA or FEMA-approved floodplain construction requirements.~~

f. The final compensatory mitigation plan must include complete information on all components of the conceptual compensatory mitigation plan detailed in subdivision 16 a of this subsection, as well as a site access plan; a monitoring plan, including proposed success criteria, monitoring goals, and the location of photostations, monitoring wells, vegetation sampling points, and reference wetlands (if available); an abatement and control plan for undesirable plant species; an erosion and sedimentation control plan; a construction schedule; and proposed deed restriction language for protecting the compensation site or sites in perpetuity. The final compensatory mitigation plan must include protection of all surface waters and upland areas that are to be preserved in perpetuity within the compensation site boundary.

17. A delineation map must be provided of the geographic area of a delineated wetland for all wetlands on the site, in accordance with 9 VAC 25-210-45, including the wetlands data sheets, and the latitude and longitude (to the nearest second) of the center of the wetland impact area. Wetland types should be noted according to their Cowardin classification or similar terminology. A copy of the USACE delineation confirmation, or other correspondence from the USACE indicating their approval of the wetland boundary, shall also be provided at the time of application, or if not available at that time, as soon as it becomes available during the VWP permit review. The delineation map should also include the location of all impacted and non-impacted streams, open water and other surface waters on the site. The approximate limits of any Chesapeake Bay Resource Protection Areas (RPAs) should be shown on the map, as other state or local requirements may apply if the project is located within an RPA;

18. A copy of the FEMA flood insurance rate map or FEMA-approved local floodplain map for the project site;]

[~~15.~~ *19.*] *The appropriate application processing fee for a VWP general permit (9 VAC 25-20-10 et seq.).*

[~~16. Documentation from the Virginia Department of Game and Inland Fisheries and the Virginia Department of Conservation and Recreation's Division of Natural Heritage, regarding the presence effect on any federal or state proposed or listed threatened and endangered species or proposed or designated critical habitat.~~

~~17.~~ *20.*] *The following certification:*

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system or those persons directly responsible for gathering the information, the information submitted is to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false information including the possibility of fine and imprisonment for knowing violations."

C. The registration statement shall be signed in accordance with 9 VAC 25-210-100. If an agent is acting on behalf of an applicant, the applicant shall submit an authorization of the agent that includes the signatures of both the applicant and the agent.

D. Upon receipt of a complete registration statement, coverage under the VWP general permit shall be approved, approved with conditions, or denied within 45 days. If the board fails to act within 45 days, coverage under the VWP general permit shall be deemed approved.

1. In evaluating the registration statement, the board shall make an assessment of the impacts associated with the project in combination with other existing or proposed impacts. Coverage under the VWP general permit shall be denied if the cumulative impacts will cause or contribute to a significant impairment of surface waters or fish and wildlife resources.

2. The board may place additional conditions on a project in order to approve [~~*the use of*~~ *authorization under*] *this VWP general permit. However, these conditions must be consistent with the* [~~*VWPP*~~ *VWP permit*] *regulation and may not conflict with the existing conditions of this VWP general permit related to impacts and compensatory mitigation.*

E. Incomplete [~~*application*~~ *registration statement*]*. Where a registration statement is* [~~*considered*~~] *incomplete, the board* [~~*may*~~ *shall*] *require the submission of additional information* [~~*after an application has been filed*~~] *and may suspend processing* [~~*of any application*~~] *until such time as the applicant has supplied* [*the*] *missing or deficient information and* [~~*the board considers*~~] *the* [~~*application*~~ *registration statement is*] *complete. Further, where the applicant becomes aware that he omitted one or more relevant facts from a* [~~*VWP permit application*~~ *registration statement*]*, or submitted incorrect information in a* [~~*VWP permit application*~~ *registration statement*] *or in any report to the board, he shall immediately submit such facts or the correct information.*

9 VAC 25-670-70. Mitigation.

A. For the purposes of this VWP general permit, the board [~~*shall*~~ *may*] *accept* [*any one or combination of the following as compensation for unavoidable impacts:*] *wetland* [*or stream*] *creation* [~~*wetland*~~ *or*] *restoration,* [~~*wetland preservation, upland buffer preservation,*~~] *the purchase or use of mitigation bank credits or a contribution to an in-lieu fee fund* [~~*or a combination of the above as compensation for unavoidable wetland impacts*~~]*.* [*Compensation may incorporate preservation of wetlands or streams or preservation or restoration of upland buffers adjacent to state waters when utilized in conjunction with creation, restoration or mitigation bank credits.*]

B. Compensatory mitigation for unavoidable permanent wetland impacts shall be provided at the following [~~*compensatory mitigation*~~ *compensation*] *to impact ratios:*

1. Impacts to forested wetlands shall be mitigated at [~~*a*~~] *2:1* [~~*replacement to impact ratio*~~]*.*

2. Impacts to scrub-shrub wetlands shall be mitigated at [~~*a*~~] *1.5:1* [~~*replacement to impact ratio*~~]*.*

3. Impacts to emergent wetlands shall be mitigated at [~~*a*~~] *1:1* [~~*replacement to impact ratio*~~]*.*

[~~*4. Impacts to open water (ponds, lakes, etc.) shall be mitigated at a 1:1 replacement to impact ratio.*~~

~~*C. Credits or units of wetland compensation shall be calculated according to the following ratios:*~~

~~*1. One acre of wetland creation equals one unit of wetland compensation.*~~

~~*2. One acre of wetland restoration equals one unit wetland compensation.*~~

~~*3. Ten acres of wetland preservation equals one unit of wetland compensation.*~~

~~*4. Twenty acres of upland buffer preservation equals one unit of wetland compensation.*~~

~~*5. One mitigation bank credit equals one unit of wetland compensation.*~~

~~*6. The monetary equivalent of one acre of wetland creation or restoration in the form of a payment to a wetland trust fund equals one unit of wetland compensation.*~~

C. Compensatory mitigation for unavoidable impacts to streams shall be provided at a 1:1 replacement to loss ratio via stream relocation, restoration, riparian buffer establishment, or purchase of mitigation bank credits or contribution to an in-lieu fee fund that includes stream restoration, when feasible.

D. Compensation for open water impacts may be required, as appropriate, to protect state waters and fish and wildlife resources from significant impairment.]

[~~*D.*~~ *E.*] *In order for contribution to an in-lieu fee fund to be an acceptable form of* [*compensatory*] *mitigation, the fund must be approved for use by the board according to the provisions of 9 VAC 25-210-115 E.*

[~~*E.*~~ *F.*] *The use of mitigation banks for* [~~*mitigating*~~ *compensating*] *project impacts shall be deemed appropriate if the bank is operating in accordance with the provisions of § 62.1-44.15:5 E of the Code of Virginia and 9 VAC 25-210-115, and the applicant provides verification to* [~~*DEQ*~~ *the board*] *of purchase or debiting of the required amount of credits.*

9 VAC 25-670-80. [~~***Modification***~~ ***Notice of planned changes*]*.***

[*A.*] *Authorization under this VWP general permit may be modified* [~~*when any of the following developments occur provided the total impacts to surface waters for a single and complete project do not exceed two acres:*~~ *subsequent to issuance if the permittee determines that additional wetland and stream impacts are necessary, provided that the cumulative increase in acreage of wetland impacts is not greater than 1/4 acre and the cumulative increase in stream impacts is not great than 50 linear feet, and provided that the additional impacts are fully mitigated.*]

[~~*1. When additions or alterations have been made to the project which require the application of VWP permit conditions that differ from those of the existing VWP general permit or are absent from it;*~~

~~*2. When new information becomes available about the operation or activity covered by the VWP general permit which was not available at the time of VWP general permit*~~

~~coverage and would have justified the application of different VWP permit conditions at that time;~~

~~3. When a change is made in the promulgated standards or regulations on which the VWP general permit was based;~~

~~4. When it becomes necessary to change final dates in schedules due to circumstances over which the permittee has little or no control such as acts of God, materials shortages, etc. However, in no case may a compliance schedule be modified to extend beyond any applicable statutory deadline of the Act;~~

~~5. When changes occur which are subject to "reopener clauses" in the VWP general permit;~~

B. The permittee shall notify the board in advance of the planned change, and the modification request will be reviewed according to all provisions of this regulation.]

9 VAC 25-670-90. Notice of termination.

When all permitted activities requiring notification [*under 9 VAC 25-670-50 B 1*] *have been completed, the applicant shall submit a notice of termination within 30 days of final completion. The notice shall contain the following information:*

1. Name, mailing address and telephone number of the [~~*applicant*~~ *permittee*]*;*

2. Name and location of the activity;

3. The VWP permit authorization number; [*and*]

4. The following certification:

"I certify under penalty of law that all activities authorized by a VWP general permit have been completed. I understand that by submitting this notice of termination, that I am no longer authorized to perform activities in [~~*wetlands*~~ *surface waters*] *in accordance with the VWP general permit, and that performing activities in* [~~*wetlands*~~ *surface waters*] *is unlawful where the activity is not authorized by a VWP permit. I also understand that the submittal of this notice does not release me from liability for any violations of this VWP general permit."*

9 VAC 25-670-100. VWP general permit.

Any applicant whose registration statement [~~*is*~~ *has been*] *accepted by the board* [~~*will receive the following VWP general permit and shall comply with the requirements in it and be subject to all requirements of the VWP permit regulation, 9 VAC 25-210-10 et seq.*~~ *shall be subject to the following requirements*]*:*

VWP General Permit No. WP2

[*Authorization*] *effective date:*

[*Authorization*] *expiration date:*

VWP GENERAL PERMIT FOR FACILITIES AND ACTIVITIES OF UTILITIES AND PUBLIC SERVICE COMPANIES REGULATED BY THE FEDERAL ENERGY REGULATORY COMMISSION OR THE STATE CORPORATION COMMISSION AND OTHER UTILITY LINE ACTIVITIES

UNDER THE VIRGINIA WATER PROTECTION PERMIT AND THE VIRGINIA STATE WATER CONTROL LAW

Based upon an examination of the information submitted by the applicant and in compliance with § 401 of the Clean Water Act as amended (33 USC § 1341) and the State Water Control Law and regulations adopted pursuant thereto, the board has determined that there is a reasonable assurance that the activity authorized by this VWP general permit, if conducted in accordance with the conditions set forth herein, will protect instream beneficial uses and will not violate applicable water quality standards. The board finds that the effect of the impact, together with other existing or proposed impacts to wetlands, will not cause or contribute to a significant impairment of surface waters or fish and wildlife resources.

[~~*In compliance with*~~ *Subject to*] *the provisions of the Clean Water Act, as amended, and pursuant to the State Water Control Law and regulations adopted pursuant to it,* [~~*citizens of the Commonwealth of Virginia are*~~ *the permittee is*] *authorized to impact up to one acre of* [*nontidal*] *surface waters* [~~*(including wetlands) within the boundaries of the Commonwealth of Virginia, for the referenced activities, except in those areas specifically named or excluded in board regulations or policies which prohibit such impacts*~~ *, including up to 500 linear feet of perennial stream channel and up to 1,500 linear feet of nonperennial stream channel*]*.*

Permittee:

Address:

Activity Location:

Activity Description:

The authorized activity shall be in accordance with this cover page, Part I - Special Conditions, Part II - Mitigation, Monitoring and Reporting, and Part III - Conditions Applicable to All VWP Permits, as set forth herein.

_____ _____

Director, Department of Environmental Quality *Date*

Part I. Special Conditions.

A. Authorized activities.

[~~*1. Any additional impacts to surface waters associated with this project may require modification of this VWP general permit and additional compensatory mitigation.*~~

~~*2. The activities authorized by this VWP general permit must commence and be completed within three years of the date of this authorization.*~~

1. This permit authorizes impacts of up to one acre of nontidal surface waters, including up to 500 linear feet of perennial stream channel and up to 1,500 linear feet of nonperennial stream channel according to the information provided in the applicant's approved registration statement.

2. Any additional impacts to surface waters associated with this project shall require either a notice of planned change in accordance with 9 VAC 25-670-80 or another VWP permit application.

3. The activities authorized for coverage under this VWP general permit must commence and be completed within three years of the date of this authorization.]

B. Reapplication. Application for continuation of coverage under this VWP general permit or a new VWP permit may be necessary if any portion of the authorized activities or any VWP permit requirement (including compensatory mitigation) has not been completed within three years of the date of authorization. Application consists of an updated or new registration statement. [Notwithstanding any other provision, a request for a reissuance of certification of coverage under a VWP general permit in order to complete monitoring requirements shall not be considered an application for coverage and no application fee will be charged.]

C. Overall project conditions.

[1. The construction or work authorized by this VWP general permit shall be executed in a manner so as to minimize any adverse impact on instream beneficial uses as defined in § 62.1-10 (b) of the Code of Virginia.

2. No activity may substantially disrupt the movement of aquatic life indigenous to the water body, including those species which normally migrate through the area, unless the primary purpose of the activity is to impound water. Culverts placed in streams must be installed to maintain low flow conditions. No activity may cause more than minimal adverse effect on navigation. Furthermore the activity must not impede the passage of normal or expected high flows and the structure or discharge must withstand expected high flows.]

[~~1.~~ 3.] Wet or uncured concrete shall be prohibited from entry into flowing surface waters.

[~~2.~~ 4.] [~~No fill in surface waters may consist of unsuitable materials (e.g., trash, debris, car bodies, asphalt).~~] All fill material shall be clean and free of contaminants in toxic concentrations or amounts in accordance with all [~~Department of Environmental Quality (DEQ) Regulations~~ applicable laws and regulations].

[~~3.~~ 5.] Erosion and sedimentation controls shall be designed in accordance with the Virginia [~~Department of Conservation and Recreation (DCR)~~] Erosion and Sediment Control Handbook, Third Edition, 1992. These controls shall be placed prior to clearing and grading [~~,~~] and maintained in good working order to minimize impacts to [~~surface~~ state] waters [~~to the maximum extent practicable~~]. These controls shall remain in place until the area stabilizes.

[~~4.~~ 6.] Any exposed slopes and streambanks must be stabilized immediately upon completion of the utility line crossing of each water body. All denuded areas shall be properly stabilized in accordance with the [~~DCR~~ Virginia] Erosion and Sediment Control Handbook, Third Edition, 1992.

[~~5.~~ 7.] All construction, construction access (e.g., cofferdams, sheetpiling, and causeways) and demolition activities associated with this project shall be accomplished in such a manner that minimizes construction [~~and/or~~ or] waste materials from entering surface waters to the maximum extent practicable, unless authorized by this VWP general permit.

[~~6. Access roads must be constructed so that the length of the road minimizes the adverse effects on surface waters to the maximum extent practicable and is as near as possible to preconstruction contours and elevations. Mechanized land clearing necessary for the construction, maintenance and expansion of utility line substations, foundations for overhead utility lines and access roads is authorized provided the cleared area is kept to the minimum necessary and preconstruction contours are maintained as near as possible. The area of surface waters or wetlands filled, excavated or flooded must be limited to the minimum necessary to construct the utility line, substations, foundations and access roads.~~

~~7. No activity may substantially disrupt the movement of aquatic life indigenous to the water body. No activity may cause more than minimal adverse effect on navigation. Access roads constructed above preconstruction contours and elevations in surface waters must be properly bridged or culverted to maintain surface flows. Culverts placed in streams must be installed to maintain low flow conditions. Furthermore the activity must not impede the passage of normal or expected high flows and the structure or discharge must withstand expected high flows.~~

8. No machinery may enter flowing waters, unless authorized by this VWP general permit.

9. Heavy equipment in temporarily impacted wetland areas shall be placed on mats, geotextile fabric, or other suitable measures, to minimize soil disturbance to the maximum extent practicable.]

[~~8.~~ 10.] All nonimpacted [~~wetlands~~ surface waters] within the project limits that are within 50 feet of any clearing, grading, [~~and/or~~ or] filling activities shall be clearly flagged or marked for the life of the construction activity within that area. The permittee shall notify all contractors that these marked areas are [~~wetlands~~ surface waters] where no [~~excavation or filling is~~ activities are] to occur.

[~~9.~~ 11.] Temporary disturbances to wetlands during construction shall be avoided and minimized to the maximum extent practicable. All temporarily disturbed wetland areas shall be restored to preconstruction conditions and planted or seeded with appropriate wetland vegetation [according to cover type (emergent, scrub-shrub or forested)]. The permittee shall [~~ensure that all temporarily disturbed wetland areas revegetate~~ take all appropriate measures to promote revegetation of temporarily disturbed wetland areas] with wetland vegetation by the second year post-disturbance. [~~Any~~ All] temporary fills must be removed in their entirety and the [~~effected~~ affected] area returned to [~~their~~] preexisting [~~elevation~~ contours].

[~~10. Heavy equipment working in wetlands must be placed on mats, or other measures must be taken to minimize soil disturbance to the maximum extent practicable.~~

~~11. Material resulting from trench excavation may be temporarily sidecast (up to three months) into wetlands,~~

~~provided the material is not placed in a manner such that it is dispersed by currents or other forces. DEQ may extend the period of temporary sidecasting not to exceed a total of 180 days, where appropriate.~~

~~12. All utility line work in surface waters shall be performed in such a manner as to minimize disturbance to the maximum extent practicable, and the area must be returned to its original contours and stabilized, unless authorized by this VWP general permit.~~

~~13. If stream channelization is required, all work in surface waters shall be done in the dry and all flows shall be diverted around the channelization area until the new channel is stabilized. This work shall be accomplished by leaving a plug at the inlet and outlet ends of the new channel during excavation. Once the new channel has been stabilized, flow shall be routed into the new channel by first removing the downstream plug and then the upstream plug. The new stream channel shall be constructed following the typical sections submitted with the application. A low flow channel shall be constructed within the channelized area. The center line of the low flow channel shall meander, to the extent possible, to mimic natural stream morphology. The rerouted stream flow must be fully established before construction activities in the old stream bed can begin.~~

~~14. Redistribution of existing stream substrate for the purpose of erosion control is prohibited.~~

~~15. Excess material must be removed to upland areas immediately upon completion of construction.~~

~~16. Riprap bank stabilization shall be of an appropriate size and design in accordance with the most recent edition of the Virginia Department of Conservation and Recreation's Sediment and Erosion Control Handbook.~~

~~17. Riprap apron for all outfalls shall be designed in accordance with the most recent edition of the Virginia Department of Conservation and Recreation's Sediment and Erosion Control Handbook.~~

~~18. The permittee shall contact the Department of Game and Inland Fisheries and the Virginia Marine Resources Commission to determine whether a time of year restriction is appropriate for any period of dredging or construction in waters containing endangered species or waters critical to the movement and reproduction of anadromous fish. The permittee shall maintain a copy of such time of year restriction as is issued, or notification that no restriction is necessary, for the duration of the construction phase of the project.~~

~~19. The permittee shall employ measures to prevent spills of fuels or lubricants into surface waters.~~

~~20. Immediately downstream of the construction area, the shall not violate Water Quality Standards (9 VAC 25-260-5 et seq.) as a result of construction activities.~~

~~21. The trench for a utility line cannot be constructed in such a manner as to drain wetlands (e.g., backfilling with extensive gravel layers creating a french drain effect.)~~

12. All materials (including fill, construction debris, and excavated and woody materials) temporarily stockpiled in wetlands shall be placed on mats or geotextile fabric, immediately stabilized to prevent entry into state waters, managed such that leachate does not enter state waters, and completely removed within 30 days following completion of that construction activity. Disturbed areas shall be returned to original contours, stabilized within 30 days following removal of the stockpile, and restored to the original vegetated state.

13. Continuous flow of perennial springs shall be maintained by the installation of spring boxes, french drains, or other similar structures.

14. The permittee shall employ measures to prevent spills of fuels or lubricants into state waters.

15. The permittee shall conduct his activities in accordance with any time-of-year restrictions recommended by the Department of Game and Inland Fisheries or the Virginia Marine Resources Commission.

16. Immediately downstream of the construction area, water quality standards shall not be violated as a result of the construction activities.

17. Untreated stormwater runoff shall be prohibited from directly discharging into any surface waters. Appropriate best management practices shall be deemed suitable treatment prior to discharge into state waters.

D. Road crossings.

1. Access roads shall be constructed to minimize the adverse effects on surface waters to the maximum extent practicable and to follow as near as possible preconstruction contours and elevations. Access roads constructed above preconstruction contours and elevations in surface waters must be properly bridged or culverted to maintain surface flows.

2. At crossings of perennial streams, pipes and culverts shall be countersunk a minimum of six inches to provide for the reestablishment of a natural stream bottom and a low flow channel. Countersinking is not required for existing pipes or culverts that are being maintained or extended.

3. Installation of road crossings shall occur in the dry via the implementation of cofferdams, sheetpiling, stream diversions, or similar structures.

4. All surface waters temporarily affected by the construction of a road crossing shall be restored to their original elevations immediately following the construction of that particular crossing.

5. If stream channelization or relocation is required, all work in surface waters shall be done in the dry, unless authorized by this VWP general permit, and all flows shall be diverted around the channelization or relocation area until the new channel is stabilized. This work shall be accomplished by leaving a plug at the inlet and outlet ends of the new channel during excavation. Once the new channel has been stabilized, flow shall be routed into the new channel by first removing the downstream plug and

then the upstream plug. The new stream channel shall be constructed following the typical sections submitted with the application. A low flow channel shall be constructed within the channelized or relocated area. The centerline of the low flow channel shall meander, to the extent possible, to mimic natural stream morphology. The rerouted stream flow must be fully established before construction activities in the old streambed can begin.

E. Utility lines.

1. All utility line work in surface waters shall be performed in a manner that minimizes disturbance, and the area must be returned to its original contours and stabilized, unless authorized by this VWP general permit.

2. Material resulting from trench excavation may be temporarily sidecast into wetlands, not to exceed 90 days, provided the material is not placed in a manner such that it is dispersed by currents or other forces.

3. The trench for a utility line cannot be constructed in a manner that drains wetlands (e.g., backfilling with extensive gravel layers creating a french drain effect.).

F. Bank stabilization.

1. Riprap bank stabilization shall be of an appropriate size and design in accordance with the Virginia Erosion and Sediment Control Handbook, Third Edition, 1992.

2. Riprap apron for all outfalls shall be designed in accordance with the Virginia Erosion and Sediment Control Handbook, Third Edition, 1992.

3. For bank protection activities, the structure and backfill shall be placed as close to the shoreline as practicable. No material shall be placed in excess of the minimum necessary for erosion protection.

4. All bank erosion control structures shall be located to eliminate or minimize impacts to vegetated wetlands to the maximum extent practicable.

5. Asphalt and materials containing asphalt or other toxic substances shall not be used in the construction of submerged sills or breakwaters.

6. Redistribution of existing stream substrate for the purpose of erosion control is prohibited.

7. All material removed from the stream substrate shall be disposed of in an approved upland area.]

Part II. Mitigation, Monitoring and Reporting.

A. [~~*Wetland*~~ *Compensatory*] *mitigation.* [~~*In order to qualify for this VWP general permit,*~~ *The permittee shall provide*] *appropriate and practicable compensatory mitigation* [~~*will be required*~~] *for all* [~~*wetland*~~] *impacts meeting the conditions outlined in this VWP general permit. The types of compensatory mitigation options that may be considered under this VWP general permit include wetland or stream creation or restoration, the purchase or use of mitigation bank credits, or a contribution to an approved in-lieu fee fund.* [*Compensation may incorporate*] *preservation of wetlands or streams or preservation or restoration of upland buffers adjacent to state waters* [~~*is acceptable*~~] *when utilized in conjunction with creation, restoration or mitigation bank credits.*

1. The [~~*site(s)*~~ *site or sites*] *depicted in the conceptual compensatory mitigation* [~~*package*~~ *plan*] *submitted with the registration statement, shall constitute the compensatory mitigation* [~~*package*~~ *plan*] *for the approved project* [~~*, unless otherwise authorized by a VWP permit modification*~~].

2. For compensation involving the purchase or use of mitigation bank credits, the permittee shall submit documentation within 60 days of VWP general permit authorization that the [~~*Corps of Engineers*~~ *USACE*] *has debited the required mitigation credits from the mitigation bank ledger. For projects proposing a contribution to an in-lieu fee* [~~*program*~~ *fund*]*, the permittee shall submit documentation within 60 days of VWP general permit authorization that the fund contribution has been received.*

3. All aspects of the compensatory mitigation plan shall be finalized, submitted and approved by [~~*DEQ*~~ *the board*] *prior to any construction activity in permitted impact areas.* [~~*DEQ*~~ *The board*] *shall review and provide written comments on the plan within 30 days of receipt or it shall be deemed approved. The final compensatory mitigation plan as approved by* [~~*DEQ*~~ *the board*] *shall* [~~*become an official component*~~ *be an enforceable requirement*] *of this VWP general permit.* [*Any deviations from the approved plan must be submitted and approved in advance by the board.*]

a. The final compensatory mitigation plan shall include: narrative description of the plan including goals and objectives, site location, existing and proposed grade, schedule for compensatory mitigation site construction, source of hydrology and a water budget [~~*(nontidal sites only) for typical and driest years, mean tidal range (tidal sites only), proposed mean low water and mean high water elevations (tidal sites only),*~~ *for a typical year, a dry year and a wet year,*] *plant species, planting scheme indicating expected zonation, planting schedule, an abatement and control plan for undesirable plant species, soil amendments, all structures and features considered necessary for the success of the plan, and number and locations of* [~~*panoramic*~~] *photographic stations and ground water monitoring wells* [~~*(or tide gages, for tidal sites)*~~] *. Rooted seedlings or cuttings should originate from a local nursery or be adapted to local conditions. Vegetation should be native species common to the area, should be suitable for growth in local wetland conditions, and should be from areas* [*within*] *approximately 200 miles from the project site.*

b. The final compensatory mitigation plan shall include protection of state waters (including compensatory mitigation areas and nonimpact state waters) within the project boundary in perpetuity. These areas shall be surveyed or platted within 120 days of final plan approval, and the survey or plat shall be recorded in accordance with the requirements of this section. The restrictions, protections, or preservations, or similar instrument shall state that no activity will be performed on the property in any area designated as a compensatory mitigation area

or nonimpact state water, with the exception of maintenance or corrective action measures authorized by [~~DEQ~~ the board]. Unless specifically authorized by [~~DEQ~~ the board] through the issuance of a VWP individual permit, modification of this VWP general permit, or waiver thereof, this restriction applies to ditching, land clearing or the discharge of dredge or fill material. Such instrument shall contain the specific phrase "ditching, land clearing or discharge of dredge or fill material" in the limitations placed on the use of these areas. The protective instrument shall be recorded in the chain of title to the property. Proof of recordation shall be submitted within 60 days of survey or plat approval. This requirement is to preserve the integrity of compensatory mitigation areas and to ensure that additional impacts to state waters do not occur.

4. Post-grading elevations for the compensatory mitigation [~~site(s)~~ site or sites] shall be sufficient to ensure that wetland hydrology will be achieved on the site to support the goals and objectives of the compensatory mitigation plan. [~~*As a general rule, elevations shall be within 0.2 feet of the elevations proposed in the final compensatory mitigation plan. The final as-built grading plan shall be approved by DEQ prior to any planting and placement of ground water monitoring wells.*~~]

5. All work in [~~jurisdictional~~ permitted impact] areas shall cease if compensatory mitigation site construction has not commenced within 180 days of commencement of project construction, unless otherwise authorized by [~~DEQ~~ the board].

[~~*6. The wetland creation portions of the site(s) shall be excavated 6-12 inches below final grade. Topdressing soil shall then be spread to bring the compensatory mitigation site to final grade. A wetland vegetation seed mix shall be applied within seven days of final grading for site stabilization.*~~

~~*7. For compensatory mitigation sites involving restoration, a wetland vegetation seed mix shall be applied for site stabilization within seven days of final grading or soil disturbance.*~~

6. A site stabilization plan shall be provided for compensation sites involving land disturbance.]

[~~8.~~ *7.*] *Planting of woody plants shall occur [~~outside the growing season, when the soil is not frozen, between November 1 and March 31~~ when vegetation is normally dormant unless otherwise approved in the final mitigation plan].*

[~~9.~~ *8.*] *Point sources of stormwater runoff shall be prohibited from entering any wetland compensatory mitigation site prior to treatment by appropriate best management practices. Appropriate best management practices may include sediment traps, grassed waterways, vegetated filter strips, debris screens, oil and grease separators, and forebays.*

[~~10.~~ *9.*] *The success of the compensatory mitigation shall be based on establishing and maintaining a viable wetland with suitable wetland hydrology, hydric soils or soils under hydric conditions, and hydrophytic plant communities.*

[~~11.~~ *10.*] *Wetland hydrology shall be considered established if depths to the seasonal high water table [~~, in a typical rainfall year,~~] are equal to or less than [~~one foot~~ 12 inches below ground surface] for at least 12.5% of the growing season [~~for~~ , as defined in the United States Department of Agriculture soil survey for the locality of the compensation site in] all monitoring years [under normal rainfall conditions, as defined in the water budget of the final mitigation plan].*

[~~12.~~ *11.*] *The wetland plant community shall be considered established [~~if:~~ according to the performance criteria specified in the final mitigation plan and approved by the board. Species composition shall reflect the desired plant community types stated in the final mitigation plan by the end of the first growing season and shall be maintained through the last year of the VWP permit. Species composition shall consist of greater than 50% facultative (FAC) or wetter (FACW or OBL) vegetation, as expressed by plant stem density or areal cover.*

~~*a. Greater than 50% of the woody plants, expressed either by plant stems or canopy coverage, shall be facultative (FAC) or wetter (FACW or OBL). A minimum plant stem count of 400/acre must be achieved in sample plots until canopy coverage is 30% or greater. Of these 400 stems, a minimum of 300 shall be from the targeted species of the compensatory mitigation plan. A minimum of 65% of the planted trees and shrubs must be viable and show signs of growth for the life of the VWP general permit.*~~

~~*b. Greater than 50% of all herbaceous plants shall be FAC or wetter. Aerial coverage shall be a minimum of 60% after one full growing season and 80% after three growing seasons and remaining at or above 80% for the life of the VWP general permit. Scrub/shrub or sapling/forest vegetation is not included in coverage or stem count for herbaceous vegetation.*~~

~~*c. Species composition reflects the desired plant community types stated in the wetland compensatory mitigation plan by the end of the first growing season and is maintained through the last year of the VWP general permit.*~~

~~*d. Noxious weeds are identified and controlled as described in the noxious weed control plan, such that they are not dominant species or do not change the desired community structure. The control plan shall include procedures to notify the VWPP staff of any invasive species occurrences, methods of removal, and successful control.*~~

~~*e. Deviations from this plan must be approved in advance by DEQ.*~~

12. Noxious weeds shall be identified and controlled as described in the noxious weed control plan, such that they are not dominant species or do not change the desired community structure. The control plan shall include

procedures to notify the board of any invasive species occurrences, methods of removal, and successful control.]

13. If the compensatory mitigation area fails to be established as viable wetlands, the reasons for this failure shall be determined and a corrective action plan, schedule, and monitoring plan shall be submitted to [~~*DEQ*~~ *the board*] *for approval prior to or with the next required monitoring report.* [~~*Replacement of dead plant stock in the wetland compensatory mitigation site shall occur, as necessary, to achieve a minimum of 400 stems/acre for the tree species (until canopy coverage is 30% or greater) and 65% of the original stocking density for the planted herb, shrub and tree species. Of these 400 stems, a minimum of 300 shall be from the targeted species of the compensatory mitigation plan.*~~] *All problems shall be corrected by the permittee. Should significant changes be necessary to establish wetlands, the monitoring plan shall begin again, with year one being the year changes are complete.*

14. The wetland boundary for the compensatory mitigation site shall be based on the results of the hydrology, soils, and vegetation monitoring data and shall be shown on the site plan. Calculation of total wetland acreage shall be based on that boundary [*at the end of the monitoring cycle*].

15. Herbicides or [~~*algacides*~~ *algicides*] *shall not be used in or immediately adjacent to the compensatory mitigation* [~~*site(s)*~~ *site or sites*] *without prior authorization by* [~~*DEQ*~~ *the board*]. *All vegetation removal shall be done by* [~~*mechanical*~~ *manual*] *means* [~~*only*~~], *unless authorized by* [~~*DEQ*~~ *the board in advance*].

16. This VWP general permit authorization may need to be renewed (or extended) to assure that the compensatory mitigation work has been successful. The request for [~~*renewal/extension*~~ *renewal or extension*] *must be made no less than 60 days prior to the expiration date of this VWP general permit authorization, at which time* [~~*DEQ*~~ *the board*] *will determine if renewal of the VWP general permit authorization is necessary.*

B. Compensatory mitigation site monitoring.

1. A post-grading survey, including spot elevations, of the [~~*site(s)*~~ *site or sites*] *for wetland compensatory mitigation* [*may be required depending upon the type and size of the compensation site, and*] *shall be conducted by a licensed land surveyor or a professional engineer* [~~*and submitted to DEQ for approval prior to placing the permanent groundwater monitoring wells and planting of the vegetation. Grading elevation plans shall be on a scale of one inch equals 50 feet (or 1:500 metric) with contour intervals of one (or two) feet accompanied by cross section views. The final as-built grading plan shall be submitted to DEQ for approval prior to any planting and placement of ground water monitoring wells*~~].

2. [~~*Panoramic*~~] *Photographs shall be taken at the compensatory mitigation* [~~*site(s)*~~ *site or sites*] *from* [~~*each of the monitoring well stations*~~ *the permanent markers identified in the final mitigation plan, and established to ensure that the same locations and view directions at the site or sites are monitored in each monitoring period*]. *These photographs shall be taken after the initial planting and in August or September every* [*monitoring*] *year* [~~*for the life of the VWP general permit*~~]. [~~*Permanent markers shall be established to ensure that the same locations and view directions at the sites are monitored in each monitoring period.*~~]

3. Compensatory mitigation site monitoring for hydrology, soils, and hydrophytic vegetation shall begin at the first complete growing season (year one) following compensatory mitigation site construction. Monitoring shall be required for years 1, 2, [*and*] *3* [~~*, 5, 7 and 10, with years 7 and 10 only required if the site success criteria were not achieved during the previous monitoring event*~~] . [*If all success criteria have not been met in the third year, then monitoring shall be required for each consecutive year until two annual sequential reports indicate that all criteria have been successfully satisfied.*]

4. The establishment of wetland hydrology shall be measured [~~*weekly*~~] *during the growing season.* [~~*The number of monitoring wells for each site will be determined by DEQ on a site-specific basis. The location of the wells must be approved by DEQ prior to placement. Adequate hydrology shall be within 12 inches of the surface for 12.5% of the growing season. Monitoring shall include approximate acreage and average depth of any ponded water on the wetland compensatory mitigation site(s).*~~ *with the location and number of monitoring wells, and frequency of monitoring for each site, set forth in the final monitoring plan. All hydrology monitoring well data shall be accompanied by precipitation data, including rainfall amounts, either from on site, or from the closest weather station.*] *Once the wetland hydrology success criteria have been satisfied for a particular monitoring year, weekly monitoring may be discontinued for the remainder of that monitoring year.*

5. The presence of hydric soils or soils under hydric conditions shall be evaluated [~~*by digging soil pits at each monitoring station and evaluating the soil profile for hydric soil indicators using a documented method acceptable to DEQ*~~ *in accordance with the final mitigation plan*].

6. The establishment of wetland vegetation shall be [~~*indicated by percent cover, percent survival, stem counts and species composition monitored*~~ *in accordance with the final mitigation plan. Monitoring shall take place*] *in August or September during* [~~*each reportable*~~ *the*] *growing season* [~~*in the life of the VWP general permit. At each monitoring station, the following information shall be collected:*~~ *of each monitoring year, unless authorized in the monitoring plan.*]

[~~*a. Percent cover for all herbaceous species shall be estimated using a documented method accepted by DEQ. The approximate species composition of the herbaceous vegetation shall be indicated, including nondominants. The number of stems per acre for woody species shall be provided. A quantitative measure for noxious species present shall also be provided.*~~

~~*b. Percent survival of planted woody species, if applicable, shall be estimated using a documented method accepted by DEQ. The number of stems of all*~~

~~tree species within each sample plot and the density of all tree species (number of stems per acre) shall be provided.~~

~~c.~~ 7.] The presence of noxious species shall be documented.

[C. Stream mitigation, restoration and monitoring.

1. Stream mitigation shall be performed in accordance with the final mitigation plan and subsequent submittals, as approved by the board.

2. Stream bank slopes shall be stabilized to reduce stream bank erosion, where practicable.

3. Stream mitigation monitoring shall be conducted in accordance with the final mitigation plan approved by the board. All monitoring reports shall be submitted by November 30 of the monitoring year. Monitoring reports shall include:

a. Photographs sufficient to document installation of specific structures and vegetative plantings or where the stream channel banks are reshaped. Permanent markers shall be established to ensure that the same locations and view directions at the site are photographed in each monitoring period.

b. Discussion of the establishment of vegetation, if applicable.

c. Any alterations, maintenance, and corrective actions conducted at the stream mitigation site.]

[~~C.~~ D.] Construction monitoring.

1. Photo stations shall be established to document the [~~various~~] construction aspects of [~~the~~] project [activities] within [~~jurisdictional~~ impact] areas [as authorized by this permit]. [~~These stations shall be established to~~ Photographs should] document the [~~existing~~ pre-construction conditions, activities during construction,] and post-construction conditions [~~of the project site~~ within one week after completion of construction]. [~~These stations shall be photographed prior to construction, during construction, and within one week after the completion of construction. Photos~~ Photographs] shall be taken during construction at the end of the first, second and twelfth months of construction, and then annually for the remainder of the construction project. [Photographs are not necessary during periods of no activity within impact areas.]

2. The permittee shall make provisions to monitor for any spills of petroleum products or other materials during the construction process. These provisions shall be sufficient to detect and contain the spill and notify the appropriate authorities.

3. Stream bottom elevations at road crossings shall be measured [at the inlet and outlet of the proposed structure] and recorded prior to construction and within one week after the completion of construction. This requirement shall only apply to those streams not designated as intermittent or those streams not designated in association with stream channelization.

4. Monitoring of water quality parameters shall be conducted during rerouting of the live streams through the new channels in the following manner:

a. A sampling station shall be located upstream and immediately downstream of the relocated channel;

b. Temperature, pH and dissolved oxygen (D.O.) measurements shall be taken once every half hour for at least three readings at each station prior to opening the new channels;

c. After opening the new channel, temperature, pH and D.O. readings shall be taken once every half hour for at least three readings at each station within 24 hours of opening the new channel.

[~~D.~~ E.] Reporting.

1. Written communications required by this VWP general permit shall be submitted to the appropriate Department of Environmental Quality [(DEQ)] office. The VWP general permit authorization number shall be included on all correspondence.

2. [~~DEQ~~ The board] shall be notified in writing by certified letter at least 10 days prior to the start of construction activities authorized by this VWP general permit. The notification shall include identification of the impact area at which work will occur and a projected schedule for completing work at each permitted impact area.

3. After construction begins, construction monitoring reports shall be submitted to [~~DEQ~~ the board] within 30 days of each monitoring event [~~as required in condition D 1 of Part II of this VWP general permit~~]. The reports shall include, at a minimum, the following:

a. A written statement regarding when work started in the identified impact area, where work was performed, what work was performed, and what work was completed.

b. Properly labeled photographs (to include date and time, name of the person taking the photograph, [a brief description,] and VWP permit number) showing representative construction activities (including, but not limited to, flagging nonimpact wetland areas, site grading and excavation, installation and maintenance of erosion and sediment controls, culvert installation, bridge and ramp construction, dredging, dredge disposal, etc.). [~~Photographs are not necessary during periods of no activity within jurisdictional areas.~~

4. All compensatory mitigation monitoring reports shall be submitted annually by November 30, with the exception of the last year of authorization, in which case the report shall be submitted at least 60 days prior to expiration of authorization under the general permit. Any alterations and maintenance conducted on the compensatory mitigation sites shall be reported. Invasive species occurrences and control of these occurrences shall also be reported to the board.

5. The permittee shall submit a notice of termination within 30 days of final completion in accordance with 9 VAC 25-670-90.]

[~~4.~~ 6.] The permittee shall notify [~~DEQ~~ the board] in writing when unusual or potentially complex conditions are encountered which require debris removal or involve potentially toxic substance. Measures to remove the obstruction, material, or toxic substance or to change the location of any structure are prohibited until approved by [~~DEQ~~ the board].

[~~5.~~ 7.] The permittee shall report any fish kills or spills of oil or fuel immediately upon discovery. If spills or fish kills occur between the hours of 8:15 a.m. to 5 p.m., Monday through Friday, [the appropriate] DEQ [regional office] shall be notified [~~at (insert appropriate DEQ office phone number~~] ; otherwise, the Department of Emergency Management shall be notified at 1-800-468-8892.

[~~6.~~ 8.] Violations of state water quality standards shall be reported within 24 hours to the appropriate DEQ office.

[~~7. The final plans of compensatory mitigation shall be submitted to and approved by DEQ prior to any construction in permitted impact areas.~~

~~8. An official copy of the instrument of restriction, protection, or preservation of wetlands and state waters provided as part of the compensatory mitigation plan shall be submitted to the DEQ within 60 days of recordation as outlined in the mitigation portion of this VWP general permit.~~

~~7. The mitigation bank account ledgers shall be submitted denoting the purchase of the required credits from the proposed bank(s).~~

~~8. All compensatory mitigation monitoring reports required by the special conditions in Section B above shall be submitted annually by November 30 with the exception of the final report in the life of the VWP general permit which shall be submitted by November 30 of that monitoring year or 180 days prior to VWP general permit expiration, whichever occurs sooner. Alterations and maintenance conducted on the compensatory mitigation sites shall be reported. Invasive species occurrences and control of these occurrences shall also be reported to DEQ.~~]

9. All submittals required by this VWP general permit shall contain the following signed certification statement:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violation."

Part III. Conditions Applicable to All VWP Permits.

A. Duty to comply. The permittee shall comply with all conditions of the VWP [general] permit. Nothing in this VWP general permit shall be construed to relieve the permittee of the duty to comply with all applicable federal and state statutes, regulations and toxic standards and prohibitions. Any VWP [general] permit noncompliance is a violation of the Clean Water Act and State Water Control Law, and is grounds for enforcement action, VWP general] permit [authorization] termination, revocation, [~~modification~~], or denial of a [~~VWP permit~~] renewal application.

B. Duty to mitigate. The permittee shall take all reasonable steps to minimize or prevent any impacts in violation of the VWP general permit which may have a reasonable likelihood of adversely affecting human health or the environment.

C. Reopener. This VWP general permit [authorization] may be reopened to modify [~~the~~ its] conditions [~~of the VWP general permit~~] when the circumstances on which the previous VWP general permit [authorization] was based have materially and substantially changed, or special studies conducted by the [~~department~~ board] or the permittee show material and substantial change since the time the VWP general permit [authorization] was issued and, thereby, constitute cause for VWP general permit [~~modification or~~ authorization] revocation and reissuance.

D. Compliance with state and federal law. Compliance with this VWP general permit constitutes compliance with the VWP permit requirements of the State Water Control Law. Nothing in this VWP general permit shall be construed to preclude the institution of any legal action under or relieve the permittee from any responsibilities, liabilities, or other penalties established pursuant to any other state law or regulation or under the authority preserved by § 510 of the Clean Water Act.

E. Property rights. The issuance of this VWP general permit does not convey any property rights in either real or personal property, or any exclusive privileges, nor does it authorize any injury to private property or any invasion of personal property rights, nor any infringement of federal, state or local laws or regulations.

F. Severability. The provisions of this VWP general permit [authorization] are severable.

G. Right of entry. The [~~applicant and/or~~] permittee shall allow [~~authorized state and federal representatives~~ the board or its agents], upon the presentation of credentials, at reasonable times and under reasonable circumstances:

1. To enter the permittee's property, public or private, and have access to, inspect and copy any records that must be kept as part of the VWP general permit conditions;

2. To inspect any facilities, operations or practices (including monitoring and control equipment) regulated or required under the VWP general permit;

3. To sample or monitor any substance, parameter or activity for the purpose of assuring compliance with the conditions of the VWP general permit or as otherwise authorized by law.

For the purpose of this section, the time for inspection shall be deemed reasonable during regular business hours. Nothing contained herein shall make an inspection time unreasonable during an emergency.

H. Transferability of VWP [~~permits~~ general permit authorization]. This VWP general permit [authorization] may be transferred to another person by a permittee if:

1. The current permittee notifies the [~~Department of Environmental Quality~~ board within] 30 days [~~prior to the proposed~~ of the] transfer of the title to the facility or property;

2. The notice [~~of the proposed transfer~~ to the board] includes a written agreement between the existing and [~~proposed~~] new permittee containing a specific date of transfer of VWP general permit [authorization] responsibility, coverage and liability [~~between them~~ to the new permittee, or that the existing permittee will retain such responsibility, coverage, or liability, including liability for compliance with the requirements of any enforcement activities related to the permitted activity]; and

3. The [~~Department of Environmental Quality~~ board] does not notify the existing [and new] permittee of [~~the State Water Control Board's~~ its] intent to modify or revoke and reissue the VWP general permit [authorization] within the 30-day time period.

[~~Such a transferred VWP general permit shall, as of the date of the transfer, be as fully effective as if it had been issued directly to the new permittee.~~ On the date of the VWP general permit authorization transfer, the transferred VWP general permit authorization shall be as fully effective as if it had been issued directly to the new permittee.]

[~~I. VWP permit modification. The permittee shall notify the Department of Environmental Quality of any modification of this activity and shall demonstrate in a written statement to the department that said modification will not violate any conditions of this VWP general permit. If such demonstration cannot be made, the permittee shall apply for a modification of this VWP general permit. This VWP general permit may be modified when any of the following developments occur:~~

~~1. When additions or alterations have been made to the affected facility or activity which require the application of VWP permit conditions that differ from those of the existing VWP general permit or are absent from it, provided the total project impacts for a single and complete project do not exceed two acres and are fully mitigated;~~

~~2. When new information becomes available about the operation or activity covered by the VWP general permit which was not available at VWP general permit issuance and would have justified the application of different VWP general permit conditions at the time of VWP general permit issuance;~~

~~3. When a change is made in the promulgated standards or regulations on which the VWP general permit was based;~~

~~4. When it becomes necessary to change final dates in schedules due to circumstances over which the permittee has little or no control such as acts of God, materials shortages, etc. However, in no case may a compliance schedule be modified to extend beyond any applicable statutory deadline of the CWA; and~~

~~5. When changes occur which are subject to "reopener clauses" in the VWP general permit.~~

I. Notice of planned change. Authorization under this VWP general permit may be modified subsequent to issuance if the permittee determines that additional wetland and stream impacts are necessary, provided that the cumulative increase in acreage of wetland impacts is not greater than 1/4 acre and the cumulative increase in stream impacts is not greater than 50 linear feet, and provided that the additional impacts are fully mitigated. The permittee shall notify the board in advance of the planned change, and the modification request will be reviewed according to all provisions of this regulation.]

J. VWP [general] permit [authorization] termination. This VWP general permit [~~, after notice and opportunity for a hearing~~ authorization] is subject to termination. Causes for termination are as follows:

1. Noncompliance by the permittee with any condition of the VWP general permit;

2. The permittee's failure in the application or during the VWP general permit [authorization] issuance process to disclose fully all relevant facts or the permittee's misrepresentation of any relevant facts at any time;

3. The permittee's violation of a special or judicial order; [and]

4. A determination by the board that the permitted activity endangers human health or the environment and can be regulated to acceptable levels by VWP general permit [authorization] modification or termination [~~; or.~~]

[~~5. A determination that the permitted activity has ceased and that the compensatory mitigation for unavoidable adverse impacts has been successfully completed.~~]

K. Civil and criminal liability. Nothing in this VWP general permit shall be construed to relieve the permittee from civil and criminal penalties for noncompliance.

L. Oil and hazardous substance liability. Nothing in this VWP general permit shall be construed to preclude the institution of legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject under § 311 of the Clean Water Act or §§ 62.1-44.34:14 through 62.1-44.34:23 of the State Water Control Law.

[M. Duty to cease or confine activity. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the activity for which a VWP permit has been granted in order to maintain compliance with the conditions of the VWP permit.

N. Duty to provide information.

1. The permittee shall furnish to the board any information which the board may request to determine whether cause exists for modifying, revoking, reissuing and terminating the VWP permit, or to determine compliance with the VWP permit. The permittee shall also furnish to the board, upon request, copies of records required to be kept by the permittee.

2. Plans, specifications, maps, conceptual reports and other relevant information shall be submitted as required by the board prior to commencing construction.

O. Monitoring and records requirements.

1. Monitoring of parameters, other than pollutants, shall be conducted according to approved analytical methods as specified in the VWP permit. Analysis of pollutants will be conducted according to 40 CFR Part 136 (2000), Guidelines Establishing Test Procedures for the Analysis of Pollutants.

2. Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.

3. The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart or electronic recordings for continuous monitoring instrumentation, copies of all reports required by the VWP permit, and records of all data used to complete the application for the VWP permit, for a period of at least three years from the date of the expiration of a granted VWP permit. This period may be extended by request of the board at any time.

4. Records of monitoring information shall include:

a. The date, exact place and time of sampling or measurements;

b. The name of the individuals who performed the sampling or measurements;

c. The date and time the analyses were performed;

d. The name of the individuals who performed the analyses;

e. The analytical techniques or methods supporting the information such as observations, readings, calculations and bench data used;

f. The results of such analyses; and

g. Chain of custody documentation.]

[~~*M.*~~ *P.*] *Unauthorized discharge of pollutants. Except in compliance with this VWP general permit, it shall be unlawful for the permittee to:*

1. Discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances;

2. Excavate in a wetland;

3. Otherwise alter the physical, chemical, or biological properties of state waters and make them detrimental to the public health, to animal or aquatic life, to the uses of such waters for domestic or industrial consumption, for recreation, or for other uses; or

4. On and after October 1, 2001, conduct the following activities in a wetland:

a. New activities to cause draining that significantly alters or degrades existing wetland acreage or functions;

b. Filling or dumping;

c. Permanent flooding or impounding; or

d. New activities that cause significant alteration or degradation of existing wetland acreage or functions.

DOCUMENTS INCORPORATED BY REFERENCE

Virginia Erosion and Sediment Control Handbook, Third Edition, 1992, Department of Conservation and Recreation.

NOTICE: The forms used in administering 9 VAC 25-670-10 et seq., Virginia Water Protection General Permit for Facilities and Activities of Utility and Public Service Companies Regulated by the Federal Energy Regulatory Commission or the State Corporation Commission and Other Utility Line Activities, are not being published due to the large number of pages; however, the name of each form is listed below. The forms are available for public inspection at the Department of Environmental Quality, 629 E. Main Street, Richmond, Virginia, or at the office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia.

FORMS

[*Department of Environmental Quality Water Division Permit Application Fee (eff. 8/01).*

Joint Permit Application for Activities in Waters and Wetlands of the Commonwealth of Virginia (eff. 8/01).

Virginia Water Protection General Permit Registration Statement (eff. 8/01).]

VA.R. Doc. No. R00-196; Filed June 13, 2001, 10:55 a.m.

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TITLE 10. FINANCE AND FINANCIAL INSTITUTIONS

STATE CORPORATION COMMISSION

REGISTRAR'S NOTICE: The State Corporation Commission is exempt from the Administrative Process Act in accordance with § 9-6.14:4.1 A 2 of the Code of Virginia, which exempts courts, any agency of the Supreme Court, and any agency which by the Constitution is expressly granted any of the powers of a court of record.

Title of Regulation: **10 VAC 5-10-10 et seq. Delegation of Certain Authority to the Commissioner of the Bureau of Financial Institutions (amending 10 VAC 5-10-10).**

Statutory Authority: §§ 12.1-13 and 12.1-16 of the Code of Virginia.

Effective Date: July 1, 2001.

Summary:

Pursuant to § 12.1-16 of the Code of Virginia, the State Corporation Commission has previously delegated authority to the Commissioner of Financial Institutions to perform its duties subject to commission review. The

commission now delegates certain additional authority by regulation.

Agency Contact: Jonathan B. Orne, Office of General Counsel, State Corporation Commission, P.O. Box 1197, Richmond, VA 23218-1197, telephone (804) 371-9671.

AT RICHMOND, JUNE 27, 2001

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

CASE NO. BFI010070

Ex Parte: In re Powers delegated to the Commissioner of Financial Institutions

ORDER ADOPTING A REGULATION

By Order entered herein on May 15, 2001, the Commission directed that notice be given of proposed amendments to its regulation entitled "Powers Delegated to Commissioner of Financial Institutions," §10 VAC 5-10-10 of the Virginia Administrative Code. Notice of the proposed amendment was published in the Virginia Register on June 4, 2001, and the proposed amended regulation was posted on the Commission's website. Interested parties were afforded the opportunity to file written comments in favor of or against the proposal on or before June 18, 2001. No written comments were filed, and the staff has suggested no modification of the proposal.

The Commission, having considered the record and the proposed amendments, concludes that the additional delegations affected by the amendments will promote the efficient administration of Title 6.1 of the Code of Virginia and that the proposed amended regulation should be adopted.

THEREFORE, IT IS ORDERED THAT:

(1) The proposed amended regulation entitled "Powers Delegated to Commissioner of Financial Institutions," attached hereto, is adopted effective July 1, 2001.

(2) The proposed amended regulation shall be transmitted for publication in the Virginia Register.

(3) This case is dismissed and the papers herein shall be placed among the ended cases.

AN ATTESTED Copy of this order shall be sent to the Commissioner of Financial Institutions.

REGISTRAR'S NOTICE: The proposed regulation was adopted as published in 17:19 VA.R. 2713-2715 June 4, 2001, without change. Therefore, pursuant to § 9-6.14:22 A of the Code of Virginia, the text of the final regulation is not set out.

VA.R. Doc. No. R01-201; Filed June 27, 2001, 11:31 a.m.

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REGISTRAR'S NOTICE: The State Corporation Commission is exempt from the Administrative Process Act in accordance with § 9-6.14:4.1 A 2 of the Code of Virginia, which exempts courts, any agency of the Supreme Court, and any agency which by the Constitution is expressly granted any of the powers of a court of record.

Title of Regulation: **10 VAC 5-20-10 et seq. Banking and Savings Institutions (amending 10 VAC 5-20-30).**

Statutory Authority: §§ 6.1-94, 6.1-194.85, 6.1-194.149 and 12.1-13 of the Code of Virginia.

Effective Date: June 27, 2001.

Summary:

The amendments modify the schedule of annual fees to be paid by state-chartered banks, savings institutions, and savings banks for their examination, supervision, and regulation.

Agency Contact: Gerald E. Fallen, State Corporation Commission, P.O. Box 1197, Richmond, VA 23218-1197, telephone (804) 371-9699.

AT RICHMOND, JUNE 26, 2001

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

CASE NO. BFI010080

Ex Parte: In re annual fees for examination, supervision, and regulation of banks and savings institutions

By order dated May 15, 2001, the State Corporation Commission ("Commission") directed that notice be given of a proposed regulation modifying the schedule of annual fees of banks and savings institutions.

Notice was published in the Virginia Register of Regulations dated June 4, 2001; was mailed to each bank and savings institution subject to the regulation; and was posted on the Commission's website. One written comment was received.

Now having considered the regulation and schedule of fees proposed by the Bureau of Financial Institutions, and the comment received, the Commission finds that the regulation should be adopted as proposed.

Accordingly, IT IS ORDERED THAT:

(1) The amended regulation, entitled "Schedule Prescribing Annual Fees Paid for Examination, Supervision, and Regulation of State-Chartered Banks and Savings Institutions" is adopted, as proposed. A copy of the final regulation is attached.

(2) An attested copy hereof, with the regulation as adopted attached, shall be sent to the Registrar of Regulations for publication in the Virginia Register.

AN ATTESTED COPY hereof shall be sent by the Clerk of the Commission to the Commissioner of Financial Institutions.

10 VAC 5-20-30. Schedule prescribing annual fees paid for examination, supervision, and regulation of state-chartered banks and savings institutions.

Pursuant to the provisions of §§ 6.1-94 ~~and~~, 6.1-194.85 *and 6.1-194.149* of the Code of Virginia, the State Corporation Commission hereby ~~promulgates~~ *sets* the following schedule ~~prescribing the~~ *of* annual ~~fee~~ *fees* to be paid by ~~every~~ state-chartered ~~bank and state-chartered~~ *banks,* savings ~~institution~~ *institutions, and savings banks* for ~~its~~ *their examination,* supervision, and regulation [~~, as follows~~]:

SCHEDULE

Asset Interval		Fee			
Assets Exceeding	But Not Exceeding	This Amount	Plus		Assets Exceeding
$0	$5 million	~~$4,500~~ *6,000*	0		
5 million	25 million	~~4,500~~ *6,000*	~~.000250~~ *.000350*	x	$5 million
25 million	100 million	~~9,500~~ *13,000*	.000200	x	25 million
100 million	200 million	~~24,500~~ *28,000*	.000150	x	100 million
200 million	1000 million	~~39,500~~ *43,000*	.000110	x	200 million
1000 million	5000 million	~~127,500~~ *131,000*	.000090	x	1000 million
5000 million		~~487,500~~ *491,000*	.000070	x	5000 million

The ~~assessment~~ fee ~~resulting from~~ *assessed using* the above schedule shall be rounded down to the nearest whole dollar ~~amount~~. The assessment shall be ~~computed~~ *based* on the ~~basis of the bank's or savings~~ institution's total assets as shown by its Report of Condition ~~made~~ as of the close of business for the preceding calendar year ~~as~~ filed with the Bureau of Financial Institutions.

~~Any~~ *A* bank or savings institution which opens for business ~~between~~ January 1 ~~and~~ *through* June 30~~, inclusive,~~ shall be assessed a fee of ~~$4,500~~ *6,000 for that year*.

~~Any~~ *A* bank or savings institution which ~~receives authorization to commence business but does not exercise that authority prior to~~ *opens for business on or after* July 1 shall be assessed a fee of ~~$3,000, which shall be in lieu of the assessment prescribed by the foregoing schedule~~ *4,500 for that year*.

VA.R. Doc. No. R01-202; Filed June 27, 2001, 11:31 a.m.

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TITLE 13. HOUSING

VIRGINIA HOUSING DEVELOPMENT AUTHORITY

REGISTRAR'S NOTICE: The Virginia Housing Development Authority is exempt from the Administrative Process Act (§ 9-6.14:1 et seq. of the Code of Virginia) pursuant to § 9-6.14:4.1 A 4; however, under the provisions of § 9-6.14:22, it is required to publish all proposed and final regulations.

Title of Regulation: **13 VAC 10-40-10 et seq. Rules and Regulations for Single-Family Mortgage Loans to Persons and Families of Low and Moderate Income (amending 13 VAC 10-40-30, 13 VAC 10-40-110, 13 VAC 10-40-130, 13 VAC 10-40-190, 13 VAC 10-40-230).**

Statutory Authority: § 36-55.30:3 of the Code of Virginia.

Effective Date: June 20, 2001.

Summary:

The amendments to the authority's rules and regulations for single family mortgage loans to persons and families of low and moderate income (i) provide that, for all loan programs governed by the regulations, a loan applicant may be a nonpermanent resident alien provided the applicant has a social security number and is eligible to work in the United States; (ii) provide that the maximum loan amount for a conventional loan with private mortgage insurance may exceed 97% if permitted by the private mortgage insurance provider; (iii) provide that the maximum loan amount for an approved condominium shall be the same as the maximum loan amount for a single family detached residence or townhouse; (iv) delete the requirements concerning the treatment of the value of personal property when calculating the maximum loan amount; (v) permit buydowns in Rural Development and conventional loans; (vi) provide that the appraiser must be licensed by the Commonwealth of Virginia; (vii) impose property standards, including FNMA and FHLMC property guidelines; (viii) prohibit covenants and restrictions which adversely affect the property; (ix) in the flexible alternative program, clarify that the maximum loan amount is 100% of the lesser of sales price or appraised value; (x) in the flexible alternative program, limit amounts funded to finance rehabilitation and improvement costs to 5.0% of the lesser of sales price or appraised value, except for an additional 5.0% to modify the residence for a disabled occupant; (xi) in the flexible alternative program, clarify that the credit guidelines apply as of the date of loan application; (xii) in the flexible alternative program alternative credit requirements, provide that the applicant may not have an outstanding collection, judgment, charge off or repossession; (xiii) in the flexible alternative program standard credit requirements, provide that the applicant may not have had an outstanding collection, judgment, charge off or repossession within the past 12 months and no more than four 30-day past due accounts within the past 24 months; (xiv) in the flexible alternative program, provide that the requirement for homeownership education when the loan-to-value ratio exceeds 95% shall be waived if the applicant's credit score

exceeds 660; and (xv) in the flexible alternative program, provide that the executive director may establish a rehabilitation loan program in accordance with the guidelines set forth in the amendments.

Agency Contact: J. Judson McKellar, Jr., General Counsel, Virginia Housing Development Authority, 601 S. Belvidere Street, Richmond, VA 23220, telephone (804) 343-5540.

REGISTRAR'S NOTICE: The proposed regulation was adopted as published in 17:19 VA.R. 2717-2723 June 4, 2001, without change. Therefore, pursuant to § 9-6.14:22 A of the Code of Virginia, the text of the final regulation is not set out.

VA.R. Doc. No. R01-198; Filed June 20, 2001, 9:57 a.m.

TITLE 14. INSURANCE

STATE CORPORATION COMMISSION

Bureau of Insurance

REGISTRAR'S NOTICE: The State Corporation Commission is exempt from the Administrative Process Act in accordance with § 9-6.14:4.1 A 2 of the Code of Virginia, which exempts courts, any agency of the Supreme Court, and any agency which by the Constitution is expressly granted any of the powers of a court of record.

Title of Regulation: **14 VAC 5-300-10 et seq. Rules Governing Credit for Reinsurance (amending 14 VAC 5-300-90).**

Statutory Authority: §§ 12.1-13 and 38.2-223 of the Code of Virginia.

Effective Date: August 1, 2001.

Summary:

Technical amendments to 14 VAC 5-300-90 correspond with § 38.2-1316.2 A 4 b of the Code of Virginia, and more accurately describe the annual certifications to be made available by groups of assuming entities that request credit for reinsurance.

Agency Contact: Raquel Pino-Moreno, Bureau of Insurance, State Corporation Commission, 1300 E. Main Street, 6th Floor, Richmond, VA 23219; Mailing Address: P.O. Box 1157, Richmond, VA 23218, telephone (804) 371-9499 or e-mail rpinomoreno@scc.state.va.us.

AT RICHMOND, JUNE 19, 2001

COMMONWEALTH OF VIRGINIA

At the relation of the

STATE CORPORATION COMMISSION

CASE NO. INS010084

Ex Parte: In the matter of
Adopting Revisions to the Rules
Governing Credit for Reinsurance

ORDER ADOPTING REVISIONS TO RULES

WHEREAS, by order entered herein April 27, 2001, all interested persons were ordered to take notice that the Commission would consider the entry of an order subsequent to June 11, 2001, adopting revisions proposed by the Bureau of Insurance to the Commission's Rules Governing Credit for Reinsurance, unless on or before June 11, 2001, any person objecting to the adoption of the proposed revisions filed a request for a hearing with the Clerk of the Commission;

WHEREAS, the April 27, 2001, Order also required all interested persons to file their comments in support of or in opposition to the proposed revisions on or before June 11, 2001;

WHEREAS, as of the date of this Order, no request for a hearing has been filed with the Clerk of the Commission;

WHEREAS, as of the date of this Order, no comments have been filed with the Clerk of the Commission;

WHEREAS, the Bureau has recommended that the proposed revisions be adopted; and

THE COMMISSION, having considered the proposed revisions and the Bureau's recommendation, is of the opinion that the attached proposed revisions should be adopted;

THEREFORE, IT IS ORDERED THAT:

(1) The revisions to Chapter 300 of Title 14 of the Virginia Administrative Code entitled "Rules Governing Credit for Reinsurance," which amend the rule at 14 VAC 5-300-90, and which are attached hereto and made a part hereof, should be, and they are hereby, ADOPTED to be effective August 1, 2001;

(2) AN ATTESTED COPY hereof shall be sent by the Clerk of the Commission to the Bureau of Insurance in care of Deputy Commissioner Douglas C. Stolte, who forthwith shall give further notice of the adoption of the revisions to the rule by mailing a copy of this Order, including a copy of the attached revised rule, to all insurers, joint underwriting associations, group self-insurance pools, group self-insurance associations, and reinsurers licensed by or otherwise registered with the Commission, and subject to Article 3.1 of Chapter 13 of Title 38.2 of the Code of Virginia or otherwise authorized by Title 38.2 to reinsure risks; and by forwarding a copy of this Order, including a copy of the attached revised rule, to the Virginia Registrar of Regulations for appropriate publication in the Virginia Register of Regulations; and

(3) The Bureau of Insurance shall file with the Clerk of the Commission an affidavit of compliance with the notice requirement of paragraph (2) above.

REGISTRAR'S NOTICE: The proposed regulation was adopted as published in 17:18 VA.R. 2504-2505 May 21, 2001, without change. Therefore, pursuant to § 9-6.14:22 A of the Code of Virginia, the text of the final regulation is not set out.

VA.R. Doc. No. R01-179; Filed June 22, 2001, 3:52 p.m.

TITLE 20. PUBLIC UTILITIES AND TELECOMMUNICATIONS

STATE CORPORATION COMMISSION

REGISTRAR'S NOTICE: The State Corporation Commission is exempt from the Administrative Process Act in accordance with § 9-6.14:4.1 A 2 of the Code of Virginia, which exempts courts, any agency of the Supreme Court, and any agency which by the Constitution is expressly granted any of the powers of a court of record.

Title of Regulation: **20 VAC 5-312-10 et seq. Rules Governing Retail Access to Competitive Energy Services.**

Statutory Authority: §§ 12.1-13 and 56-35.8 of the Code of Virginia.

Effective Date: August 1, 2001.

Summary:

These amended final rules govern retail access to competitive energy services of the electricity and natural gas industries.

The rules for retail access consist of eleven sections in a new chapter, Chapter 312 (20 VAC 5-312-10 et seq.) of Title 20 of the Virginia Administrative Code. They pertain to various relationships between the local distribution companies, competitive service providers, aggregators, and retail customers. These rules govern: (i) the relationships between local distribution companies and affiliated competitive service providers to prevent discriminatory or anti-competitive behavior; (ii) the competitive service provider and aggregator application process for licensure by the State Corporation Commission; (iii) the process for competitive service provider registration with the local distribution company; (iv) the development, maintenance, and distribution of mass lists and other customer information to competitive service providers and aggregators; (v) competitive service provider and aggregator dissemination of clear and accurate marketing materials to consumers, and minimum customer service contract provisions; (vi) the process, responsibilities, and rights of a customer, the local distribution company, and a competitive service provider in switching a customer's provider of electricity or natural gas supply service; (vii) the provision of competitive billing service options and the establishment of minimum bill information standards and consumer protections; (viii) the reasonableness and nondiscriminatory application of local distribution company load profiling activities; and (ix) the establishment of dispute resolution procedures between customers and competitive service providers or aggregators and between competitive service providers or aggregators and the local distribution company.

The majority of changes made since publication of the proposed rules are for purposes of clarification, organization and refinement. Major changes made since publication of the proposed rules include the following:

1. Aggregators are considered a subset of competitive service providers.

2. The requirement to provide "price-to-compare" information on customer bills is less prescriptive than originally proposed. This change gives local distribution companies added flexibility in considering the unique circumstances of each utility and current practices in other jurisdictions.

3. Flexibility was added to numerous rules to permit natural gas local distribution companies to reference tariff requirements in lieu of complying with VAEDT EDI standards.

4. The local distribution company must apply a customer's partial payment of a consolidated bill as designated by the customer.

5. Local distribution companies must give advance notice to competitive service providers and divisions of the State Corporation Commission prior to imposing any non-emergency related restrictions or disqualifications on a competitive service provider.

Copies of the proposed retail access rules are available on the State Corporation Commission's website at http://www.state.va.us/scc/caseinfo/orders.htm or may be obtained from the Clerk of the State Corporation Commission.

Agency Contact: Thomas E. Lamm, Division of Energy Regulation, State Corporation Commission, 1300 E. Main Street, 4th Floor, Richmond, VA 23219, telephone (804) 371-9611 or e-mail tlamm@scc.state.va.us.

AT RICHMOND, JUNE 19, 2001

COMMONWEALTH OF VIRGINIA

At the relation of the

STATE CORPORATION COMMISSION

CASE NO. PUE010013

Ex Parte: In the matter of establishing rules for retail access

FINAL ORDER

On May 26, 2000, the State Corporation Commission ("Commission") entered an order in Case No. PUE980812 adopting interim rules governing retail access pilot programs in the electric and natural gas industries. In that order, the Commission recognized that the rules were developed for pilot programs of limited scope and duration and could require alteration to accommodate full-scale retail access and competition. The Commission stated that it would review and revise these rules as needed for the start and continuation of full retail access.

The Virginia Electric Utility Restructuring Act directs the Commission to establish a transition schedule for retail access, which will begin January 1, 2002.[1] In furtherance of this goal, the Staff of the Commission ("Staff") invited representatives of interested parties to participate in a work group to assist the Staff in developing proposed rules for the start of retail access in Virginia. The work group met at least twice a week, from January 10, 2001, to February 28, 2001, and approximately 30 organizations were represented at one or more of the meetings. According to the Staff, in developing the proposed rules, it strongly considered the input and perspectives of work group participants, relied on experience gained through the operation of the pilot programs, and gave consideration to retail access rules adopted by neighboring states and national/regional uniform business practice efforts.

On March 6, 2001, the Staff filed its proposed retail access rules, and on March 13, 2001, the Staff filed its report discussing the rules. By April 6, 2001, the Commission had received comments from 18 interested parties[2] on the Staff's proposed rules and one request for hearing from the Virginia Electric Cooperatives[3] (the "Cooperatives"). On April 23, 2001, we issued an order scheduling a hearing for May 10, 2001, to hear evidence only on the Cooperatives' several issues.[4] That order also directed the filing of testimonies, ordered the Staff to file revised proposed rules by May 4, 2001, and directed interested parties to file comments on both the Staff's revised proposed rules and issues raised at the hearing, as well as any comments in response to those previously filed by other parties, by May 21, 2001.

By May 1, 2001, four interested parties, Washington Gas Light Company ("WGL"), Dominion Virginia Power, Delmarva Power & Light Company ("Delmarva"), the Cooperatives, and the Staff filed testimony, and by May 7, 2001, one party, Allegheny Power, and the Staff filed rebuttal testimony. The Staff also filed its revised proposed rules on May 4, 2001.

The hearing was held on May 10, 2001. The Commission Staff, the Cooperatives, WGL, Dominion Virginia Power, Delmarva, Allegheny Power, the Division of Consumer Counsel, Office of the Attorney General ("Consumer Counsel"), and Appalachian Power Company, d/b/a American Electric Power, participated at the hearing. The Commission heard evidence primarily concerning the methods of release of customer information to competitive service providers – the so-called "opt-in" and "opt-out" methodologies – and the inclusion of certain information on customers' bills.

On May 11, 2001, the day after the hearing, the Staff reconvened the work group to further discuss the proposed rules and gather additional input from the participants. Based on the Staff's May 21, 2001 filing, it is our understanding that several of the outstanding issues were discussed and resolved at that meeting by further revisions to the rules. Also by May 21, 2001, we had received additional comments from numerous parties on the Staff's revised proposed rules, issues raised at the May 10, 2001 hearing, and also comments in response to those previously filed by other parties, or presented during work group discussions.

Although the hearing was limited to issues regarding the provisioning of customer information and the content of customer bills, we stated then and emphasize now that the fact that a particular issue was not addressed at the hearing does not diminish its importance and does not lessen the extent to which we have considered it. The Commission has carefully considered all the comments and testimony filed herein, and our decision adopting final rules to govern retail access reflects the balancing of objectives to afford reasonable customer protections, to ensure equitable treatment of market participants, and to promote the advancement of competition in the Commonwealth.

NOW UPON CONSIDERATION of the pleadings and comments filed herein, we find that we should adopt the rules appended to this order as Attachment A, effective August 1, 2001, to be applicable to the start of retail access in Virginia.

The regulations we adopt herein contain several modifications to those that were originally proposed by Staff and published in the Virginia Register on March 26, 2001. These modifications have been made after our consideration of further proposed changes made to those rules by the Staff prior to the hearing in May of this year, other changes suggested by the parties at the hearing and in comments filed, and our analysis of how best to balance the interests of customers and other market participants. We will not review each rule in detail, but we will comment briefly on several of them.

First, we address the issue concerning the methods of release of certain customer information on a mass list to competitive service providers – the so-called "opt-in" versus "opt-out" methodologies contained in 20 VAC 5-312-60 B 2. The Cooperatives and Delmarva urged the Commission to reject the Staff's proposed "opt-out" method, which permits the release of certain customer information unless customers notify their local distribution companies that they do not want their information released to competitive service providers. The Staff and WGL countered that an "opt-in" method results in a list that is of little use to competitive service providers in marketing to potential customers. We understand and sympathize with the privacy concerns raised by the

[1] § 56-577 of the Code of Virginia.

[2] The Commission received comments from Allegheny Energy Supply, AES NewEnergy, Inc., Energy Consultants, Inc., Wattage Monitor, Pepco Energy Services, Inc., Kentucky Utilities Company d/b/a Old Dominion Power Company, Washington Gas Energy Services, Allegheny Power, Washington Gas Light Company, Dominion Retail, Inc., the Division of Consumer Counsel, Office of the Attorney General, Columbia Gas of Virginia, Dominion Virginia Power, The New Power Company, the Virginia Committee for Fair Utility Rates and the Old Dominion Committee for Fair Utility Rates, Delmarva Power & Light Company, Appalachian Power Company, d/b/a American Electric Power, and the Virginia Electric Cooperatives.

[3] The Virginia Electric Cooperatives include A&N Electric Cooperative, BARC Electric Cooperative, Central Virginia Electric Cooperative, Community Electric Cooperative, Craig-Botetourt Electric Cooperative, Mecklenburg Electric Cooperative, Northern Neck Electric Cooperative, Inc., Northern Virginia Electric Cooperative, Powell Valley Electric Cooperative, Prince George Electric Cooperative, Rappahannock Electric Cooperative, Shenandoah Valley Electric Cooperative, Southside Electric Cooperative, Inc., and the Virginia, Maryland & Delaware Association of Electric Cooperatives.

[4] All parties to this case agreed that this proceeding should be expedited in order to allow sufficient time for system changes that may be required by the rules. Accordingly, all parties agreed that the hearing could be limited to the Cooperatives' several issues regarding 12 specific rules enumerated by the Cooperatives in their supplemental comments filed on April 19, 2001.

Cooperatives and Delmarva; however, we believe, based on the comments and testimony filed in this case, that an "opt-out" approach is necessary to help foster a competitive market.

Second, we address Dominion Virginia Power's proposal to add a new rule applicable to slamming complaints received beyond the contract cancellation period. While we recognize the potential significance of this issue, we believe it is premature at this time to adopt such a rule without much, if any, experience or history of slamming complaints received beyond the contract rescission period in the pilot programs. We believe that, initially, the Staff's proposed rules may provide an adequate basis for resolving slamming complaints. Once full-scale retail access is underway, we will revisit the need for slamming rules if problems with unauthorized switching activity surface.

Third, the Consumer Counsel recommended that the Commission permit customers to designate the application of a partial payment of a consolidated bill in 20 VAC 5-312-90 H. The Staff disagreed and proposed limiting such designation to cases involving disputed billing charges. We agree with the Consumer Counsel that the choice should be left to the customer as to which charges on the bill a partial payment should be applied. Indeed, where dual billing exists, customers can and do choose which bills to pay, and the order in which they are paid. This option should still be available to customers with consolidated billing.

We note that several parties may require additional time to comply with some of these rules. For example, WGL, pursuant to § 56-235.8 of the Code of Virginia and our final order in Case No. PUE000474, has already implemented its plan for natural gas retail access, and therefore may not be in compliance with many of the rules on the August 1, 2001 effective date. Also, Dominion Virginia Power and others have indicated that they may need additional time to comply with certain billing rules. Therefore, we direct WGL, Dominion Virginia Power, and any other parties needing additional time to comply with certain rules, to submit requests in writing to the Commission on or before July 9, 2001. Each such request shall: (1) specifically identify each rule for which additional time is needed to comply, and the reasons for such request, and (2) state how much additional time is desired to comply with the specified rules.

Finally, we direct each competitive service provider who wishes to convert its pilot license to a permanent license to participate in retail access to submit a request to do so in writing to the Commission on or before August 31, 2001. Each such request shall include an attestation that the information provided and updated in its application for a pilot license is true and correct, and that the applicant will abide by all applicable regulations of the Commission, as required by 20 VAC 5-312-40 B, and shall also include any changes to information previously provided to the Commission, as required by 20 VAC 5-312-20 R.

Accordingly, IT IS ORDERED THAT:

(1) We hereby adopt the Rules Governing Retail Access to Competitive Energy Services, appended hereto as Attachment A.

(2) Parties needing additional time to comply with certain rules shall submit such requests in writing to the Commission on or before July 9, 2001. Each such request shall: (1) specifically identify each rule for which additional time is needed to comply, and the reasons for such request, and (2) state how much additional time is desired to comply with the specified rules.

(3) Each competitive service provider who wishes to convert its pilot license to a permanent license to participate in retail access shall submit a request to do so in writing to the Commission on or before August 31, 2001. Each such request shall include an attestation that the information provided and updated in its application for a pilot license is true and correct, and that the applicant will abide by all applicable regulations of the Commission, as required by 20 VAC 5-312-40 B, and shall also include any changes to information previously provided to the Commission, as required by 20 VAC 5-312-20 R.

(4) Because these rules may require changes to effective or proposed tariffs currently on file at the Commission, local distribution companies shall be directed to file revised tariffs, if necessary, on or before July 20, 2001, incorporating changes required by these rules.

(5) A copy of this Order and the rules adopted herein shall be forwarded promptly for publication in the Virginia Register of Regulations.

(6) This case is dismissed and the papers herein shall be placed in the file for ended causes.

AN ATTESTED COPY HEREOF shall be sent by the Clerk of the Commission to: Anthony Gambardella, Esquire, Woods, Rogers & Hazlegrove, PLC, 823 East Main Street, Suite 1200, Richmond, Virginia 23219; Guy T. Tripp III, Esquire, Hunton & Williams, Riverfront Plaza, East Tower, 951 East Byrd Street, Richmond, Virginia 23219-4074; Thomas B. Nicholson, Esquire, Williams Mullen Clark & Dobbins, Two James Center, 1021 East Cary Street, P.O. Box 1320, Richmond, Virginia 23218-1320; Gary A. Jeffries, Esquire, Dominion Retail, Inc., 625 Liberty Avenue, Suite 700, Pittsburgh, Pennsylvania 15222-3199; Adam Chmara, Esquire, Pepco Energy Services, 2000 K Street N.W., Washington, D.C. 20006; John F. Dudley, Senior Assistant Attorney General, Office of the Attorney General, 900 East Main Street, Second Floor, Richmond, Virginia 23219; Cliona Mary Robb, Esquire, and Sheila Martin, Legal Assistant, Christian & Barton, L.L.P., 909 East Main Street, Suite 1200, Richmond, Virginia 23219-3095; Deborah J. Henry, Esquire, and Carolyn Conrad, Allegheny Energy Supply, Roseytown Road, RR 12, Box 1000, Greensburg, Pennsylvania 15601; Ed Toppi, Vice President, and Eric Matheson, AES NewEnergy, Inc., 1001 North 19th Street, Arlington, Virginia 22209; Jack Greenhalgh, Vice President, Energy Consultants, Inc., 421 South Lynnhaven Road, Suite 101, Virginia Beach, Virginia 23452; Ronald L. Willhite, Director of Rates and Regulatory Affairs, LG&E Energy Corp., 220 West Main Street, P.O. Box 32010, Louisville, Kentucky 40232; James S. Copenhaver, Esquire, Columbia Gas of Virginia, 9001 Arboretum Parkway, Richmond, Virginia 23236-3488; Telemac N. Chryssikos, Esquire, Washington Gas Energy Services, 2565 Horsepen Road, Suite 200, Herndon, Virginia

20171-3401; Donald R. Hayes, Esquire, Washington Gas, 1100 H Street, N.W., Washington, D.C. 20080; Philip J. Bray, Esquire, and Robert C. Carder, Jr., Allegheny Power, 10435 Downsville Pike, Hagerstown, Maryland 21740-1766; Karen L. Bell, Esquire, Dominion Virginia Power, P.O. Box 26532, Richmond, Virginia 23261-6532; John A. Pirko, Esquire, LeClair Ryan, Innsbrook Corporate Center, 4201 Dominion Boulevard, Suite 200, Glen Allen, Virginia 23060; Robert E. Forrest, Vice President – Operations, Wattage Monitor, 1745 Terminal Way, Suite B, Reno, Nevada 89502; Dale P. Moore, Director of Rates, Regulatory Affairs and Financial Planning, Roanoke Gas Company, P.O. Box 13007, Roanoke, Virginia 24030; Patrick G. Jeffery, Assistant Vice President, Smartenergy Inc., Regulatory Affairs, 300 Unicorn Park, Woburn, Massachusetts; Emmett Kelly, Manager Regulatory Affairs, Itron, Inc., 2019 Hillcroft Drive, Forest Hill, Maryland 21050; James R. Kibler, Jr., Esquire, McCandlish, Kaine & Grant, P.O. Box 796, Richmond, Virginia 23218; Sally McFarlane-Parrott, DTE Energy Marketing, Inc., 101 North Main Street, Suite 300, Ann Arbor, Michigan 48104; E. Paul Hilton, Sr. Vice President, Dominion Energy Direct Sales, 120 Tredegar Street, Richmond, Virginia 23219; EnergyWindow, Inc., Kenneth G. Hurwitz, Esquire, Venable, Baetjer, Howard & Civiletti, LLP, 1201 New York Avenue, N.W., 11th Floor, Washington, D.C. 20005; Patricia J. Clark, Esquire, Allegheny Energy Supply Company, 800 Cabin Hill Drive, Greensburg, Pennsylvania 15601; Kathleen Magruder, Vice President, The New Power Company, 10 Glenville Street, Greenwich, Connecticut 06831; essential.com, Inc., Eric J. Krathwohl, Esquire, Rich, May, Bilodeau & Flaherty, P.C., 176 Federal Street, Boston, Massachusetts 02110-2223; Mary Elizabeth Tight, Regulatory Affairs, Amerada Hess Corporation, 2800 Eisenhower Avenue, 3rd Floor, Alexandria, Virginia 22314; James P. Guy, II, Esquire, LeClair Ryan, P.C., 4201 Dominion Boulevard, Suite 200, Glen Allen, Virginia 23060; Stephen L. Rosenstein, Energy Services Management Virginia LLC, d/b/a Virginia Energy Consortium, 3504 Northridge Drive, Baltimore, Maryland 21208; Mark Berndt, Manager, Commercial Operations, AEP Retail Energy, 1 Riverside Plaza, Columbus, Ohio 43215-2373; Meg Brunson, Bollinger Energy Corporation, 2833 O'Donnell Street, Baltimore, Maryland 21224; Beth Goodman, Enron Energy Marketing Corp., 1400 Smith Street, Houston, Texas 77002; Lori Johnson, President, Tiger Natural Gas, Inc., 1-G West 41st, Sand Springs, Oklahoma 74063; Michael Dailey, President, America's Energy Alliance, inc., 10323 Lomond Drive, Manassas, Virginia 20108-0875; Kevin Carey, Manager, Commodity Operations, BGE Commercial Building Systems, Inc., 7161 Columbia Gateway Drive, Suite B, Columbia, Maryland 21046; Ryan Arce, Regulatory Affairs, Titan Energy of Chesapeake, Inc., 1210 Sheppard Avenue, East, Suite 401, Toronto, Ontario M2K 1E3, Michel A. King, President, Old Mill Power Company, 103 Shale Place, Charlottesville, Virginia 22902-6402; Matthew Dutzman, Director Business Development, UGI Energy Services, Inc., 1100 Berkshire Boulevard, Suite 305, Wyomissing, Pennsylvania 19610; Gordon L. Pozza, Metromedia Energy, Inc., 6 Industrial Way, Eatontown, New Jersey 07724; and the Commission's Divisions of Energy Regulation, Public Utility Accounting and Economics and Finance.

CHAPTER 312.
RULES GOVERNING RETAIL ACCESS TO COMPETITIVE ENERGY SERVICES.

20 VAC 5-312-10. Applicability; definitions.

A. These regulations are promulgated pursuant to the provisions of the Virginia Electric Utility Restructuring Act (§ 56-576 et seq. of the Code of Virginia) and to the provisions of retail supply choice for natural gas customers, § 56-235.8 of the Code of Virginia. The provisions in this chapter apply to suppliers of electric and natural gas services including local distribution companies [*,* ~~*,*~~ *and*] *competitive service providers,* [~~*and aggregators*~~] *, and govern the implementation of retail access to competitive energy services in the electricity and natural gas markets, including the conduct of market participants. The provisions in this chapter shall be* [~~*effective with*~~ *applicable to*] *the implementation of full or phased-in retail access to competitive energy services in the service territory of each local distribution company.*

B. The following terms when used in this chapter shall have the following meanings, unless the context clearly indicates otherwise:

"Affiliated competitive service provider" means a competitive service provider that is a separate legal entity that controls, is controlled by, or is under common control of, a local distribution company or its parent. For the purpose of this chapter, any unit or division created by a local distribution company for the purpose of acting as a competitive service provider shall be treated as an affiliated competitive service provider and shall be subject to the same provisions and regulations.

"Aggregator" means a person [*licensed by the State Corporation Commission*] *that, as an agent or intermediary, (i) offers to purchase, or purchases, electricity* [*supply service*] *or natural gas supply* [*service*]*, or both, or (ii) offers to arrange for, or arranges for, the purchase of electricity* [*supply service*] *or natural gas supply* [*service*]*, or both, for sale to, or on behalf of, two or more retail customers not controlled by or under common control with such person. The following activities shall not, in and of themselves, make a person an aggregator under this chapter: (i) furnishing legal services to two or more retail customers* [*,* ~~*,*~~ *or*] *competitive service providers* [~~*or aggregators*~~]*; (ii) furnishing educational, informational, or analytical services to two or more retail customers, unless direct or indirect compensation for such services is paid by* [~~*an aggregator or*~~] *a competitive service provider supplying electricity or natural gas, or both; (iii) furnishing educational, informational, or analytical services to two or more competitive service providers* [~~*or aggregators*~~]*; (iv) providing default service under § 56-585 of the Code of Virginia; (v) conducting business as a competitive service provider licensed under 20 VAC 5-312-40; and (vi) engaging in actions of a retail customer, acting in common with one or more other such retail customers, to issue a request for proposal or to negotiate a purchase of electricity* [*supply service*] *or natural gas supply* [*service*]*, or both, for consumption by such retail customers.*

"Billing party" means a [~~*competitive service provider, an aggregator, or the local distribution company that transmits*~~

person who renders] a consolidated or separate bill [directly to a retail customer] for competitive energy services, aggregation services, or distribution services, [~~directly to a retail customer~~ or both].

["Bill-ready" means the consolidated billing practice in which the nonbilling party calculates each retail customer's billing charges for services provided and forwards such charges to the billing party for inclusion on the consolidated bill.]

"Business day" means any calendar day or computer processing day in the Eastern United States time zone in which the general office of the applicable local distribution company is open for business with the public.

"Competitive energy service" means the retail sale of electricity supply service [~~or~~ ,] natural gas supply service, or [~~both, or~~] any other competitive service as provided by legislation [~~or~~ and] approved by the State Corporation Commission as part of retail access by an entity other than the local distribution company as a regulated utility. [For the purpose of this chapter, competitive energy services include services provided to retail customers by aggregators.]

"Competitive service provider" means a person, licensed by the State Corporation Commission, that sells or offers to sell a competitive energy service within the Commonwealth. This term includes affiliated competitive service providers, as defined above, but does not include a party that supplies electricity or natural gas, or both, exclusively for its own consumption or the consumption of one or more of its affiliates. [For the purpose of this chapter, competitive service providers include aggregators.]

"Competitive transition charge" means the wires charge, as provided by § 56-583 of the Code of Virginia, that is applicable to a retail customer that chooses to procure electricity supply service from a competitive service provider.

"Consolidated billing" means the [~~provision~~ rendering] of a single bill to a retail customer that includes the billing charges [~~for services rendered by~~ of] a competitive service provider [~~or an aggregator, or both,~~] and the [billing charges of the] local distribution company.

["Customer" means retail customer.]

"Distribution service" means the delivery of electricity or natural gas, or both, through the distribution facilities of the local distribution company to a retail customer.

"Electricity supply service" means the generation [of electricity, or when provided together, the generation of electricity] and [its] transmission [~~of electricity~~] to the distribution facilities of the local distribution company on behalf of a retail customer.

"Electronic Data Interchange" (EDI) means computer-to-computer exchange of business information using common standards for high volume electronic transactions.

"Local distribution company" means an entity regulated by the State Corporation Commission that owns or controls the distribution facilities required for the transportation and delivery of electricity or natural gas to the retail customer.

"Natural gas supply service" means the procurement [~~and transportation~~] of natural gas [, or when provided together, the procurement of natural gas and its transportation] to the distribution facilities of a local distribution company on behalf of a retail customer.

"Nonbilling party" means a party that provides [retail] customer billing information for competitive energy services or [~~aggregation services~~ regulated service] to the [~~local distribution company~~ billing party] for the purpose of consolidated billing.

"Person" means any individual, corporation, partnership, association, company, business, trust, joint venture, or other private legal entity, and the Commonwealth or any city, county, town, authority or other political subdivision of the Commonwealth.

"Price-to-compare" means the portion of the [electric] local distribution company's regulated rate applicable to electricity supply service less the competitive transition charge rate [or the portion of the natural gas local distribution company's regulated rate applicable to natural gas supply service].

["Rate-ready" means the consolidated billing practice in which the nonbilling party provides rate information to the billing party to calculate and include the nonbilling party's charges on the consolidated bill.]

"Residential customer" means any person [~~taking~~ receiving] retail distribution service under a residential tariff of the local distribution company.

"Retail access" means the opportunity for a retail customer in the Commonwealth to purchase a competitive energy service from a licensed competitive service provider seeking to sell such services to that customer.

["Retail customer" means any person who purchases retail electricity or natural gas for his or her own consumption at one or more metering points or nonmetered points of delivery located within the Commonwealth.]

"Separate billing" means the [~~transmittal~~ rendering] of separate bills [to a retail customer] for [~~services rendered by~~ the billing charges of] a competitive service provider [~~, an aggregator,~~] and [the billing charges of] the local distribution company.

"Transmission provider" means an entity regulated by the Federal Energy Regulatory Commission that owns or operates, or both, the transmission facilities required for the delivery of electricity or natural gas to the local distribution company or retail customer.

"Virginia Electronic Data Transfer Working Group" (VAEDT) means the group of representatives from electric and natural gas local distribution companies, competitive service providers, the staff of the State Corporation Commission, and the Office of Attorney General whose objective is to formulate guidelines and practices for the electronic exchange of information necessitated by retail access.

20 VAC 5-312-20. General provisions.

A. A request for a waiver of any of the provisions in this chapter shall be considered by the State Corporation

Commission on a case-by-case basis, and may be granted upon such terms and conditions as the State Corporation Commission may impose.

B. The provisions of this chapter may be enforced by the State Corporation Commission by any means authorized under applicable law or regulation. Enforcement actions may include, without limitation, the refusal to issue any license for which application has been made, and the revocation or suspension of any license previously granted. [~~*Any*~~ *The provisions of this chapter shall not be deemed to preclude a*] *person aggrieved by a violation of these regulations* [~~*may pursue*~~ *from pursuing*] *any civil relief that may be available under state or federal law, including, without limitation, private actions for* [~~*enforcement of these regulations, without regard to or first pursuing the remedies available from the State Corporation Commission hereunder*~~ *damages or other equitable relief*].

C. The provisions of this chapter shall not be deemed to prohibit the local distribution company, in emergency situations, from taking actions it is otherwise authorized to take that are necessary to ensure public safety and reliability of the distribution system. The State Corporation Commission, upon a claim of inappropriate action or its own motion, may investigate and take such corrective actions as may be appropriate.

D. The State Corporation Commission maintains the right to inspect the books, papers, records and documents, and to require [~~*special*~~] *reports and statements, of a competitive service provider* [~~*or an aggregator regarding*~~ *as required to verify*] *qualifications to conduct business within the Commonwealth,* [~~*in*~~ *to*] *support* [~~*of*~~] *affiliate transactions, to investigate allegations of violations of this chapter, or to resolve a complaint filed against a competitive service provider* [~~*or an aggregator*~~].

E. [~~*The*~~ *Absent the designation of a default service provider as determined by the State Corporation Commission pursuant to § 56-585 of the Code of Virginia, the*] *local distribution company shall provide, pursuant to the prices, terms, and conditions of its tariffs approved by the State Corporation Commission, service to all customers that do not select a competitive service provider and to customers that chose a competitive service provider but whose service is terminated* [~~*at the request of the customer or by the competitive service provider*~~] *for any reason.*

F. [~~*The local distribution company and a competitive service provider shall not:*~~

~~*1. Suggest that the services provided by the local distribution company are of any different quality when competitive energy services are purchased from a particular competitive service provider; or*~~

~~*2. Suggest that the competitive energy services provided by a competitive service provider are being provided by the local distribution company rather than the competitive service provider.*~~

A competitive service provider selling electricity supply service or natural gas supply service, or both, at retail shall:

1. Procure sufficient electric generation and transmission service or sufficient natural gas supply and delivery capability, or both, to serve the requirements of its firm customers.

2. Abide by any applicable regulation or procedure of any institution charged with ensuring the reliability of the electric or natural gas systems, including the State Corporation Commission, the North American Electric Reliability Council, and the Federal Energy Regulatory Commission, or any successor agencies thereto.

3. Comply with any obligations that the State Corporation Commission may impose to ensure access to sufficient availability of capacity.]

G. The local distribution company and a competitive service provider [~~*or an aggregator*~~] *shall* [~~*establish and advise each other of internal points of contact to address business coordination and customer account issues.*~~ *not:*

1. Suggest that the services provided by the local distribution company are of any different quality when competitive energy services are purchased from a particular competitive service provider; or

2. Suggest that the competitive energy services provided by a competitive service provider are being provided by the local distribution company rather than the competitive service provider.

H. The local distribution company shall conduct its forecasting, scheduling, balancing, and settlement activities in a nondiscriminatory and reasonably transparent manner.]

[~~*H.*~~ *I.*] *The local distribution company* [~~*, a*~~ *or*] *competitive service provider* [~~*, or an aggregator*~~] *shall bear the responsibility for metering as provided by legislation and implemented by the State Corporation Commission.*

[~~*I.*~~ *J.*] *The local distribution company* [~~*,*~~ *and*] *a competitive service provider,* [~~*and an aggregator*~~] *shall* [~~*fully cooperate*~~ *coordinate their customer communication activities*] *with the State Corporation Commission's statewide consumer education campaign.*

[~~*J.*~~ *K.*] *The local distribution company and a competitive service provider* [~~*or an aggregator*~~] *shall adhere to standard practices for exchanging data and information in an electronic medium as specified by the VAEDT and filed with the State Corporation Commission* [*or as otherwise provided by the local distribution company's tariff approved by the State Corporation Commission*]. *In the event the parties agree to initially use a means other than those specified by VAEDT* [*or the local distribution company's tariff*]*, then the competitive service provider* [~~*or the aggregator*~~] *shall file a plan with the State Corporation Commission's Division of Economics and Finance to implement VAEDT* [*or tariff*] *approved standards within 180 days of the initial retail offering.*

[~~*K.*~~ *L.*] *The local distribution company and a competitive service provider* [~~*or an aggregator*~~ *that is responsible for exchanging customer information electronically with such local distribution company*] *shall* [*, except as otherwise provided by the local distribution company's tariff approved by the State Corporation Commission,*] *successfully complete*

EDI testing and receive certification for all EDI transactions, as outlined in the VAEDT EDI Test Plan, prior to actively enrolling customers, except as permitted by subsection [~~J~~ *K*] *of this section.*

[~~L.~~ *M.*] *A competitive service provider* [~~or aggregator~~] *offering billing service that requires the direct delivery of a bill to a customer* [*and that requires the electronic exchange of data with the local distribution company*] *shall furnish, prior to enrolling the customer, a sample bill produced from the data exchanged in the EDI certification process* [*, or comparable electronic data exchange process,*] *as described in subsection* [~~K above~~ *L of this section*]*, or a sample bill produced similarly elsewhere, to the State Corporation Commission's Division of Energy Regulation and Division of Economics and Finance.*

[~~M.~~ *N.*] *The local distribution company shall file with the State Corporation Commission's Division of Energy Regulation and Division of Economics and Finance a monthly report* [~~of~~ *which shall, at a minimum, include*] *all cancellation requests alleging a customer was enrolled without authorization. Such reports shall include: (i) the approximate date of the enrollment; (ii) the identity of the competitive service provider involved; (iii) the name and address of the customer that cancelled such enrollment; and (iv)* [*if readily available,*] *a brief statement regarding the customer's explanation for the cancellation. Such reports shall be reviewed by commission staff and regarded as confidential unless and until the State Corporation Commission orders otherwise.*

[~~N.~~ *O.*] *The local distribution company shall file with the State Corporation Commission's Division of Economics and Finance a quarterly report providing a detailed breakdown of residential and nonresidential customer switching activity. Such reports shall include, for the local distribution company, the total number of customers and corresponding amount of load eligible to switch; and, for each competitive service provider, the total number of customers and corresponding amount of load served.* [*The amount of load shall be measured in MW or dekatherm capacity of peak load contribution and in kWh or therms of associated energy.*] *Such reports shall be reviewed by commission staff and information specific to individual competitive service providers shall be regarded as confidential unless and until the State Corporation Commission orders otherwise.*

[~~O.~~ *P.*] *By March 31 of each year,* [~~the local distribution company or a competitive service~~ *the*] *provider* [~~providing~~ *of*] *electricity supply service shall* [~~provide a~~] *report to its customers and file* [~~such~~ *a*] *report with the State Corporation Commission stating to the extent feasible, fuel mix and emissions data for the prior calendar year. If such data is unavailable, the* [~~local distribution company or a competitive service~~] *provider* [*of electricity supply service*] *shall file a report with the State Corporation Commission stating why it is not feasible to submit any portion of such data.*

[~~P.~~ *Q.*] *A competitive service provider* [~~and an aggregator~~] *shall file a report with the State Corporation Commission by March 31 of each year to update all information required in the original application for licensure. A $100 administrative fee payable to the State Corporation Commission shall accompany this report.*

[~~Q.~~ *R.*] *A competitive service provider* [~~or an aggregator~~] *shall inform the State Corporation Commission within 30 days of the following: (i) any change in its name, address and telephone numbers; (ii) any change in information regarding its affiliate status with the local distribution company; (iii) any changes to information provided pursuant to 20 VAC 5-312-40 A 13; and (iv) any changes to information provided pursuant to 20 VAC 5-312-40 A 15.*

[~~R.~~ *S.*] *If a filing with the State Corporation Commission, made pursuant to this chapter, contains information that the local distribution company* [~~,~~ *or*] *a competitive service provider* [~~, or an aggregator~~] *claims to be confidential, the filing may be made under seal provided it is accompanied by both a motion for protective order or other confidential treatment and an additional five copies of a redacted version of the filing to be available for public disclosure. Unredacted filings containing the confidential information shall be maintained under seal unless the State Corporation Commission orders otherwise, except that such filings shall be immediately available to the commission staff for internal use at the commission. Filings containing confidential or redacted information shall be so stated on the cover of the filing, and the precise portions of the filing containing such confidential or redacted information, including supporting material, shall be clearly marked within the filing.*

20 VAC 5-312-30. Codes of conduct.

A. An affiliated competitive service provider may use the name or logo of its affiliated local distribution company in advertising and solicitation materials. A disclaimer shall be used when an affiliated competitive service provider offers services in the certificated service territory of its affiliated local distribution company. Such disclaimer shall clearly and conspicuously disclose that the affiliated competitive service provider is not the same company as the local distribution company. Disclaimers shall not be required, however, on company vehicles, clothing, or trinkets, writing instruments, or similar promotional materials. Upon complaint of any interested person, the Attorney General, staff motion, or on its own motion, the State Corporation Commission may, after notice and an opportunity for hearing, make a determination whether any such usage is misleading, and if so, take appropriate corrective actions.

B. An affiliated competitive service provider shall operate independently of its affiliated local distribution company and shall abide by the following provisions with respect to any competitive energy service it offers in the certificated service territory of the affiliated local distribution company:

1. Each affiliated competitive service provider shall implement internal controls to ensure that it and its employees, contractors and agents that are engaged in the (i) merchant, operations, transmission, or reliability functions of the electric generation or natural gas supply systems, or (ii) customer service, sales, marketing, [*metering,*] *accounting or billing functions, do not receive information from an affiliated local distribution company or from entities that provide similar functions for or on behalf*

of its affiliated local distribution company or affiliated transmission provider as would give such affiliated competitive service provider an undue advantage over non-affiliated competitive service providers. For purposes of this subdivision, "undue advantage" means an advantage that is reasonably likely to adversely affect the development of effective competition within the Commonwealth.

2. An affiliated competitive service provider shall file with the State Corporation Commission a revised listing and description of all internal controls required in subdivision 1 of this subsection within 10 days of any modification to such controls as was originally provided under 20 VAC 5-312-40 A 8 as part of the requirements of the affiliated competitive service provider's application for license.

3. An affiliated competitive service provider shall document each occasion that an employee of its affiliated local distribution company, or of the transmission provider that serves its affiliated local distribution company, becomes one of its employees and each occasion that one of its employees becomes an employee of its affiliated local distribution company or the transmission provider that serves its affiliated local distribution company. Upon staff's request, such information shall be filed with the State Corporation Commission that identifies each such occasion. Such information shall include a listing of each employee transferred and a brief description of each associated position and responsibility.

C. Each affiliated competitive service provider shall maintain separate books of accounts and records.

D. The local distribution company shall not give undue preference to an affiliated competitive service provider over the interests of any other competitive service provider related to the provision of electric transmission, distribution, generation, or ancillary services, or natural gas supply or capacity. For purposes of this subsection, "undue preference" means a preference that is reasonably likely to adversely affect the development of effective competition within the Commonwealth.

E. The local distribution company shall provide information related to the transmission, distribution or provision of electricity, ancillary services, or natural gas supply or capacity to an affiliated competitive service provider only if it makes such information available simultaneously, through an electronic bulletin board or similar means of public dissemination, to all other competitive service providers licensed to conduct business in Virginia. This provision shall not apply to daily operational data, information provided in response to inquiries regarding the applicability of tariffs and terms and conditions of service, or similar data provided by the local distribution company to any competitive service provider in the ordinary course of conducting business. Nothing in this provision shall require the local distribution company to disseminate to all competitive service providers information requested and deemed competitively sensitive by a competitive service provider and supplied by the local distribution company.

F. Joint advertising and marketing shall be prohibited between the local distribution company and its affiliated competitive service provider unless made available to all competitive service providers upon the same price, terms, and conditions.

G. The local distribution company shall not condition the provision of any services on the purchase of any other service or product from its affiliated competitive service provider.

H. The local distribution company shall operate independently of any affiliated competitive service provider and shall observe the following requirements with respect to any competitive energy service offered by such affiliated competitive service provider in the local distribution company's certificated service territory:

1. Each local distribution company having an affiliated competitive service provider shall develop and implement internal controls to ensure that it and its employees, contractors, and agents that are engaged in the (i) merchant, operations, transmission, or reliability functions of the electric generation or natural gas supply systems, or (ii) customer service, sales, marketing, [*metering,*] *accounting or billing functions, do not provide information to an affiliated competitive service provider or to entities that provide similar functions for or on behalf of such an affiliated competitive service provider as would give such affiliated competitive service provider an undue advantage, as defined in subdivision B 1 of this section, over* [~~*nonaffiliated*~~ *non-affiliated*] *competitive service providers.*

2. An affiliated local distribution company shall file with the State Corporation Commission a listing and description of all internal controls required in subdivision 1 of this subsection not later than 30 days prior to implementation or within 10 days of any modification to such controls.

3. The local distribution company shall document each occasion that an employee of its affiliated competitive service provider becomes one of its employees and each occasion that one of its employees becomes an employee of its affiliated competitive service provider. Upon staff's request, such information shall be filed with the State Corporation Commission that identifies each such occasion. Such information shall include a listing of each employee transferred and a brief description of each associated position and responsibility.

I. With respect to affiliate transactions, the local distribution company shall abide by the following:

1. The local distribution company shall be compensated at the greater of fully distributed cost or market price for all nontariffed services, facilities, and products provided to an affiliated competitive service provider. An affiliated competitive service provider shall be compensated at the lower of fully distributed cost or market price for all nontariffed services, facilities, and products provided to the local distribution company. If market price data are unavailable, nontariffed services, facilities and products shall be compensated at fully distributed cost and the local distribution company shall document its efforts to determine market price data and its basis for concluding that such price data are unavailable. Notification of a determination of the unavailability of market price data shall be included with the report required in subdivision 2 of this subsection.

2. The local distribution company shall file annually, with the State Corporation Commission, a report that shall, at a minimum, include: the amount and description of each type of nontariffed service provided to or by an affiliated competitive service provider; accounts debited or credited; and the compensation basis used, i.e., market price or fully distributed cost. The local distribution company shall maintain the following documentation for each agreement and arrangement where such services are provided to or by an affiliated competitive service provider and make such documentation available to staff upon request: (i) component costs (i.e., direct or indirect labor, fringe benefits, travel or housing, materials, supplies, indirect miscellaneous expenses, equipment or facilities charges, and overhead); (ii) profit component; and (iii) comparable market values, with supporting documentation.

20 VAC 5-312-40. Licensing.

A. Each person applying for a license to conduct business as a competitive service provider [~~*or an aggregator*~~]*, including entities described in § 56-589 A 1 of the Code of Virginia, shall file an original and 15 copies of its application with the Clerk of the State Corporation Commission. If there are any material changes to the applicant's information while the application is pending, the applicant shall inform the State Corporation Commission within 10 calendar days. Each application shall include the following:*

1. Legal name of the applicant as well as any trade name.

2. A description of the applicant's authorized business structure, identifying the state authorizing such structure and the date thereof; e.g., if incorporated, the state and date of incorporation; if a limited liability company, the state issuing the certificate of organization and the date thereof.

3. Name and business addresses of all principal corporate officers and directors, partners, and LLC members, as appropriate.

4. Physical business addresses and telephone numbers of the applicant's principal office and any Virginia office location or locations.

5. A list of states in which the applicant or an affiliate conducts business related to electricity supply service or natural gas supply service, the names under which such business is conducted, and a description of the businesses conducted.

6. Names of the applicant's affiliates and subsidiaries. If available, applicant shall satisfy this requirement by providing a copy of its most recent form 10K, Exhibit 21 filing with the Securities and Exchange Commission.

7. Disclosure of any affiliate relationships with local distribution companies or competitive service providers, or both, that conduct business in Virginia, and any agreements with the affiliated local distribution company that affect the provision of competitive energy services within the Commonwealth of Virginia.

8. If an affiliated competitive service provider, a description of internal controls the applicant has designed to ensure that it and its employees, contractors, and agents that are engaged in the (i) merchant, operations, transmission, or reliability functions of the electric generation or natural gas supply systems, or (ii) customer service, sales, marketing, [*metering,*] *accounting or billing functions, do not receive information from an affiliated local distribution company or from entities that provide similar functions for or on behalf of its affiliated local distribution company or affiliated transmission provider as would give such affiliated competitive service provider an undue advantage over non-affiliated competitive service providers. For purposes of this subdivision, "undue advantage" means an advantage that is reasonably likely to adversely affect the development of effective competition in the Commonwealth.*

9. Toll-free telephone number of the customer service department.

10. Name, title, address, telephone number, facsimile number, and e-mail address of the company liaison with the State Corporation Commission.

11. Name, title, and address of the applicant's registered agent in Virginia for service of process.

12. If a foreign corporation, a copy of the applicant's authorization to conduct business in Virginia from the State Corporation Commission or if a domestic corporation, a copy of the certificate of incorporation from the State Corporation Commission.

13. Sufficient information to demonstrate, for purposes of licensure with the State Corporation Commission, financial fitness commensurate with the service or services proposed to be provided. Applicant shall submit the following information related to general financial fitness:

a. If available, applicant's audited balance sheet and income statement for the most recent fiscal year and published financial information such as the most recent Securities and Exchange Commission forms 10K and 10Q. If not available, other financial information for the applicant or any other entity that provides financial resources to the applicant.

b. If available, proof of a minimum bond rating (or other senior debt) of "BBB-" or an equivalent rating by a major rating agency, or a guarantee with a guarantor possessing a credit rating of "BBB-" or higher from a major rating agency. If not available, other evidence that will demonstrate the applicant's financial responsibility.

14. The name of the local distribution company that is certificated to provide service in the area in which the applicant proposes to provide service, the type of service or services it proposes to provide, and the class of customers to which it proposes to provide such services.

15. a. Disclosure of any (i) civil, criminal, or regulatory sanctions or penalties imposed or in place within the previous five years against the company, any of its affiliates, or any officer, director, partner, or member of an LLC or any of its affiliates, pursuant to any state or federal consumer protection law or regulation; and (ii) felony convictions within the previous five years, which relate to the business of the company or to an affiliate

thereof, of any officer, director, partner, or member of an LLC.

b. Disclosure of whether any application for license or authority to conduct the same type of business as it proposes to offer in Virginia has ever been denied, and whether any license or authority issued to it or an affiliate has ever been suspended or revoked and whether other sanctions have been imposed.

c. If applicant has engaged in the provision of electricity supply service or natural gas supply service, or both, in Virginia or any other state, a report of all instances of violations of reliability standards that were determined to be the fault of the applicant, including unplanned outages, failure to meet service obligations, and any other deviations from reliability standards during the previous three years. The report shall include, for each instance, the following information: (i) a description of the event; (ii) its duration; (iii) its cause; (iv) the number of customers affected; (v) any reports, findings or issuances by regulators or electric and natural gas system reliability organizations relating to the instance; (vi) any penalties imposed; and (vii) whether and how the problem has been remedied.

16. A $250 registration fee payable to the State Corporation Commission.

17. Sufficient information to demonstrate technical fitness commensurate with the service or services to be provided, to include:

a. The applicant's experience.

b. Identity of applicant's officers directly responsible for the business operations conducted in Virginia and their experience in the generation of electricity, procurement of electricity or natural gas, or both, and the provision of energy services to retail customers.

c. If applying to sell electricity supply service at retail, documentation of any membership or participation in regional reliability councils or regional transmission organizations.

d. If applying to sell electricity supply service or natural gas supply service, or both, at retail, information concerning access to generation, supply, reserves, and transmission. If applying to sell electricity supply service, provide information specifying, to the extent possible, the expected sources of electricity or electricity procurement practices and transmission arrangements that will be used to support retail sales of electricity in Virginia. If applying to sell natural gas supply service, provide information regarding pipeline capacity and storage arrangements, including assurances that such suppliers will be able to meet the requirements of their essential human needs customers.

e. Billing service options the applicant intends to offer and a description of the applicant's billing capability including a description of any related experience.

18. A copy of the applicant's dispute resolution procedure.

B. An officer with appropriate authority, under penalty of perjury shall attest that all information supplied on the application for licensure form is true and correct, and that, if licensed, the applicant will abide by all applicable regulations of the State Corporation Commission.

C. Upon receipt of an application for a license to conduct business as a competitive service provider [~~*or an aggregator*~~] *, the State Corporation Commission shall enter an order providing notice to appropriate persons and an opportunity for written comments on the application.*

D. If any application fails to conform to the requirements herein, the application shall not be regarded as complete. No action shall be taken on any application until deemed complete and filed.

E. A license to conduct business as a competitive service provider [~~*or an aggregator*~~] *granted under this section is valid until revoked or suspended by the State Corporation Commission after providing due notice and an opportunity for a hearing, or until the competitive service provider* [~~*or aggregator*~~] *abandons its license* [*in accordance with 20 VAC 5-312-80 O*].

F. A competitive service provider [~~*or an aggregator*~~] *shall comply with all initial and continuing requirements of the State Corporation Commission's licensure process and any reasonable registration processes required by the local distribution company and the transmission provider. Should the State Corporation Commission determine, upon complaint of any interested person, the Attorney General, upon staff motion, or its own motion, that a competitive service provider* [~~*or an aggregator*~~] *has failed to comply with any of the requirements of this chapter or a State Corporation Commission order related thereto, the State Corporation Commission may, after providing due notice and an opportunity for a hearing, suspend or revoke the competitive service provider's license* [~~*or an aggregator's license*~~] *or take any other actions permitted by law or regulations as it may deem necessary to protect the public interest.*

20 VAC 5-312-50. Competitive service provider registration with the local distribution company.

A. A competitive service provider shall submit to the local distribution company the full name of the competitive service provider, the type of entity (e.g., partnership, corporation, etc.), physical street and mailing addresses [~~*, and the names, telephone numbers, and e-mail addresses of appropriate contact persons, including a 24-hour emergency telephone number, and the name, title, and address of its registered agent in Virginia*~~].

B. A competitive service provider shall furnish the local distribution company and the transmission provider proof of licensure from the State Corporation Commission to provide competitive energy services in the Commonwealth. [*A competitive service provider shall provide notice of any suspension or revocation of its license to the local distribution company and the transmission provider upon issuance of the suspension or revocation by the State Corporation Commission.*]

C. A competitive service provider [~~selling electricity supply service or natural gas supply service, or both, at retail shall:~~ and the local distribution company shall exchange the names, telephone numbers, and e-mail addresses of appropriate internal points of contact to address operational, business coordination and customer account issues, and the names and addresses of their registered agents in Virginia.]

[~~1. Procure sufficient electric generation and transmission service or sufficient natural gas supply and delivery capability, or both, to serve the requirements of its firm customers.~~

~~2. Abide by any applicable regulation or procedure of any institution charged with ensuring the reliability of the electric or natural gas systems, including the State Corporation Commission, the North American Electric Reliability Council, and the Federal Energy Regulatory Commission, or any successor agencies thereto.~~

~~3. Comply with any obligations that the State Corporation Commission may impose to ensure access to sufficient availability of capacity.~~

~~4. Comply with generally accepted technical protocols applicable to particular competitive services.~~]

D. The local distribution company may require reasonable financial security from the competitive service provider to safeguard the local distribution company and its customers from the reasonably expected net [~~incremental costs~~ financial impact] due to the nonperformance of the competitive service provider. The amount of such financial security shall be commensurate with the level of risk assumed by the local distribution company, as determined by the local distribution company's applicable tariff approved by the State Corporation Commission. Such financial security may include a letter of credit, a deposit in an escrow account, a prepayment arrangement, [a surety bond,] or other arrangements that may be mutually agreed upon by the local distribution company and the competitive service provider. Disagreements with respect to financial security shall be subject to the dispute resolution procedures established pursuant to 20 VAC 5-312-110 G.

[E. Prior to imposing a non-emergency related restriction or disqualification on a competitive service provider, as provided by its tariff approved by the State Corporation Commission, the local distribution company shall notify the competitive service provider of the impending restriction or disqualification and its effective date, the alleged action or inaction that merits such restriction or disqualification, and the actions, if any, that the competitive service provider may take to avoid the restriction or disqualification. Such notice shall be in writing and sent to the competitive service provider via fax or overnight delivery. A copy of the notice shall be forwarded contemporaneously to the State Corporation Commission's Division of Energy Regulation and Division of Economics and Finance via fax or overnight delivery.]

20 VAC 5-312-60. Customer information.

A. A competitive service provider [~~or an aggregator~~] shall adequately safeguard [all] customer information [~~, including payment history,~~ and shall not disclose such information] unless the customer authorizes disclosure or unless the information to be disclosed is already in the public domain. This provision, however, shall not restrict the disclosure of credit and payment information as currently permitted by federal and state statutes.

B. The local distribution company shall provide, upon the request of a competitive service provider [~~or an aggregator~~], a mass list of eligible customers. [A competitive service provider shall adequately safeguard all of the information included on the mass list and shall not disclose such information unless the customer authorizes disclosure or unless the information to be disclosed is already in the public domain.]

1. The mass list shall include the following customer information: (i) customer name; (ii) service address; (iii) billing address; (iv) [either an account number, a] service delivery point, [~~if~~ or universal identifier, as] applicable; (v) [~~universal identifier, if applicable~~ meter reading date or cycle]; (vi) [~~utility account identifier; (vii) electricity or natural gas account; (viii) meter reading date or cycle; (ix)~~ wholesale delivery point, if applicable; [~~(x)~~ (vii)] rate class and subclass or rider, as applicable; [~~(xi)~~ (viii)] load profile reference category, if not based on rate class; and [~~(xii)~~ (ix)] up to twelve months of cumulative historic energy usage and annual peak demand information as available.

2. Prior to [~~releasing~~ disclosing] any information on the mass list, the local distribution company shall provide each customer the opportunity to have the information itemized in subdivision 1 of this subsection withheld [, in total,] from the mass list.

3. The local distribution company shall make the mass list available two months prior to implementation of full or phased-in retail access and shall update or replace the list every six months thereafter. Prior to each update, each customer shall be provided an opportunity to reverse the prior decision regarding the [~~release~~ disclosure] of the information included on the mass list.

4. The local distribution company shall prepare and make available the mass list by means specified by the VAEDT [or as otherwise provided by the local distribution company's tariff approved by the State Corporation Commission].

C. A competitive service provider [~~or an aggregator~~ choosing to utilize the mass list] shall use the most recent mass list made available by the local distribution company.

D. A competitive service provider [~~or an aggregator~~] shall obtain customer authorization prior to requesting any customer [usage] information not included on the mass list from the local distribution company. [A competitive service provider shall provide evidence of such authorization, in the manner required to demonstrate authorization to enroll a customer in 20 VAC 5-312-80 B, upon request by the customer or the State Corporation Commission.]

20 VAC 5-312-70. Marketing.

A. A competitive service provider [~~or an aggregator~~] shall provide, in any advertisements, solicitations, marketing materials, or customer service contracts, accurate,

understandable information, in a manner that is not misleading. Any such materials specifying a price [*for electricity supply service or natural gas supply service*] *shall include a statement* [~~*that the local distribution company shall continue to provide and charge for distribution service*~~ *to the effect that distribution service and other charges are not included*].

B. A competitive service provider shall provide to a prospective residential customer, in writing or by electronic means, prior to, or contemporaneously with, the written contract, an estimated electricity supply service or natural gas supply service annual bill assuming average monthly usage of 1,000 kWh of electricity or 7.5 Mcf or 75 therms of natural gas, including all fees and minimum or fixed charges, exclusive of any nonrecurring financial or nonfinancial incentives, and the total average price per kWh, Mcf, or therm based on the annual bill. If a competitive service provider's offer cannot be adequately described in such a manner or if the prospective customer is other than a residential customer, the competitive service provider shall furnish similar information that will allow prospective customers to reasonably compare the price of electricity supply service or natural gas supply service, if purchased from a competitive service provider, to the price of equivalent service provided by the local distribution company.

C. Customer service contracts shall include:

1. Price or, if the exact price cannot feasibly be specified, an explanation of how the price will be calculated;

2. Length of the service contract, including any provisions for automatic contract renewal;

3. Provisions for termination by the customer and by the competitive service provider;

4. A statement of any minimum contract terms, minimum or maximum usage requirements, minimum or fixed charges, [*any other charges,*] *and any required deposit;*

5. Applicable fees including, but not limited to, start-up fees, cancellation fees, late payment fees, and fees for checks returned for insufficient funds;

6. A notice of billing terms and conditions;

7. A toll-free telephone number and an address for inquiries and complaints;

8. A clear and conspicuous caption: "CUSTOMER'S RIGHT TO CANCEL," that shall appear on the front side of the contract, or immediately above the customer's signature, in bold face type of a minimum size of 10 points, and a statement under such caption that a customer may cancel the contract, without penalty, with the competitive service provider by notifying the [*competitive service provider or*] *local distribution company prior to* [~~*midnight of*~~ *the close of business on*] *the tenth day following the mailing of notice by the local distribution company of an enrollment request* [~~*and*~~*. Such statement shall be modified as appropriate for those customers that have specifically agreed with the competitive service provider to a shorter cancellation period as provided by subsection D of this section*];

9. In a conspicuous place, confirmation of the customer's request for enrollment and the approximate date the customer's service shall commence [*;*

10. A notice that, upon request by the customer, the competitive service provider shall provide a copy of its dispute resolution procedure; and

11. A notice that, upon any change in the terms and conditions of the contract, including any provisions governing price or pricing methodology, or assignment of the contract to another competitive service provider, the competitive service provider shall communicate such changes to the customer at least 30 days in advance of implementing such changes].

D. A competitive service provider and a nonresidential customer that is subject to demand-based billing charges [~~*and with an annual peak demand of greater than 30 kilowatts*~~] *may contractually agree to a shorter cancellation period than stated in subdivision C 8 of this section.* [*The competitive service provider shall inform the customer that although the customer has waived the right to the 10-day cancellation period, the customer will still receive notification from the local distribution company indicating a 10-day cancellation period.*]

E. A competitive service provider that claims its offerings possess unusual or special attributes shall maintain documentation to substantiate any such claims. Such documentation may be made available through electronic means and a written explanation shall be provided promptly upon request of any customer, prospective customer, competitive service provider, [~~*aggregator*~~]*, local distribution company, or* [*the*] *State Corporation Commission.*

F. Prior to the enrollment of a customer with a competitive service provider, an aggregator shall provide written notice to the customer identifying the name, toll-free telephone number, and address of the selected competitive service provider.

G. An aggregator that receives or expects to receive compensation from both a customer, or a prospective customer, and the customer's competitive service provider shall disclose in writing to the customer the existence or expectation of such an arrangement.

20 VAC 5-312-80. Enrollment and switching.

A. A competitive service provider [~~*shall be permitted*~~ *may offer*] *to enroll a customer upon: (i) receiving a license* [~~*by*~~ *from*] *the State Corporation Commission; (ii) receiving EDI certification as required by the VAEDT* [*or completing other data exchange testing requirements as provided by the local distribution company's tariff approved by the State Corporation Commission*]*, including the subsequent provision of a sample bill as required by 20 VAC 5-312-20* [~~*L*~~ *M*] *; and (iii) completing registration with the local distribution company.*

B. A competitive service provider [~~*shall*~~ *may*] *enroll* [*or modify the services provided to*] *a customer only after the customer has affirmatively authorized such enrollment* [*or modification*]*. A competitive service provider shall maintain adequate records allowing it to verify a customer's enrollment authorization. Examples of adequate records of enrollment*

authorization include: (i) a written contract signed by the customer; (ii) a written statement by an independent third party that witnessed or heard the customer's verbal commitments; (iii) a recording of the customer's verbal commitment; or (iv) electronic data exchange, [*including the Internet,*] *provided that the competitive service provider can show that the electronic transmittal of a customer's authorization originated with the customer. Such authorization records shall contain the customer's name and address; the date the authorization was obtained; the name of the product, pricing plan, or service that is being subscribed; and acknowledgment of any switching fees, minimum contract terms or usage requirements, or cancellation fees. Such authorization records shall be retained for at least 12 months after enrollment and shall be provided within five business days upon request by the customer or the State Corporation Commission.*

C. A competitive service provider shall send a written contract to a customer prior to, or contemporaneously with, sending the enrollment request to the local distribution company.

D. Upon a customer's request, a competitive service provider may re-enroll such customer at a new address under the existing contract, without acquiring new authorization records, if a competitive service provider is licensed to provide service to the customer's new address [*and is registered with the local distribution company*] *.*

E. The local distribution company shall advise a customer initiating new service of the customer's right and opportunity to choose a competitive service provider.

F. In the event that multiple enrollment requests are submitted regarding the same customer within the same enrollment period, the local distribution company shall process the first one submitted and reject all others for the same enrollment period.

[~~*G. Upon receipt of an enrollment request from a competitive service provider, the local distribution company shall, normally within one business day of receipt of such notice, mail notification to the customer advising of the enrollment request, the approximate date that the competitive service provider's service commences, and the caption and statement as to cancellation required by 20 VAC 5-312-70 C 8. The customer shall have 10 calendar days from the mailing of such notification to advise the local distribution company to cancel such enrollment without penalty.*~~

~~*H. In the event a competitive service provider receives a cancellation request, it shall notify, by any means specified by the VAEDT, the local distribution company of the customer's cancellation in order to terminate the enrollment process.*~~

~~*I. In the event the local distribution company receives notice of a cancellation request from a competitive service provider or a customer, the local distribution company shall terminate the enrollment process by any means specified by the VAEDT.*~~

~~*J. A competitive service provider shall commence service to a customer as provided in the local distribution company's applicable tariff as approved by the State Corporation Commission. A competitive service provider may request, pursuant to the local distribution company's tariff, a special meter reading, in which case the enrollment may become effective on the date of the special meter reading. The local distribution company shall perform the requested special meter reading as promptly as working conditions permit.*~~

G. Except as otherwise provided by the local distribution company's tariff approved by the State Corporation Commission, the competitive service provider shall submit an enrollment request to the local distribution company at least 15 days prior to the customer's next scheduled meter reading date for service to be effective on that meter reading date. For an enrollment request received less than 15 days prior to the customer's next scheduled meter reading date, service shall be effective on the customer's subsequent meter reading date, except as provided by subsection H of this section.

H. A competitive service provider may request, pursuant to the local distribution company's tariff, a special meter reading, in which case the enrollment may become effective on the date of the special meter reading. The local distribution company shall perform the requested special meter reading as promptly as working conditions permit.

I. Upon receipt of an enrollment request from a competitive service provider, the local distribution company shall, normally within one business day of receipt of such notice, mail notification to the customer advising of the enrollment request, the approximate date that the competitive service provider's service commences, and the caption and statement as to cancellation required by 20 VAC 5-312-70 C 8. The customer shall have until the close of business on the tenth day following the mailing of such notification to advise the local distribution company to cancel such enrollment without penalty.

J. In the event a competitive service provider receives a cancellation request within the cancellation period provided by 20 VAC 5-312-70 C 8 or 20 VAC 5-312-70 D, it shall notify, by any means specified by the VAEDT or as otherwise provided by the local distribution company's tariff approved by the State Corporation Commission, the local distribution company of the customer's cancellation in order to terminate the enrollment process.

K. In the event the local distribution company receives notice of a cancellation request from a competitive service provider or a customer within the cancellation period provided by 20 VAC 5-312-70 C 8 or 20 VAC 5-312-70 D, the local distribution company shall terminate the enrollment process by any means specified by the VAEDT or as otherwise provided by the local distribution company's tariff approved by the State Corporation Commission.]

[~~*K.*~~ *L.*] *In the event a customer terminates a contract* [~~*with a competitive service provider*~~] *beyond the* [~~*10-day*~~] *cancellation period* [*as provided by 20 VAC 5-312-70 C 8 and 20 VAC 5-312-70 D*]*, the competitive service provider* [*or the local distribution company*] *shall provide notice of termination to the* [~~*local distribution company*~~ *other party*] *by any means specified by the VAEDT* [*or as otherwise provided by the local distribution company's tariff approved by the State Corporation Commission*].

[~~L.~~ M.] If a competitive service provider terminates an individual contract for any reason [,] including expiration of the contract, the competitive service provider shall provide notice of termination to the local distribution company by any means specified by the VAEDT [or as otherwise provided by the local distribution company's tariff approved by the State Corporation Commission] and also shall send written notification of such termination [, for reasons other than nonpayment,] to the customer at least 30 days prior to the date that service to the customer is scheduled to terminate. [A competitive service provider shall send written notification to the customer of termination for nonpayment at least 15 days prior to the date that service to such customer is scheduled to terminate.]

[~~M.~~ N.] If the local distribution company is notified by a competitive service provider that the competitive service provider will terminate service to a customer, the local distribution company shall respond to [~~a~~ the] competitive service provider by any means specified by the VAEDT [~~that will~~ or as otherwise provided by the local distribution company's tariff approved by the State Corporation Commission to] acknowledge (i) receipt of [~~a~~ the] competitive service provider's notice, and (ii) the date that [~~a~~ the] competitive service provider's service to the customer is scheduled to terminate. Additionally, the local distribution company shall send written notification to the customer, normally within five business days, that it was so informed and describe the customer's opportunity to select a new supplier. [Absent the designation of a default service provider as determined by the State Corporation Commission pursuant to § 56-585 of the Code of Virginia,] the local distribution company shall inform the affected customer that if the customer does not select another competitive service provider, the local distribution company shall provide the customer's electricity supply service or natural gas supply service [~~under its tariffed rates~~].

[~~N.~~ O.] If a competitive service provider decides to terminate service to a customer class or to abandon service within the Commonwealth, the competitive service provider shall provide at least 60 days advanced written notice to the local distribution company, to the affected customers, and to the State Corporation Commission.

[~~O.~~ P.] If the local distribution company issues a final bill to a customer, the local distribution company shall notify, by any means specified by the VAEDT [or as otherwise provided in the local distribution company's tariff approved by the State Corporation Commission], the customer's competitive service provider.

20 VAC 5-312-90. Billing and payment.

A. A competitive service provider [~~or an aggregator~~] shall offer separate billing service or consolidated billing service by the local distribution company, or both, to prospective customers pursuant to § 56-581.1 of the Code of Virginia [and the local distribution company's tariff approved by the State Corporation Commission].

B. A competitive service provider [~~or an aggregator~~] shall coordinate the provision of the customer-selected billing service with the local distribution company by any means specified by VAEDT [or as otherwise provided by the local distribution company's tariff approved by the State Corporation Commission].

C. Consolidated billing by the local distribution company, except as otherwise arranged through contractual agreement between the local distribution company and a competitive service provider or [~~an aggregator~~ as otherwise provided by the local distribution company's tariff approved by the State Corporation Commission] , shall:

1. Be performed under a "bill-ready" protocol.

2. Not require the local distribution company to purchase the accounts receivable of the competitive service provider [~~or aggregator~~].

3. Not require the electric local distribution company to include natural gas competitive energy service charges on a consolidated bill or the natural gas local distribution company to include electric competitive energy service charges on a consolidated bill.

4. Not require the local distribution company to receive the transmittal of billing information for one customer account from more than one competitive service provider or aggregator for the same billing period.

D. In the event a competitive service provider [~~or an aggregator~~] collects security deposits or prepayments, such funds shall be held in escrow by a third party in Virginia, and the competitive service provider [~~or the aggregator~~] shall provide to the State Corporation Commission the name and address of the entity holding such deposits or prepayments.

E. A competitive service provider [~~or an aggregator~~] requiring a deposit or prepayment from a customer shall limit the amount of the deposit or prepayment to the equivalent of a customer's estimated liability for no more than three months' usage of services from the competitive service provider by that customer.

F. Customer deposits held or collected by a local distribution company shall be for only those services provided by the local distribution company. Any deposit held in excess of this amount shall be promptly credited or refunded to the customer. The local distribution company may, upon a customer's return to regulated electricity supply service or natural gas supply service, collect that portion of a customer deposit as permitted by the local distribution company's tariffs and 20 VAC 5-10-20.

G. Terms and conditions concerning customer disconnection for nonpayment of regulated service charges shall be set forth in each local distribution company's tariff approved by the State Corporation Commission. A customer may not be disconnected for nonpayment of unregulated service charges.

H. The local distribution company shall apply a customer's partial payment of a consolidated bill [as designated by the customer, or, in the absence of a customer's designation,] to charges in the following order: (i) to regulated service arrearages owed the local distribution company; (ii) to competitive energy service [~~and aggregation service~~] arrearages owed the competitive service provider [~~or the aggregator~~]; (iii) to regulated service current charges of the

local distribution company; (iv) to competitive energy service [~~*and aggregation service*~~] *current charges of the competitive service provider* [~~*or the aggregator*~~]*; and (v) to other charges. Collections of state and local consumption taxes and local utility taxes shall be remitted as required by law.*

I. The local distribution company [~~,~~ *and*] *a competitive service provider* [~~*, and an aggregator*~~] *shall comply with the following minimum billing information standards applicable to all customer bills:*

1. Sufficient information shall be provided or referenced on the bill so that a customer can understand and calculate the billing charges.

2. Charges for regulated services and unregulated services shall be clearly distinguished.

3. Standard terminology shall be employed and charges shall be categorized for the following key bill components, as applicable: (i) distribution service; (ii) competitive transition charge; (iii) electricity supply service or natural gas supply service; (iv) state and local consumption tax; and (v) local (or locality name) utility tax. The bill may provide further detail of each these key components as appropriate.

4. Nonroutine charges and fees shall be itemized including late payment charges and deposit collections.

5. The total bill amount due and date by which payment must be received to avoid late payment charges shall be clearly identified.

6. The 24-hour toll-free telephone number of the local distribution company for service emergencies shall be clearly identified.

7. In the event a disconnection notice for nonpayment is included on a customer bill, the notice shall appear on the first page of the bill and be emphasized in a manner that draws immediate attention to such notice. The notice shall clearly identify the amount that must be paid and the date by which such amount must be paid to avoid disconnection.

8. The following additional information shall be provided on customer bills to the extent applicable:

a. Customer name, service address, billing address, account number, rate schedule identifier, and meter identification number.

b. Billing party name, payment address, and [~~*24-hour*~~] *toll-free telephone number for customer inquiries and complaints.*

c. For consolidated bills, non-billing party name and [~~*24-hour*~~] *toll-free telephone number for customer inquiries and complaints.*

d. Bill issue date and notice of change in rates.

e. Previous and current meter readings and dates of such meter readings or metering period days, current period energy consumption, meter reading unit conversion factor, billing-demand information, and "estimated" indicator for [~~*nonactual*~~ *non-actual*] *meter reads.*

f. Previous bill amount, payments received since previous billing, balance forward, current charges, total amount due, and budget billing information.

g. For consolidated bills, billing party [~~,~~] *and nonbilling party elements as specified in subdivision 8 f of this subsection.*

J. The local distribution company shall comply with the following additional billing information standards applicable to the bills of [~~*residential and other*~~] *customers that are not subject to demand-based billing charges and that purchase regulated electricity supply service or regulated natural gas supply service from the local distribution company:*

1. The local distribution company shall employ standard terminology and categorize charges for the following key billing components: (i) distribution service; (ii) electricity supply service or natural gas supply service; (iii) state and local consumption tax; and (iv) local (or locality name) utility tax. Brief explanations of distribution service and electricity supply service or natural gas supply service shall be presented on the bill. Such explanations shall convey that distribution service is a regulated service that must be purchased from the local distribution company and that electricity supply service or natural gas supply service may be purchased from the competitive market but, if applicable, may result in a competitive transition charge.

2. The local distribution company shall provide on customer bills [~~*either (i) a customer's cumulative 12-month energy consumption, and total seasonal energy consumption if seasonal rates are applicable, for the 12-month period consistent with the calculation of "price-to-compare" values required in subdivision 3 of this subsection or for the most recent 12 months or (ii)*~~] *a customer's monthly energy consumption, numerically or graphically, for the* [~~*most recent*~~ *previous*] *12 months; and*

3. The investor-owned electric local distribution company shall [~~*also*~~] *provide* [~~*a customer-specific annual average*~~ *on each bill a*] *"price-to-compare* [~~,~~] *"* [*value,*] *stated in cents per kilowatt-hour,* [~~*for regulated electricity supply service on each customer bill. In the event the local distribution company employs seasonal rates, "price-to-compare" values shall be specified for each season in addition to the annual average. The customer-specific "price-to-compare" values shall be based on the currently approved rates of the local distribution company and the customer's historical usage pattern over the most recent 12-month period, updated no less frequently than quarterly. If 12 months' energy consumption is not available for a customer, class average load profile data shall be employed to either (i) substitute for unavailable consumption information or (ii) provide a class average "price-to-compare." The bill shall be noted accordingly*~~ *representing the cost of regulated electricity supply service less the competitive transition charge, if any, that would be applicable if such service were purchased from a competitive service provider. The appropriate use and limitations of such "price-to-compare" value shall be stated on the bill*].

K. The [~~*investor-owned electric*~~] *local distribution company shall develop and* [~~*file a plan, prior to the implementation of full or phased-in retail access, with the State Corporation Commission's Division of Energy Regulation*~~ *implement a program*] *to provide "price-to-compare"* [*information and*] *assistance* [~~*and information, on bills or by other means,*~~] *to customers* [~~*that are subject to demand-based billing charges*~~]. [*The local distribution company shall provide a program plan to the State Corporation Commission's Division of Energy Regulation at least 90 days prior to the implementation of full or phased-in retail access. Such a program shall ensure that customers will be provided meaningful information for evaluating competitive offers of electricity supply service or natural gas supply service. At a minimum, the program shall include a mechanism for providing, or making readily accessible, customer-specific "price-to-compare" information, including explanations of its appropriate use and limitations and, if applicable, the relationship between the regulated electricity supply charge, the competitive transition charge, and the "price-to-compare."*]

[~~*L. The electric cooperative local distribution company and the natural gas local distribution company shall develop and file a plan, prior to the implementation of full or phased-in retail access, with the State Corporation Commission's Division of Energy Regulation to provide "price-to-compare" assistance and information, on bills or by other means, to all customers.*~~

~~*M.*~~ *L.*] *The local distribution company shall* [*, except as otherwise arranged through contractual agreement between the local distribution company and a competitive service provider,*] *provide sufficient space on a consolidated bill to accommodate a competitive service provider's* [~~*or an aggregator's*~~] *name and* [~~*24-hour*~~] *toll-free telephone number, previous account balance, payments applied since the previous billing, total current charges, total amount due, six additional numeric fields to detail current charges, and 240 additional text characters.*

[~~*N.*~~ *M.*] *The local distribution company shall* [*, except as otherwise arranged through contractual agreement between the local distribution company and a competitive service provider,*] *continue to track and bill customer account arrearages owed to former competitive service providers or aggregators for two billing cycles after service has terminated. The bill shall list, at a minimum, the name,* [~~*24-hour*~~] *toll-free telephone number, and balance due for each former competitive service provider* [~~*or aggregator*~~]*.*

[~~*O.*~~ *N.*] *If the current charges of a competitive service provider* [~~*or an aggregator*~~] *are not included on the consolidated bill issued by the local distribution company, the bill shall note that such charges are not included.*

[~~*P.*~~ *O.*] *If the current charges of a competitive service provider* [~~*or an aggregator*~~] *are not included on the consolidated bill issued by the local distribution company due to causes attributable to the competitive service provider* [~~*or aggregator*~~]*, the charges shall be billed in the following month unless the two parties mutually agree to other arrangements.*

[~~*Q.*~~ *P.*] *If the current charges of a competitive service provider* [~~*or an aggregator*~~] *are not included on the consolidated bill issued by the local distribution company due to causes attributable to the local distribution company, the bill shall be cancelled and reissued to include such charges unless the two parties mutually agree to other arrangements.*

[~~*R.*~~ *Q.*] *The local distribution company* [~~*,*~~ *or*] *a competitive service provider* [~~*, or an aggregator*~~] *shall report any significant deficiency regarding the timely issuance, accuracy, or completeness of customer bills to the State Corporation Commission's Division of Energy Regulation as soon as practicable. Such reports shall detail the circumstances surrounding the deficiency and the planned corrective actions.*

20 VAC 5-312-100. Load profiling.

A. The local distribution company shall conduct its [*load profiling*] *activities* [~~*regarding load profiling and settlement*~~] *in a nondiscriminatory* [*and reasonably transparent*] *manner.*

B. The local distribution company shall ensure that profile classes are easily identifiable, that load profiles used are representative of the customer class being profiled, and that customer loads are represented in a nondiscriminatory manner. Load profiles and load profiling methodologies shall be reviewable and verifiable by the State Corporation Commission.

C. The local distribution company shall provide a competitive service provider, through the appropriate regulatory process, access to [~~*interval*~~ *sample*] *data, excluding any customer-specific identifier, that is necessary to verify the validity and reliability of load profiles and methodologies.*

D. The local distribution company shall use a load profiling method that balances ease of implementation with the need for the load profile to reasonably represent and predict the customer's actual use. The method used shall balance the need for accuracy, cost-effectiveness for the market, predictability, technical innovation, lead time to implement, demonstrated need for market data, and sample bias. The validity of the approach needs to be reconfirmed periodically or as markets evolve, and corresponding load profiles shall be updated accordingly and made available to competitive service providers.

E. The local distribution company shall make available to a competitive service provider the validated and edited customer class or segment load profile via a website in a read-only, downloadable format or by other appropriate cost-effective electronic media. The information shall be date stamped with the date posted and the date created, and the website or other electronic media shall clearly indicate when updated information has become available.

F. A customer's assigned load profile shall remain the same regardless of the provider of electricity supply service. Customer loads that are not metered, such as streetlights, may be represented by load profiles deemed to closely reflect their known patterns of usage.

G. The load sample may include both [~~*bundled and unbundled*~~] *customers* [*served by the local distribution company, or the default service provider as determined by the State Corporation Commission pursuant to § 56-585 of the*

Code of Virginia, and customers served by a competitive service provider], *such that a customer is not automatically removed from the load sample when the customer begins to receive service from a competitive service provider.*

H. Upon a customer's request, the local distribution company shall provide interval metering service to the customer at the net incremental cost above the basic metering service provided [~~*in accordance with*~~ *by*] *the local distribution* [~~*company's applicable tariff*~~ *company*]. *If the local distribution company provides interval metering as the basic metering service* [~~*for customer billing purposes*~~] *in accordance with its applicable tariff, interval metering of a customer's load shall continue to be required if such customer purchases electricity supply service from a competitive service provider.*

I. The local distribution company shall post its distribution and transmission loss factors via the appropriate electronic methodology.

20 VAC 5-312-110. Dispute resolution.

A. A competitive service provider [~~*or an aggregator*~~] *shall establish an explicit dispute resolution procedure that clearly identifies the process that shall be followed when resolving customer disputes. A copy of such dispute resolution procedure shall be provided to a customer or the State Corporation Commission upon request.*

B. A competitive service provider shall furnish to customers an address and 24-hour toll-free telephone number for customer inquiries and complaints regarding services provided by the competitive service provider. The 24-hour toll-free telephone number shall be stated on all customer-billing statements [*and shall provide customers the opportunity to speak to a customer representative during normal business hours. Outside of normal business hours, a recorded message shall direct customers how to obtain customer assistance*].

C. A competitive service provider shall immediately direct a customer to contact the appropriate local distribution company if the customer has a service emergency. Such direction may be given either by a customer service representative or by a recorded message on its 24-hour toll-free telephone number.

D. A competitive service provider shall retain customer billing and account records and complaint records for at least three years, and provide copies of such records to a customer or the State Corporation Commission upon request.

E. In the event that a customer has been referred to the local distribution company by a competitive service provider, or to a competitive service provider by the local distribution company, for response to an inquiry or a complaint, the party that is contacted second shall: (i) resolve the inquiry or complaint in a timely fashion or (ii) contact the other party to determine responsibility for resolving the inquiry or complaint.

F. In the event a competitive service provider and customer cannot resolve a dispute, the competitive service provider shall provide the customer with the toll-free telephone number and address of the State Corporation Commission.

G. The local distribution company shall establish and file with the State Corporation Commission prior to implementation of full or phased-in retail access an explicit dispute resolution procedure to address complaints, disputes, or alleged violations of the provisions of this chapter that may arise between the local distribution company and a competitive service provider.

VA.R. Doc. No. R01-136; Filed June 26, 2001, 11:05 a.m.

EXECUTIVE ORDER NUMBER SEVENTY-FIVE (01)

ESTABLISHING THE GOVERNOR'S COMMISSION ON GOVERNMENT FINANCE REFORM FOR THE 21ST CENTURY

Preamble

By virtue of the authority vested in me as Governor under Article V of the Constitution of Virginia, including but not limited to Section 2.1-51.36 of the Code of Virginia, and subject to my continuing and ultimate authority and responsibility to act in such matters, I hereby establish the Governor's Commission on Government Finance Reform for the 21st Century. The Commission is classified as a gubernatorial advisory commission pursuant to Section 2.1-51.35 and Section 9-6.25 of the Code of Virginia.

This Commission shall study and recommend fundamental reforms to the Virginia Constitution and tax and spending policies with the purpose of modernizing government finances in Virginia to meet the new and unprecedented challenges of the 21st Century.

Challenges for Government in the 21st Century

Virginia's demographics have shifted significantly over the last three decades. Population and prosperity has increased dramatically in the "Golden Crescent" stretching from the suburbs of the northern part of the state down the I-95 corridor to the state's capitol and south to the Hampton Roads region. Inner cities have lost population to the suburbs. Rural areas have lost population to urban areas. And certain industries that once dominated the economies of regions of our state, especially in Southside and Southwest Virginia, have declined and challenged us to seek others to prosper in their place.

At the same time, information technology is transforming the world in which we live, empowering the individual at the expense of large corporate and governmental institutions, and expanding the reach of individual citizens beyond old borders and physical limits. Biotechnology and medical breakthroughs are curing people of once fatal diseases, extending life, and improving the quality of life for millions of Americans afflicted with physical or mental ailments. The technological revolution of the last decade fundamentally has transformed the American economy by making the private sector more efficient in the production of goods and delivery of services, augmenting the wealth of American citizens, and expanding economic opportunity to more citizens and places.

Such profound changes in Virginia's economy and the lives of our citizens present unprecedented challenges and opportunities for government at all levels. Governmental institutions cannot stand pat during times of cumulative and dramatic societal change. They must be flexible, innovative and reform-minded in order to harness the same efficiencies driving the private sector and deliver essential services as effectively as possible. From top to bottom, from the way government taxes its citizens in a New Economy to the way government plans its affairs for long-term continuity and funds and delivers services, all functions of government in Virginia deserve a thorough study to identify those areas in need of reform, or those areas where reform might enhance government operations and improve the lives of people.

Over the course of the last three years, I have attempted to reform numerous aspects of government in Virginia. I have worked tirelessly to eliminate an antiquated and regressive tax on the vehicles our citizens need in a mobile society. I have implemented fundamental education reforms to raise academic standards and achievement for the next generation of Virginians and prepare them for the economic and intellectual challenges of a global economy. I have initiated a long-term plan to tie, for the first time, funding in higher education to measurable results in terms of affordability and quality. I created the first Cabinet-level Secretary of Technology in the nation, launched a comprehensive e-government initiative, signed into law the first Internet policy as well as the first uniform electronic commerce statute, and took steps to close the digital divide. I have proposed fundamental reforms in the way Virginia delivers mental health services to those in need. I have signed into law major reforms for the Virginia Department of Transportation and Virginia's road building programs to build roads faster and more efficiently. And I have proposed, with some success, electoral reforms to ensure fair and honest elections for voters.

Unfortunately, each governor leaves a two-year budget for his successor who faces significant limits in his ability to engage in long-range planning for the Commonwealth during the first two years in office and one four-year term as Governor offers precious little time to undertake all of the major reforms demanded by the challenges of our times. Despite our reform efforts on so many fronts, I have been struck by how many opportunities for reform and improvement could be accomplished by a more fundamental review of how government budgets and finances services, and I have heard the voices for change expressed through many disparate and competing study commissions and interest groups.

Among the many 21st century challenges facing a government designed in the 20th century is the question of how to distribute taxation authority, tax revenues, and funding responsibilities for essential services between state and local governments. Some people have advocated tax increases at the local level, others have proposed to shift more funding responsibilities to the state, while others have proposed sharing more state tax revenues with the localities. This debate has been fueled no doubt in large measure by the comparatively disproportionate growth in state tax revenues through the income tax, the less prolific but nevertheless significant growth of real estate and personal property taxes at the local level, and the ever increasing demand by special interest groups for government services.

This debate also has been spurred by implementation of the Personal Property Tax Relief Act of 1998 which phases out the burdensome local property tax on our citizens' cars and trucks. The public outcry for relief from this onerous tax has consistently been very strong. At this time, the state reimburses each locality dollar-for-dollar for the revenues the localities once collected directly from our citizens. That approach has been functional and effective. However, the complexities of this reimbursement mechanism have

prompted suggestions for alternatives and these should be explored.

Virginia's current Constitution was adopted three decades ago in 1971. It has been amended every even year since (with the exception of 1988), but no comprehensive review or overhaul has occurred since its adoption. Much has changed in thirty years, and so I believe the time is proper to compare our Constitution to the New Economy, our changed demographics, and the challenges of our time.

My goal is for this Commission to engage as thorough and perceptive a review as any in our history and make reform recommendations that advance our Commonwealth and our people into a 21st Century filled with unprecedented challenges and opportunities. Government must reform itself and adapt to change if it is to fulfill its solemn obligations to the people it serves.

Charge for the Commission

The Commission shall undertake a thorough and comprehensive review of Virginia's governmental finances, including its Constitutional structure, and advise the Governor and General Assembly, in a final report, of those reforms necessary to modernize Virginia government to meet the unique challenges and opportunities of the 21st Century.

In the course of its review, the Commission shall strive to address, and be guided by, the following issues and principles in a coordinated set of recommendations for reform:

- State and local tax structures, including elimination of the personal property tax on vehicles and other tax reforms adapted to the New Economy;
- Appropriate division between state and local governments for the provision of and funding for essential services, including education, public safety, and social services; and
- Modernization of government, including improvements to the state budget process, continuity in public policy over time, and mechanisms for long-term strategic planning for the Commonwealth.

The Commission shall consider and, where appropriate, synthesize or draw upon the findings and recommendations of other governmental study committees and commissions, including but not limited to the following:

- Commission Studying Virginia's State and Local Tax Structure in the 21st Century
- Legislative Joint Subcommittee to Study and Revise Virginia's State Tax Code
- Commission on the Future of Virginia's Cities
- Rural Virginia Prosperity Commission
- Commission on Community Services and Inpatient Services
- Special Task Force on Faith-Based Community Service Groups
- Joint Rules Committee Studying the Legislative Process

Structure and Funding

The Commission shall be composed of no more than 30 members, appointed by the Governor, and serving at his pleasure. The Governor shall designate a Commission Chairman and Vice Chairman who will direct the Commission's work. The Attorney General of Virginia, or his designee, shall serve on the Commission. Members of the Commission shall serve without compensation but shall receive reimbursement for expenses incurred in the discharge of their official duties and approved by the Chairman.

The Governor will designate staff support as necessary for the conduct of the Commission's work during the term of its existence. The Commission's staff may include, if necessary, an Executive Director appointed by the Governor and other persons furnished by the Office of the Governor, the Offices of the Governor's Cabinet Secretaries, the Department of Planning and Budget, the Department of Taxation, and other executive branch agencies and institutions as the Chairman or Vice Chairman may request.

The Governor hereby directs all executive branch agencies and institutions, including institutions of higher education, to cooperate fully in assisting the Commission and Chairman in their work and to provide promptly all information requested by the Commission. An estimated 2,000 hours of staff time will be required to support the work of the Commission. Necessary funding for the term of the Commission's existence shall be provided from such sources, both state appropriations and private contributions, as authorized by Section 2.1-51.37 of the Code of Virginia. Direct expenditures for the Commission's work are estimated to be $35,000.

The Commission shall make a final report to the Governor and General Assembly no later than December 31, 2001. It may issue interim reports, findings, or recommendations at any time it deems appropriate.

This Executive Order shall be effective upon its signing and shall remain in force and effect until January 10, 2002, unless amended or rescinded by further executive order.

Given under my hand and seal of the Commonwealth of Virginia this 20th day of June, 2001.

/s/ James S. Gilmore, III
Governor of Virginia

VA.R. Doc. No. R01-234; Filed June 27, 2001,

EXECUTIVE ORDER NUMBER SEVENTY-SIX (01)

STATEWIDE AGENCY RADIO SYSTEM (STARS)

Preamble

It is essential that a statewide system of integrated radio and wireless data communication be developed for state agencies engaged in public protection and safety and for the mutual aid needs of state and local law enforcement agencies.

The system must meet the needs of a diverse group of agencies and localities in order to be effective. No single agency can fairly be expected to assimilate the needs of all involved parties nor to adjudicate interests. Therefore appropriate entities must also be established and empowered to oversee policy and direction for the State Agency Radio

System (STARS). These entities should be comprised of equitable representation from among the participating entities. Also an implementation and operation unit must be established to manage, maintain, and operate a reliable integrated radio communications system.

The 1998 session of the Virginia General Assembly directed the Secretary of Public Safety, in cooperation with the Secretary of Administration, to develop a plan for implementing a statewide shared land mobile radio system for the Commonwealth and her localities. The plan was to assure that state and local agencies engaged in public protection and safety could share the benefits and efficiencies of an improved and effective communications infrastructure and to provide for mutual aid communication among state and local agency field units.

As this will be a shared system between numerous agencies providing public protection and safety services, the management structure poses considerable challenges.

In order to meet the needs of all potential users, the managing entity must establish and provide formal communication venues for user input. In addition to providing a forum for reporting system problems, these venues must provide valuable input to the design of the system, efficient troubleshooting and diagnostics, and a community for leveraging mutual application interests.

By virtue of the authority vested in me as Governor under Article V of the Constitution of Virginia and under the laws of the Commonwealth, including but not limited to Sections 2.1-39 and 2.1-41.1 of the Code of Virginia, and subject to my continuing and ultimate authority and responsibility to act in such matters, I hereby establish an initiative to accomplish the goals of the Statewide Agency Radio System (STARS).

1. STARS Established

The Statewide Agency Radio System (STARS) is hereby established to meet the need for integrated radio and wireless data communications for state agencies engaged in public protection and safety and the joint state and local police communication system established pursuant to Chapter 3, Title 52, Code of Virginia.

2. STARS Membership

The STARS shall be composed of the following state agencies and such other state agencies and institutions and local government agencies and institutions, as the STARS Management Group shall approve.

The Department of Alcoholic Beverage Control,
The Department of Aviation,
The Division of Capitol Police,
The Department of Conservation and Recreation,
The Department of Corrections,
The Department of Emergency Management,
The Department of Environmental Quality,
The Department of Fire Programs,
The Department of Forestry,
The Department of Game and Inland Fisheries,
The Department of Health,
The Department of Information Technology,
The Department of Juvenile Justice,
The Department of Military Affairs,
The Department of Mines, Minerals, and Energy,
The Division of Motor Vehicles,
The Department of State Police,
The Department of Transportation, and
Virginia Marine Resources Commission.

Withdrawal by state agencies and institutions from the STARS shall be only upon approval of the STARS Management Group.

3. STARS Management Group

As part of this initiative, I hereby establish the STARS Management Group (hereinafter called the Management Group) to provide overall direction and governance for the STARS development, implementation, and ongoing operation.

A. Composition of the Management Group

The Secretary of Public Safety, Secretary of Technology, the Secretary of Transportation, the Secretary of Natural Resources, the Secretary of Finance, and the Deputy Chief of Staff for Operations shall serve as members of the Management Group.

The Secretary of Public Safety shall serve as chair of the Management Group. The chair of the Management Group shall have the power to set meetings and make assignments to members of the user group established below.

B. Duties of the Management Group

The Management Group shall designate a project management team, consisting of persons with project management, communications engineering, procurement, financing and contract administration expertise, to provide staff support for the Management Group in the development, implementation, management and operation of the system.

The specific duties of this Management Group are to:

- Provide direction and overall governance for the STARS including communications privacy and security,
- Review all procurements and contracts relating to the STARS,
- Coordinate and assign radio frequency licenses granted by the federal government to agencies of the Commonwealth, and
- Promote interagency cooperation and coordination in the use of communications resources.

4. STARS User Group

The Management Group shall be assisted by a User Group consisting of representatives from each member agency and institution.

A. Composition of User Group

The head of each member agency and institution shall appoint one member of their respective staffs and a designated alternate to serve on the User Group. The user group shall also include at least one person from the advisory committee established by the Secretary of Public Safety to oversee the joint state and local police communication system established pursuant to Chapter 3 of Title 52 of the Code of Virginia.

B. Duties of the User Group

The User Group shall elect from its membership a chairman and vice-chairman and may establish such operating procedures, executive committee and subcommittees as its deems appropriate to carry out its work. The User Group shall meet as necessary, but at least quarterly.

The specific duties of the User Group are to:

- Advise of member agency needs for the planning, design, establishment, and operation of the STARS,
- Provide advice and comment on proposals for other federal, state, or local agencies to join STARS and on any proposals for third party use of any STARS infrastructure or component, and
- Develop a comprehensive management plan and procedures for the STARS use and operation. The management plan and any changes thereto shall be subject to review and approval by the Management Group.

5. STARS Procurement

Subject to the provisions of the Virginia Public Procurement Act §11-35 et seq., the Management Group may authorize the acquisition and implementation of the STARS. Such acquisition and implementation may provide for a STARS infrastructure that is shared between the state and a non-government partner wherein the parties will share system assets and system upgrade development costs and share any revenues that might be generated from use of the shared network or assets. Any such shared arrangement shall also insure that the Commonwealth retains the ability to maintain the functionality of the system, cause improvements in functionality of the system over its life, and veto changes to the system that affect functionality. The Management Group shall report on the status of the STARS to the Governor and General Assembly by January 1 of each year.

This Executive Order shall become effective upon its signing and shall remain in full force and effect until June 30, 2002, unless amended or rescinded by further Executive Order.

Given under my hand and the Seal of the Commonwealth of Virginia on this 20th day of June, 2001.

/s/ James S. Gilmore, III
Governor of Virginia

VA.R. Doc. No. R01-235; Filed June 27, 2001,

GOVERNOR'S COMMENTS ON PROPOSED REGULATIONS

TITLE 12. HEALTH

STATE BOARD OF HEALTH

Title of Regulation: **12 VAC 5-420-10 et seq. Rules and Regulations Governing Restaurants (REPEALING).**

Title of Regulation: **12 VAC 5-421-10 et seq. Regulations Governing Restaurants.**

Governor's Comment:

I have reviewed the proposed regulation on a preliminary basis. While I reserve the right to take action under the Administrative Process Act during the final adoption period, I have no objection to this regulation based on the information and public comment currently available.

/s/ James S. Gilmore, III
Governor
Date: June 21, 2001

VA.R. Doc. Nos. R98-216 and R98-217; Filed June 26, 2001, 11:22 a.m.

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TITLE 22. SOCIAL SERVICES

STATE BOARD OF SOCIAL SERVICES

Title of Regulation: **22 VAC 40-790-10 et seq. Minimum Standards for Local Agency Operated Volunteer Respite Child Care Programs (REPEALING).**

Governor's Comment:

I have reviewed the proposed regulation on a preliminary basis. While I reserve the right to take action under the Administrative Process Act during the final adoption period, I have no objection to this regulation based on the information and public comment currently available.

/s/ James S. Gilmore, III
Governor
Date: June 21, 2001

VA.R. Doc. No. R00-62; Filed June 26, 2001, 11:22 a.m.

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TITLE 24. TRANSPORTATION AND MOTOR VEHICLES

COMMONWEALTH TRANSPORTATION BOARD

Title of Regulation: **24 VAC 30-40-10 et seq. Rules and Regulations Governing Relocation Assistance (REPEALING).**

Title of Regulation: **24 VAC 30-41-10 et seq. Rules and Regulations Governing Relocation Assistance.**

Governor's Comment:

I have reviewed the proposed regulation on a preliminary basis. While I reserve the right to take action under the Administrative Process Act during the final adoption period, I have no objection to this regulation based on the information and public comment currently available.

/s/ James S. Gilmore, III
Governor
Date: June 21, 2001

VA.R. Doc. No. R99-69; Filed June 26, 2001, 11:22 a.m.

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DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

Notice of Annual Report Availability

The Commissioner of Agriculture and Consumer Services announces the availability of the 2000 annual report of the Agricultural Stewardship Act entitled *Virginia Agricultural Stewardship Act Annual Report - April 1, 2000 - March 31, 2001: A Positive Approach*. Copies of this report can be obtained by contacting Ms. Joyce Knight, Office of Policy, Planning and Research, Virginia Department of Agricultural and Consumer Services, P.O. Box 1163, Richmond, VA 23219, telephone (804) 786-3538 or e-mail jknight@vdacs.state.va.us. Copies of the annual report are available without charge.

STATE CORPORATION COMMISSION

Appendices A, B and C referenced in the following order are not being published. However, the appendices are available for public inspection at the State Corporation Commission, Document Control Center, Tyler Building, 1st Floor, 1300 East Main Street, Richmond, Virginia from 8:15 a.m. to 5 p.m., Monday through Friday.

AT RICHMOND, JUNE 26, 2001

STATE CORPORATION COMMISSION

CASE NO. PUC000304

Ex Parte: In the matter of
implementation of number
conservation measures granted
to Virginia by the Federal
Communications Commission in its
Order released July 20, 2000

ORDER ON MOTION

On February 16, 2001, the State Corporation Commission ("Commission") issued an Order naming Telcordia Technologies ("Telcordia") as Virginia's interim number pooling administrator and implementing thousand-block number pooling in the 804/434 area code. Pursuant to that Order and a subsequent Order entered on March 27, 2001, Virginia's first interim thousand-block pooling trials have been, or will be, implemented in the 804/434, 757, and 540 area codes by Telcordia on June 15, 2001; October 12, 2001; and November 15, 2001; respectively.

In order to compensate Telcordia for its costs in conducting the number pooling trials in these NPAs, the Commission must establish a cost allocation methodology to fairly distribute these costs among carriers in Virginia.

By motion filed on June 25, 2001, the Commission Staff ("Staff") proposed a cost allocation methodology whereby each carrier's allocation of total shared costs would be prorated based upon the number of thousand blocks it holds in the NPA as a percentage of the total thousand-number blocks held by all carriers in that NPA.

In its motion, the Staff states that by charging for number pooling costs in direct proportion to the share of thousand-number blocks that carriers hold, no carrier will be placed at a competitive disadvantage by bearing a disproportionate share of pooling costs. Also, according to the Staff, this allocation method directs each carrier to bear an equivalent share of costs in direct proportion to the resources it has withdrawn from the system.

The Staff further states that for those carriers participating in the number pool, their total number blocks used in the calculation would be the total number of NXX codes in their inventory, plus any thousand blocks they have drawn from the pool, less any thousand blocks they have donated to the pool. For carriers not participating in the number pool, the allocation of shared pooling costs would be based on the total number of NXX codes they hold in the NPA (each NXX counting as ten thousand-number blocks). According to the Staff, this methodology allows Telcordia to calculate each carrier's shared costs without access to any confidential number utilization data.

NOW THE COMMISSION, upon consideration of the Staff's motion, is of the opinion that interested parties should have an opportunity to comment on the Staff's proposed cost allocation methodology.

Accordingly, IT IS ORDERED THAT:

(1) On or before July 20, 2001, interested parties may file comments on the Staff's proposed cost allocation methodology.

(2) A copy of this Order shall be forwarded promptly for publication in the Virginia Register of Regulations.

(3) This matter is continued for further orders of the Commission.

AN ATTESTED COPY hereof shall be sent by the Clerk of the Commission to: John F. Dudley, Esquire, Senior Assistant Attorney General, Division of Consumer Counsel, Office of the Attorney General, 900 East Main Street, 2nd Floor, Richmond, Virginia 23219; Adam Newman, Senior Pooling Administrator, Telcordia Technologies, 331 Newman Springs Road, Room 3D204, Red Bank, New Jersey 07701; all local exchange carriers certificated in Virginia as set out in Appendix A; all interexchange carriers certificated in Virginia as set out in Appendix B; all other telecommunications carriers in Virginia as set out in Appendix C; and the Commission's Office of General Counsel and Division of Communications.

DEPARTMENT OF ENVIRONMENTAL QUALITY

Notice of Data Availability Regarding Toxic Contaminants in Fish

Pursuant to § 62.1-44.19:6 A 3 of the Code of Virginia the Virginia Department of Environmental Quality (DEQ) is giving notice that new data concerning the presence of toxic contaminants in fish tissue and sediments are available for the fish and sediment monitoring performed by DEQ in the calendar year 2000. The routine fish and sediment monitoring

in 2000 was performed in the river basins of the York River and the New River. Additional monitoring was performed at selected sites in the Banister, Dan, Hyco, Roanoke and Potomac rivers as well as at sites in Levisa Fork, Deep Creek (Elizabeth River), Dragon Run (Piankatank River) and on the Eastern Shore at Bagwell Creek and near Kiptopeke State Park. These data have only recently been received from the analytical lab and are undergoing review and preparation for posting on the DEQ web site. These data should be available on the DEQ web site at http://www.deq.state.va.us/rivers/homepage.html soon after this notice is published. For additional information contact Alex Barron directly at (804) 698-4119, or e-mail ambarron@deq.state.va.us, or call toll free 1-800-592-5482 and request Mr. Barron.

Total Maximum Daily Load (TMDL) for Fecal Coliform Bacteria on an Approximate 7.4-Mile Segment of Thumb Run

The Department of Environmental Quality (DEQ) and the Department of Conservation and Recreation (DCR) seek written and oral comments from interested persons on the development of a Total Maximum Daily Load (TMDL) for fecal coliform bacteria on an approximate 7.4-mile segment of Thumb Run. The Thumb Run impaired segment is located in Fauquier County. It begins at the confluence of West Branch Thumb Run and East Branch Thumb Run downstream to its confluence with the Rappahannock River. Thumb Run is identified in Virginia's 1998 § 303(d) TMDL Priority List and Report as impaired due to violations of the state's water quality standard for fecal coliform bacteria.

Section 303(d) of the Clean Water Act and § 62.1-44.19:7.C of the Code of Virginia require DEQ to develop TMDLs for pollutants responsible for each impaired water contained in Virginia's § 303(d) TMDL Priority List and Report.

The first public meeting on the development of the Thumb Run fecal coliform TMDL will be held on Wednesday, August, 1, 2001, at 7 p.m. at the Orlean Volunteer Fire Department located at 6838 Leeds Manor Road (State Route 688), Orlean, Virginia.

The public comment period will begin on July 16, 2001, and end on August 15, 2001. A fact sheet on the development of the TMDL for fecal coliform bacteria on Thumb Run is available upon request. Questions or information requests should be addressed to Bryant Thomas. Written comments should include the name, address, and telephone number of the person submitting the comments and should be sent to Mr. Bryant H. Thomas, Department of Environmental Quality, 13901 Crown Court, Woodbridge, VA 22193, telephone (703) 583-3843, FAX (703) 583-3841 or e-mail bhthomas@deq.state.va.us.

Total Maximum Daily Load (TMDL) for Holmans Creek in Shenandoah County

The Department of Environmental Quality (DEQ) and the Department of Conservation and Recreation (DCR) seek written and oral comments from interested persons on the development of a Total Maximum Daily Load (TMDL) for Holmans Creek in Shenandoah County. The impaired stream segment is identified in Virginia's 1998 § 303 (d) TMDL Priority List and Report, and the impairment is due to violations of the state's water quality standard for fecal coliform bacteria.

Section 303 (d) of the Clean Water Act and § 62.1-44.19:7.C of the Code of Virginia require DEQ to develop TMDLs for pollutants responsible for each impaired water contained in Virginia's § 303 (d) TMDL Priority List and Report.

The third public meeting on the development of the Fecal Coliform Bacteria TMDL will be held on Tuesday, July 31, 2001, at 7 p.m. at the New Market Town Hall in New Market. The draft TMDL study will be presented at this meeting.

The public comment period will end on August 15, 2001. A copy of the draft TMDL document for fecal coliform bacteria in Holmans Creek is available upon request. Questions or information requests should be addressed to the individual listed below. Written comments should include the name, address, and telephone number of the person submitting the comments and be sent to Rod Bodkin, Department of Environmental Quality, 4411 Early Road, Harrisonburg, VA 22801, telephone (540) 574-7801, FAX (540) 574-7878 or e-mail rvbodkin@deq.state.va.us.

Total Maximum Daily Load (TMDL) for PCBs in the South Fork Shenandoah River/Shenandoah River and the North Fork Shenandoah River Notice of Extension of Public Comment Period

The Department of Environmental Quality (DEQ) and the Department of Conservation and Recreation (DCR) seek written and oral comments from interested persons on the development of a Total Maximum Daily Load (TMDL) for PCBs in the South Fork Shenandoah River/Shenandoah River and the North Fork Shenandoah River.

The notice for the second public meeting on the development of the PCB TMDL for the two Shenandoah segments appeared in the June 18, 2001, edition of the Virginia Register. The public comment period was listed as ending on July 31, 2001. This notice is to extend the public comment period through August 15, 2001. A fact sheet on the development of the TMDL for PCBs on South Fork Shenandoah/Shenandoah River and North Fork Shenandoah River is available upon request. Questions or information requests should be addressed to Rod Bodkin. Written comments should include the name, address, and telephone number of the person submitting the comments and be sent to Rod Bodkin, Department of Environmental Quality, 4411 Early Road, Harrisonburg, VA 22801, telephone (540) 574-7801, FAX (540) 574-7878 or e-mail rvbodkin@deq.state.va.us.

STATE WATER CONTROL BOARD

Proposed Special Order
Town of Saltville
Sewage Treatment Plant

The State Water Control Board proposes to take an enforcement action against the above listed facility. Under the terms of the proposed Special Order, the owner of this facility has agreed to be bound by the terms and conditions of a schedule of compliance contained in the appendix of the order. The requirements contained in the order bring the facility into compliance with state law and protect water quality.

On behalf of the State Water Control Board, the Department of Environmental Quality will receive comments relating to the Special Order until August 15, 2001. Comments should be addressed to Dallas Sizemore, Department of Environmental Quality, Southwest Regional Office, P.O. Box 1688, Abingdon, VA 24212 and should refer to the Consent Special Order. Comments can also be sent by e-mail to drsizemore@deq.state.va.us. Anyone wishing to comment must include their name, address and phone number and all comments must be received before the end of the comment period.

The proposed order may be examined at the Department of Environmental Quality, 355 Deadmore Street, Abingdon, Virginia.

A copy of the order may be obtained in person or by mail from the above office.

VIRGINIA CODE COMMISSION

Notice to State Agencies

Mailing Address: Virginia Code Commission, 910 Capitol Street, General Assembly Building, 2nd Floor, Richmond, VA 23219, FAX (804) 692-0625.

Forms for Filing Material for Publication in *The Virginia Register of Regulations*

All agencies are required to use the appropriate forms when furnishing material for publication in The Virginia Register of Regulations. The forms may be obtained from: Virginia Code Commission, 910 Capitol Street, General Assembly Building, 2nd Floor, Richmond, VA 23219, telephone (804) 786-3591.

Internet: Forms and other Virginia Register resources may be printed or downloaded from the Virginia Register web page: http://legis.state.va.us/codecomm/register/regindex.htm

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 BOARD OF MENTAL HEALTH, MENTAL RETARDATION AND SUBSTANCE ABUSE SERVICES

Title of Regulation: **12 VAC 35-115-10 et seq. Rules and Regulations to Assure the Rights of Individuals Receiving Services from Providers of Mental Health, Mental Retardation and Substance Abuse Services.**

Publication: 17:20 VA.R. 2891-2920 June 18, 2001

Correction to Final Regulation:

Page 2898, in 12 VAC 35-115-50 D 3 d, line 1, change "*ore*" to "*or*"

Page 2901, in 12 VAC 35-115-70 B 9 c, line 4, change "*share*" to "*shared*"

CALENDAR OF EVENTS

Symbol Key
♿ Location accessible to persons with disabilities
☎ Teletype (TTY)/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. If you are unable to find a meeting notice for an organization in which you are interested, please check the Commonwealth Calendar at www.vipnet.org or contact the organization directly.

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) 698-1500 or Senate Information and Constituent Services at (804) 698-7410 or (804) 698-7419/TTY☎, or visit the General Assembly web site's Legislative Information System (http://leg1.state.va.us/lis.htm) and select "Meetings."

VIRGINIA CODE COMMISSION

EXECUTIVE

COMMONWEALTH COUNCIL ON AGING

July 27, 2001 - 10 a.m. -- Open Meeting
Virginia Department for the Aging, 1600 Forest Avenue, Suite 102, Richmond, Virginia.♿ (Interpreter for the deaf provided upon request)

A meeting of the Legislative Committee.

Contact: Bill Peterson, Virginia Department for the Aging, 1600 Forest Avenue, Suite 102, Richmond, VA 23229, telephone (804) 662-9325, e-mail whpeterson@vdh.state.va.us.

August 3, 2001 - 10 a.m. -- Open Meeting
Virginia Department for the Aging, 1600 Forest Avenue, Suite 102, Richmond, Virginia.♿ (Interpreter for the deaf provided upon request)

A meeting of the Public Relations Committee.

Contact: Bill Peterson, Virginia Department for the Aging, 1600 Forest Avenue, Suite 102, Richmond, VA 23229, telephone (804) 662-9325, e-mail whpeterson@vdh.state.va.us.

BOARD OF AGRICULTURE AND CONSUMER SERVICES

† **July 23, 2001 - 1 p.m.** -- Open Meeting
Hilton Alexandria Old Town, 1767 King Street, Alexandria, Virginia.♿

The board will meet to discuss issues related to Virginia agriculture and consumer services. The board will also consider regulations at this meeting. 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 accommodation in order to participate at the meeting should contact the person identified in this notice at least five days before the meeting date so that suitable arrangements can be made.

Contact: Roy E. Seward, Board Secretary, Department of Agriculture and Consumer Services, Washington Bldg., 1100 Bank St., Suite 211, Richmond, VA 23219, telephone (804) 786-3538, FAX (804) 371-2945, e-mail jknight@vdacs.state.va.us.

DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

Virginia State Apple Board

July 17, 2001 - 9:30 a.m. -- Open Meeting
Rowe's Restaurant, 74 Rowe Road (Intersection of I-81 and Rte. 250), Staunton, Virginia.♿

A meeting to approve the minutes of the last meeting and discuss any old business arising from the board meeting of May 1, 2001, and to discuss any new business to be brought 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 accommodation in order to participate at the meeting should contact the person identified in this notice at least five days before the meeting date so that suitable arrangements can be made.

Contact: David Robishaw, Regional Marketing Development Manager, Virginia State Apple Board, 900 Natural Resources Dr., Suite 300, Charlottesville, VA 22903, telephone (804) 984-0573, FAX (804) 984-4156.

Virginia Cattle Industry Board

July 31, 2001 - 10:30 a.m. -- Open Meeting
Holiday Inn, Woodrow Wilson Parkway, Staunton, Virginia.♿

A regular business meeting to approve minutes from the April 2001 meeting and review the financial statement for the period April 1 through July 1. Staff will give program updates for the state and national level. Committees will convene to review project proposals submitted by staff and other organizations for FY 01-02 Marketing Plan. Prior to the full board meeting, a new board orientation will be held beginning at 9 a.m. For directions please call 540-248-6020. 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 accommodation in order to participate at the meeting should contact the person identified in this notice at least five days before the meeting date so that suitable arrangements can be made.

Contact: Reginald B. Reynolds, Executive Director, Virginia Cattle Industry Board, P.O. Box 9, Daleville, VA 24083, telephone (540) 992-1992, FAX (540) 992-4632.

Virginia Corn Board

† **August 22, 2001 - 1 p.m.** -- Open Meeting
† **August 23, 2001 - 1 p.m.** -- Open Meeting
Wintergreen Resort, Wintergreen, Virginia.

Meetings to follow up the strategic planning meeting held in July. Members will develop specific and detailed action steps for the board to implement its strategic plan. 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 accommodation in order to participate at the meeting should contact the person identified in this notice at least five days before the meeting date so that suitable arrangements can be made.

Contact: Philip T. Hickman, Program Director, Department of Agriculture and Consumer Services, 1100 Bank St., Room 1005, Richmond, VA 23219, telephone (804) 371-6157, FAX (804) 371-7786.

Pesticide Control Board

July 19, 2001 - 9 a.m. -- Open Meeting
Department of Agriculture and Consumer Services, Washington Building, 1100 Bank Street, Second Floor Board Room, Richmond, Virginia.

A general business meeting. Portions of the meeting may be held in closed session pursuant to § 2.1-344 of the Code of Virginia. The public will have an opportunity to comment on any matter not on the board's agenda beginning at 9 a.m. 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 accommodation in order to participate at the meeting should contact the person identified in this notice at least five days before the meeting date so that suitable arrangements can be made.

Contact: Dr. Marvin A. Lawson, Program Manager, Office of Pesticide Services, Department of Agriculture and Consumer Services, Washington Building, 1100 Bank Street, Room 401, Richmond, VA 23219, telephone (804) 371-6558, FAX (804) 371-8598, toll-free (800) 552-9963, e-mail jknight@vdacs.state.va.us.

Virginia Small Grains Board

July 26, 2001 - 8 a.m. -- Open Meeting
Radisson Fort Magruder Hotel and Conference Center, 6945 Pocahontas Trail, Williamsburg, Virginia.

A meeting to review FY 2000-01 project reports and receive 2001-02 project proposals. Minutes from the last board meeting and a current financial statement will be heard and approved. Additionally, action will be taken on any other new business that comes before the group. 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 accommodation in order to participate at the meeting should contact the person identified in this notice at least five days before the meeting date so that suitable arrangements can be made.

Contact: Philip T. Hickman, Program Director, Department of Agriculture and Consumer Services, 1100 Bank Street, Room 1005, Richmond, VA 23219, telephone (804) 371-6157, FAX (804) 371-7786.

Virginia Soybean Board

August 15, 2001 - 3 p.m. -- Open Meeting
Engel Farms, 13267 Wickerton Lane, Hanover, Virginia.

A meeting to discuss checkoff revenues and the financial status of the board following the end of the fiscal year ending June 30, 2001. Reports will be heard from the chairman, United Soybean representatives, and other committees. 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 accommodation in order to participate at the meeting should contact the person identified in this notice at least five days before the meeting date so that suitable arrangements can be made.

Contact: Philip T. Hickman, Program Director, Department of Agriculture and Consumer Services, 1100 Bank Street, Room 1005, Richmond, VA 23219, telephone (804) 371-6157, FAX (804) 371-7786.

Virginia Winegrowers Advisory Board

† **July 19, 2001 - 10 a.m.** -- Open Meeting
Virginia State Capitol Building, House Room 1, Richmond, Virginia.

A regular business meeting. The board will approve minutes from the May 10-11 meeting, review the financial statement for fiscal year 2000-2001, hear reports from the ABC Board and the viticulture, enology, and marketing committees, and elect officers for 2001-2002. 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 accommodation in order to participate at the meeting should contact Mary Davis-Barton at least two days before the meeting date so that suitable arrangements can be made.

Contact: Mary Davis-Barton, Board Secretary, Department of Agriculture and Consumer Services, 1100 Bank St., Suite 1010, Richmond, VA 23219, telephone (804) 371-7685, FAX (804) 786-3122.

STATE AIR POLLUTION CONTROL BOARD

† **July 26, 2001 - 10 a.m.** -- Public Hearing
Department of Environmental Quality, Tidewater Regional Office, 5636 Southern Boulevard, Virginia Beach, Virginia.
(Interpreter for the deaf provided upon request)

A public hearing to receive comments on consideration of an application from International Paper Franklin Mill to modify certain systems resulting in a net decrease of 554 tons per year of SO_2.

Contact: Jane Workman, State Air Pollution Control Board, Department of Environmental Quality, 5636 Southern Blvd., Virginia Beach, VA 23462, telephone (757) 518-2000, FAX (757) 518-2103, e-mail jaworkman@deq.state.va.us.

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August 16, 2001 - 9 a.m. -- Public Hearing
Department of Environmental Quality, 629 East Main Street, First Floor Conference Room, Richmond, Virginia. (Interpreter for the deaf provided upon request)

September 6, 2001 - Public comments may be submitted until 4:30 p.m. on this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Air Pollution Control Board intends to amend regulations entitled: **Regulations for the Control and Abatement of Air Pollution (Rev. B00): 9 VAC 5-10-10 et seq. General Definitions, 9 VAC 5-20-10 et seq. General Provisions, 9 VAC 5-40-10 et seq. Existing Stationary Sources, 9 VAC 5-80-10 et seq. Permits for Stationary Sources.** The purpose of the proposed amendments is to incorporate by reference the newest editions of technical documents that are required by federal law or regulation. They are included in order to ensure that the air pollution control regulations are properly implemented. The proposed amendments are being made to ensure that the most up-to-date and technically accurate documents are used, thus ensuring the proper implementation of the air pollution control regulations, and thereby protecting the public health and welfare.

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

Public comments may be submitted until September 6, 2001, to Director, Office of Air Regulatory Development, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240.

Contact: Karen G. Sabasteanski, Policy Analyst, Office of Air Regulatory Development, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4426, FAX (804) 698-4510, toll-free 1-800-592-5482, (804) 698-4021/TTY ☎, e-mail kgsabastea@deq.state.va.us.

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† **August 22, 2001 - 10 a.m.** -- Public Hearing
Main Street Centre, Lower Level Conference Room, 600 East Main Street, Richmond, Virginia. (Interpreter for the deaf provided upon request)

September 14, 2001 - Public comments may be submitted until 4:30 p.m. on this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Air Pollution Control Board intends to amend regulations entitled: **NO_X Emissions Budget Trading Program (Rev. D98): 9 VAC 5-140-10 et seq. Regulations for Emissions Trading.** The purpose of the proposed regulation is to establish a NO_x Budget Trading Program as a means of mitigating the interstate transport of ozone and nitrogen oxides including the following provisions: permitting allowance methodology, monitoring, banking, compliance supplement pool, compliance determination and opt-in provisions for sources not covered by the regulation.

Beginning May 31, 2004, electric generating units with a nameplate capacity greater than 25 MWe and nonelectric generating units above 250 mmBtu will be subject to the provisions of the regulation. NOx emissions from subject units shall be capped to a specific limit (measured in tons) during the summer months of May 1 through September 31, otherwise known as the control period. The NOx cap shall be determined through a methodology based upon emission rates multiplied by heat input. If a unit does not use all of its allowances for a specific control period, those extra tons may be banked for future use or sold. If a unit exceeds the capped limit, additional allowances may be purchased or the source may use banked allowances to offset the amount of NOx generated above the capped limit.

Sources found to be out of compliance will be forced to surrender allowances for the next year on a ratio of 3:1, i.e., for every ton over the cap, three tons will be forfeited from the next year's allocation.

Emissions will need to be monitored according to 40 CFR Part 75 for all sources subject to the regulation and for any sources wishing to opt-in to the program.

A compliance supplement pool is provided for sources that generate early reduction credits or demonstrate "undue risk." The allowances from the pool are good for only two years and cannot be banked after that two-year period.

Statutory Authority: §§ 10.1-1308 and 10.1-1322.3 of the Code of Virginia.

Public comments may be submitted until 4:30 p.m. on September 14, 2001, to Director, Office of Air Regulatory Development, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240.

Contact: Mary E. Major, Environmental Program Manager, Office of Air Regulatory Development, Department of Environmental Quality, P.O. Box 10009 Richmond, VA 23240, telephone (804) 698-4423, FAX (804) 698-4510, toll free 1-800-592-5482, (804) 698-4021 TTY ☎, e-mail memajor @deq.state.va.us.

BOARD FOR ARCHITECTS, PROFESSIONAL ENGINEERS, LAND SURVEYORS, CERTIFIED INTERIOR DESIGNERS AND LANDSCAPE ARCHITECTS

July 17, 2001 - 9 a.m. -- Open Meeting
Department of Professional and Occupational Regulation, 3600 W. Broad Street, Richmond, Virginia.

A meeting of a committee of the board to discuss changes to the board's regulations and statutes regarding photogrammetrists.

Contact: Mark N. Courtney, Assistant Director, Board for Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects, 3600 W. Broad St. Richmond, VA 23230, telephone (804) 367-8514, FAX (804) 367-2475, (804) 367-9753/TTY ☎, e-mail APELSLA @dpor.state.va.us.

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July 20, 2001 - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board for Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects intends to amend regulations entitled: **18 VAC 10-20-10 et seq. Board for Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects Regulations.** The board has clarified language, consolidated provisions, and modified wording to accord with the Code of Virginia. Substantive changes include requiring that regulants notify the board office when they leave as the responsible professional of a professional corporation, permitting use of electronic seals, signatures and dates, and adding various requirements and standards regarding land boundary surveying.

Statutory Authority: §§ 54.1-201, 54.1-404 and 54.1-411 of the Code of Virginia.

Contact: Mark N. Courtney, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8514, FAX (804) 367-2475 or (804) 367-9753/TTY ☎

July 24, 2001 - 9 a.m. -- Open Meeting
Department of Professional and Occupational Regulation, 3600 W. Broad Street, Richmond, Virginia.♿

A meeting to review board regulations and statutes including, but not limited to, 18 VAC 10-20-780 and to conduct any and all board business.

Contact: Mark N. Courtney, Assistant Director, Board for Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects, 3600 W. Broad St. Richmond, VA 23230, telephone (804) 367-8514, FAX (804) 367-2475, (804) 367-9753/TTY ☎, e-mail APELSLA @dpor.state.va.us.

September 12, 2001 - 9 a.m. -- Open Meeting
Department of Professional and Occupational Regulation, 3600 W. Broad Street, Richmond, Virginia.♿

A meeting to conduct any and all board business.

Contact: Mark N. Courtney, Assistant Director, Board for Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8514, FAX (804) 367-2475, (804) 367-9753/TTY ☎, e-mail APELSLA @dpor.state.va.us.

Architect Section

August 8, 2001 - 9 a.m. -- Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad St., Richmond, Virginia.♿ (Interpreter for the deaf provided upon request)

A meeting to conduct any and all board business. Persons desiring to participate in the meeting and requiring special accommodations or interpretative services should contact the department at (804) 367-8514 at least 10 days prior to this meeting so that suitable arrangements can be made. The department fully complies with the Americans with Disabilities Act.

Contact: Mark N. Courtney, Assistant Director, Department of Professional and Occupational Regulation, 3600 West Broad St., Richmond, VA 23230-4917, telephone (804) 367-8514, FAX (804) 367-2475, (804) 367-9753/TTY ☎, e-mail apelsla@dpor.state.va.us.

Certified Interior Designer Section

September 5, 2001 - 9 a.m. -- Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad St., Richmond, Virginia.♿ (Interpreter for the deaf provided upon request)

A meeting to conduct any and all board business. Persons desiring to participate in the meeting and requiring special accommodations or interpretative services should contact the department at (804) 367-8514 at least 10 days prior to this meeting so that suitable arrangements can be made for an appropriate accommodation. The department fully complies with the Americans with Disabilities Act.

Contact: Mark N. Courtney, Assistant Director, Department of Professional and Occupational Regulation, 3600 West Broad St., Richmond, VA 23230-4917, telephone (804) 367-8514, FAX (804) 367-2475, (804) 367-9753/TTY ☎, e-mail apelsla@dpor.state.va.us.

Land Surveyor Section

August 22, 2001 - 9 a.m. -- Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad St., Richmond, Virginia.♿ (Interpreter for the deaf provided upon request)

A meeting to conduct any and all board business. Persons desiring to participate in the meeting and requiring special accommodations or interpretative services should contact the department at (804) 367-8514 at least 10 days prior to this meeting so that suitable arrangements can be made for an appropriate accommodation. The department fully complies with the Americans with Disabilities Act.

Contact: Mark N. Courtney, Assistant Director, Department of Professional and Occupational Regulation, 3600 West Broad St., Richmond, VA 23230-4917, telephone (804) 367-8514, FAX (804) 367-2475, (804) 367-9753/TTY ☎, e-mail apelsla@dpor.state.va.us.

Landscape Architect Section

August 29, 2001 - 9 a.m. -- Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad St., Richmond, Virginia. (Interpreter for the deaf provided upon request)

A meeting to conduct any and all board business. Persons desiring to participate in the meeting and requiring special accommodations or interpretative services should contact the department at (804) 367-8514 at least 10 days prior to this meeting so that suitable arrangements can be made for an appropriate accommodation. The department fully complies with the Americans with Disabilities Act.

Contact: Mark N. Courtney, Assistant Director, Department of Professional and Occupational Regulation, 3600 West Broad St., Richmond, VA 23230-4917, telephone (804) 367-8514, FAX (804) 367-2475, (804) 367-9753/TTY ☎, e-mail apelsla@dpor.state.va.us.

Professional Engineer Section

August 15, 2001 - 9 a.m. -- Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad St., Richmond, Virginia. (Interpreter for the deaf provided upon request)

A meeting to conduct any and all board business. Persons desiring to participate in the meeting and requiring special accommodations or interpretative services should contact the department at (804) 367-8514 at least 10 days prior to this meeting so that suitable arrangements can be made for an appropriate accommodation. The department fully complies with the Americans with Disabilities Act.

Contact: Mark N. Courtney, Assistant Director, Department of Professional and Occupational Regulation, 3600 West Broad St., Richmond, VA 23230-4917, telephone (804) 367-8514, FAX (804) 367-2475, (804) 367-9753/TTY ☎, e-mail apelsla@dpor.state.va.us.

ART AND ARCHITECTURAL REVIEW BOARD

August 3, 2001 - 10 a.m. -- Open Meeting
September 7, 2001 - 10 a.m. -- Open Meeting
† **October 5, 2001 - 10 a.m.** -- Open Meeting
Science Museum of Virginia, 2500 West Broad Street, Forum Room, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A monthly meeting to review projects submitted by state agencies.

Contact: Richard L. Ford, AIA, Chairman, Art and Architectural Review Board, 1011 E. Main St., Room 221, Richmond, VA 23219, telephone (804) 643-1977, FAX (804) 643-1981, (804) 786-6152/TTY ☎

VIRGINIA BOARD FOR ASBESTOS AND LEAD

July 20, 2001 - 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 Board for Asbestos and Lead intends to amend regulations entitled: **18 VAC 15-20-10 et seq. Virginia Asbestos Licensing Regulations.** The proposed regulation will revise definitions; delete roofing, flooring and siding provisions, which were abolished by House Bill 951, effective July 1, 1996; clarify fees for initial approval of accredited asbestos training programs; and create a biennial renewal requirement and fee for accredited asbestos training programs. Project monitors who also hold a valid supervisor or project designer license may renew their project monitor license by completing the supervisor or project designer refresher training. Language has been added to make clear that a refresher training certificate may be used only once to renew a license. The entry standards for inspectors, management planners and project designers have been changed to allow applicants to present evidence of specific minimal competence. Project monitors will be required on projects involving more than 260 linear feet or 160 square feet of asbestos containing materials. An additional option to qualify for an asbestos and analytical laboratory license has been added and performance standards for laboratory operation have been added.

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

Contact: Joseph Kossan, Regulatory Board Administrator, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-2648.

August 15, 2001 - 10 a.m. -- Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, Conference Room 4W, Richmond, Virginia.

A meeting to conduct routine business. A public comment period will be held at the beginning of the meeting.

Contact: David E. Dick, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-2648, FAX (804) 367-6128, (804) 367-9753/TTY ☎, e-mail asbestos @dpor.state.va.us.

COMPREHENSIVE SERVICES FOR AT-RISK YOUTH AND FAMILIES

State Executive Council

July 25, 2001 - 9 a.m. -- Open Meeting
August 29, 2001 - 9 a.m. -- Open Meeting
September 26, 2001 - 9 a.m. -- Open Meeting
Department of Social Services, 730 East Broad Street, Lower Level, Training Room 1, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A regular meeting. An agenda will be posted on the web (http://www.csa.state.va.us) a week prior to the meeting.

Contact: Alan G. Saunders, Director, Comprehensive Services for At-Risk Youth and Families, 1604 Santa Rosa Rd., Suite 137, Richmond, VA 23229, telephone (804) 662-

9815, FAX (804) 62-9831, e-mail AGS992@central.dss.state.va.us.

AUCTIONEERS BOARD

July 20, 2001 - 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 Auctioneers Board intends to amend regulations entitled: **18 VAC 25-21-10 et seq. Rules and Regulations of the Auctioneers Board.** The Auctioneers Board has clarified language, deleted duplicate and unutilized definitions, removed unnecessary requirements, and modified certain requirements in this chapter. Substantive changes include the following: the board has clarified that disciplinary action in another jurisdiction relating to auctioneering may prevent licensure in Virginia, has removed the option of substituting 25 auctions in lieu of educational requirements, has modified reinstatement requirements, and has modified compliance requirements for schools.

Statutory Authority: §§ 54.1-201 and 54.1-602 of the Code of Virginia.

Contact: Mark N. Courtney, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8514, FAX (804) 367-2475 or (804) 367-9753/TTY ☎

BOARD FOR THE BLIND AND VISION IMPAIRED

July 17, 2001 - 10 a.m. -- Open Meeting
Department for the Blind and Vision Impaired, 397 Azalea Avenue, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A meeting to review information regarding department activities and operations, review expenditures from the board's endowment fund, and discuss other issues raised for the board members. The Board for the Blind and Vision Impaired is an advisory board responsible for advising the Governor, the Secretary of Health and Human Resources, the commissioner, and the General Assembly in the delivery of public services to the blind and the protection of their rights. The board also reviews and comments on policies, budgets and requests for appropriations for the department.

Contact: Katherine C. Proffitt, Administrative Staff Assistant, Department for the Blind and Vision Impaired, 397 Azalea Ave., Richmond, VA 23227, telephone (804) 371-3145, FAX (804) 371-3157, toll-free (800) 622-2155, (804) 371-3140/TTY ☎, e-mail proffikc@dbvi.state.va.us.

BOARD FOR BRANCH PILOTS

August 1, 2001 - 9:30 a.m. -- Open Meeting
Virginia Port Authority, 600 World Trade Center, Norfolk, Virginia. (Interpreter for the deaf provided upon request)

A meeting to conduct examinations.

Contact: Mark N. Courtney, Assistant Director, Department of Professional and Occupational Regulation, 3600 West Broad St., Richmond, VA 23230-4917, telephone (804) 367-8514, FAX (804) 367-2475, (804) 367-9753/TTY ☎, e-mail branchpilots@dpor.state.va.us.

August 2, 2001 - 9:30 a.m. -- Open Meeting
Virginia Port Authority, 600 World Trade Center, Norfolk, Virginia. (Interpreter for the deaf provided upon request)

A meeting to conduct any and all board business. Persons desiring to participate in the meeting and requiring special accommodations or interpretative services should contact the department at (804) 367-8514 at least 10 days prior to this meeting so that suitable arrangements can be made for an appropriate accommodation. The department fully complies with the Americans with Disabilities Act.

Contact: Mark N. Courtney, Assistant Director, Department of Professional and Occupational Regulation, 3600 West Broad St., Richmond, VA 23230-4917, telephone (804) 367-8514, FAX (804) 367-2475, (804) 367-9753/TTY ☎, e-mail branchpilots@dpor.state.va.us.

CEMETERY BOARD

July 18, 2001 - 8:30 a.m. -- Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia.

A general meeting of the Regulatory Review Committee.

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, e-mail cemetery@dpor.state.va.us.

July 18, 2001 - 9:30 a.m. -- Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia.

A general meeting.

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, e-mail cemetery@dpor.state.va.us.

STATE BOARD FOR COMMUNITY COLLEGES

July 18, 2001 - 2:30 p.m. -- Open Meeting
Virginia Community College System, James Monroe Building, 101 N. 14th Street, 15th Floor, Richmond, Virginia. (Interpreter for the deaf provided upon request)

The Academic and Student Affairs Committee, the Audit Committee, and the Budget and Finance Committee will meet at 2:30 p.m. The Facilities Committee and the Personnel Committee will meet at 3:30 p.m.

Contact: D. Susan Hayden, Public Relations Manager, State Board for Community Colleges, 101 N. 14th Street, 15th Floor, Richmond, VA 23219, telephone (804) 819-4961, FAX (804) 819-4768, (804) 371-8504/TTY ☎

July 19, 2001 - 9 a.m. -- Open Meeting
Virginia Community College System, James Monroe Building, 101 N. 14th Street, 15th Floor, Godwin-Hamel Board Room, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A regular meeting. Public comment will be received at the beginning of the meeting.

Contact: D. Susan Hayden, Public Relations Manager, State Board for Community Colleges, James Monroe Bldg., 101 N. 14th Street, 15th Floor, Richmond, VA 23219, telephone (804) 819-4961, FAX (804) 819-4768, (804) 371-8504/TTY ☎

COMPENSATION BOARD

July 24, 2001 - 11 a.m. -- Open Meeting
Compensation Board, 202 North 9th Street, 10th Floor, Richmond, Virginia.

A monthly board meeting.

Contact: Cindy Waddell, Administrative Staff Assistant, Compensation Board, P.O. Box 710, Richmond, VA 23218, telephone (804) 786-0786, FAX (804) 371-0235, e-mail cwaddell@scb.state.va.us.

BOARD FOR CONTRACTORS

July 18, 2001 - 10 a.m. -- Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, 4th Floor, Richmond, Virginia.

A regular meeting of the Tradesman Committee to consider items of interest relating to the tradesmen/backflow workers and other appropriate matters pertaining to the tradesman section of the board for contractors.

Contact: David Dick, Assistant Director, Board for Contractors, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-6166, FAX (804) 367-2474, (804) 367-9753/TTY ☎, e-mail dick@dpor.state.va.us.

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July 18, 2001 - 1 p.m. -- Public Hearing
Department of Professional and Occupational Regulation, 3600 West Broad Street, 4th Floor, Richmond, Virginia.

July 20, 2001 - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board for Contractors intends to amend regulations entitled: **18 VAC 50-30-10 et seq. Tradesman Rules and Regulations.** The Board for Contractors seeks to amend its current tradesman regulations to reflect statutory changes that respond to industry changes. The regulations have not been revised since July 7, 1999. Parts of the regulation text may be revised for clarity and ease of use.

Statutory Authority: §§ 54.1-201 and 54.1-1102 of the Code of Virginia.

Contact: Nancy Taylor Feldman, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8590, FAX (804) 367-2474 or (804) 367-9753/TTY ☎

BOARD OF EDUCATION

July 26, 2001 - 9 a.m. -- Open Meeting
General Assembly Building, 9th and Broad Streets, Senate Room A, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A regular meeting. Public comment will be received at this meeting.

Contact: Dr. Margaret N. Roberts, Office of Policy, Department of Education, P.O. Box 2120, 101 N. 14th St., 25th Floor, Richmond, VA 23219, telephone (804) 225-2540, FAX (804) 225-2524, e-mail mroberts@mail.vak12ed.edu.

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July 20, 2001 - Public comment 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 Education intends to adopt regulations entitled: **8 VAC 20-630-10 et seq. Standards for State-Funded Remedial Programs.** The proposed regulations will require the collection of the minimum data necessary to comply with the intent of the Code of Virginia.

Statutory Authority: § 22.1-199.2 of the Code of Virginia.

Contact: Dr. Kathleen Smith, Specialist, Elementary Education, Department of Education, P.O. Box 2120, Richmond, VA 23218-2120, telephone (804) 786-5819 or (804) 225-2524.

September 20, 2001 - 9:30 a.m. -- Open Meeting
Henrico County School Board Office, 3820 Nine Mile Road, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A working session of the Accountability Advisory Committee. Public comment will not be received. Persons requesting the services of an interpreter for the deaf should do so in advance.

Contact: Cam Harris, Board of Education, P.O. Box 2120, James Monroe Bldg., 101 N. 14th St., 25th Floor, Richmond, VA 23219, telephone (804) 225-2102, FAX (804) 225-2524.

September 27, 2001 - 9 a.m. -- Open Meeting
General Assembly Building, 9th and Broad Streets, Senate Room A, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A regular business meeting. Public comment will be received. Persons requesting the services of an interpreter for the deaf should do so in advance.

Contact: Dr. Margaret N. Roberts, Office of Policy, Board of Education, P.O. Box 2120, James Monroe Bldg., 101 N. 14th St., 25th Floor, Richmond, VA 23219, telephone (804) 225-

2540, FAX (804) 225-2524, e-mail mroberts@mail.vak12ed.edu.

DEPARTMENT OF ENVIRONMENTAL QUALITY

† **July 20, 2001 - 10 a.m.** -- Open Meeting
Campus Center, Little Theater, College of William and Mary, Williamsburg, Virginia.

A meeting to discuss the U.S. Geologic Survey study on hydrologic reaction in cataloging units 02080108, 02080208 and 3010205.

Contact: Kathy Frahm, Department of Environmental Quality, P.O. Box 10009 Richmond, VA 23240, telephone (804) 698-4376, FAX (804) 698-4346, e-mail krfrahm@deq.state.va.us.

BOARD OF FUNERAL DIRECTORS AND EMBALMERS

July 17, 2001 - 9 a.m. -- Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 4, Richmond, Virginia.

A general business meeting, including discussions of the recommendations from the periodic review of regulations. Public comment will be received at the beginning of the meeting.

Contact: Elizabeth Young Tisdale, Executive Director, Board of Funeral Directors and Embalmers, 6606 W. Broad St., 4th Floor, Richmond, VA 23230, telephone (804) 662-9907, FAX (804) 662-9523, (804) 662-7197/TTY ☎, e-mail etisdale@dhp.state.va.us.

Special Conference Committee

July 31, 2001 - 9 a.m. -- Open Meeting
Department of Health Professions, 6606 W. Broad Street, 5th Floor, Conference Room 1, Richmond, Virginia.

A meeting to hold informal hearings. There will not be a public comment period.

Contact: Cheri Emma-Leigh, Administrative Staff Assistant, Board of Funeral Directors and Embalmers, 6606 W. Broad Street, 4th Floor, Richmond, VA 23230, telephone (804) 662-9907, FAX (804) 662-9523, (804) 662-7197/TTY ☎, e-mail CEmma-Leigh@dhp.state.va.us.

BOARD OF GAME AND INLAND FISHERIES

July 19, 2001 - 9 a.m. -- Open Meeting
Department of Game and Inland Fisheries, 4000 West Broad Street, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A meeting to adopt webless migratory game bird and September Canada goose seasons and bag limits based on frameworks provided by the U.S. Fish and Wildlife Service. The board will solicit the public's comments in a public hearing offered during this portion of the meeting, at which time any interested citizen present shall be heard. Pursuant to §§ 29.1-103 and 105 of the Code of Virginia, the board will also hold a public hearing on a proposed memorandum of agreement between the Department of Game and Inland Fisheries and Dogwood Development Group, LLC, regarding a proposed exchange of land in Frederick County, Virginia intended to provide continued and improved public recreational access to Lake Frederick within the context of planned commercial development of surrounding adjacent real estate. The proposed memorandum of agreement is available from the Department of Game and Inland Fisheries; requests for copies, inquiries, or written comments addressing the proposed memorandum should be directed to Jane Powell, 4010 West Broad Street, Richmond, Virginia 23230; phone 804-367-0811. Such written comments prior to the Board meeting will be accepted until 5 p.m. Thursday, July 12, 2001. The board may also discuss general and administrative issues. The board may elect to hold a dinner Wednesday evening, July 18, at a location and time to be determined; and it may hold a closed session before or after the open session on July 19.

Contact: Phil Smith, Policy Analyst, Department of Game and Inland Fisheries, 4010 W. Broad St., Richmond, VA 23230, telephone (804) 367-1000, FAX (804) 367-0488, e-mail phil_smith@dgif.state.va.us.

† **August 6, 2001 - 7 p.m.** -- Public Hearing
Department of Game and Inland Fisheries, 4000 West Broad Street, Richmond, Virginia. (Interpreter for the deaf provided upon request)

Public input meeting concerning federal frameworks for the 2001-2002 waterfowl hunting seasons. The Virginia Department of Game and Inland Fisheries (DGIF) is holding a public input meeting to discuss and receive public comments regarding season lengths and bag limits for the 2001-2002 hunting seasons for migratory waterfowl (ducks and coots, geese and brant, swan, gallinules and moorhens) and falconry. All interested citizens are invited to attend. DGIF Wildlife Division staff will discuss the population status of these species, and present hunting season frameworks for them provided by the U.S. Fish and Wildlife Service. The public's comments will be solicited in the public hearing portion of the meeting. A summary of the results of this public hearing will be presented to the Virginia Board of Game and Inland Fisheries prior to its scheduled August 23, 2001, meeting. At the August 23 meeting, the board will hold another public hearing, after which it intends to set 2001-2002 hunting seasons and bag limits for the above species.

Contact: Bob Ellis, Wildlife Division Assistant Director, Department of Game and Inland Fisheries, 4010 W. Broad St., Richmond VA 23230, telephone (804) 367-1000, FAX (804) 367-0262, e-mail dgifweb@dgif.state.va.us.

† **August 23, 2001 - 9 a.m.** -- Public Hearing
Department of Game and Inland Fisheries, 4000 West Broad Street, Richmond, Virginia. (Interpreter for the deaf provided upon request)

The board will meet and adopt 2001-2002 hunting seasons and bag limits for migratory waterfowl (ducks and coots, geese and brant, swan, gallinules and moorhens) and

falconry, based on frameworks provided by the U.S. Fish and Wildlife Service. The board will solicit and receive comments from the public during the public hearing portion of the meeting, at which time any interested citizen present shall be heard. The board may also review possible proposals for legislation for the 2002 Session of the General Assembly, discuss general and administrative issues and hold a closed session at some time during the meeting. The board may elect to hold a dinner Wednesday evening, August 22, at a location and time to be determined. In the event the board does not complete its entire agenda on August 23 it may convene the following day, August 24, 2001. The Board of Game and Inland Fisheries is exempt from the Administrative Process Act (§ 9-6.14:4.1 of the Code of Virginia) in promulgating wildlife management regulations, including the length of seasons, bag limits and methods of take set on the wildlife resources within the Commonwealth of Virginia. It is required by § 9-6.14:22 to publish all proposed and final regulations.

Contact: Phil Smith, Policy Analyst, Department of Game and Inland Fisheries, 4010 W. Broad St., Richmond, VA 23230, telephone (804) 367-1000, FAX (804) 367-0488, e-mail dgifweb@dgif.state.va.us.

STATE BOARD OF HEALTH

July 18, 2001 - 1 p.m. -- Open Meeting
The Virginia Farm Bureau, 12580 West Creek Parkway, Richmond, Virginia.

A meeting of the Biosolids Fee Regulation Ad Hoc Committee to begin development of the draft regulations to be presented to the State Board of Health for acceptance as proposed regulations, concerning payment of fees in accordance with the provisions of House Bill 2827 (2001), from land appliers of sewage sludge (biosolids) that is land applied in the Commonwealth in accordance with the provisions of the Biosolids Use Regulations.

Contact: Calmet M. Sawyer, PhD, P.E., Division Director, Division of Wastewater Engineering, Department of Health, 1500 East Main Street, Room 109, Richmond, VA 23219, telephone (804) 786-1755, FAX (804) 786-5567.

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August 13, 2001 - 7 p.m. -- Public Hearing
Holbert Building, 9104 Courthouse Road, Board of Supervisors Meeting Room, Spotsylvania, Virginia.

August 15, 2001 - 7 p.m. -- Public Hearing
James City County Administration Center, Board of Supervisors Meeting Room, 101-C Mounts Bay Road, Williamsburg, Virginia.

August 16, 2001 - 7 p.m. -- Public Hearing
Roanoke County Administration Center, Board of Supervisors Meeting Room, 5204 Bernard Drive, Roanoke, Virginia.

September 10, 2001 - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Board of Health intends to adopt regulations entitled: **12 VAC 5-581-10 et seq. Sewage Collection and Treatment (SCAT) Regulations.** The purpose of the proposed action is to provide uniform statewide standards governing the design, construction, and operation of the sewage collection systems and sewage treatment works.

Statutory Authority: §§ 32.1-164 and 62.1-44.19 of the Code of Virginia.

Contact: Calmet M. Sawyer, PhD, P.E., Division Director, Division of Wastewater Engineering, Department of Health, 1500 East Main Street, Room 109, Richmond, VA 23219, telephone (804) 786-1755, FAX (804) 786-5567.

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August 20, 2001 - 7 p.m. -- Public Hearing
Henrico County Board of Supervisors Room, 4301 East Parham Road, Henrico County Complex, Richmond, Virginia.

August 23, 2001 - 7 p.m. -- Public Hearing
Roanoke County Administration Building, 5204 Bernard Drive, Roanoke, Virginia.

August 27, 2001 - 7 p.m. -- Public Hearing
1 County Complex, McCoart Building, Prince William County Board Chambers, Prince William, Virginia.

August 29, 200 1- 7 p.m. -- Public Hearing
Virginia Beach Central Library, 4100 Virginia Beach Boulevard, Auditorium, Virginia Beach, Virginia.

August 31, 2001 - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Board of Health intends to **repeal** regulations entitled: **12 VAC 5-420-10 et seq. Rules and Regulations Governing Restaurants** and **adopt** regulations entitled: **12 VAC 5-421-10 et seq. Regulations Governing Restaurants.** The purpose of the proposed action is to repeal the existing regulations and adopt new regulations that comply with the 1997 FDA Model Food Code. The proposed regulations address the emergence of new strains of bacteria and other organisms and incorporate new control measures for the prevention of food borne disease.

Statutory Authority: §§ 35.1-11 and 35.1-14 of the Code of Virginia.

Contact: Gary L. Hagy, Director, Division of Food and Environmental Services, Department of Health, P.O. Box 2448, Richmond, VA 23218-2448, telephone (804) 225-4022.

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† **August 27, 2001 - 7 p.m.** -- Public Hearing
Thomas Jefferson Health District Office Conference Room, 1138 Rose Hill Drive, Charlottesville, Virginia.

† **August 29, 2001 - 7 p.m.** -- Public Hearing
Board of Supervisors Room, Holbert Building, 9104 Courthouse Road, Spotsylvania, Virginia.

† **September 5, 2001 - 7 p.m.** -- Public Hearing
Human Services Auditorium, James City County Human Services Building, 5249 Old Towne Road, Williamsburg, Virginia.

† **September 24, 2001 -** Public comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Board of Health intends to **repeal** regulations entitled: **12 VAC 5-430-10 et seq. Transient Lodging and Hotel Sanitation in Virginia** and **adopt** regulations entitled: **12 VAC 5-431-10 et seq. Sanitary Regulations Governing Hotels.** The proposed amendments update the regulations to more modern industry and public health standards. The regulations require annual inspections of a percentage of the total number of hotels. They also require automatic ice dispenser in lieu of ice machines with common ice bins.

Statutory Authority: §§ 35.1-11 and 35.1-13 of the Code of Virginia.

Contact: Gary L. Hagy, Director, Division of Food and Environmental Services, Department of Health, P.O. Box 2448, Room 115, Richmond, VA 23218, telephone (804) 225-4022 or FAX (804) 225-4003.

State Emergency Medical Services Advisory Board

† **August 3, 2001 - 1 p.m.** -- Open Meeting
Sheraton Richmond West Hotel, 6624 West Broad Street, Richmond, Virginia.

Regular quarterly meeting of the State Emergency Medical Services Advisory Board.

Contact: Gary Brown, Director, Office of Emergency Medical Services, Department of Health, 1538 E. Parham Rd., Richmond, VA 23228, telephone (804) 371-3500, FAX (804) 371-3543, toll-free (800) 523-6019, e-mail gbrown@vdh.state.va.us.

DEPARTMENT OF HEALTH PROFESSIONS

August 17, 2001 - 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 meeting of the Health Practitioners' Intervention Program Committee to meet with its contractor and representatives to review reports, policies, and procedures for the Health Practitioners' Intervention Program. The committee will meet in open session for general discussion of the program and may meet in executive session to consider specific requests from applicants or participants in the program.

Contact: John W. Hasty, Director, Department of Health Professions, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9424, FAX (804) 662-9114, (804) 662-9197/TTY

STATE COUNCIL OF HIGHER EDUCATION FOR VIRGINIA

† **July 16, 2001 - 8:30 a.m.** -- Open Meeting
Linden Row Inn, 100 East Franklin Street, Richmond, Virginia.

An informal working meeting of the council. No action will be taken at this meeting.

Contact: Lee Ann Rung, State Council of Higher Education for Virginia, 101 N. 14th St., Richmond, VA 23219, telephone (804) 225-2602, e-mail lrung@schev.edu.

July 17, 2001 - 9 a.m. -- Open Meeting
State Council of Higher Education, James Monroe Building, 101 North 14th Street, 9th Floor, Richmond, Virginia.

A regular meeting. Agenda materials will be available on the website approximately one week prior to the meeting at www.schev.edu.

Contact: Lee Ann Rung, State Council of Higher Education for Virginia, 101 N. 14th St., Richmond, VA 23219, telephone (804) 225-2602, FAX (804) 371-7911, e-mail lrung@schev.edu.

BOARD OF HOUSING AND COMMUNITY DEVELOPMENT

† **July 16, 2001 - 9 a.m.** -- Open Meeting
501 North Second Street, Richmond, Virginia.

A regular business meeting. The board's Codes and Standards Committee will meet immediately following the full board meeting at the same location.

Contact: Steve Calhoun, Senior Policy Analyst, Department of Housing and Community Development, 501 N. 2nd St., Richmond, VA 23219, telephone (804) 371-7015, FAX (804) 371-7090.

VIRGINIA HOUSING DEVELOPMENT AUTHORITY

July 17, 2001 - 9 a.m. -- Open Meeting
Virginia Housing Development Authority, 601 South Belvidere Street, Richmond, Virginia.

Annual meeting of the Board of Commissioners. The board will review and, if appropriate, approve the minutes from the prior monthly meeting; elect a Chairman and Vice Chairman; consider for approval and ratification mortgage loan commitments under its various programs; review the authority's operations for the prior month; and consider such other matters and take such other actions as they may deem appropriate. Various committees of the Board of Commissioners may also meet before or after the regular meeting and consider topics within their purview. The planned agenda of the meeting will be available at the offices of the authority one week prior to the date of the meeting. The annual meetings of the shareholders and board of directors of Housing for Virginia, Inc., a corporation wholly owned by the authority, will be held following the meeting of the authority's Board of Commissioners.

Contact: J. Judson McKellar, Jr., General Counsel, Virginia Housing Development Authority, 601 South Belvidere Street, Richmond, VA 23220, telephone (804) 343-5540, FAX (804) 783-6701, toll-free (800) 968-7837, (804) 783-6705/TTY ☎

STATE LAND EVALUATION ADVISORY COUNCIL

August 14, 2001 - 10 a.m. -- Open Meeting
Department of Taxation, Richmond District Office, 1708 Commonwealth Avenue, Richmond, Virginia.

A meeting to consider suggested ranges of values for agricultural, horticultural, forest and open-space land use and the use-value assessment program.

Contact: H. Keith Mawyer, Property Tax Manager, Department of Taxation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8020.

September 20, 2001 - 10 a.m. -- Open Meeting
Department of Taxation, Richmond District Office, 1708 Commonwealth Avenue, Richmond, Virginia.

A meeting to adopt ranges of values for agricultural, horticultural, forest and open-space land use and the use-value assessment program.

Contact: H. Keith Mawyer, Property Tax Manager, Department of Taxation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8020.

COMMISSION ON LOCAL GOVERNMENT

July 16, 2001 - 10:30 a.m. -- Open Meeting
Tripplett Technical School Cafeteria, 6375 Main Street (Route 11), Mount Jackson, Virginia. (Interpreter for the deaf provided upon request)

Oral presentations regarding the Town of Mount Jackson/Shenandoah County agreement defining annexation rights.

Contact: Barbara Bingham, Administrative Assistant, Commission on Local Government, 900 E. Main Street, Suite 103, Richmond, VA 23219-3513, telephone (804) 786-6508, FAX (804) 371-7999, (800) 828-1120/TTY ☎, e-mail bbingham@clg.state.va.us.

July 16, 2001 - 2 p.m. -- Open Meeting
Tripplett Technical School Cafeteria, 6375 Main Street (Route 11), Mount Jackson, Virginia. (Interpreter for the deaf provided upon request)

A regular meeting to consider such matters as may be presented.

Contact: Barbara Bingham, Administrative Assistant, Commission on Local Government, 900 E. Main Street, Suite 103, Richmond, VA 23219-3513, telephone (804) 786-6508, FAX (804) 371-7999, (800) 828-1120/TTY ☎, e-mail bbingham@clg.state.va.us.

July 16, 2001 - 7 p.m. -- Public Hearing
Tripplett Technical School Cafeteria, 6375 Main Street (Route 11), Mount Jackson, Virginia. (Interpreter for the deaf provided upon request)

A public hearing regarding the Town of Mount Jackson/Shenandoah County agreement defining annexation rights.

Contact: Barbara W. Bingham, Administrative Assistant, Commission on Local Government, 900 E. Main Street, Suite 103, Richmond, VA 23219-3513, telephone (804) 786-6508, FAX (804) 371-7999, (800) 828-1120/TTY ☎, e-mail bbingham@clg.state.va.us.

VIRGINIA MANUFACTURED HOUSING BOARD

† **August 8, 2001 - 10 a.m.** -- Open Meeting
Ramada Plaza Resort Oceanfront, 57th Street and Atlantic Avenue, Virginia Beach, Virginia. (Interpreter for the deaf provided upon request)

A regular meeting to review applications for licenses in the manufactured housing program, address complaints and claims against licensees, handle claims to the Transaction Recovery Fund, and carry out other duties under the Manufactured Housing Licensing and Transaction Recovery Fund Regulations.

Contact: Curtis L. McIver, State Building Code Administrator, Department of Housing and Community Development, State Building Code Administrative Office, The Jackson Center, 501 N. 2nd St., Richmond, VA 23219, telephone (804) 371-7160, FAX (804) 371-7092, (804) 371-7089/TTY ☎, e-mail cmciver@dhcd.state.va.us.

MARINE RESOURCES COMMISSION

July 24, 2001 - 9:30 a.m. -- Open Meeting
August 28, 2001 - 9:30 a.m. -- Open Meeting
September 25, 2001 - 9:30 a.m. -- Open Meeting
Marine Resources Commission, 2600 Washington Avenue, 4th Floor, Newport News, Virginia.

A monthly meeting.

Contact: LaVerne Lewis, Commission Secretary, Marine Resources Commission, 2600 Washington Ave., Newport News, VA 23607, telephone (757) 247-2261, FAX (757) 247-2020, toll-free (800) 541-4646, (757) 247-2292/TTY ☎, e-mail llewis@mrc.state.va.us.

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

July 21, 2001 - 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 30-20-10 et seq. Administration of Medical Assistance Services.** The purpose of the proposed amendment is to increase the amount of the copayment that Medicaid recipients are required to pay when their prescriptions are filled with brand name drugs instead of generics.

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

Public comments may be submitted until July 21, 2001, to Marianne Rollings, R.Ph., Program Operations, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219.

Contact: Victoria P. Simmons, Regulatory Coordinator, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 786-7959 or FAX (804) 786-1680.

Medicaid Drug Utilization Review (DUR) Board

† **August 16, 2001 - 2 p.m.** -- Open Meeting
Department of Medical Assistance Services, 600 East Broad Street, DMAS Board Room, Suite 1300, Richmond, Virginia.♿

A general meeting.

Contact: Marianne Rollings, R.Ph., Board Coordinator, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300 Richmond, VA 23219, telephone (804) 225-4268, FAX (804) 225-4393, (800) 343-0634/TTY ☎, e-mail mrollings@dmas.state.va.us.

Pharmacy Liaison Committee

† **September 10, 2001 - 1 p.m.** -- Open Meeting
Department of Medical Assistance Services, 600 East Broad Street, DMAS Board Room, Suite 1300, Richmond, Virginia.♿

A general meeting.

Contact: Marianne Rollings, R.Ph., Committee Coordinator, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300 Richmond, VA 23219, telephone (804) 225-4268, FAX (804) 225-4393, (800) 343-0634/TTY ☎, e-mail mrollings@dmas.state.va.us.

BOARD OF MEDICINE

July 26, 2001 - 9:30 a.m. -- Open Meeting
Williamsburg Marriott, 50 Kingsmill Road, Williamsburg, Virginia.

A meeting of the Informal Conference Committee to inquire into allegations that certain practitioners may have violated laws and regulations governing the practice of medicine and other healing arts in Virginia. Public comment will not be received.

Contact: Peggy Sadler or Renee Dixson, Board of Medicine, 6606 West Broad Street, Richmond, VA 23230, telephone (804) 662-7332, FAX (804) 662-9517, (804) 662-7197/TTY ☎, e-mail PSadler@dhp.state.va.us.

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† **August 3, 2001 - 9:30 a.m.** -- Public Hearing
Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 2, Richmond, Virginia.♿

September 14, 2001 - 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 85-20-10 et seq. Regulations Governing the Practice of Medicine, Osteopathy, Podiatry, and Chiropractic.** The proposed amendments replace emergency regulations establishing that of the 200 hours of acupuncture training required for doctors of medicine, osteopathy, podiatry and chiropractic to practice acupuncture, 50 hours must be in clinical practice.

Statutory Authority: §§ 54.1-2400 and 54.1-2956.9 of the Code of Virginia.

Contact: William L. Harp, M.D., Executive Director, Board of Medicine, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9908, FAX (804) 662-9943, (804) 662-7197/TTY ☎, e-mail wharp@dhp.state.va.us.

Informal Conference Committee

† **July 26, 2001 - 9:30 a.m.** -- Open Meeting
† **August 30, 2001 - 9 a.m.** -- Open Meeting
Williamsburg Marriott Hotel, 50 Kingsmill Road, Williamsburg, Virginia.
† **August 9, 2001 - 8:45 a.m.** -- Open Meeting
Holiday Inn Select, 2801 Plank Road, Fredericksburg, Virginia.

An 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 the Code of Virginia. Public comment will not be received.

Contact: Peggy Sadler/Renee Dixson, Staff, Board of Medicine, 6606 W. Broad St., Richmond, VA, telephone (804) 662-7332, FAX (804) 662-9517, (804) 662-7197/TTY ☎, e-mail PSadler@dhp.state.va.us.

STATE MENTAL HEALTH, MENTAL RETARDATION AND SUBSTANCE ABUSE SERVICES BOARD

August 17, 2001 - 10 a.m. -- Public Hearing
Jefferson Building, 1220 Bank Street, 9th Floor, Conference Room, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

A public hearing to receive comments of the Virginia Community Mental Health Services Performance Block Grant Application for federal fiscal year 2002. Copies of the application are available for review at the Office of Mental Health Services, Jefferson Building, 1220 Bank Street, 10th Floor, or at each Community Services Board office. Comments may be made at the hearing or in writing no later than August 17, 2001, to the Office of the Commissioner of the Department of Mental Health, Mental Retardation and Substance Abuse Services. Anyone wishing to make a presentation at the meeting should contact Sterling Deal. Copies of oral presentations should be filed in writing at the time of the hearing.

Contact: Sterling G. Deal, Ph.D., Resource Analyst, P.O. Box 1797, State Mental Health, Mental Retardation and Substance Abuse Services Board, Richmond, VA 23218, telephone (804) 371-2148, FAX (804) 786-1836, (804) 371-8977/TTY ☎

STATE MILK COMMISSION

August 15, 2001 - 10 a.m. -- Public Hearing
General Assembly Building, 9th and Broad Streets, Senate Room A, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

A public hearing to receive evidence and testimony related to Order 21 that was implemented on March 1, 2001, and terminates on August 31, 2001. The hearing will assist the commission in determining if the order should be terminated or extended and if existing regulations should be terminated, amended or retained in its current form. Written comments may be submitted until August 1, 2001, to Edward C. Wilson, Jr.

Contact: Edward C. Wilson, Jr., Deputy Administrator, State Milk Commission, Ninth Street Office Bldg., 202 N. Ninth St., Room 915, Richmond, VA 23219, telephone (804) 786-2013, FAX (804) 786-3779, e-mail ewilson@smc.state.va.us.

August 15, 2001 - 1 p.m. -- Open Meeting
General Assembly Building, 9th and Broad Streets, Senate Room A, Richmond, Virginia ♿ (Interpreter for the deaf provided upon request)

A regular meeting of commissioners to consider industry issues, distributor licensing, base transfers, baseholder license amendment, fiscal matters, and to review reports from staff of the agency. Any persons requiring special accommodations in order to participate in the meeting should contact Edward C. Wilson, Jr. at least five days prior to the meeting date so that suitable arrangements can be made.

Contact: Edward C. Wilson, Jr., Deputy Administrator, State Milk Commission, Ninth Street Office Bldg., 202 N. Ninth St., Room 915, Richmond, VA 23219, telephone (804) 786-2013, FAX (804) 786-3779, e-mail ewilson@smc.state.va.us.

COMMONWEALTH NEUROTRAUMA INITIATIVE ADVISORY BOARD

† **August 2, 2001 - 9:30 a.m.** -- Open Meeting
Department of Rehabilitative Services, 8004 Franklin Farms Drive, Richmond, Virginia.♿ (Interpreter for the deaf provided upon request)

A general meeting to review the panel recommendations of the grant proposals submitted under Option B and select the grantees who will be awarded funding.

Contact: Sandra Prince, Program Specialist, Department of Rehabilitative Services, 8004 Franklin Farms Dr., Richmond, VA 23228, telephone (804) 662-7021, FAX (804) 662-7122, toll-free (800) 552-5019, (800) 464-9950/TTY ☎, e-mail princesw@drs.state.va.us.

BOARD OF NURSING

July 16, 2001 - 8:30 a.m. -- Open Meeting
July 18, 2001 - 8:30 a.m. -- Open Meeting
July 19, 2001 - 8:30 a.m. -- Open Meeting
† **August 21, 2001 - 8:30 a.m.** -- Open Meeting
September 24, 2001 - 8:30 a.m. -- Open Meeting
September 26, 2001 - 8:30 a.m. -- Open Meeting
September 27, 2001 - 8:30 a.m. -- Open Meeting
† **October 9, 2001 - 8:30 a.m.** -- Open Meeting
† **October 15, 2001 - 8:30 a.m.** -- Open Meeting
† **October 16, 2001 - 8:30 a.m.** -- Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 2, Richmond, Virginia.♿

A panel of the board will conduct formal hearings with licensees and certificate holders. Public comment will not be received.

Contact: Nancy K. Durrett, R.N., Executive Director, Board of Nursing, 6606 W. Broad Street, 4th Floor, Richmond, VA 23230, telephone (804) 662-9909, FAX (804) 662-9512, (804) 662-7197/TTY ☎, e-mail nursebd@dhp.state.va.us.

July 17, 2001 - 9 a.m. -- Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 2, Richmond, Virginia.♿

A general business meeting to include discussion of regulatory and disciplinary matters. Public comment will be received at 11 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) 662-9512, (804) 662-7197/TTY ☎, e-mail ndurrett@dhp.state.va.us.

Special Conference Committee

August 2, 2001 - 8:30 a.m. -- Open Meeting
August 7, 2001 - 8:30 a.m. -- Open Meeting
August 13, 2001 - 8:30 a.m. -- Open Meeting
August 16, 2001 - 8:30 a.m. -- Open Meeting
August 28, 2001 - 8:30 a.m. -- Open Meeting
October 2, 2001 - 8:30 a.m. -- Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Rooms 3 and 4, Richmond, Virginia.♿

A Special Conference Committee, comprised of two or three members of the Virginia Board of Nursing, will conduct informal conferences with licensees or certificate holders. Public comment will not be received.

Contact: Nancy K. Durrett, R.N., Executive Director, Board of Nursing, 6606 W. Broad Street, 4th Floor, Richmond, VA 23230, telephone (804) 662-9909, FAX (804) 662-9512, (804) 662-7197/TTY ☎, e-mail nursebd@dhp.state.va.us.

BOARD OF NURSING HOME ADMINISTRATORS

July 23, 2001 - 9 a.m. -- Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 1, Richmond, Virginia.♿

A general business meeting. Public comment will be received at the beginning of the meeting.

Contact: Sandra Reen, Executive Director, Board of Nursing Home Administrators, 6606 W. Broad St., 4th Floor Richmond, VA 23230-1717, telephone (804) 662-7457, FAX (804) 662-9943, (804) 662-7197/TTY ☎, e-mail sandra_reen@dhp.state.va.us.

BOARD FOR OPTICIANS

August 3, 2001 - 9 a.m. -- Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, 4th Floor, Richmond, Virginia. (Interpreter for the deaf provided upon request)

An open meeting to discuss matters requiring board action, including disciplinary cases. A public comment period will be held at the beginning of the meeting. All meetings are subject to cancellation. The time of the meeting is subject to change. Any persons desiring to attend the meeting and requiring special accommodations or interpretative services should contact the department at 804-367-8590 or TTY 804-367-9753 at least 10 days prior to the meeting so that suitable arrangements can be made for an appropriate accommodation. The department fully complies with the Americans with Disabilities Act.

Contact: Susan Luebehusen, Board Administrator, Department of Professional and Occupational Regulation, 3600 West Broad Street, 4th Floor, Richmond, VA 23230-4917, telephone (804) 367-8590, FAX (804) 367-6295, (804) 367-9753/TTY ☎, e-mail opticians@dpor.state.va.us.

BOARD OF PHARMACY

Special Conference Committee

† **July 24, 2001 - 9 a.m.** -- Open Meeting
Department of Health Professions, 6606 West Broad Street, Fifth Floor, Conference Room 4, Richmond, Virginia.

Special Conference Committee to hear informal conferences. Public comments will not be received.

Contact: Elizabeth Scott Russell, Executive Director, Board of Pharmacy, 6606 West Broad Street, 4th Floor, Richmond, VA 23230, telephone (804) 662-9911, FAX (804) 662-9313.

POLYGRAPH EXAMINERS ADVISORY BOARD

September 19, 2001 - 10 a.m. -- Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A general meeting. Persons desiring to participate in the meeting and requiring special accommodations or interpretative services should contact the department at least 10 days prior to this meeting so that suitable arrangements can be made. The department 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 23230-4917, telephone (804) 367-8514, FAX (804) 367-2475, (804) 367-9753/TTY ☎, e-mail polygraph@dpor.state.va.us.

BOARD FOR PROFESSIONAL AND OCCUPATIONAL REGULATION

August 6, 2001 - 2 p.m. -- Public Hearing
Fairfax County Government Center, 12000 Government Center Parkway, Conference Rooms 4 and 5, Fairfax, Virginia.

A public hearing to accept comments regarding the need for state regulation of foresters and the need for state regulation of arborists. Interested parties are encouraged to attend and provide testimony and/or written comments. The board will receive written comments until 5 p.m. on September 6, 2001. Comments may be mailed to Debra Vought at the Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia 23230, emailed to vought@dpor.state.va.us, or faxed to 804-367-9537. Please call 804-367-8519 if you have questions regarding the public hearing.

Contact: Judy Spiller, Administrative Staff Assistant, Board for Professional and Occupational Regulation, 3600 West Broad Street, Richmond, VA 23230, telephone (804) 367-8519, FAX (804) 367-9537, (804) 367-9753/TTY ☎, e-mail spiller@dpor.state.va.us.

BOARD OF PSYCHOLOGY

July 17, 2001 - 10 a.m. -- Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 1, Richmond, Virginia.

A general business meeting. Public comment will be received at the beginning of the meeting.

Contact: Evelyn B. Brown, Executive Director, Board of Psychology, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9913, FAX (804) 662-9943, (804) 662-7197/TTY ☎, e-mail ebrown@dhp.state.va.us.

Special Conference Committee

† **July 17, 2001 - 1 p.m.** -- Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Richmond, Virginia.

A meeting to discuss possible violations of the regulations and laws governing the practice of psychology. No public comment will be received.

Contact: Evelyn B. Brown, Executive Director, Board of Psychology, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9913, FAX (804) 662-7250, (804) 662-7197/TTY ☎, e-mail ebrown@dhp.state.va.us.

VIRGINIA RACING COMMISSION

July 18, 2001 - 9:30 a.m. -- Open Meeting
Tyler Building, 1300 East Main Street, Richmond, Virginia.

A monthly meeting, including a segment for public participation. The commission will hear a report on the Thoroughbred race meeting at Colonial Downs.

Contact: William H. Anderson, Policy Analyst, Virginia Racing Commission, 10700 Horsemen's Road, New Kent, VA 23124, telephone (804) 966-7404, FAX (804) 966-7418, e-mail Anderson@vrc.state.va.us.

REAL ESTATE APPRAISER BOARD

July 17, 2001 - 10 a.m. -- Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia.

A general business meeting.

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, e-mail reappraiser@dpor.state.va.us.

BOARD OF REHABILITATIVE SERVICES

† **August 13, 2001 - 11 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 to include a joint meeting with the Statewide Rehabilitation Council during the morning session.

Contact: Barbara G. Tyson, Administrative Staff Specialist, Department of Rehabilitative Services, 8004 Franklin Farms Dr., P.O. Box K-300, Richmond, VA 23288-0300, telephone (804) 662-7010, toll-free (800) 552-5019, (804) 662-7000/TTY ☎

VIRGINIA RESOURCES AUTHORITY

August 14, 2001 - 9 a.m. -- Open Meeting
September 11, 2001 - 9 a.m. -- Open Meeting
Virginia Resources Authority, 707 East Main Street, 2nd Floor Conference Room, Richmond, Virginia.

A regular meeting of the Board of Directors to (i) review and, if appropriate, approve the minutes from the most recent monthly meeting; (ii) review the authority's operations for the prior month; (iii) review applications for loans submitted to the authority for approval; (iv) consider loan commitments for approval and ratification under its various programs; (v) approve the issuance of any bonds; (vi) review the results of any bond sales; and (vii) consider such other matters and take such other actions as it may deem appropriate. Various committees of the Board of Directors may also meet immediately before or after the regular meeting and consider matters within their purview. The planned agenda of the meeting and any committee meetings will be available at the offices of the authority one week prior to the date of the meeting. Any person who needs any accommodation in order to participate in the meeting should contact the authority at least 10 days before the meeting so that suitable arrangements can be made.

Contact: Benjamin Hoyle, Executive Assistant, Virginia Resources Authority, 707 East Main Street, Suite 1350, Richmond, VA 23219, telephone (804) 644-3100, FAX (804) 644-3109, e-mail bhoyle@vra.state.va.us.

DEPARTMENT FOR RIGHTS OF VIRGINIANS WITH DISABILITIES

Developmental Disabilities Advisory Council

† **July 26, 2001 - 10 a.m.** -- Open Meeting
Hampton Inn, 900 West Main Street, Charlottesville, Virginia. (Interpreter for the deaf provided upon request)

A general meeting. Public comment is welcome and will be received at approximately 10 a.m.

Contact: Kim Ware, Program Operations Coordinator, Department for Rights of Virginians with Disabilities, 202 N. Ninth St., 9th Floor, Richmond, VA 23219, telephone (804) 225-2061, FAX (804) 225-3221, toll-free (800) 552-3962, (804) 225-2042/TTY ☎, e-mail wareka@drvd.state.va.us.

SEWAGE HANDLING AND DISPOSAL APPEAL REVIEW BOARD

† **August 15, 2001 - 10 a.m.** -- Open Meeting
† **September 19, 2001 - 10 a.m.** -- Open Meeting
General Assembly Building, 910 Capitol Street, Senate Room B, Richmond, Virginia.

A meeting to hear appeals of health department denials of septic tank permits.

Contact: Susan Sherertz, Secretary to the Board, Sewage Handling and Disposal Appeal Review Board, 1500 E. Main St., Room 117, Richmond, VA 23219, telephone (804) 371-4236, FAX (804) 225-4003, e-mail ssherertz@vdh.state.va.us.

VIRGINIA SMALL BUSINESS FINANCING AUTHORITY

July 24, 2001 - 10 a.m. -- Open Meeting
Department of Business Assistance, 707 E. Main Street, 3rd Floor, Board Room, Richmond, Virginia.

A meeting of the Board of Directors to review applications for loans submitted to the authority for approval and handle general business of the board. The time is subject to change depending upon the agenda of the board.

Contact: Scott E. Parsons, Executive Director, Department of Business Assistance, P.O. Box 446, Richmond, VA 23218-0446, telephone (804) 371-8254, FAX (804) 225-3384, e-mail sparsons@dba.state.va.us.

STATE BOARD OF SOCIAL SERVICES

August 3, 2001 - 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 Social Services intends to repeal regulations entitled: **22 VAC 40-790-10 et seq. Minimum Standards for Local Agency Operated Volunteer Respite Child Care Programs.** The purpose of the proposed action is to repeal this regulation, which was originally promulgated to provide standards for local departments of social services that chose to operate volunteer respite child care programs. The Department of Social Services has not received any requests to operate this type of program since the regulation became effective in 1998 and does not anticipate receiving any such requests in the future.

Statutory Authority: §§ 63.1-25 and 63.1-55 of the Code of Virginia.

Contact: Phyllis S. Parrish, Program Consultant, Department of Social Services, 730 E. Broad St., Richmond, VA 23219, telephone (804) 692-1895.

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August 31, 2001 - 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 Social Services intends to repeal regulations entitled: **22 VAC 40-560-10. Monthly Reporting in the Food Stamp Program.** The purpose of the proposed action is to repeal this regulation, which identified which households were required to file monthly reports as a condition of eligibility for the Food Stamp Program.

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

Contact: Celestine Jackson, Human Services Program Consultant, Department of Social Services, 730 E. Broad St., Richmond, VA 23219, telephone (804) 692-1716, FAX (804) 692-1704.

COUNCIL ON TECHNOLOGY SERVICES

September 24, 2001 - 9 a.m. -- Open Meeting
Virginia Military Institute, Lexington, Virginia.

A general meeting.

Contact: Jenny Wootton, Council on Technology Services, Washington Bldg., 1100 Bank St., Suite 901, Richmond, VA 23219, telephone (804) 786-0744, FAX (804) 371-7952, e-mail jwootton@egov.state.va.us.

DEPARTMENT OF TECHNOLOGY PLANNING

Virginia Geographic Information Network Advisory Board

September 6, 2001 - 1:30 p.m. -- Open Meeting
Location to be announced.

A regular quarterly meeting.

Contact: William Shinar, VGIN Coordinator, Department of Technology Planning, 110 S. 7th St., Suite 135, Richmond, VA 23219, telephone (804) 786-8175, FAX (804) 371-2795, e-mail bshinar@vgin.state.va.us.

COMMONWEALTH TRANSPORTATION BOARD

July 16, 2001 - 10 a.m. -- Public Hearing
Department of Transportation, 1221 East Broad Street, 1st Floor, Front Auditorium, Richmond, Virginia.

August 20, 2001 - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Commonwealth Transportation Board intends to **repeal** regulations entitled: **24 VAC 30-40-10 et seq. Rules and Regulations Governing Relocation Assistance** and **adopt** regulations entitled: **24 VAC 30-41-10 et seq. Rules and Regulations Governing Relocation Assistance.** The purpose of the proposed regulatory action is to ensure adequate relocation services and provide moving, replacement housing, and other expense payments so that individuals will not suffer disproportionate injuries as a result of the highway improvement program. VDOT is repealing the existing regulation and promulgating a replacement regulation, which is intended to streamline procedures to improve operational efficiency and effectiveness. The text is revised and reformatted to make the policies and procedures more understandable to both displacees eligible for these services, as well as the VDOT personnel who will implement and interpret the regulation.

Statutory Authority: §§ 25-253 and 33.1-12 of the Code of Virginia, 42 USC § 4601 et seq.

Contact: Beverly D. Fulwider, Relocation Program Manager, Department of Transportation, Right of Way and Utilities Division, 1401 E. Broad St., Richmond, VA 23219, telephone (804) 786-4366 or (804) 786-1706.

July 18, 2001 - 2 p.m. -- Open Meeting
Department of Transportation Auditorium, 1221 E. Broad St., Richmond, Virginia.

Work session of the Commonwealth Transportation Board and the Department of Transportation staff.

Contact: Cathy M. Ghidotti, Assistant Secretary to the Board, Commonwealth Transportation Board, 1401 E. Broad St., Richmond, VA 23219, telephone (804) 786-6675, FAX (804) 786-6683, e-mail ghidotti_cm@vdot.state.va.us.

July 19, 2001 - 10 a.m. -- Open Meeting
Department of Transportation Auditorium, 1221 E. Broad St., Richmond, Virginia.

Monthly meeting of the Commonwealth Transportation Board to vote on proposals presented regarding bids, permits, additions and deletions to the highway system, and any other matters requiring board approval. Public comment will be received at the outset of the meeting on items on the meeting agenda for which the opportunity for public comment has not been afforded the public in another forum. Remarks will be limited to five minutes. Large groups are asked to select one individual to speak for the

group. The board reserves the right to amend these conditions. Separate committee meetings may be held on call of the chairman. Contact VDOT Public Affairs at (804) 786-2715 for schedule.

Contact: Cathy M. Ghidotti, Assistant Secretary to the Board, Commonwealth Transportation Board, 1401 E. Broad St., Richmond, VA 23219, telephone (804) 786-6675, FAX (804) 786-6683, e-mail ghidotti_cm@vdot.state.va.us.

VIRGINIA MILITARY INSTITUTE

Board of Visitors

† **August 23, 2001 - 10 a.m.** -- Open Meeting
Virginia Military Institute, Preston Library, Turman Room, Lexington, Virginia.

A meeting of the Appeals Committee.

Contact: Colonel Michael M. Strickler, Secretary, Virginia Military Institute, Superintendent's Office, Lexington, VA 24450, telephone (540) 464-7206.

† **August 24, 2001 - 10 a.m.** -- Open Meeting
Virginia Military Institute, Preston Library, Turman Room, Lexington, Virginia.

Meetings of the following committees: Academic Affairs Committee; Audit, Finance, and Planning Committee; Cadet Affairs Committee; Legislative Affairs Committee; External Affairs Committee; and Nominating Committee.

Contact: Colonel Michael M. Strickler, Secretary, Virginia Military Institute, Superintendent's Office, Lexington, VA 24450, telephone (540) 464-7206.

† **August 25, 2001 - 10 a.m.** -- Open Meeting
Virginia Military Institute, Preston Library, Turman Room, Lexington, Virginia.

A regular meeting to elect the president, vice presidents, and secretary of the board and to receive committee reports.

Contact: Colonel Michael M. Strickler, Secretary, Virginia Military Institute, Superintendent's Office, Lexington, VA 24450, telephone (540) 464-7206.

VIRGINIA WASTE MANAGEMENT BOARD

August 15, 2001 - 10 a.m. -- Public Hearing on Amendment 15A
August 15, 2001 - 11 a.m. -- Public Hearing on Amendment 15B
Department of Environmental Quality, 629 East Main Street, Training Room, Richmond, Virginia. (Interpreter for the deaf provided upon request)

September 6, 2001 -- 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 20-60-12 et seq. Virginia Hazardous Waste Management Regulations**. The purpose of proposed Amendment 15A is to clarify that low-level radioactive waste is not subject to the requirements of this regulation. The proposed amendments in Amendment 15B are the result of a comprehensive review of incorporation of federal regulations and, among other things, delete the text located in Part XI describing the permitting process and replace it with analogous federal text.

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

Contact: Robert G. Wickline, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4213, FAX (804) 698-4327, e-mail rgwickline@deq.state.va.us.

† **August 15, 2001 - 1 p.m.** -- Open Meeting
Department of Environmental Quality, 1st Floor Training Room, 629 East Main Street, Richmond, Virginia.

A public meeting to receive comments on the intent to amend the Regulations for the Transportation of Hazardous Materials.

Contact: Melissa Porterfield, Virginia Waste Management Board, Department of Environmental Quality, P.O. Box 10009 Richmond, VA 23240, telephone (804) 698-4238, FAX (804) 698-4237, (804) 698-4021/TTY ☎, e-mail msporterfi@deq.state.va.us.

STATE WATER CONTROL BOARD

† **July 17, 2001 - 9 a.m.** -- Open Meeting
† **August 14, 2001 - 9 a.m.** -- Open Meeting
† **September 11, 2001 - 9 a.m.** -- Open Meeting
Department of Environmental Quality, Piedmont Regional Office, 4949-A Cox Road, Glen Allen, Virginia.

A meeting of the advisory committee assisting in the development of regulations for the reuse of reclaimed wastewater.

Contact: Lily Choi, State Water Control Board, Department of Environmental Quality, P.O. Box 10009 Richmond, VA 23240, telephone (804) 698-4054, FAX (804) 698-4032, e-mail ychoi@deq.state.va.us.

† **July 31, 2001 - 2 p.m.** -- Public Hearing
Rappahannock Regional Library, Theater, 1201 Caroline Street, Fredericksburg, Virginia. (Interpreter for the deaf provided upon request)

A public hearing to receive comments on the proposed reissuance of Virginia Pollutant Discharge Elimination System Permits for the FMC, Massaponax and Fredericksburg wastewater treatment facilities located in Fredericksburg at 11801 Capital Lane, 10900 H.C. Drive and 700 Beulah-Salisbury Road, respectively.

Contact: Anna T. Westernik, State Water Control Board, Department of Environmental Quality, 13901 Crown Court, Woodbridge, VA 22193, telephone (540) 583-3837, FAX (540) 583-3841, e-mail atwesteri@deq.state.va.us.

August 2, 2001 - 7 p.m. -- Open Meeting
Department of Environmental Quality, Tidewater Regional Office, 5636 Southern Boulevard, Training Room, Virginia Beach, Virginia.

August 3, 2001 - 10 a.m. -- Open Meeting
Department of Environmental Quality, Piedmont Regional Office, 4949A Cox Road, Training Room, Glen Allen, Virginia.

August 6, 2001 - 7 p.m. -- Open Meeting
Department of Environmental Quality, West Central Regional Office, 3019 Peters Creek Road, Training Room, Roanoke, Virginia.

A public meeting to receive comments on the notice of intent to adopt regulations governing the discharge of sewage from boats.

Contact: Michael B. Gregory, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4065, FAX (804) 698-4032, e-mail mbgregory@deq.state.va.us.

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† **August 16, 2001 - 2 p.m.** -- Public Hearing
Department of Environmental Quality, Piedmont Regional Office, 494-A Cox Road, Glen Allen, Virginia. (Interpreter for the deaf provided upon request)

September 14, 2001 -- Public comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Water Control Board intends to amend regulations entitled: **9 VAC 25-650-10 et seq. Closure Plan and Demonstration of Financial Capability**. The purpose of the proposed regulation is to establish requirements for privately owned sewerage treatment systems and sewerage treatment works that discharge more than 1,000 and less than 40,000 gallons per day to have a closure plan and demonstrate financial capability to implement the plan.

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

Contact: Jon van Soestbergen, State Water Control Board, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4117, FAX (804) 698-4032, e-mail jvansoest@deq.state.va.us.

VIRGINIA WORKFORCE COUNCIL

† **August 1, 2001 - 10 a.m.** -- Open Meeting
Virginia Employment Commission, 703 East Main Street, Room 304, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A meeting of the Continuous Improvement and Evaluation Committee. Agenda to be announced. Public comment is scheduled for 11 a.m. (Comments are limited to five minutes per speaker and a written copy of the remarks is requested.)

Contact: Gail Robinson, Liaison, Virginia Workforce Council, P.O. Box 1358, Richmond, VA 23218-1358, telephone (804) 225-3070, FAX (804) 225-2190, (800) 828-1120/TTY ☎, e-mail grobinson@vec.state.va.us.

† **October 3, 2001 - 10 a.m.** -- Open Meeting
Richmond, Virginia. (Interpreter for the deaf provided upon request)

The exact location, time and agenda to be announced at a later date. Public comment is usually scheduled for 11 a.m. (Comments are limited to five minutes per speaker and a written copy of the remarks is requested.)

Contact: Gail Robinson, Liaison, Virginia Employment Commission, P.O. Box 1358, Richmond, VA 23218-1358, telephone (804) 225-3070, FAX (804) 225-2190, (800) 828-1120/TTY ☎, e-mail grobinson@vec.state.va.us.

INDEPENDENT

VIRGINIA RETIREMENT SYSTEM

August 15, 2001 - 3 p.m. -- Open Meeting
VRS Headquarters, 1200 East Main Street, Richmond, Virginia.

Regular meetings of the Audit and Compliance Committee and the Benefits and Actuarial Committee.

Contact: Darla K. Glazier, Office Manager, Virginia Retirement System, P.O. Box 2500, Richmond, VA 23218, telephone (804) 649-8059, FAX (804) 786-1541, toll-free (888) 827-3847, (804) 344-3190/TTY ☎, e-mail dkestner@vrs.state.va.us.

August 16, 2001 - 8 a.m. -- Open Meeting
VRS Headquarters, 1200 East Main Street, Richmond, Virginia.

Regular meetings of the Administration Committee and the Personnel Committee.

Contact: Darla K. Glazier, Office Manager, Virginia Retirement System, P.O. Box 2500, Richmond, VA 23218, telephone (804) 649-8059, FAX (804) 786-1541, toll-free (888) 827-3847, (804) 344-3190/TTY ☎, e-mail dkestner@vrs.state.va.us.

August 16, 2001 - 9 a.m. -- Open Meeting
Virginia Retirement System Headquarters, 1200 East Main Street, Richmond, Virginia.

A regular meeting of the Board of Trustees.

Contact: Darla K. Glazier, Office Manager, Virginia Retirement System, P.O. Box 2500, Richmond, VA 23218, telephone (804) 649-8059, FAX (804) 786-1541, toll-free (888) 827-3847, (804) 344-3190/TTY ☎, e-mail dglazier@vrs.state.va.us.

September 19, 2001 - 3 p.m. -- Open meeting
VRS Headquarters, 1200 East Main Street, Richmond, Virginia.

The regular meeting of the Investment Advisory Committee.

Contact: Darla K. Glazier, Office Manager, Virginia Retirement System, P.O. Box 2500, Richmond, VA 23218,

telephone (804) 649-8059, FAX (804) 786-1541, toll-free (888) 827-3847, (804) 344-3190/TTY ☎, e-mail dglazier@vrs.state.va.us.

LEGISLATIVE

VIRGINIA CODE COMMISSION

† **July 25, 2001 - 10 a.m.** -- Open Meeting
General Assembly Building, 9th and Broad Streets, 6th Floor, Speaker's Conference Room, Richmond, Virginia.♿

A meeting of the Subcommittee Studying Code Publication to discuss publication options regarding the Code of Virginia. Public comment will be received.

Contact: Jane Chaffin, Registrar of Regulations, General Assembly Bldg., 910 Capitol Street, Richmond, VA 23219, telephone (804) 786-3591 FAX (804) 692-0625, e-mail jchaffin@leg.state.va.us.

July 26, 2001 - 10 a.m. -- Open Meeting
August 30, 2001 - 10 a.m. -- Open Meeting
General Assembly Building, 9th and Broad Streets, 6th Floor, Speaker's Conference Room, Richmond, Virginia.♿

A meeting to continue with the recodification of Title 63.1 of the Code of Virginia and to conduct any other business that may come before the commission. Public comment will be received at the end of the meeting.

Contact: Jane Chaffin, Registrar of Regulations, General Assembly Bldg., 910 Capitol Street, Richmond, VA 23219, telephone (804) 786-3591 FAX (804) 692-0625, e-mail jchaffin@leg.state.va.us.

COMMISSION ON EDUCATIONAL ACCOUNTABILITY (SJR 498, 1999)

† **August 7, 2001- 1 p.m.** -- Open Meeting
General Assembly Building, 9th and Broad Streets, Senate Room A, Richmond, Virginia.♿ (Interpreter for the deaf provided upon request)

A regular meeting. Questions regarding the meeting should be directed to Kathy Harris, Division of Legislative Services, (804) 786-3591. Individuals requiring interpreter services or other accommodations should call or write Senate Committee Operations at least seven working days prior to the meeting.

Contact: Patty J. Lung, Senate Committee Operations, P.O. Box 396, Richmond, VA 23218, telephone (804) 698-7450 or (804) 698-7419/TTY ☎

JOINT SUBCOMMITTEE STUDYING VIRGINIA'S ELECTION PROCESS AND VOTING TECHNOLOGIES

† **July 31, 2001 - 10 a.m.** -- Open Meeting
Sheraton Richmond West, 6624 Broad Street, Richmond, Virginia.

A third all-day meeting of the joint subcommittee. Any questions should be directed to Mary Spain, Jack Austin, or Ginny Edwards in the Division of Legislative Services, (804) 786-3591.

Contact: Barbara L. Regen, House Committee Operations, P.O. Box 406, Richmond, VA 23218, telephone (804) 698-1540 or (804) 786-2369/TTY ☎

Task Force # 1 (Technology and Voting Equipment)

† **July 27, 2001 - 10 a.m.** -- Open Meeting
General Assembly Building, 9th and Broad Streets, 4th Floor West Conference Room, Richmond, Virginia.

A general meeting. Any questions should be directed to Mary Spain, Jack Austin, or Ginny Edwards in the Division of Legislative Services, (804) 786-3591.

Contact: Barbara L. Regen, House Committee Operations, P.O. Box 406, Richmond, VA 23218, telephone (804) 698-1540 or (804) 786-2369/TTY ☎

Task Force #2 (Voter Registration and Election Day)

† **July 26, 2001 - 1 p.m.** -- Open Meeting
† **August 28, 2001 - 10 a.m.** -- Open Meeting
General Assembly Building, 9th and Broad Streets, 4th Floor West Conference Room, Richmond, Virginia.

A third all-day meeting of the joint subcommittee Any questions should be directed to Mary Spain, Jack Austin, or Ginny Edwards, Division of Legislative Services, (804) 786-3591.

Contact: Barbara L. Regen, House Committee Operations, P.O. Box 406, Richmond, VA 23218, telephone (804) 698-1540 or (804) 786-2369/TTY ☎

JOINT COMMISSION ON PRESCRIPTION DRUG ASSISTANCE (HJR 810)

July 18, 2001 - 2 p.m. -- Open Meeting
September 12, 2001 - 2 p.m. -- Open Meeting
General Assembly Building, 9th and Broad Streets, House Room C, Richmond, Virginia.♿

October 10, 2001 - 2 p.m. -- Open Meeting
General Assembly Building, 9th and Broad Streets, House Room D, Richmond, Virginia.♿

A meeting of the joint commission to develop ways and means to provide prescription drug assistance to needy senior citizens and to coordinate state and federal programs providing such assistance. Questions about the agenda should be addressed to Gayle Vergara, Division of Legislative Services, (804) 786-3591.

Contact: Lois V. Johnson, House Committee Operations, P.O. Box 406, Richmond, VA 23218, telephone (804) 698-1540 or (804) 786-2369/TTY ☎

JOINT SUBCOMMITTEE TO STUDY CREATION OF A NORTHERN VIRGINIA REGIONAL TRANSPORTATION AUTHORITY (SJR 397, 2001)

August 1, 2001 - 9:30 a.m. -- Open Meeting
Fairfax Municipal Government Center, 12000 Government Center Parkway, Room 232, Fairfax, Virginia. (Interpreter for the deaf provided upon request)

A regular meeting. Individuals with questions about the agenda or who require interpreter services or other special accommodations should contact Senate Committee Operations.

Contact: Thomas G. Gilman, Senate Committee Operations, P.O. Box 396, Richmond, VA 23218, telephone (804) 698-7450 or (804) 698-7419/TTY ☎

JOINT SUBCOMMITTEE TO STUDY AND REVISE VIRGINIA'S STATE TAX CODE

† **August 6, 2001 - 1 p.m.** -- Open Meeting
General Assembly Building, 9th and Broad Streets, House Room C, Richmond, Virginia.

† **September 4, 2001 - 1 p.m.** -- Open Meeting
General Assembly Building, 9th and Broad Streets, Senate Room A, Richmond, Virginia.

A regular meeting. Questions regarding the meeting should be directed to Joan Putney, Mark Vucci or David Rosenberg, Division of Legislative Services, (804) 786-3591. Individuals requiring interpreter services or other accommodations should call or write Senate Committee Operations at least seven working days prior to the meeting.

Contact: Patty J. Lung, Senate Committee Operations, P.O. Box 396, Richmond, VA 23218, telephone (804) 698-7450 or (804) 698-7419/TTY ☎

JOINT SUBCOMMITTEE TO STUDY FUNDING OF UNFUNDED TRANSPORTATION PROJECTS IN HAMPTON ROADS

† **July 25, 2001 - 10 a.m.** -- Open Meeting
Hampton City Council Chambers, 22 Lincoln Street, Hampton, Virginia.

A regular meeting. Individuals with questions about the agenda or who require interpreter services or other special accommodations should contact Senate Committee Operations.

Contact: Thomas G. Gilman, Senate Committee Operations, P.O. Box 396, Richmond, VA 23218, telephone (804) 698-7450 or (804) 698-7419/TTY ☎

U.S. ROUTE 460 COMMUNICATIONS COMMITTEE

† **August 8, 2001 - 10 a.m.** -- Open Meeting
Department of Transportation, 1700 North Main Street, Suffolk, Virginia.

A regular meeting. Questions about the meeting agenda should be directed to Alan Wambold, Division of Legislative Services, (804) 786-3591.

Contact: Hudaidah F. Bhimdi, House Committee Operations, P.O. Box 406, Richmond, VA 23218, telephone (804) 698-1540 or (804) 786-2369/TTY ☎

CHRONOLOGICAL LIST

OPEN MEETINGS

July 16
† Higher Education for Virginia, State Council of
† Housing and Community Development, Board of
Local Government, Commission on
Nursing, Board of

July 17
Agriculture and Consumer Services, Department of
- Virginia State Apple Board

Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects, Board for
Blind and Vision Impaired, Department for the
Funeral Directors and Embalmers, Board of
Higher Education for Virginia, State Council of
Housing Development Authority, Virginia
Nursing, Board of
† Psychology, Board of
- Special Conference Committee

Real Estate Appraiser Board
† Water Control Board, State

July 18
Cemetery Board
- Regulatory Review Committee

Community Colleges, State Board for
- Academic and Student Affairs Committee
- Audit Committee
- Budget and Finance Committee
- Facilities Committee
- Personnel Committee

Contractors, Board for
- Tradesman Committee

Health, State Board of
- Biosolids Fee Regulation Ad Hoc Committee

Nursing, Board of
Prescription Drug Assistance, Joint Commission on
Racing Commission, Virginia
Transportation Board, Commonwealth

July 19
† Agriculture and Consumer Services, Department of
- Pesticide Control Board
- Winegrowers Advisory Board

Community Colleges, State Board for
Game and Inland Fisheries, Board of
Nursing, Board of
Transportation Board, Commonwealth

July 20
† Environmental Quality, Department of

July 23
† Agriculture and Consumer Services, Board of
Nursing Home Administrators, Board of

July 24
Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects, Board for
Compensation Board
Marine Resources Commission
† Pharmacy, Board of
- Special Conference Committee
Small Business Financing Authority, Virginia
July 25
At-Risk Youth and Families, Comprehensive Services for
- State Executive Council
† Code Commission, Virginia
- Subcommittee Studying Code Publication
† Unfunded Transportation Projects in Hampton Roads, Joint Subcommittee to Study Funding of
July 26
Agriculture and Consumer Services, Department of
- Virginia Small Grains Board
Code Commission, Virginia
Education, Board of
† Election Process and Voting Technologies, Joint Subcommittee Studying
† Medicine, Board of
- Informal Conference Committee
† Rights of Virginians with Disabilities
- Developmental Disabilities Advisory Council
July 27
Aging, Commonwealth Council on
- Legislative Committee
† Election Process and Voting Technologies, Joint Subcommittee Studying
July 31
Agriculture and Consumer Services, Department of
- Virginia Cattle Industry Board
† Election Process and Voting Technologies, Joint Subcommittee Studying
Funeral Directors and Embalmers, Board of
- Special Conference Committee
August 1
Branch Pilots, Board for
Northern Virginia Regional Transportation Authority, Joint Subcommittee to Study Creation of a
† Workforce Council, Virginia
- Continuous Improvement and Evaluation Committee
August 2
Branch Pilots, Board for
† Neurotrauma Initiative Advisory Board, Commonwealth
Nursing, Board of
- Special Conference Committee
Water Control Board, State
August 3
Aging, Commonwealth Council on
- Public Relations Committee
Art and Architectural Review Board
† Health, Department of
- State Emergency Medical Services Advisory Board
Opticians, Board for
Water Control Board, State
August 6
† State Tax Code, Joint Subcommittee to Study and Revise Virginia's
Water Control Board, State
August 7
† Educational Accountability, Commission on
Nursing, Board of
- Special Conference Committee
August 8
Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects, Board for
- Architect Section
† Manufactured Housing Board, Virginia
† U.S. Route 460 Communications Committee
August 9
† Medicine, Board of
- Informal Conference Committee
August 13
Nursing, Board of
- Special Conference Committee
† Rehabilitative Services, Board of
August 14
Land Evaluation Advisory Council, State
Resources, Authority, Virginia
† Water Control Board, State
August 15
Agriculture and Consumer Services, Department of
- Virginia Soybean Board
Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects, Board for
- Professional Engineer Section
Asbestos and Lead, Virginia Board for
Milk Commission, State
Retirement System, Virginia
† Sewage Handling and Disposal Appeal Review Board
† Waste Management Board, Virginia
August 16
† Medical Assistance Services, Department of
- Medicaid Drug Utilization Review Board
Nursing, Board of
- Special Conference Committee
Retirement System, Virginia
August 17
Health Professions, Department of
- Health Practitioners' Intervention Program Committee
August 21
† Nursing, Board of
August 22
† Agriculture and Consumer Services, Department of
- Virginia Corn Board
Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects, Board for
- Land Surveyor Section
August 23
† Agriculture and Consumer Services, Department of
- Virginia Corn Board
† Virginia Military Institute
- Appeals Committee
August 24
† Virginia Military Institute
August 25
† Virginia Military Institute

August 28
† Election Process and Voting Technologies, Joint Subcommittee Studying
Marine Resources Commission
Nursing, Board of
- Special Conference Committee

August 29
Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects, Board for
- Landscape Architect Section
At-Risk Youth and Families, Comprehensive Services for
- State Executive Council

August 30
Code Commission, Virginia
† Medicine, Board of
- Informal Conference Committee

September 4
† State Tax Code, Joint Subcommittee to Study and Revise Virginia's

September 5
Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects, Board for
- Certified Interior Designer Section

September 6
Technology Planning, Department of
- Virginia Geographic Information Network Advisory Board

September 7
Art and Architectural Review Board

September 10
† Medical Assistance Services, Department of
- Pharmacy Liaison Committee

September 11
Resources, Authority, Virginia
† Water Control Board, State

September 12
Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects, Board for
Prescription Drug Assistance, Joint Commission on

September 19
Polygraph Examiners Advisory Board
Retirement System, Virginia
† Sewage Handling and Disposal Appeal Review Board

September 20
Education, Board of
- Accountability Advisory Committee
Land Evaluation Advisory Council, State

September 24
Nursing, Board of
Technology Services, Council on

September 25
Marine Resources Commission

September 26
At-Risk Youth and Families, Comprehensive Services for
- State Executive Council
Nursing, Board of

September 27
Education, Board of
Nursing, Board of

October 2
Nursing, Board of
- Special Conference Committee

October 3
† Workforce Council, Virginia

October 5
† Art and Architectural Review Board

October 9
† Nursing, Board of

October 10
Prescription Drug Assistance, Joint Commission on

October 15
† Nursing, Board of

October 16
† Nursing, Board of

PUBLIC HEARINGS

July 16
Local Government, Commission on
Transportation Board, Commonwealth

July 18
Contractors, Board for

July 26
† Air Pollution Control Board, State

July 31
† Water Control Board, State

August 3
† Medicine, Board of

August 6
† Game and Inland Fisheries, Board of
Professional and Occupational Regulation, Board for

August 13
Health, State Board of

August 15
Health, State Board of
Milk Commission, State
Waste Management Board, Virginia

August 16
Air Pollution Control Board, State
Health, State Board of
† Water Control Board, State

August 17
State Mental Health, Mental Retardation and Substance Abuse Services Board

August 20
Health, State Board of

August 22
† Air Pollution Control Board, State

August 23
† Game and Inland Fisheries, Board of
Health, State Board of

August 27
† Health, State Board of

August 29
† Health, State Board of

September 5
† Health, State Board of