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CUMULATIVE TABLE OF VIRGINIA ADMINISTRATIVE CODE SECTIONS ADOPTED, AMENDED, OR REPEALED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printed below lists regulation sections, by Virginia Administrative Code (VAC) title, that have been amended, added or repealed in the *Virginia Register* since the regulations were originally published or last supplemented in VAC (the Spring 2002 VAC Supplement includes final regulations published through *Virginia Register* Volume 18, Issue 11, dated February 11, 2002). 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 4. Conservation and Natural Resources			
4 VAC 5-35-10 through 4 VAC 5-35-50	Repealed	18:14 VA.R. 1800	4/25/02
4 VAC 5-36-10 through 4 VAC 5-36-210	Added	18:14 VA.R. 1800-1827	4/25/02
4 VAC 20-270-30	Amended	18:14 VA.R. 1827	3/5/02
4 VAC 20-270-40	Amended	18:14 VA.R. 1828	3/5/02
4 VAC 20-270-55	Amended	18:14 VA.R. 1828	3/5/02
4 VAC 20-270-56	Added	18:14 VA.R. 1828	3/5/02
4 VAC 20-430-50	Amended	18:18 VA.R. 2287	5/1/02
4 VAC 20-430-60	Amended	18:18 VA.R. 2287	5/1/02
4 VAC 20-560-20	Erratum	18:14 VA.R. 1911	--
4 VAC 20-560-20 emer	Amended	18:14 VA.R. 1904	3/4/02-3/31/02
4 VAC 20-560-20	Amended	18:16 VA.R. 2054	4/1/02
4 VAC 20-560-50 emer	Amended	18:14 VA.R. 1905	3/4/02-3/31/02
4 VAC 20-560-50	Amended	18:16 VA.R. 2055	4/1/02
4 VAC 20-620-20	Amended	18:14 VA.R. 1828	3/5/02
4 VAC 20-620-40	Amended	18:12 VA.R. 1646	1/31/02
4 VAC 20-620-50	Amended	18:14 VA.R. 1828	3/5/02
4 VAC 20-620-60	Amended	18:14 VA.R. 1829	3/5/02
4 VAC 20-620-70	Amended	18:14 VA.R. 1829	3/5/02
4 VAC 20-720-47 emer	Added	18:12 VA.R. 1697	2/1/02-2/28/02
4 VAC 20-950-30	Amended	18:14 VA.R. 1829	3/4/02
4 VAC 20-950-40	Amended	18:14 VA.R. 1829	3/4/02
4 VAC 20-950-45	Amended	18:12 VA.R. 1647	1/31/02
4 VAC 20-950-45	Amended	18:14 VA.R. 1830	3/4/02
4 VAC 20-950-45	Amended	18:16 VA.R. 2055	4/1/02
4 VAC 50-20-30	Amended	18:14 VA.R. 1831	7/1/02
4 VAC 50-20-50	Amended	18:14 VA.R. 1832	7/1/02
4 VAC 50-20-50	Erratum	18:17 VA.R. 2183	--
4 VAC 50-20-70	Amended	18:14 VA.R. 1832	7/1/02
4 VAC 50-20-120	Amended	18:14 VA.R. 1834	7/1/02
4 VAC 50-20-220	Amended	18:14 VA.R. 1834	7/1/02
4 VAC 50-20-320	Amended	18:14 VA.R. 1835	7/1/02
Title 6. Criminal Justice and Corrections			
6 VAC 20-171-10	Amended	18:15 VA.R. 1955	5/10/02
6 VAC 20-171-50	Amended	18:15 VA.R. 1957	5/10/02
6 VAC 20-171-120	Amended	18:15 VA.R. 1958	5/10/02
6 VAC 20-171-200	Amended	18:15 VA.R. 1958	5/10/02
6 VAC 20-171-220	Amended	18:15 VA.R. 1959	5/10/02
6 VAC 20-171-230	Amended	18:15 VA.R. 1960	5/10/02
6 VAC 20-171-240	Amended	18:15 VA.R. 1961	5/10/02
6 VAC 20-171-250	Amended	18:15 VA.R. 1961	5/10/02
6 VAC 20-171-260	Amended	18:15 VA.R. 1962	5/10/02
6 VAC 20-171-280	Amended	18:15 VA.R. 1963	5/10/02
6 VAC 20-171-310	Amended	18:15 VA.R. 1964	5/10/02
6 VAC 20-171-320	Amended	18:15 VA.R. 1964	5/10/02

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6 VAC 20-171-330	Amended	18:15 VA.R. 1965	5/10/02
6 VAC 20-171-340	Amended	18:15 VA.R. 1965	5/10/02
6 VAC 20-171-350	Amended	18:15 VA.R. 1966	5/10/02
6 VAC 20-171-445	Amended	18:15 VA.R. 1968	5/10/02
6 VAC 20-171-450	Amended	18:15 VA.R. 1968	5/10/02
6 VAC 20-171-480	Amended	18:15 VA.R. 1968	5/10/02
6 VAC 20-171-520	Amended	18:15 VA.R. 1969	5/10/02
6 VAC 20-171-530	Amended	18:15 VA.R. 1969	5/10/02
6 VAC 20-171-540	Amended	18:15 VA.R. 1969	5/10/02
Title 8. Education			
8 VAC 20-21-10	Amended	18:12 VA.R. 1648	3/28/02
8 VAC 20-21-40	Amended	18:12 VA.R. 1649	3/28/02
8 VAC 20-21-50	Amended	18:12 VA.R. 1650	3/28/02
8 VAC 20-21-90	Amended	18:12 VA.R. 1651	3/28/02
8 VAC 20-21-100	Amended	18:12 VA.R. 1651	3/28/02
8 VAC 20-21-120	Amended	18:12 VA.R. 1652	3/28/02
8 VAC 20-21-170	Amended	18:12 VA.R. 1653	3/28/02
8 VAC 20-21-590	Amended	18:12 VA.R. 1653	3/28/02
8 VAC 20-21-660	Amended	18:12 VA.R. 1655	3/28/02
8 VAC 20-21-680	Amended	18:12 VA.R. 1656	3/28/02
8 VAC 20-80-30	Amended	18:12 VA.R. 1657	3/27/02
8 VAC 20-80-40	Amended	18:12 VA.R. 1660	3/27/02
8 VAC 20-80-54	Amended	18:12 VA.R. 1661	3/27/02
8 VAC 20-80-56	Amended	18:12 VA.R. 1664	3/27/02
8 VAC 20-80-60	Amended	18:12 VA.R. 1666	3/27/02
8 VAC 20-80-66	Amended	18:12 VA.R. 1668	3/27/02
8 VAC 20-80-70	Amended	18:12 VA.R. 1671	3/27/02
8 VAC 20-80-76	Amended	18:12 VA.R. 1676	3/27/02
8 VAC 20-630-10 through 8 VAC 20-630-70	Added	18:12 VA.R. 1683-1684	3/28/02
Title 9. Environment			
9 VAC 5-40-160 through 9 VAC 5-40-230	Repealed	18:14 VA.R. 1836-1840	5/1/02
9 VAC 5-50-160 through 9 VAC 5-50-230	Repealed	18:14 VA.R. 1840-1844	5/1/02
9 VAC 5-60-200 through 9 VAC 5-60-270	Added	18:14 VA.R. 1836-1840	5/1/02
9 VAC 5-60-200	Erratum	18:17 VA.R. 2183	--
9 VAC 5-60-300 through 9 VAC 5-60-370	Added	18:14 VA.R. 1840-1844	5/1/02
9 VAC 5-60-300	Erratum	18:17 VA.R. 2183	--
9 VAC 5-80-2000 through 9 VAC 5-80-2090	Amended	18:14 VA.R. 1845-1852	5/1/02
9 VAC 5-80-2100	Repealed	18:14 VA.R. 1852	5/1/02
9 VAC 5-80-2110	Amended	18:14 VA.R. 1852	5/1/02
9 VAC 5-80-2120	Amended	18:14 VA.R. 1852	5/1/02
9 VAC 5-80-2150	Amended	18:14 VA.R. 1853	5/1/02
9 VAC 5-80-2160	Repealed	18:14 VA.R. 1853	5/1/02
9 VAC 5-80-2180	Amended	18:14 VA.R. 1853	5/1/02
9 VAC 5-80-2190	Amended	18:14 VA.R. 1853	5/1/02
9 VAC 5-80-2200	Added	18:14 VA.R. 1853	5/1/02
9 VAC 5-80-2210	Added	18:14 VA.R. 1853	5/1/02
9 VAC 5-80-2220	Added	18:14 VA.R. 1853	5/1/02
9 VAC 5-80-2230	Added	18:14 VA.R. 1853	5/1/02
9 VAC 5-80-2240	Added	18:14 VA.R. 1853	5/1/02
9 VAC 10-20-40	Erratum	18:13 VA.R. 1763	--
9 VAC 10-20-130	Erratum	18:13 VA.R. 1764	--
9 VAC 10-20-181	Erratum	18:13 VA.R. 1764	--
9 VAC 10-20-191	Erratum	18:13 VA.R. 1764	--
9 VAC 20-60	Erratum	18:12 VA.R. 1714	--
9 VAC 20-120-10	Amended	18:18 VA.R. 2287	6/19/02
9 VAC 20-120-20	Repealed	18:18 VA.R. 2287	6/19/02

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9 VAC 20-120-40 through 9 VAC 20-120-100	Amended	18:18 VA.R. 2287	6/19/02
9 VAC 20-120-120	Amended	18:18 VA.R. 2287	6/19/02
9 VAC 20-120-130	Amended	18:18 VA.R. 2287	6/19/02
9 VAC 20-120-150 through 9 VAC 20-120-180	Amended	18:18 VA.R. 2287	6/19/02
9 VAC 20-120-200 through 9 VAC 20-120-310	Amended	18:18 VA.R. 2287	6/19/02
9 VAC 20-120-330	Amended	18:18 VA.R. 2287	6/19/02
9 VAC 20-120-340	Amended	18:18 VA.R. 2287	6/19/02
9 VAC 20-120-360	Amended	18:18 VA.R. 2287	6/19/02
9 VAC 20-120-370	Amended	18:18 VA.R. 2287	6/19/02
9 VAC 20-120-380	Amended	18:18 VA.R. 2287	6/19/02
9 VAC 20-120-390	Amended	18:18 VA.R. 2287	6/19/02
9 VAC 20-120-410 through 9 VAC 20-120-480	Amended	18:18 VA.R. 2287	6/19/02
9 VAC 20-120-500	Amended	18:18 VA.R. 2287	6/19/02
9 VAC 20-120-530	Amended	18:18 VA.R. 2287	6/19/02
9 VAC 20-120-540	Amended	18:18 VA.R. 2287	6/19/02
9 VAC 20-120-560	Amended	18:18 VA.R. 2287	6/19/02
9 VAC 20-120-590	Amended	18:18 VA.R. 2287	6/19/02
9 VAC 20-120-640	Amended	18:18 VA.R. 2287	6/19/02
9 VAC 20-120-680 through 9 VAC 20-120-760	Amended	18:18 VA.R. 2287	6/19/02
9 VAC 20-120-770 through 9 VAC 20-120-800	Repealed	18:18 VA.R. 2287	6/19/02
9 VAC 20-120-810	Amended	18:18 VA.R. 2287	6/19/02
9 VAC 20-120-835	Added	18:18 VA.R. 2287	6/19/02
9 VAC 20-120-840	Amended	18:18 VA.R. 2287	6/19/02
9 VAC 20-120-880	Amended	18:18 VA.R. 2287	6/19/02
Appendix 10.1	Repealed	18:18 VA.R. 2287	6/19/02
Appendix 10.4	Repealed	18:18 VA.R. 2287	6/19/02
9 VAC 20-160-10 through 9 VAC 20-160-40	Amended	18:18 VA.R. 2288-2290	7/1/02
9 VAC 20-160-50	Repealed	18:18 VA.R. 2290	7/1/02
9 VAC 20-160-60 through 9 VAC 20-160-120	Amended	18:18 VA.R. 2290-2292	7/1/02
9 VAC 20-160-130	Repealed	18:18 VA.R. 2292	7/1/02
9 VAC 25-194-10	Amended	18:19 VA.R. 2452	10/15/02
9 VAC 25-194-40 through 9 VAC 25-194-70	Amended	18:19 VA.R. 2452	10/15/02
9 VAC 25-194-80	Repealed	18:19 VA.R. 2452	10/15/02
9 VAC 25-260-50	Amended	17:16 VA.R. 2381	6/5/02*
9 VAC 25-260-55	Added	17:16 VA.R. 2381	6/5/02*
Title 10. Gaming			
10 VAC 5-160-50	Added	18:19 VA.R. 2453	5/15/02
Title 11. Gaming			
11 VAC 10-180-10	Amended	18:19 VA.R. 2453	5/10/02
11 VAC 10-180-20	Amended	18:19 VA.R. 2454	5/10/02
11 VAC 10-180-40 through 11 VAC 10-180-90	Amended	18:19 VA.R. 2455-2462	5/10/02
Title 12. Health			
12 VAC 5-65	Repealed	18:12 VA.R. 1685	3/27/02
12 VAC 5-66-10 through 12 VAC 5-66-80	Added	18:12 VA.R. 1685-1688	3/27/02
12 VAC 5-66-10 through 12 VAC 5-66-80	Erratum	18:13 VA.R. 1764	--
12 VAC 5-120-10 through 12 VAC 5-120-90	Added	18:16 VA.R. 2057-2058	5/22/02
12 VAC 5-475-10 through 12 VAC 5-475-90	Added	18:12 VA.R. 1691	3/27/02
12 VAC 5-520-10	Amended	18:15 VA.R. 1969	5/8/02
12 VAC 5-520-20	Amended	18:15 VA.R. 1969	5/8/02
12 VAC 5-520-30	Amended	18:15 VA.R. 1969	5/8/02
12 VAC 5-520-30	Erratum	18:18 VA.R. 2369	--
12 VAC 5-520-40 through 12 VAC 5-520-70	Repealed	18:15 VA.R. 1969	5/8/02
12 VAC 5-520-80	Amended	18:15 VA.R. 1969	5/8/02

* Notice of effective date published in 18:17 VA.R. 2174

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SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
12 VAC 5-520-90 through 12 VAC 5-520-120	Repealed	18:15 VA.R. 1969	5/8/02
12 VAC 5-520-130 through 12 VAC 5-520-210	Added	18:15 VA.R. 1969	5/8/02
12 VAC 5-590-10	Amended	18:19 VA.R. 2462	7/3/02
12 VAC 5-590-370	Amended	18:19 VA.R. 2468	7/3/02
12 VAC 5-590-410	Amended	18:19 VA.R. 2474	7/3/02
12 VAC 5-590-420	Amended	18:19 VA.R. 2477	7/3/02
12 VAC 5-590-440	Amended	18:19 VA.R. 2490	7/3/02
12 VAC 5-590-500	Amended	18:19 VA.R. 2496	7/3/02
12 VAC 5-590-530	Amended	18:19 VA.R. 2496	7/3/02
12 VAC 5-590-540	Amended	18:19 VA.R. 2502	7/3/02
12 VAC 5-590-550	Amended	18:19 VA.R. 2504	7/3/02
12 VAC 5-590 Appendix B	Amended	18:19 VA.R. 2505	7/3/02
12 VAC 5-590 Appendix F	Amended	18:19 VA.R. 2506	7/3/02
12 VAC 5-615-10 through 12 VAC 5-615-470	Added	18:18 VA.R. 2293-2300	7/1/02
12 VAC 30-40-220	Amended	18:18 VA.R. 2304	7/1/02
12 VAC 30-40-280	Amended	18:18 VA.R. 2307	7/1/02
12 VAC 30-40-290	Amended	18:18 VA.R. 2307	7/1/02
12 VAC 30-40-345	Amended	18:18 VA.R. 2308	7/1/02
12 VAC 30-50-190	Amended	18:18 VA.R. 2309	7/1/02
12 VAC 30-50-210	Amended	18:18 VA.R. 2310	7/1/02
12 VAC 30-60-300	Amended	18:18 VA.R. 2312	6/20/02
12 VAC 30-60-303	Added	18:18 VA.R. 2313	6/20/02
12 VAC 30-60-307	Added	18:18 VA.R. 2315	6/20/02
12 VAC 30-60-312	Added	18:18 VA.R. 2315	6/20/02
12 VAC 30-60-316	Added	18:18 VA.R. 2316	6/20/02
12 VAC 30-60-318	Added	18:18 VA.R. 2316	6/20/02
12 VAC 30-90-10	Amended	18:18 VA.R. 2319	7/1/02
12 VAC 30-90-20	Amended	18:18 VA.R. 2320	7/1/02
12 VAC 30-90-38	Amended	18:18 VA.R. 2321	7/1/02
12 VAC 30-90-40	Amended	18:18 VA.R. 2321	7/1/02
12 VAC 30-90-41	Amended	18:18 VA.R. 2321	7/1/02
12 VAC 30-90-60	Amended	18:18 VA.R. 2324	7/1/02
12 VAC 30-90-271	Amended	18:18 VA.R. 2324	7/1/02
12 VAC 30-90-272	Amended	18:18 VA.R. 2325	7/1/02
12 VAC 30-90-280	Amended	18:18 VA.R. 2325	7/1/02
12 VAC 30-90-300	Repealed	18:18 VA.R. 2327	7/1/02
12 VAC 30-90-301	Repealed	18:18 VA.R. 2327	7/1/02
12 VAC 30-90-302	Repealed	18:18 VA.R. 2327	7/1/02
12 VAC 30-90-303	Repealed	18:18 VA.R. 2327	7/1/02
12 VAC 30-90-304	Repealed	18:18 VA.R. 2327	7/1/02
12 VAC 30-90-305	Added	18:18 VA.R. 2327	7/1/02
12 VAC 30-90-306	Added	18:18 VA.R. 2327	7/1/02
12 VAC 30-90-307	Added	18:18 VA.R. 2328	7/1/02
12 VAC 30-120-10 emer	Amended	18:12 VA.R. 1698	2/1/02-1/31/03
12 VAC 30-120-40 emer	Amended	18:12 VA.R. 1699	2/1/02-1/31/03
12 VAC 30-120-50 emer	Amended	18:12 VA.R. 1701	2/1/02-1/31/03
12 VAC 30-120-55 emer	Added	18:12 VA.R. 1702	2/1/02-1/31/03
12 VAC 30-120-60 emer	Amended	18:12 VA.R. 1704	2/1/02-1/31/03
12 VAC 30-141-90	Erratum	18:18 VA.R. 2369	--
12 VAC 30-150-10 through 12 VAC 30-150-100	Added	18:17 VA.R. 2174	6/6/02
12 VAC 30-150	Erratum	18:18 VA.R. 2370	--
12 VAC 35-20	Repealed	18:12 VA.R. 1691	3/27/02
12 VAC 35-102	Repealed	18:18 VA.R. 2330	9/19/02
12 VAC 35-105-10 through 12 VAC 35-105-1410	Added	18:18 VA.R. 2331-2365	9/19/02
12 VAC 35-140	Repealed	18:12 VA.R. 1691	3/27/02
12 VAC 35-150	Repealed	18:12 VA.R. 1691	3/27/02

Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
12 VAC 35-160	Repealed	18:12 VA.R. 1691	3/27/02
12 VAC 35-170	Repealed	18:18 VA.R. 2330	9/19/02
12 VAC 35-200-10	Amended	18:16 VA.R. 2059	5/22/02
12 VAC 35-200-20	Amended	18:16 VA.R. 2060	5/22/02
12 VAC 35-200-30	Amended	18:16 VA.R. 2061	5/22/02
Title 14. Insurance			
14 VAC 5-80-160 through 14 VAC 5-80-190	Repealed	18:14 VA.R. 1896	3/31/02
14 VAC 5-390-20	Amended	18:12 VA.R. 1692	2/1/02
14 VAC 5-390-30	Amended	18:12 VA.R. 1692	2/1/02
14 VAC 5-390-40	Amended	18:12 VA.R. 1692	2/1/02
Title 18. Professional and Occupational Licensing			
18 VAC 45-10-10	Amended	18:19 VA.R. 2508	7/8/02
18 VAC 45-10-20	Amended	18:19 VA.R. 2508	7/8/02
18 VAC 45-10-30	Amended	18:19 VA.R. 2508	7/8/02
18 VAC 45-10-50	Amended	18:19 VA.R. 2508	7/8/02
18 VAC 45-10-90	Amended	18:19 VA.R. 2508	7/8/02
18 VAC 90-30-20	Amended	18:15 VA.R. 1970	5/8/02
18 VAC 90-30-100	Amended	18:15 VA.R. 1970	5/8/02
18 VAC 90-30-105	Added	18:15 VA.R. 1970	5/8/02
18 VAC 90-30-220	Amended	18:15 VA.R. 1970	5/8/02
18 VAC 90-40-20	Amended	18:15 VA.R. 1977	5/8/02
18 VAC 90-40-50	Amended	18:15 VA.R. 1977	5/8/02
18 VAC 90-40-55	Added	18:15 VA.R. 1977	5/8/02
18 VAC 90-40-60	Amended	18:15 VA.R. 1977	5/8/02
18 VAC 90-40-130	Amended	18:15 VA.R. 1977	5/8/02
18 VAC 110-20-20	Amended	18:12 VA.R. 1693	3/27/02
18 VAC 110-20-270	Amended	18:12 VA.R. 1693	3/27/02
18 VAC 110-20-280	Amended	18:12 VA.R. 1693	3/27/02
18 VAC 110-20-285	Amended	18:12 VA.R. 1694	3/27/02
18 VAC 110-20-430	Amended	18:12 VA.R. 1694	3/27/02
18 VAC 125-10-10	Amended	18:12 VA.R. 1694	3/27/02
18 VAC 125-10-20	Amended	18:12 VA.R. 1694	3/27/02
18 VAC 125-10-30	Amended	18:12 VA.R. 1695	3/27/02
18 VAC 125-10-40	Amended	18:12 VA.R. 1695	3/27/02
18 VAC 125-10-60	Amended	18:12 VA.R. 1695	3/27/02
18 VAC 125-10-70	Amended	18:12 VA.R. 1695	3/27/02
18 VAC 125-10-80	Amended	18:12 VA.R. 1695	3/27/02
18 VAC 125-10-100	Amended	18:12 VA.R. 1695	3/27/02
18 VAC 125-30 (Forms)	Amended	18:15 VA.R. 1985	--
18 VAC 125-30-10 through 18 VAC 125-30-50	Amended	18:13 VA.R. 1753-1754	4/10/02
18 VAC 125-30-60	Repealed	18:13 VA.R. 1754	4/10/02
18 VAC 125-30-80	Amended	18:13 VA.R. 1755	4/10/02
18 VAC 125-30-90	Amended	18:13 VA.R. 1755	4/10/02
Title 20. Public Utilities and Telecommunications			
20 VAC 5-423-10 through 20 VAC 5-423-90	Added	18:14 VA.R. 1899-1902	3/6/02
Title 22. Social Services			
22 VAC 15-10-10	Amended	18:14 VA.R. 1902	5/1/02
22 VAC 15-10-30	Amended	18:14 VA.R. 1902	5/1/02
22 VAC 15-10-40	Amended	18:14 VA.R. 1902	5/1/02
22 VAC 15-10-50	Amended	18:14 VA.R. 1902	5/1/02
22 VAC 15-10-60	Amended	18:14 VA.R. 1902	5/1/02
22 VAC 15-10-70	Amended	18:14 VA.R. 1902	5/1/02
22 VAC 40-41-10	Amended	18:12 VA.R. 1696	4/1/02
22 VAC 40-41-20	Amended	18:12 VA.R. 1696	4/1/02
22 VAC 40-41-40	Amended	18:12 VA.R. 1696	4/1/02
22 VAC 40-41-50	Amended	18:12 VA.R. 1696	4/1/02

Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
22 VAC 40-41-55	Added	18:12 VA.R. 1696	4/1/02
22 VAC 40-880-10	Amended	18:14 VA.R. 1903	4/24/02
22 VAC 40-880-30	Amended	18:14 VA.R. 1903	4/24/02
22 VAC 40-880-60	Amended	18:14 VA.R. 1903	4/24/02
22 VAC 40-880-80	Amended	18:14 VA.R. 1903	4/24/02
22 VAC 40-880-110	Amended	18:14 VA.R. 1903	4/24/02
22 VAC 40-880-120	Amended	18:14 VA.R. 1903	4/24/02
22 VAC 40-880-130	Amended	18:14 VA.R. 1903	4/24/02
22 VAC 40-880-170	Amended	18:14 VA.R. 1903	4/24/02
22 VAC 40-880-190	Amended	18:14 VA.R. 1903	4/24/02
22 VAC 40-880-200 through 22 VAC 40-880-300	Amended	18:14 VA.R. 1903	4/24/02
22 VAC 40-880-270	Erratum	18:17 VA.R. 2183	--
22 VAC 40-880-290	Erratum	18:17 VA.R. 2183	--
22 VAC 40-880-320	Amended	18:14 VA.R. 1903	4/24/02
22 VAC 40-880-330	Amended	18:14 VA.R. 1903	4/24/02
22 VAC 40-880-340	Amended	18:14 VA.R. 1903	4/24/02
22 VAC 40-880-360	Amended	18:14 VA.R. 1903	4/24/02
22 VAC 40-880-380	Amended	18:14 VA.R. 1903	4/24/02
22 VAC 40-880-385	Added	18:14 VA.R. 1903	4/24/02
22 VAC 40-880-410	Amended	18:14 VA.R. 1903	4/24/02
22 VAC 40-880-430	Amended	18:14 VA.R. 1903	4/24/02
22 VAC 40-880-440	Amended	18:14 VA.R. 1903	4/24/02
22 VAC 40-880-480 through 22 VAC 40-880-520	Amended	18:14 VA.R. 1903	4/24/02
22 VAC 40-880-550	Amended	18:14 VA.R. 1903	4/24/02
22 VAC 40-880-560	Amended	18:14 VA.R. 1903	4/24/02
22 VAC 40-880-650	Amended	18:14 VA.R. 1903	4/24/02
22 VAC 40-880-670	Amended	18:14 VA.R. 1903	4/24/02
22 VAC 40-880-680	Amended	18:14 VA.R. 1903	4/24/02
22 VAC 40-880-700	Amended	18:14 VA.R. 1903	4/24/02
22 VAC 40-880-720	Added	18:14 VA.R. 1903	4/24/02

NOTICES OF INTENDED REGULATORY ACTION

Symbol Key

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

TITLE 6. CRIMINAL JUSTICE AND CORRECTIONS

CRIMINAL JUSTICE SERVICES BOARD

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Criminal Justice Services Board intends to consider amending regulations entitled: **6 VAC 20-171. Regulations Relating to Private Security Services.** While all areas of the regulations will be subject to review, the substance of this review will focus on improving the licensing, registration, certification, and training requirements and procedures. It will also identify possible areas of confusion or weakness that currently may not protect the health, safety, or welfare of the citizens of the Commonwealth. The department will have specific recommendations in the area of the fee schedule and the compulsory minimum training requirements.

The agency intends to hold a public hearing on the proposed regulation after publication in the Virginia Register.

Statutory Authority: § 9.1-141 of the Code of Virginia.

Public comments may be submitted until July 17, 2002, to Lisa Hahn, Department of Criminal Justice Services, 805 East Broad Street, Richmond, VA 23219.

Contact: Judith Kirkendall, Job Task Analysis Administrator, Department of Criminal Justice Services, 805 E. Broad St., Richmond, VA 23219, telephone (804) 786-8003, FAX (804) 786-0410 or e-mail jkirkendall@dcjs.state.va.us.

VA.R. Doc. No. R02-182; Filed May 16, 2002, 8:50 a.m.

TITLE 9. ENVIRONMENT

STATE WATER CONTROL BOARD

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the State Water Control Board intends to consider amending regulations entitled: **9 VAC 25-193. General Virginia Pollutant Discharge Elimination System (VPDES) Permit for Ready-Mixed Concrete Plants.** The purpose of the proposed action is to reissue the existing general permit that expires on September 30, 2003. The general permit will establish limitations and monitoring requirements for point source discharge of storm water and process wastewater from ready-mixed concrete plants.

The agency intends to hold a public hearing on the proposed action after publication in the Virginia Register.

Statutory Authority: § 62.1-44.15 (10) of the Code of Virginia; § 402 of the federal Clean Water Act; 40 CFR Parts 122, 123 and 124.

Public comments may be submitted until July 17, 2002.

Contact: Lily Choi, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23219, telephone (804) 698-4054, FAX (804) 698-4032 or e-mail ychoi@deq.state.va.us.

VA.R. Doc. No. R02-183; Filed May 17, 2002, 1:56 p.m.

TITLE 12. HEALTH

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Department of Medical Assistant Services intends to consider amending regulations entitled: **12 VAC 30-50. Amount, Duration, and Scope of Medical and Remedial Care Services.** The purpose of the proposed action is to amend the DMAS community mental health services regulations. The potential amendments cover a range of topics: billing units, provider license qualifications, emergency response capability, provider acceptance of all individuals without regard to their ability to pay for services, providers permitted to perform evaluations and several federally mandated changes. The purpose of these revisions is to facilitate the delivery of services to Medicaid recipients.

The agency does not intend to hold a public hearing on the proposed regulation after publication in the Virginia Register.

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

Public comments may be submitted until June 20, 2002.

Contact: Catherine Hancock, MH Policy Analyst, Policy Division, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 225-4272, FAX (804) 786-1680 or e-mail chancock@dmas.state.va.us.

VA.R. Doc. No. R02-164; Filed April 29, 2002, 2:41 p.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Department of Medical Assistant Services intends to consider amending regulations entitled: **12 VAC 30-90. Methods and Standards for Establishing**

Notices of Intended Regulatory Action

Payment Rates-Long Term Care Services: Nursing Home Payment System. The purpose of the proposed action is to add a new requirement to the Nursing Home Payment System that each nursing facility submit a quarterly report of Medicaid credit balances. A credit balance would be defined as an improper or excess payment made to a provider as a result of patient billing or claims processing errors. Therefore, for each credit balance, the nursing facility would be required to submit to DMAS either the payment of the credit balance or an adjustment claim to correct any billing or claims processing errors.

The agency does not intend to hold a public hearing on the proposed regulation after publication in the Virginia Register.

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

Public comments may be submitted until June 20, 2002.

Contact: James Branham, Reimbursement Analyst, Division of Cost Settlement and Reimbursement Division, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 225-4587, FAX (804) 786-0729 or e-mail jbranham@dmas.state.va.us.

VA.R. Doc. No. R02-166; Filed April 29, 2002, 2:41 p.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Department of Medical Assistant Services intends to consider amending regulations entitled: **12 VAC 30-110. Eligibility and Appeals.** The purpose of this regulatory action is to promulgate state regulations concerning which individuals are authorized to sign Medicaid applications. In the past, the department has found itself faced with applications filed without the knowledge and approval of the applicant or filed on behalf of incompetent or incapacitated individuals by others who have no legal authority to conduct business on behalf of the applicant. To ensure that applications are only filed with the full knowledge and consent of an applicant or by someone legally acting on his behalf, the department proposes this regulation.

The agency does not intend to hold a public hearing on the proposed regulation after publication in the Virginia Register.

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

Public comments may be submitted until June 20, 2002.

Contact: Patricia A. Sykes, Manager, Division of Policy, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 786-7958, FAX (804) 786-1680 or e-mail psykes@dmas.state.va.us.

VA.R. Doc. No. R02-165; Filed April 29, 2002, 2:24 p.m.

TITLE 13. HOUSING

BOARD OF HOUSING AND COMMUNITY DEVELOPMENT

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board of Housing and Community Development intends to consider amending regulations entitled: **13 VAC 5-21. Virginia Certifications Standards.** The purpose of the proposed action is to initiate a review and reevaluation of the regulation to determine if it should be continued, amended, or terminated, and to consider amending the regulation by adopting and incorporating updated text to comport with the Virginia Administrative Code formatting and to put before the public proposed changes submitted to the board.

The agency intends to hold a public hearing on the proposed action after publication in the Virginia Register.

Statutory Authority: § 36-137 of the Code of Virginia.

Public comments may be submitted until June 21, 2002.

Contact: George W. Rickman, Jr., Regulatory Coordinator, Department of Housing and Community Development, 501 N. 2nd St., Richmond, VA 23219-1321, telephone (804) 371-7150, FAX (804) 371-7092 or e-mail grickman@dhcd.state.va.us.

VA.R. Doc. No. R02-169; Filed April 30, 2002, 11:57 a.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board of Housing and Community Development intends to consider amending regulations entitled: **13 VAC 5-31. Virginia Amusement Device Regulations.** The purpose of the proposed action is to initiate a review and reevaluation of the regulation to determine if it should be continued, amended, or terminated, and to consider amending the regulation by incorporating by reference updated standards of the American Society for Testing and Materials (ASTM) for the regulation of amusement devices. Also, proposed changes submitted to the board by the Virginia Amusement Device Technical Advisory Committee will be considered.

The agency intends to hold a public hearing on the proposed action after publication in the Virginia Register.

Statutory Authority: § 36-98.3 of the Code of Virginia.

Public comments may be submitted until June 21, 2002.

Contact: George W. Rickman, Jr., Regulatory Coordinator, Department of Housing and Community Development, 501 N. 2nd St., Richmond, VA 23219-1321, telephone (804) 371-7150, FAX (804) 371-7092 or e-mail grickman@dhcd.state.va.us.

VA.R. Doc. No. R02-171; Filed April 30, 2002, 11:56 a.m.

Notices of Intended Regulatory Action

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board of Housing and Community Development intends to consider amending regulations entitled: **13 VAC 5-51. Virginia Statewide Fire Prevention Code**. The purpose of the proposed action is to initiate a review and reevaluation of the regulation to determine if it should be continued, amended, or terminated, and to consider amending the regulation by adopting and incorporating by reference the International Code Council's (ICC) International Fire Code/2000 and to put before the public proposed changes submitted to the board.

The agency intends to hold a public hearing on the proposed action after publication in the Virginia Register.

Statutory Authority: § 27-97 of the Code of Virginia.

Public comments may be submitted until June 21, 2002.

Contact: George W. Rickman, Jr., Regulatory Coordinator, Department of Housing and Community Development, 501 N. 2nd St., Richmond, VA 23219-1321, telephone (804) 371-7150, FAX (804) 371-7092 or e-mail grickman@dhcd.state.va.us.

VA.R. Doc. No. R02-172; Filed April 30, 2002, 11:57 a.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board of Housing and Community Development intends to consider amending regulations entitled: **13 VAC 5-61. Virginia Uniform Statewide Building Code**. The purpose of the proposed action is to initiate a review and reevaluation of the regulation to determine if it should be continued, amended, or terminated, and to consider amending the regulation by adopting and incorporating by reference the International Code Council's (ICC), International Building Code/2000 and to put before the public proposed changes submitted to the board.

The agency intends to hold a public hearing on the proposed action after publication in the Virginia Register.

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

Public comments may be submitted until June 21, 2002.

Contact: George W. Rickman, Jr., Regulatory Coordinator, Department of Housing and Community Development, 501 N. 2nd St., Richmond, VA 23219-1321, telephone (804) 371-7150, FAX (804) 371-7092 or e-mail grickman@dhcd.state.va.us.

VA.R. Doc. No. R02-170; Filed April 30, 2002, 11:57 a.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board of Housing and Community Development intends to consider amending regulations entitled: **13 VAC 5-80. Standards Governing Operation of Individual and Regional Code Academies/1990**. The purpose of the proposed action is to initiate a review and reevaluation of the regulation to determine if it should be

continued, amended, or terminated, and to consider amending the regulation by adopting and incorporating updated text to comport with the Virginia Administrative Code formatting and to put before the public proposed changes submitted to the board.

The agency intends to hold a public hearing on the proposed action after publication in the Virginia Register.

Statutory Authority: §§ 36-137 and 36-139 of the Code of Virginia.

Public comments may be submitted until June 21, 2002.

Contact: George W. Rickman, Jr., Regulatory Coordinator, Department of Housing and Community Development, 501 N. 2nd St., Richmond, VA 23219-1321, telephone (804) 371-7150, FAX (804) 371-7092 or e-mail grickman@dhcd.state.va.us.

VA.R. Doc. No. R02-168; Filed April 30, 2002, 11:57 a.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board of Housing and Community Development intends to consider amending regulations entitled: **13 VAC 5-91. Virginia Industrialized Building Safety Regulations**. The purpose of the proposed action is to initiate a review and reevaluation of the regulation to determine if it should be continued, amended, or terminated, and to consider amending the regulation by adopting and incorporating by reference the International Code Council's (ICC), International Building Code/2000 and to put before the public proposed changes submitted to the board.

The agency intends to hold a public hearing on the proposed action after publication in the Virginia Register.

Statutory Authority: § 36-73 of the Code of Virginia.

Public comments may be submitted until June 21, 2002.

Contact: George W. Rickman, Jr., Regulatory Coordinator, Department of Housing and Community Development, 501 N. 2nd St., Richmond, VA 23219-1321, telephone (804) 371-7150, FAX (804) 371-7092 or e-mail grickman@dhcd.state.va.us.

VA.R. Doc. No. R02-173; Filed April 30, 2002, 11:56 a.m.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF DENTISTRY

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board of Dentistry intends to consider amending regulations entitled: **18 VAC 60-20. Regulations Governing the Practice of Dentistry and Dental Hygiene**. The purpose of the proposed action is to

Notices of Intended Regulatory Action

amend regulations pursuant to recommendations of a periodic review, including but not limited to updates to certain requirements and terminology, clarification of requirements, and an expanded access to Virginia licensure for persons who are licensed in other states and hold board certification in a specialty area of dentistry approved by the American Dental Association Commission on Dental Accreditation. The board will also consider modifying and adding requirements and qualifications for administration of various forms of analgesia, sedation and anesthesia as minimally necessary to ensure public safety. It will consider an amendment to specify that dental education must be in an accredited program of at least 24 months in duration.

The agency intends to hold a public hearing on the proposed regulation after publication in the Virginia Register.

Statutory Authority: § 54.1-2400 and Chapter 27 (§ 54.1-2700 et seq.) of Title 54.1 of the Code of Virginia.

Public comments may be submitted until June 19, 2002.

Contact: Sandra Reen, Executive Director, Board of Dentistry, 6606 W. Broad St., Richmond, VA 23230-1717, telephone (804) 662-9906, FAX (804) 662-9943 or e-mail sandra.reen@dhp.state.va.us.

VA.R. Doc. No. R02-176; Filed May 1, 2002, 10:41 a.m.

BOARD OF MEDICINE

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board of Medicine intends to consider amending regulations entitled: **18 VAC 85-20. Regulations Governing the Practice of Medicine, Osteopathy, Podiatry and Chiropractic.** The purpose of the proposed action is to eliminate unnecessary provisions of the regulations, clarify provisions that have raised questions for licensees or the public, especially the rules on advertising, and specify the use of the term "active practice."

The agency intends to hold a public hearing on the proposed action after publication in the Virginia Register.

Statutory Authority: § 54.1-2400 and Chapter 29 (§ 54.1-2900 et seq.) of Title 54.1 of the Code of Virginia.

Public comments may be submitted until June 19, 2002.

Contact: William Harp, M.D., Executive Director, Board of Medicine, 6606 W. Broad St., Richmond, VA 23230-1717, telephone (804) 662-9908, FAX (804) 662-9943 or e-mail william.harp@dhp.state.va.us.

VA.R. Doc. No. R02-177; Filed May 1, 2002, 10:41 a.m.

BOARD OF SOCIAL WORK

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board of Social Work intends to consider amending regulations entitled: **18 VAC 140-20.**

Regulations Governing the Practice of Social Work. The purpose of the proposed action is to eliminate inconsistencies in the ethical standards among behavior science boards and clarify certain language in the regulation.

The agency intends to hold a public hearing on the proposed action after publication in the Virginia Register.

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

Public comments may be submitted until July 17, 2002.

Contact: Ben Foster, Deputy Executive Director, Board of Social Work, 6606 W. Broad St., Richmond, VA 23230-1717, telephone (804) 662-9914, FAX (804) 662-9943 or e-mail ben.foster@dhp.state.va.us.

VA.R. Doc. No. R02-184; Filed May 16, 2002, 3:36 p.m.



PROPOSED REGULATIONS

For information concerning Proposed Regulations, see Information Page.

Symbol Key

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

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 § 2.2-4002 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 5-200. Payday Lending (adding 10 VAC 5-200-10 through 10 VAC 5-200-60).

Statutory Authority: §§ 6.1-458 and 12.1-13 of the Code of Virginia.

Public Hearing Date: June 26, 2002 (if requested).

Public comments may be submitted until June 20, 2002.

Agency Contact: Susan Hancock, Deputy Commissioner, Bureau of Financial Institutions, State Corporation Commission, P.O. Box 640, Richmond, VA 23218, telephone (804) 371-9702, FAX (804) 371-9416, toll free 1-800-552-7945 or e-mail shancock@scc.state.va.us.

Summary:

The proposed regulation defines various terms used in the Payday Loan Act (§ 6.1-444 et seq. of the Code of Virginia) and regulation and sets forth requirements relating to required liquid assets, acquisition of interests in licenses, surety bond retention, and provision of notice of commencement of business. It also prescribes forms for a pamphlet and special notice that must be given to borrowers, and rules relating to prepayment of loans and timely licensee responses to requests for information and records.

AT RICHMOND, MAY 28, 2002

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

CASE NO. BFI-2002-00012

Ex Parte: In re: proposed
payday lending regulations

ORDER TO TAKE NOTICE

WHEREAS, § 6.1-458 of the Payday Loan Act ("the Act"), §§ 6.1-444 et seq. of the Code of Virginia, authorizes the State Corporation Commission ("Commission") to adopt such regulations as it deems appropriate to effect the purposes of the Act; and

WHEREAS, the Bureau of Financial Institutions has proposed regulations that will define various terms used in the Act, clarify certain requirements and rules applicable to payday lending licensees and payday loans, and provide for the contents of a borrower rights and responsibilities pamphlet;

IT IS THEREFORE ORDERED THAT:

(1) The proposed payday lending regulations are appended hereto and made a part of the record herein.

(2) On or before June 20, 2002, any person desiring a hearing or to comment on the proposed regulations shall file a written request for hearing or written comments containing a reference to Case No. BFI-2002-00012, with the Clerk of the Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218.

(3) If a request for hearing is filed with the Clerk, a hearing will be held on June 26, 2002, at 10:00 a.m. in the Commission Courtroom, 1300 East Main Street, Second Floor, Richmond, Virginia.

(4) The proposed regulations shall be posted on the Commission's website at the following address:

<http://www.state.va.us/scc/caseinfo/orders.htm>

(5) An attested copy hereof, together with a copy of the proposed regulation, shall be sent to the Registrar of Regulations for publication in the Virginia Register.

AN ATTESTED COPY hereof shall be sent to the Commissioner of Financial Institutions.

CHAPTER 200. PAYDAY LENDING.

10 VAC 5-200-10. Definitions.

A. The following words and terms when used in this chapter shall have the following meanings unless the context clearly indicates otherwise:

"Act" means the Payday Loan Act (§ 6.1-444 et seq. of the Code of Virginia).

"Bureau" means the Bureau of Financial Institutions.

"Commission" means the State Corporation Commission.

"Duplicate original" for purposes of subdivision 2 of § 6.1-459 of the Code of Virginia and this chapter means an exact copy with signatures created by the same impression as the original, or an exact copy bearing an original signature.

"Good funds instrument" for purposes of clause 1(vi) of § 6.1-459 of the Code of Virginia and this chapter means a certified check, cashier's check, money order, or payment effected by use of a debit or credit card.

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"Liquid assets" for purposes of the Act and this chapter means cash on hand and in depository institutions, money market funds, commercial paper, and treasury bills.

"Small," as used in the definition of "payday loan" in § 6.1-444 of the Code of Virginia, means \$2,500 or less.

B. Other terms used in this chapter shall have the meaning set forth in § 6.1-444 of the Act.

10 VAC 5-200-20. Requirements for licensees; operating rules.

A. A licensee shall maintain unencumbered liquid assets per place of business in Virginia of at least \$25,000 at all times. The bureau may require submission of proof of maintenance of such liquid assets at any time.

B. Any person submitting an application to acquire, directly or indirectly, 25% or more of the voting shares of a corporation or 25% or more of the ownership of any other person licensed to conduct business under the Act shall pay a nonrefundable application fee of \$500.

C. Each original license shall be prominently posted in each place of business of the licensee. In order for a licensee to receive a replacement or reissued license, a licensee shall pay a fee of \$50 per place of business to the commission. Licenses will only be replaced or reissued if the licensee is in compliance with all laws and regulations applicable to the conduct of the licensee's business.

D. If a person has filed a bond with the bureau, as required by § 6.1-448 of the Code of Virginia, such bond shall be retained by the bureau notwithstanding the occurrence of any of the following events:

1. The person's license is surrendered, suspended or revoked; or
2. The person ceases engaging in business as a payday lender.

E. Upon becoming licensed, a licensee shall give written notice to the bureau of its commencement of business within 10 days thereafter.

10 VAC 5-200-30. Notice and payday lending pamphlet.

A. Before entering into a payday loan transaction, a licensee shall provide each prospective borrower with a pamphlet which explains the borrower's rights and responsibilities. This pamphlet shall use the exact language appearing in the "Payday Lending Pamphlet" set forth in 10 VAC 5-200-60. The form shall be printed or typed without alteration separate from all other papers or documents obtained by the licensee in type of size not less than that known as 10 point. The title of the pamphlet ("Payday Lending in the Commonwealth of Virginia, Borrower Rights and Responsibilities") and the headings for the individual sections of the pamphlet (e.g., "In General," "Notice from Lender," "Limitations on Security Interest," etc.) shall be in bold-face print or type.

B. Prior to disbursing loan funds to a borrower, a licensee shall provide each borrower with a printed notice which states the following: "WARNING: A payday loan is not intended to meet long-term financial needs. It is recommended that you

use a payday loan only to meet occasional or unusual short-term cash needs."

1. The notice and acknowledgement shall be printed or typed on 8-1/2 x 11 paper without alteration, be separate from all other papers or documents obtained by the licensee, and be in type not less than that known as 24 point. The notice must also contain an acknowledgement stating the following: "I acknowledge that I have received a copy of this notice and the pamphlet entitled "Payday Lending in the Commonwealth of Virginia - Borrower Rights and Responsibilities."

2. The notice must be signed and dated by each borrower. A duplicate original of the acknowledged notice shall be kept in the separate loan file maintained with respect to the loan for the period specified in § 6.1-453 of the Code of Virginia.

10 VAC 5-200-40. Borrower prepayment.

A. In order to prepay a payday loan, a borrower shall only be required to pay the principal amount advanced as well as any accrued and unpaid fees.

B. For purposes of the Act and this chapter, interest and fees will be deemed "accrued" on a straight line basis over the term of a payday loan. Accordingly, a borrower choosing to prepay his payday loan shall only be responsible for the pro-rata portion of the total interest and fees based upon the number of days which have elapsed between the loan disbursement date and the date of repayment. (For example, if a \$400 loan with fees of \$60 and a term of 10 days is prepaid after five days, the borrower shall only be required to pay in cash or good funds instrument \$430 (\$400 + \$30) to the licensee.)

10 VAC 5-200-50. Responding to requests from the Bureau of Financial Institutions.

A. When the bureau requests a written response, books, records, documentation, or other information from a licensee in connection with the bureau's investigation, enforcement, or examination of compliance with applicable laws, the licensee shall deliver a written response as well as any requested books, records, documentation, or information within the time period specified in the bureau's request. If no time period is specified, a written response as well as any requested books, records, documentation, or information shall be delivered by the licensee to the bureau not later than 30 days from the date of such request. In determining the specified time period for responding to the bureau and when considering a request for an extension of time to respond, the bureau shall take into consideration the volume and complexity of the requested written response, books, records, documentation, or information, and such other factors as the bureau determines to be relevant under the circumstances.

B. Requests made by the bureau pursuant to subsection A are deemed to be in furtherance of the bureau's investigation and examination authority provided for in § 6.1-456 of the Code of Virginia. Failure to comply with subsection A may result in fines, license suspension, or license revocation.

10 VAC 5-200-60. Payday lending pamphlet text.

The required text of the payday lending pamphlet referred to in 10 VAC 5-200-30 is as follows:

PAYDAY LENDING IN THE COMMONWEALTH OF VIRGINIA

BORROWER RIGHTS AND RESPONSIBILITIES

Please take the time to carefully review the information contained in this pamphlet. It is designed to advise you of your right and responsibilities in connection with obtaining a payday loan in Virginia under the Payday Loan Act, §§ 6.1-444 et seq. of the Code of Virginia. If you have any questions about payday lending or want additional information, you may contact the Virginia State Corporation Commission's Bureau of Financial Institutions toll-free at (800) 552-7945 or on the internet at <http://www.state.va.us/scc/division/banking>. The Bureau of Financial Institutions has available a "Consumer Guide to Payday Lending" which may be viewed at this website or obtained by calling the toll-free telephone number listed above.

In General: You are responsible for evaluating whether a payday loan is right for you. Alternatives may include less expensive short-term financing from another financial institution, family, or friends, a cash advance on a credit card, an account with overdraft protection, or a loan repayable over several months.

Notice from Lender: The lender is required to provide you with a clear and conspicuous printed notice advising you that a payday loan is not intended to meet long-term financial needs and that you should use a payday loan only to meet occasional or unusual short-term cash needs.

Limitations on Security Interest: The lender cannot require you to provide more than one check as security for any payday loan. The check cannot be post-dated. The lender cannot require you to provide any security for your payday loan other than a check payable to the lender.

\$500 Maximum/7 Day Minimum Term: The lender cannot lend you more than \$500. By law, the specified due date of your loan must be at least seven days after the date that money is advanced to you.

Fees, Charges, and Interest: The lender is permitted to charge you interest in the form of a fee not exceeding 15% of the amount of money advanced to you (i.e., \$15 per \$100 advanced). For example, if the lender advances you \$500 (the maximum amount allowed), the lender may charge you up to \$75 as a fee for obtaining the loan. No additional amounts may be directly or indirectly charged, contracted for, collected, received, or recovered.

You will receive your loan proceeds in the form of either cash or a check from the lender. The lender cannot charge you a fee for cashing their check. Similarly, a check casher affiliated with the lender cannot charge you a fee for cashing the lender's check.

Written Agreement: The lender must provide you with a written loan agreement, which must be signed by both you and an authorized representative of the lender. The loan

agreement is a binding, legal document which requires you to repay the loan. Make sure you read the entire loan agreement carefully before signing and dating it. The lender must provide you with a duplicate original of the loan agreement at the time of your loan transaction.

Cannot Purchase Other Products & Services: You are prohibited from using any of the money from your payday loan to purchase any other product or service sold at the lender's business location.

Right to Cancel: You have the right to cancel your loan at any time prior to the close of business on the next business day following the date your loan is made by paying the lender the amount advanced to you in cash, certified check, cashier's check, or money order, or by using a credit or debit card. For example, if you obtain a loan on a Friday, you have until the close of business on the following Monday to cancel your loan (assuming that neither Friday nor Monday are federal holidays).

Partial Payments and Prepayments: You have the right to make partial payments (in increments of not less than \$5.00) on your payday loan at any time without charge. You have the right to receive signed, dated receipts for each payment made along with a statement of the balance remaining on your payday loan. You also have the right to prepay your loan in full before its specified due date without penalty by paying the lender in cash, certified check, cashier's check, or money order, or by use of a credit or debit card, the amount of money advanced to you as well as any accrued and unpaid fees.

No Rollovers, Extensions, Etc.: The lender cannot refinance, renew, extend, or rollover your payday loan.

Failure to Repay: Pay back your loan! Know when your payment is due and be sure to repay your loan on time and in full. You are responsible for having sufficient funds in your checking account on the due date of your loan so that your check does not bounce if the lender deposits it in his account. If you do not repay your loan by the specified due date, the lender may begin accruing interest at a maximum rate of 6% per year.

The lender is prohibited from threatening or beginning criminal proceedings against you if a check you provide to the lender bounces.

If you cannot or do not repay the loan: (i) the lender is permitted to recover from you any fee charged to the lender (maximum of \$25) as a result of your check being returned due to your account being closed by you or containing insufficient funds, or if you stopped payment on your check; and (ii) if the lender seeks and obtains judgment against you as a result of your returned check, the lender may obtain court costs and reasonable attorney's fees (total may not exceed \$250) if such costs and fees are awarded by the court.

Legal Action Against Lender: You have the right to sue the lender if you suffer a loss as a result of the lender violating any provision of the Payday Loan Act. If you are successful in your lawsuit, you have the right to be reimbursed for reasonable attorney's fees, expert witness fees, and court costs you have paid in connection with the lawsuit. Losses suffered as the result of the lender's violation of the Payday

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Loan Act may also be pursued under the Virginia Consumer Protection Act (§§ 59-196 et seq. of the Code of Virginia).

Complaints and Contacting the Bureau of Financial Institutions: For assistance with any complaints you may have against a payday lender, please contact the Bureau of Financial Institutions toll-free at (800) 552-7945 or on the internet at <http://www.state.va.us/scc/division/banking>.

VA.R. Doc. No. R02-190; Filed May 29, 2002, 9:53 a.m.

TITLE 12. HEALTH

STATE BOARD OF HEALTH

Title of Regulation: 12 VAC 5-407. **Procedures for the Submission of Health Maintenance Organization Quality of Care Data (adding 12 VAC 5-407-10 through 12 VAC 5-407-120).**

Statutory Authority: §§ 32.1-12 and 32.1-276.5 of the Code of Virginia.

Public Hearing Date: July 30, 2002 - 10 a.m.

Public comments may be submitted until August 19, 2002.
(See Calendar of Events section for additional information)

Agency Contact: Margot Fritts, Office of Health Planning, Department of Health, 1500 E. Main Street, Suite 227, Richmond, VA 23219, telephone (804) 692-0808, FAX (804) 371-0116 or e-mail mfritts@vdh.state.va.us.

Basis: Section 32.1-12 of the Code of Virginia authorizes the board to promulgate regulations that are necessary to carry out the provisions of Title 32.1 of the Code of Virginia.

Section 32.1-276.4 of the Code of Virginia requires the State Health Commissioner to contract with a nonprofit organization to "collect, compile, and publish Health Employer Data and Information Set (HEDIS) information or reports or other quality of care or performance information sets approved by the Board pursuant to § 32.1-276.5, and submitted by health maintenance organizations or other health care plans."

Section 32.1-276.5 of the Code of Virginia requires that HMOs "shall annually submit to the Commissioner, to make available to consumers who make health benefit enrollment decisions, audited data consistent with the latest version of the Health Employer Data and Information Set (HEDIS), as required by the National Committee for Quality Assurance, or any other quality of care or performance information set as approved by the Board. The Commissioner, at his discretion, may grant a waiver of the HEDIS or other approved quality of care or performance information set upon a determination by the Commissioner that the health maintenance organization has met Board-approved exemption criteria. The Board shall promulgate regulations to implement the provisions of this section."

This section also requires that the commissioner make available to consumers the HMO data. The State Board of

Health is required to evaluate biennially the impact and effectiveness of the data collected.

Section 32.1-276.8 of the Code of Virginia grants the Board of Health the authority to prescribe a tiered-fee structure based on the number of enrollees for each health maintenance organization to cover the costs of collecting and making available the data.

Purpose: For Virginia consumers who make health insurance decisions, it is often difficult to obtain information about the quality of health maintenance organizations (HMO). The proposed regulations will require the annual submission of quality of care data to the State Health Commissioner by HMOs. The quality of care data will be published via the Internet by VHI, Inc.

Substance: The proposed regulatory action will detail the quality performance measures required of HMOs, the process for submission of data, the tiered-fee structure, and the criteria for exemption by the commissioner. The decision on the appropriate performance measures will represent a consensus of insurance brokers, HMOs, small and large employers, consumer advocates, and agency health policy staff with expertise in managed care and HEDIS.

Issues: The primary advantage to the public is that these regulations permit the implementation of the legislation requiring the publication of quality performance information about HMOs licensed in Virginia. This information is useful to consumers or businesses wishing to compare the quality performance of HMOs. The only potential disadvantage to consumers or businesses would be if the compliance with these regulations were to prove sufficiently burdensome to the HMOs to cause an increase in premiums. The advantages to the Department of Health in publishing this information is that it reinforces the department's role in monitoring the quality of health plans. The only possible disadvantage is that the fees paid by the HMOs for this initiative will likely not be applied to the department's cost, primarily staff time, in the administration of this initiative. There are no other anticipated disadvantages to the public or the Commonwealth.

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 § 2.2-4007 G of the Administrative Process Act and Executive Order Number 25 (98). Section 2.2-4007 G requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. The analysis presented below represents DPB's best estimate of these economic impacts.

Summary of the proposed regulation. The proposed regulation implements legislation passed during the 2000 General Assembly that requires all health maintenance organizations (HMO) licensed in Virginia to submit quality of care data to the State Health Commissioner. This data will be published and

made available to consumers who make health benefit enrollment decisions. HMOs will be charged a fee, not to exceed \$3,000 per year, to cover the cost of compiling, storing, and making the data available to consumers.

Estimated economic impact. The National Committee for Quality Assurance (NCQA) offers accreditation to HMOs that complete a rigorous evaluation of key measures of care and service. NCQA's Health Plan Report Card rates health plans in the five Accreditation categories and then uses a star-rating system to help consumers compare health plans. The purpose of this regulation is to make similar data on all HMO's licensed in Virginia accessible to the employers and consumers who can then use it to inform their health plan enrollment decisions.

The specific data measures to be collected by VDH are not stated in the regulation and have not yet been finalized by the board; however, the quality measures are likely to mirror many of those measures evaluated by NCQA. For HMOs currently accredited by NCQA, and already developing and reporting these data measures, the proposed regulation is likely to have little impact aside from the annual fees they will be required to pay. Sixteen of the 21 HMOs licensed in Virginia are currently accredited by NCQA. Compliance costs for HMOs not accredited by NCQA will depend on the quantity and complexity of the data measures required. If the data measures required are extremely burdensome, the proposed regulation could potentially lead to an increase in premiums charged to consumers or businesses.

In addition to providing information that can be used to inform health plan enrollment decisions, the proposed regulation may also generate competition, which could improve the overall quality of care provided by HMOs in Virginia. According to the NCQA, research has shown that health plans that publicly report on their performance tend to improve much more quickly and consistently than other plans.

Businesses and entities affected. There are currently 21 HMOs licensed in Virginia that would be affected by this proposed regulation.

Localities particularly affected. The proposed regulation will not uniquely affect any particular localities as they apply statewide.

Projected impact on employment. The proposed regulation is not expected to have any impact on employment in Virginia.

Effects on the use and value of private property. The proposed regulation is not expected to have any effects on the use and value of private property in Virginia.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: VDH concurs substantially with the DPB economic impact analysis conducted on these regulations.

Summary:

The proposed regulation implements legislation passed during the 2000 General Assembly that requires all health maintenance organizations (HMO) licensed in Virginia to submit quality of care data to the State Health Commissioner. This data will be published and made

available to consumers who make health benefit enrollment decisions. HMOs will be charged a fee, not to exceed \$3,000 per year, to cover the cost of compiling, storing, and making the data available to consumers.

CHAPTER 407.

PROCEDURES FOR THE SUBMISSION OF HEALTH MAINTENANCE ORGANIZATION QUALITY OF CARE DATA.

PART I.

DEFINITIONS AND GENERAL INFORMATION.

12 VAC 5-407-10. Definitions.

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

"Board" means State Board of Health.

"Code" means the Code of Virginia.

"Commissioner" means the State Health Commissioner.

"Consumer" means any person (i) whose occupation is other than the administration of health activities or the provision of health services, (ii) who has no fiduciary obligation to a health care institution or other health agency or to any organization, public or private, whose principal activity is an adjunct to the provision of health services, or (iii) who has no material financial interest in the rendering of health services.

"Department" means the State Department of Health.

"Health maintenance organization" or "HMO" means any person who undertakes to provide or to arrange for one or more health care plans pursuant to Chapter 43 (§ 38.2-4300 et seq.) of Title 38.2 of the Code of Virginia.

"HEDIS" means the Health Plan Employer Data and Information Set, a set of standardized performance measures sponsored, supported and maintained by the National Committee for Quality Assurance.

"NCQA" means the National Committee for Quality Assurance.

"Nonprofit organization" means a nonprofit, tax-exempt health data organization with the characteristics, expertise, and capacity to execute the powers and duties set forth for such entity in this chapter.

12 VAC 5-407-20. Applicability.

This chapter shall apply to all HMOs with an active license to operate in this Commonwealth.

PART II.

QUALITY OF CARE DATA REPORTING.

12 VAC 5-407-30. Reporting requirements for HMO data.

A. Every HMO shall make available to the commissioner those HEDIS or any other quality of care or performance information set, or a subset thereof.

B. The board may contract directly with NCQA to purchase the selected HEDIS measures on behalf of the HMOs.

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12 VAC 5-407-40. Exception to HEDIS reporting.

A. The board may approve and require quality of care data other than the HEDIS measures provided that reasonable notice is given to the HMOs in writing.

12 VAC 5-407-50. Reporting and exemption from reporting.

A. Every HMO with an active license in the Commonwealth shall be required to submit the HEDIS or any other quality of care or performance information set approved by the board unless granted a written exemption by the commissioner.

B. An HMO may, in writing, petition the commissioner for an exemption. The commissioner, at his discretion, may grant a waiver from reporting the HEDIS or any other approved quality of care or performance information set. In considering a petition for waiver, the commissioner may give due consideration to the HMO's (i) sample size; (ii) number of covered lives; (iii) length of operating experience in Virginia; (iv) accreditation status with respect to NCQA or other national accrediting organizations; or (v) any other relevant factors he deems appropriate.

C. An HMO that can demonstrate that it does not meet NCQA's minimum sample size requirements to collect statistically valid information on at least 50% of the HEDIS effectiveness of care measures or performance information sets approved by the board shall be exempt from reporting the HEDIS quality of care or performance sets during the reporting period. The HMO shall submit documentation to the commissioner each reporting period to demonstrate that it meets the criteria for obtaining an exemption from reporting.

D. Options for data submission.

1. The commissioner may purchase HEDIS data or any other quality of care or performance information set from NCQA that includes all HMOs operating in the Commonwealth that submit HEDIS data to NCQA.

2. HMOs that do not submit data directly to NCQA must submit the performance information sets approved by the board to the nonprofit organization in accordance with the timeframes established in 12 VAC 5-407-70.

3. If the budget pursuant to 12 VAC 5-407-100 E includes a cost benefit for direct submission of HEDIS data or any other quality of care or performance information set, the commissioner may thereafter require direct submission.

12 VAC 5-407-60. Audited data required.

A. Data submitted by HMOs is required to be verified by an independent auditing organization with no financial interest in or managerial association with the HMO.

B. HMOs whose performance information set is audited by an NCQA-certified HEDIS compliance auditor will have a notice to that effect published with their HEDIS data.

C. HMOs whose performance information set is not audited by NCQA-certified auditors will have a notice to that effect published with their HEDIS data.

12 VAC 5-407-70. Process for data submission.

A. Before March 1 of each year, the commissioner shall submit to each HMO in writing the process required for data submission, obtaining a waiver from reporting and the amount of the fee to be paid. HMOs providing HEDIS or any other quality of care or performance information set directly to the commissioner shall submit the data by September 15 of each year.

B. The nonprofit organization shall publish annually the quality information data before December 31.

12 VAC 5-407-80. Fees.

A. For each HMO required to provide information pursuant to this chapter, the board shall prescribe a reasonable fee to cover the cost of collecting and making available such data. The commissioner may purchase HEDIS data or other quality of care or performance information set on behalf of all the actively licensed HMOs in the Commonwealth that are participating in HEDIS and divide the cost among the HMOs. Each HMO shall pay an equal share of the cost to the board for purchase of the HEDIS data directly from NCQA. The remainder of the cost associated with making the data available shall be divided among the participating HMOs in a tiered format based on the number of enrollees per HMO.

B. Fees described in subsection A of this section shall not exceed \$3,000 per HMO per year.

C. The payment of such fees shall be on September 15 of each year. The nonprofit organization providing services pursuant to an agreement or contract as provided in § 32.1-276.4 of the Code of Virginia shall be authorized to charge and collect the fees prescribed by the board in this section when the data are provided directly to the nonprofit organization. Such fees shall not exceed the amount authorized by the board.

D. The nonprofit organization providing services pursuant to an agreement or contract as provided in § 32.1-276.4 of the Code of Virginia shall be authorized to charge and collect reasonable fees approved by the board for making available the HEDIS data or other approved quality of care data; however, the commissioner, the State Corporation Commission, and the Commissioner of Mental Health, Mental Retardation and Substance Abuse Services shall be entitled to receive relevant and appropriate data from the nonprofit organization at no charge.

E. HMOs shall be entitled to receive relevant and appropriate HMO data as defined by and from the nonprofit organization, with input from the HMO industry at no charge.

12 VAC 5-407-90. Late charge.

A. A late charge of \$25 per working day shall be paid to the board by an HMO that has not received an exemption from the commissioner as provided for in 12 VAC 5-407-50 and that has not paid the assessed fees by September 15. The late fee may not be assessed until completion of a 30-day grace period for submitting the data.

B. Late charges may be waived by the board, in its discretion, if an HMO can show that an extenuating circumstance exists.

Examples of an extenuating circumstance may include, but are not limited to, the installation of a new computerized system, a bankruptcy proceeding, or change of ownership in the HMO.

PART III.
DUTIES OF THE BOARD AND THE NONPROFIT ORGANIZATION.

12 VAC 5-407-100. Contract with the nonprofit organization.

A. The commissioner shall negotiate and contract with a nonprofit organization pursuant to § 32.1-276.4 of the Code of Virginia for compiling, storing, and making available to consumers the data submitted by HMOs pursuant to 12 VAC 5-407-30 and 12 VAC 5-407-40.

B. The nonprofit organization shall assist the board in developing a summary plan and budget to collect and make available HMO HEDIS or any other quality of care performance information set results for consumers. The nonprofit organization shall present the summary plan and budget on a biennial basis to the board for approval. The commissioner, at his discretion, shall also review the summary plan on a periodic basis to determine its effectiveness.

C. The nonprofit organization shall collect the HEDIS data in the most cost-effective manner available.

D. The nonprofit organization will prepare a biennial summary plan in identifying the measures selected for reporting. The summary plan shall include:

1. The rationale for selecting each measure to be made available to consumers;
2. The goal of reporting each measure;
3. The cost and benefit of collecting the measures and making them available to consumers; and
4. The scope of dissemination of information in paper or electronic format and the target audience.

E. The nonprofit organization shall prepare a biennial budget that includes a cost-benefit analysis of purchasing HEDIS data from NCQA or obtaining the information performance sets directly from the HMOs.

F. The nonprofit organization will present the summary plan and budget to the board for review and approval on a biennial basis.

G. The nonprofit organization shall organize, present and make available to consumers all data required by the board to be reported to the commissioner.

12 VAC 5-407-110. Biennial evaluation.

A. The board shall evaluate biennially the impact and effectiveness of collecting and making available HEDIS or any other quality of care or performance information set and the appropriateness of the fee structure. This evaluation shall be completed by October 1.

B. As part of the biennial evaluation, the board may consult with the HMOs and the nonprofit organization to determine

whether changes should be made to the HEDIS or any other quality of care or performance information set requirements.

12 VAC 5-407-120. Other duties of the board.

The board shall (i) maintain records of its activities relating to the dissemination of data reported by HMOs and (ii) collect and account for all fees, as described in this chapter, and deposit the moneys so collected into a special fund from which the expenses attributed to this chapter shall be paid.

VA.R. Doc. No. R01-70; Filed May 29, 2002, 11:34 a.m.

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Title of Regulation: **Managed Care: Medallion II.**

12 VAC 30-120. Waivered Services (amending 12 VAC 30-120-360, 12 VAC 30-120-370, 12 VAC 30-120-380, and 12 VAC 30-120-390 through 12 VAC 30-120-420; repealing 12 VAC 30-120-385).

Statutory Authority: § 32.1-325 of the Code of Virginia; Chapter 1073 of the 2000 Acts of Assembly (Item 319 J); 42 USC § 1396 b (m).

Public Hearing Date: N/A -- Public comments may be submitted until August 16, 2002.

(See Calendar of Events section for additional information)

Agency Contact: Adrienne Fegans, Manager, Division of Managed Care, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 225-4714, FAX (804) 786-1680 or e-mail afegans@dmas.state.va.us.

Basis: Section 32.1-325 of the Code of Virginia grants to the Board of Medical Assistance Services (BMAS) the authority to administer and amend the Plan for Medical Assistance. Section 32.1-324 of the Code of Virginia grants to the Director of the Department of Medical Assistance Services (DMAS) the authority to administer and amend the Plan for Medical Assistance in lieu of board action pursuant to the board's requirements.

Item 319 J of Chapter 1073 of the 2000 Acts of Assembly mandates that the process for pre-selection of a managed care program be shortened. The provision of the Primary Care Case Manager (PCCM) program was a condition of federal approval of the agency's recently approved § 1915 (b) waiver expansion. Additionally, expansion of the agency's managed care delivery system throughout the Commonwealth was set out in the agency's 2002 strategic plan. This expansion implemented two of the agency's most critical programs: Medallion II and the Family Access to Medical Insurance Security (FAMIS).

Purpose: The purpose of this action is to conform the regulations of the Medallion II waiver to federal law changes contained in the 1997 Balanced Budget Act, requirements of the Health Care Financing Administration (HCFA) (now the Centers for Medicare and Medicaid Services (CMS)), and state industry standards, and to make certain other programmatic changes necessary for the improved efficiency

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and effectiveness of this program. These changes are expected to benefit the health and welfare of Medicaid recipients in this managed care program by their accessing care more quickly and efficiently. Such improved care access is expected to result in improved health outcomes.

Substance: Based on changes enacted by the Balanced Budget Act of 1997 and new waiver requirements of CMS, the agency is required to implement new program regulations. Additionally, the agency must conform its regulations to Item 319 J of the Governor's 2000 budget. This language required the agency to modify the process by which Medicaid recipients are enrolled into managed care programs. Even though the Governor's budget was not adopted as an Appropriations Act, neither the House Appropriations Committee nor the Senate Finance Committee objected to this provision.

Major changes to the Medallion II Regulations include:

1. Repealing 12 VAC 30-120-385. This provision previously provided that mental health services to recipients in Northern Virginia would be provided outside of any managed care organization (MCO) on a fee-for-service basis. In order to fully implement managed care services within the Northern Virginia area, this section must be repealed. If the agency is unable to permanently implement managed care services in Northern Virginia, the lack of contracting MCOs would impact the delivery of quality managed care services to citizens of Northern Virginia.
2. Shortening of the pre-assignment process - 12 VAC 30-120-370. This regulatory change would allow recipients to be enrolled into managed care sooner by reducing the current waiting period of 45 days to 30 days. This reduction in the waiting period would allow a recipient to more efficiently access quality managed health care. The shortening of the pre-assignment process was mandated in Chapter 1073 of the 2000 Acts of Assembly Item 319 J.
3. Changes in recipients who may be excluded from the program - 12 VAC 30-120-370. This change excludes participants in residential treatment or treatment foster care programs from participating in managed care programs. This regulation further allows for recipients receiving managed care services in areas where there is only one contracted MCO to have a choice of enrolling with the contracted MCO or the area's primary care case management (PCCM) programs.

All eligible recipients in areas where one contracted MCO exists, however, are automatically assigned to the contracted MCO. Individuals are allowed to change from either the contracted MCO to the PCCM program or vice versa within 90 days after the effective date of enrollment. This regulatory change would bring the regulations into compliance with the waiver that CMS recently approved and allow the agency to implement the expansion of the MCO program statewide. Without this change, the legislatively mandated expansion cannot proceed.

Issues: Compliance with new provisions will allow the Commonwealth to meet specific managed care objectives such as broadening access to care and ultimately improving health outcomes for recipients. Likewise, shortening the pre-

assignment process allows recipients to enroll in managed care programs sooner, thereby increasing access to care, and again, improving health outcomes. Recipients residing in areas where there is only one contracted MCO now have a choice of enrolling with either the MCO or PCCM program. Recipients are also afforded more flexibility by being able to change programs within 90 days of their original effective date. Additional enhancements include mental health services offered through the MCO for Northern Virginia recipients, thereby paving the way for all services to be provided within the same program. These revisions also ensure compliance with recent federal changes and industry standards and allow for certain programmatic changes necessary to improve efficiency and effectiveness. Furthermore, compliance with federal changes ensures that the Commonwealth will not be in danger of loss of federal financial participation for the program. The revised definitions are consistent with current federal definitions.

There are no disadvantages to the public or the Commonwealth in these changes.

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 § 2.2-4007 G of the Administrative Process Act and Executive Order Number 25 (98). Section 2.2-4007 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. DMAS proposes to amend the regulations governing its Medallion II managed care program to 1) allow expansion of the program into regions that have only one contracted MCO, 2) shorten the pre-assignment process, and 3) remove language pertaining to the carve-out of mental health services provided in Northern Virginia. Other editorial and clarifying changes are also included. The proposed regulations will supercede emergency regulations that went into effect December 1, 2001.

Estimated economic impact.

Expansion of Medallion II. The Medallion II program, authorized by the 1995 General Assembly, requires mandatory enrollment in managed care organizations of most Medicaid clients. The main exceptions are long-term care recipients who are in institutions and those recipients enrolled in separate home and community-based care waiver programs. The emphasis of the program is to provide access for preventive and coordinated care, thereby reducing expenditures over the long term by improving health outcomes.

Initial implementation of the Medallion II program took place on January 1, 1996, in the Tidewater community and has since expanded into Central Virginia, including Richmond,

Fredericksburg, Charlottesville, and their surrounding counties. In order to fulfill the legislative mandate to implement the Medallion II program statewide, DMAS requested and received federal approval to allow expansion into areas with only one contracting managed care organization (MCO) by allowing recipients to alternatively choose to enroll in the area's Primary Care Case Management (PCCM) program. Previously, the federal waiver had required there to be at least two contracting MCOs in an area to provide recipients with freedom of choice. The agency expanded Medallion II into 48 localities on December 1, 2001 under emergency regulations. Danville, Roanoke, and Northern Virginia operate with only one MCO in the region. Approximately 83,000 Medicaid recipients were affected by this expansion.

The capitation rates for the Medallion II program are set five percent below the estimated per person per month cost in the Medicaid fee-for-service program. Providing MCOs with a lump sum payment creates incentives to provide care efficiently and to invest in resources that could prevent costly hospitalizations and emergency room use. This arrangement encourages better disease and disability management strategies to maintain the health and functional status of enrollees. The Medallion II program also generates an increase in provider access as the plans encourage commercial providers to accept Medicaid patients.

Findings from an independent assessment of Virginia's Medicaid managed care program indicates that Virginia's managed care program does provide improved health at a lower cost.¹ For example:

- The number of recipient complaints dropped from 11.2 per 1,000 recipients in 1997 to 0.6 per 1,000 recipients in 1999. In calendar year 2000, this number rose to 3.1 per 1,000 due to managed care expansion efforts.
- Medicaid MCO activities reduced neonatal intensive care unit use, increased WIC enrollment, increased prenatal care visits, and reduced pre-term births.
- Compliance with the Early and Periodic Screening Diagnosis Treatment (EPSDT) schedule increased from 59% in 1998 to 72% in 1999. In calendar year 2000, this number rose to 75%.
- MCO disease management activities resulted in:
 - A shift in recipients with Stage II Hypertension to Stage I;
 - A decrease in asthma inpatient admissions and emergency room visits;
 - Increased number of diabetics receiving retinal eye exams; and
 - Increased number of recipients receiving timely follow-up after a mental health admission.

Based on these findings, the expansion of the Medallion II program contained in the proposed regulations is likely to

represent a net economic benefit for Virginia, while maintaining freedom of choice for Medicaid recipients.

Shortening pre-assignment process. Item 319 J of the 2000 Appropriation Act (Chapter 1073) directed DMAS to modify the process by which Medicaid recipients are enrolled into managed care programs. The current regulations allow recipients 45 days to select a managed care provider. The proposed regulations shorten that period to 30 days. This change expedites the enrollment of recipients into managed care programs and as a result, is expected to result in savings of \$1.5 to \$2 million per month. Emergency regulations containing this provision were implemented Dec 1, 2001 and, according to DMAS, there have been no indications so far that the 30-day waiting period is insufficient to provide recipients adequate time to select a managed care provider.

Based on experience so far, the proposed change can be expected to result in a net economic benefit by enrolling recipients into managed care plans sooner and generating the associated cost savings, while still providing recipients sufficient freedom of choice.

Removing NOVA mental health carve-out language. In expectation of the planned 1997 Medallion II expansion into Northern Virginia, budget language, requested by Northern Virginia Community Service Boards (CSBs), was passed to address concerns about the provision of mental health services under a managed care program, which at that time had only six months of experience. A provision was then put into the regulation that directed that mental health services to recipients in Northern Virginia were to be provided outside ("carved-out") of the MCO network on a fee for service basis. Due to several factors, the 1997 expansion into Northern Virginia did not occur. In the five years since then, the Medallion II program has been implemented in several other regions of the state with the inclusion of mental health services. According to DMAS, there have been no adverse comments or concerns with this delivery system, which provides cost savings and continuity of care.

Emergency regulations, effective Dec 1, 2001, removed the mental health services carve-out provision, which had expired in 1999, and expanded the Medallion II program into the Northern Virginia region. Medicaid recipients in the Northern Virginia region eligible for managed care enrollment have the option of choosing either the one contracted MCO in the region or selecting to enroll in the area's Primary Care Case Management (PCCM) program. In the PCCM program, mental health services continue to be provided on a fee-for-service basis.

The proposed regulations permanently remove the expired carve-out language, allowing the Medallion II expansion into Northern Virginia to be fully implemented. Based on experience over the past six years with Medallion II programs in other regions of the state, including mental health services, the Medallion II program in Northern Virginia is unlikely to have any negative consequences, especially since recipients have the option to continue to use the provider of their choice by selecting the PCCM program.

Other changes. The proposed regulation revises language relating to emergency services to make the regulation

¹ *Health Care Financing Review Virginia's Medicaid Managed Care Waiver Independent Assessment Report*, George Mason University Center of Health Policy Research and Ethics, June 2000.

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consistent with the broader definition of emergency that has been used for the past two years. Case management services are removed from the list of provider responsibilities to eliminate any confusion since Medicaid does not reimburse those services. The proposed regulations specify that, consistent with current practice, individuals enrolled in residential treatment or treatment foster care programs are excluded from managed care enrollment. Lastly, the regulations remove the exclusion of individuals with comprehensive group or individual health insurance, except Medicare, from managed care enrollment. The agency has had the federal waiver authority to enroll these individuals since 2000; however, this policy is not expected to be implemented until 2003 due to delays in shifting to a new computer system. At that time, approximately 10,000 to 15,000 Medicaid recipients will be moved from fee-for-service into the managed care program.

Businesses and entities affected. As of February 2002, there were 238,937 individuals enrolled in a Medicaid managed care program.

Localities particularly affected. DMAS expanded Medallion II into 48 localities, including Danville, Roanoke, and Northern Virginia, on December 1, 2001, under emergency regulations.

Projected impact on employment. The proposed changes to this regulation are not anticipated to have a significant effect on employment.

Effects on the use and value of private property. The proposed changes to this regulation are not anticipated to have a significant effect on the use and value of private property.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The agency concurs with the economic impact analysis prepared by the Department of Planning and Budget regarding the regulations concerning Medallion II.

Summary:

Chapter 1073 of the 2000 Acts of Assembly, Item 319 J, directed the agency to seek federal approval of certain changes to its Medallion II program. The purpose of the mandated changes was to bring this waiver program into compliance with recent federal law changes as well as other federal changes and changes that reflect industry standards of practice.

DMAS proposes to amend the regulations governing its Medallion II managed care program to (i) allow expansion of the program into regions that have only one contracted MCO, (ii) shorten the pre-assignment process, and (iii) remove language pertaining to the carve-out of mental health services provided in Northern Virginia. Other editorial and clarifying changes are also included. The proposed regulations will supercede emergency regulations that went into effect December 1, 2001.

12 VAC 30-120-360. Definitions.

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

"*Appeal*" means any written communication from a client or his representative which clearly expresses that he wants to present his case to a reviewing authority.

"*Area of residence*" means the recipient's address in the Medicaid eligibility file.

"*Capitation payment*" means ~~the payment issued to an HMO contractor by DMAS on behalf of a client, in return for which the HMO accepts responsibility for the services to be provided under a contract~~ a payment the department makes periodically to a contractor for each recipient enrolled under a contract for the provision of medical services under the State Plan, regardless of whether the recipient receives services during the period covered by the fee.

"*Client,*" "*clients,*" "*recipient,*" ~~or~~ "*enrollee,*" or "*participant*" means an individual or individuals having current Medicaid eligibility who shall be authorized by DMAS to be a member or members of Medallion II.

"*Covered services*" means Medicaid services as defined in the State Plan for Medical Assistance.

"*Disenrollment*" means ~~a change in the process of changing enrollment from one Medallion II HMO Managed Care Organization (MCO) plan to another MCO or to the Primary Care Case Management (PCCM) program, if applicable.~~

"*DMAS*" means the Department of Medical Assistance Services.

"*Eligible person*" means any person ~~determined by DMAS as eligible to receive services and benefits under~~ eligible for Virginia Medicaid in accordance with the State Plan for Medical Assistance under Title XIX of the Social Security Act.

"*Emergency services*" means ~~those health care services provided in a hospital, clinic, office, or other facility that is equipped to furnish the required care, that are rendered by participating or nonparticipating providers~~ after the sudden onset of a medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) that a prudent layperson, who possesses an average knowledge of health and medicine, could reasonably expect the absence of immediate medical attention to result in:

1. Placing the client's health or, with respect to a pregnant woman, the health of the woman or her unborn child in serious jeopardy;
2. Serious impairment to bodily functions; or
3. Serious dysfunction of any bodily organ or part.

Emergency services provided within the MCO plan's service area shall include covered health care services from nonaffiliated providers only when delay in receiving care from a provider affiliated with the managed care organization could reasonably be expected to cause the recipient's condition to worsen if left unattended.

"*Enrollment broker*" means ~~the individual who~~ an independent contractor that enrolls recipients in the contractor plan, and ~~who~~ is responsible for the operation and documentation of a toll-free recipient service helpline. The responsibilities of the enrollment broker ~~may~~ include, but shall not be limited to,

recipient education and enrollment, assistance with and tracking of recipients' complaints resolutions, and may include recipient marketing and outreach.

"Exclusion from Medallion II" means the removal of an enrollee from the Medallion II program on a temporary or permanent basis.

"Foster care" means a child who received either foster care assistance under Title IV-E of the Social Security Act or state and local foster care assistance.

~~"Grievance" means any request by a client, or a provider on behalf of a client, to an HMO to resolve a dispute regarding coverage or payment for services under the Medallion II Program an oral or written communication made by or on behalf of a member expressing dissatisfaction with the resolution of a complaint. Grievances are usually handled by the MCO's Internal Grievance Committee and are related to:~~ (i) the availability, delivery or quality of health care services including the utilization review decisions that are adverse to the member or (ii) payment or reimbursement of health care service claims.

"Health care plan" means any arrangement in which any health maintenance organization undertakes to provide, arrange for, pay for, or reimburse any part of the cost of any health care services.

~~"HMO" "Managed care organization" or "MCO" means a health maintenance organization, as licensed by the State Corporation Commission's Bureau of Insurance, which undertakes to provide or arrange for one or more health care plans an organization that offers managed care health insurance plans (MCHIP) as defined by § 38.2-5800 of the Code of Virginia. Any health maintenance organization as defined in § 38.2-4300 of the Code of Virginia or health carrier that offers preferred provider contracts or policies as defined in § 38.2-3407 of the Code of Virginia or preferred provider subscription contracts as defined in § 38.2-4209 of the Code of Virginia shall be deemed to be offering one or more MCHIPs.~~

"Network" means doctors, hospitals or other health care providers who participate or contract with an HMO MCO and, as a result, agree to accept a mutually-agreed upon sum or fee schedule as payment in full for covered services that are rendered to eligible participants.

~~"Nonparticipating provider" means a facility not in the HMO's network or a provider not in the HMO's network practicing at a facility not in the HMO's health care entity or health care professional not in the contractor's participating provider network.~~

"Primary care case management" or "PCCM" means a system under which a primary care case manager contracts with the Commonwealth to furnish case management services (which include the location, coordination, and monitoring of primary health care services) to Medicaid recipients.

"School-based services" means those therapy services, nursing services, psychiatric/psychological screenings, and well-child screenings, rendered to children who qualify for these services under the federal Individuals with Disabilities Education Act (20 USC § 1471 et seq.) by (i) employees of the

school divisions or (ii) providers that subcontract with school divisions.

"Spend-down" means the process of reducing countable income by deducting incurred medical expenses for medically needy individuals, as determined in the State Plan for Medical Assistance.

~~"Subsidized adoption" means any child for whom an adoption assistance agreement is in effect.~~

12 VAC 30-120-370. Medallion II enrollees.

A. DMAS shall determine enrollment in Medallion II. Enrollment in Medallion II is not a guarantee of continuing eligibility for services and benefits under the Virginia Medical Assistance Program.

B. The following individuals shall be excluded from participating in Medallion II. Individuals not meeting the exclusion criteria must participate in the Medallion II program.

1. Individuals who are inpatients in state mental hospitals;
2. Individuals who are approved by DMAS as inpatients in long-stay hospitals, nursing facilities, or intermediate care facilities for the mentally retarded;
3. Individuals who are placed on spend-down;
4. Individuals who are participating in federal waiver programs for home-based and community-based Medicaid coverage;
5. Individuals who are participating in foster care or subsidized adoption programs;
6. Individuals who are in the third trimester of pregnancy upon initial assignment to Medallion II and who request exclusion. Following the end of the pregnancy, these individuals shall be required to enroll to the extent they remain eligible for Medicaid enrolled in DMAS authorized residential treatment or treatment foster care programs;
7. Individuals who are in their ninth month of pregnancy, when they are or will be automatically assigned or reassigned, and were not in the Medicaid HMO to which they were assigned or reassigned within the last seven months, if they are seeking care from a provider (physician or hospital or both) not affiliated with the HMO to which they were previously assigned. Exclusion requests may be made by the HMO, a provider, or the recipient. Newly eligible individuals who are in the third trimester of pregnancy and who request exclusion within a department-specified timeframe of the effective date of their MCO enrollment. Exclusion may be granted only if the member's obstetrical provider (physician or hospital) does not participate with any of the state-contracted MCOs. Exclusion requests made during the third trimester may be made by the recipient, MCO, or provider. DMAS shall determine if the request meets the criteria for exclusion. Following the end of the pregnancy, these individuals shall be required to enroll to the extent they remain eligible for Medicaid and do not meet any other exclusion;
8. Individuals, other than students, who permanently live outside their area of residence for greater than 60

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~~consecutive~~ days except those individuals placed there for medically necessary services funded by the ~~HMO~~ MCO;

9. Individuals who ~~enter into a Medicaid approved~~ receive hospice program services in accordance with DMAS criteria;

10. Individuals with ~~any other comprehensive group or individual health insurance~~ Medicare coverage;

11. Individuals who ~~have been preassigned to an HMO but have not yet been enrolled~~, requesting exclusion who are inpatients in hospitals, other than those listed in subdivisions 1 and 2 of this subsection, *at the scheduled time of enrollment or who are scheduled for inpatient hospital stay or surgery within 30 calendar days of the enrollment effective date. The exclusion shall remain effective until the first day of the month following discharge;*

12. Individuals who ~~have been preassigned to an HMO but have not yet been enrolled~~, who are scheduled for surgery which is scheduled to be within 30 days of initial enrollment into the HMO, which requires an inpatient hospital stay, until the first day of the month following discharge;

13. 12. Individuals who have been preassigned to an HMO MCO but have not yet been enrolled, who have been diagnosed with a terminal condition and who have a life expectancy of six months or less, if they request exclusion. The client's physician must certify the life expectancy; and

14. 13. Certain individuals between birth and age three certified by the Department of Mental Health, Mental Retardation and Substance Abuse Services as eligible for services pursuant to Part C of the Individuals with Disabilities Education Act (20 USC § 1471 et seq.) who are granted an exception by DMAS to the mandatory Medallion II enrollment.

C. Medallion II managed care plans shall be offered to recipients, and recipients shall be enrolled in those plans, exclusively through an independent enrollment broker under contract to DMAS.

D. Clients shall be enrolled as follows:

1. All eligible persons, except those meeting one of the exclusions of subsection B of this section, shall be enrolled in Medallion II.

2. Clients shall receive a Medicaid card from DMAS during the interim period, and shall be provided authorized medical care in accordance with DMAS' procedures, after eligibility has been determined to exist.

3. Once individuals are enrolled in Medicaid, they will receive a letter indicating that they may select one of the contracted HMOs MCOs. These letters shall indicate a preassigned HMO MCO, determined as provided in subsection E of this section, in which the client will be enrolled if he does not make a selection within a period specified by DMAS of not less than ~~45~~ 30 days.

4. ~~The effective date of coverage in the Medallion II program for newly eligible individuals under the Virginia Medical Assistance Program (except for those specified under subdivision 6 of this subsection) and individuals who~~

~~move from the area of their Medallion II HMO shall be assigned to an HMO as described in subdivision 3 of this subsection.~~

5. 4. A child born to a woman enrolled with an HMO MCO will be enrolled with the HMO MCO from birth until the last day of the third month including the month of birth, unless otherwise specified by the Enrollment Broker. For instance, a child born during the month of February will be automatically enrolled until April 30. By the end of that third month, the child will be disenrolled unless the Enrollment Broker specifies continued enrollment. If the child remains an inpatient in a hospital at the end of that third month, the child shall automatically remain enrolled until the last day of the month of discharge, unless this child's parent requests disenrollment.

6. 5. Individuals who lose then regain eligibility for Medallion II within 60 days will be reenrolled into their previous HMO MCO without going through preassignment and selection.

E. Clients who do not select an HMO MCO as described in subdivision D 3 of this section shall be assigned to an HMO MCO as follows:

1. ~~MEDALLION primary care physicians will be asked to select the HMO in which their MEDALLION clients will be enrolled.~~

2. ~~Clients currently enrolled in "Options" shall be assigned to the HMO in which they participated under "Options" if that HMO contracts with DMAS for Medallion II.~~

1. *Clients are assigned through system algorithm based upon the client's history with a contracted MCO.*

3. 2. Clients not assigned pursuant to subdivision 1 ~~or 2~~ of this subsection shall be assigned to the HMO MCO of another family member, if applicable.

4. 3. All other clients shall be assigned to an HMO MCO on a basis of approximately equal number by HMO MCO in each locality.

4. *In areas where there is only one contracted MCO, recipients have a choice of enrolling with the contracted MCO or the PCCM program. All eligible recipients in areas where one contracted MCO exists, however, are automatically assigned to the contracted MCO. Individuals are allowed 90 days after the effective date of new or initial enrollment to change from either the contracted MCO to the PCCM program or vice versa.*

F. Following their initial enrollment into an HMO MCO or PCCM program, recipients shall be restricted to ~~that HMO the MCO or PCCM program~~ until the next open enrollment period, unless appropriately disenrolled or excluded by the department.

1. During the first 90 calendar days of enrollment in a new or initial HMO MCO, a client may disenroll from that HMO MCO to enroll into another HMO MCO or into PCCM, if applicable, for any reason. Such disenrollment shall be effective no later than the first day of the second month after the month in which the client requests disenrollment.

2. During the remainder of the enrollment period, the client may only disenroll from one ~~HMO~~ MCO into another MCO or PCCM, if applicable, upon determination by DMAS that good cause exists as determined under subsection H of this section.

G. The department shall conduct an annual open enrollment for all Medallion II participants, *including in areas where there is only one contracted MCO*. The open enrollment period shall be the 60 calendar days before the end of the enrollment period. Prior to the open enrollment period, DMAS will inform the recipient of the opportunity to remain with the current ~~HMO~~ MCO or change to another ~~HMO~~ MCO, without cause, for the following year. *In areas with only one contracted MCO, recipients will be given the opportunity to select either the MCO or the PCCM program*. Enrollment selections will be effective on the first of the next month following the open enrollment period. Recipients who do not make a choice during the open enrollment period will remain with their current ~~HMO~~ and shall have priority over those individuals who are seeking to enroll with that ~~HMO~~ MCO selection.

H. Disenrollment for good cause may be requested at any time.

1. After the first 90 days of enrollment in an ~~HMO~~ MCO, clients must request disenrollment from DMAS based on good cause. The request must be made in writing to DMAS and cite the reasons why the client wishes to disenroll. Good cause for disenrollment shall include the following:

a. A recipient's desire to seek services from a federally qualified health center which is not under contract with the recipient's current ~~HMO~~ but is under contract to another ~~HMO~~ available to the recipient MCO, and the recipient (i) requests a change to another MCO that subcontracts with the desired federally qualified health center or (ii) requests a change to the PCCM, if the federally qualified health center is contracting directly with DMAS as a PCCM;

b. Performance or nonperformance of service to the recipient by an ~~HMO~~ MCO or one or more of its providers which is deemed by the department's external quality review organizations to be below the generally accepted community practice of health care. This may include poor quality care;

c. Lack of access to necessary specialty services covered under the State Plan;

d. A client has a combination of complex medical factors that, in the sole discretion of DMAS, would be better served under another contracted ~~HMO~~ MCO or PCCM program, if applicable, or provider; or

e. Other reasons as determined by DMAS through written policy directives.

2. DMAS shall determine whether good cause exists for disenrollment.

3. Good cause for disenrollment shall be deemed to exist and the disenrollment shall be granted if DMAS fails to take final action on a valid request prior to the first day of the second month after the request.

4. The DMAS determination concerning good cause for disenrollment may be appealed by the client in accordance with the department's client appeals process at 12 VAC 30-110-10 through 12 VAC 30-110-380.

5. The current ~~HMO~~ MCO shall provide, within two working days of a request from DMAS, information necessary to determine good cause.

12 VAC 30-120-380. Medallion II provider MCO responsibilities.

A. The ~~HMO~~ MCO shall provide, at a minimum, all medically necessary covered services provided under the State Plan for Medical Assistance and further defined by written DMAS regulations, policies and instructions, except as otherwise modified or excluded in this part.

Nonemergency services provided by hospital emergency departments shall be covered by ~~HMOs~~ MCOs in accordance with rates negotiated between the ~~HMOs~~ MCOs and the emergency departments.

B. Services that shall be provided outside the ~~HMO~~ MCO network, and reimbursed by DMAS, ~~are shall include, but are not limited to, those services defined by the contract between DMAS and the MCO~~. Services reimbursed by DMAS include school-based services and community mental health services (rehabilitative, targeted case management and ~~waiver substance abuse~~ services). ~~Clients may also seek emergency services and family planning services from a provider outside the HMO~~. The ~~HMOs~~ MCOs shall pay for emergency services and family planning services *and supplies* whether they are provided inside or outside the ~~HMO~~ MCO network.

The ~~HMOs~~ shall pay for services furnished in:

~~1. Facilities or by practitioners outside the HMOs' networks if services are needed because of a medical emergency;~~

~~2. Areas outside the HMOs' service areas if medical services are needed and the recipient's health would be endangered if he were required to travel to his place of residence;~~

~~3. Another state if it is general practice for recipients in that area to receive medical services in another state; and~~

~~4. Facilities or by practitioners outside the HMOs' networks if the needed medical services or necessary supplementary resources are not available in the HMOs' networks.~~

~~C. Immunizations shall not be included in the fee that DMAS pays the HMOs. The HMO may choose to offer immunizations under the regular Medicaid immunization reimbursement methodology or may refer the patient to a local health department.~~

~~D. C. The HMOs MCOs shall report encounter data to DMAS under the contract requirements, which may include data reports based on the Health Plan Employer Data and Information Set (HEDIS), report cards for clients, and ad hoc quality studies performed by the MCO or third parties.~~

~~E. D. The HMO MCO shall maintain such records as may be required by federal and state law and regulation and by DMAS policy. The HMO MCO shall furnish such required information~~

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to DMAS, the Attorney General of Virginia or his authorized representatives, or the State Medicaid Fraud Control Unit on request and in the form requested.

F. E. The HMO MCO shall ensure that the health care provided to its clients meets all applicable federal and state mandates, community standards for quality, and standards developed pursuant to the DMAS managed care quality program.

G. Effective January 1, 1997, each HMO shall test the readability of its program information documents by use of the Flesch Readability Formula, as set forth in Rudolf Flesch, *The Art of Readable Writing* (1949, as revised 1962), and no program information document shall be used unless it achieves a Flesch total readability score of 40 or better. This requirement shall not apply to language that is mandated by federal or state laws, regulations or agencies.

All program information documents within the scope of this section, and all amendments thereto, shall be filed with DMAS in advance of their use and distribution, accompanied by certificates setting forth the Flesch scores and certifying compliance with the requirements of this section. Any program information document to which this does not apply shall be accompanied by a documentation of the federal or state laws, regulation or agency mandate that authorizes the exemption. The term "program information documents" means all forms, brochures, handbooks or other documentation (i) provided to recipients covered under Medicaid managed care programs and (ii) describing the programs' medical care coverages and the rights and responsibilities of recipients covered. The term "recipient" shall include potential recipients and recipients.

H. F. The HMOs MCOs shall promptly provide or arrange for the provision of all required services as specified in the contract between the state and the contractor. Initial face-to-face Medical evaluations shall be available within 48 hours for urgent care and within 15 business 30 calendar days for routine care. On-call clinicians shall be available 24 hours per day, seven days per week.

I. G. The HMOs MCOs must meet standards specified by DMAS for sufficiency of provider networks as specified in the contract between the state and the contractor. The HMOs shall include in their network a sufficient number of providers of each type of covered service (i.e., speech, occupational, or physical therapy) to ensure adequate access. For example, HMOs must include, but are not necessarily limited to, providers specializing in early childhood, youth and geriatric services.

J. H. Preauthorization and concurrent review decisions must be supervised by qualified medical professionals and completed within two business days after receipt of all necessary information as defined by the contract between DMAS and the MCO.

K. When the need is identified, the HMOs shall designate a single case manager, who shall function as an exceptional needs care coordinator within the HMO, for all persons with complex health care needs.

L. I. The HMOs MCOs shall not charge copayments to any categorically needy enrollees.

12 VAC 30-120-385. Medallion II provider responsibilities in Northern Virginia. (Repealed.)

~~In addition to the requirements in 12 VAC 30-120-380, HMOs providing services in the Northern Virginia region shall comply with the requirements of this section. Inpatient and outpatient mental health services provided by physicians, practitioners, and clinics shall be provided outside the HMO network and shall be reimbursed directly by DMAS.~~

12 VAC 30-120-390. Payment rate for Medallion II HMOs MCOs.

The payment rate to HMOs MCOs shall be based on contract negotiations set by negotiated contracts.

12 VAC 30-120-395. Payment rate for preauthorized or emergency care provided by out-of-network providers.

The HMOs MCOs shall pay for preauthorized or emergency services when they are provided outside the HMO MCO network. Preauthorized or emergency care provided to a Medallion II client by a provider or facility not participating in the client's MCO's network will be reimbursed according to the current Medicaid fee schedule. This reimbursement shall be considered payment in full to the provider or facility of emergency care.

12 VAC 30-120-400. Quality control and utilization review.

A. DMAS shall rigorously monitor the quality of care provided by the HMOs MCOs. DMAS may contract with one or more external quality review organizations to perform focused studies on the quality of care provided by the HMOs MCOs. The external organizations may utilize data or other tools to ensure contract compliance and quality improvement activities. Specifically, DMAS shall monitor to determine if the HMO MCO:

1. Fails substantially to provide the medically necessary items and services required under law or under the contract to be provided to an enrolled recipient and the failure has adversely affected (or has substantial likelihood of adversely affecting) the individual. This shall be monitored through the review of encounter data on a routine basis and other methods determined by DMAS.

2. Imposes on clients premium amounts in excess of premiums permitted. This shall be monitored through surveying a sample of clients at least annually and other methods determined by DMAS.

3. Engages in any practice that discriminates among individuals on the basis of their health status or requirements for health care services, including expulsion or refusal to reenroll an individual, or any practice that could reasonably be expected to have the effect of denying or discouraging enrollment (except as permitted by § 1903(m) of the Social Security Act (42 USC § 1396b(m))) by eligible individuals whose medical conditions or histories indicate a need for substantial future medical services. This shall be monitored through surveying a sample of clients at least annually and other methods determined by DMAS.

4. Misrepresents or falsifies information that it furnishes, under § 1903(m) of the Social Security Act (42 USC

§ 1396b(m)) to HCFA CMS, DMAS, an individual, or any other entity. ~~This shall be monitored through surveying a sample of clients at least annually and other methods determined by DMAS.~~

~~5. 4. Fails to comply with the requirements of 42 CFR 417.479(d) through (g) relating to physician incentive plans, or fails to submit to DMAS its physician incentive plans as required or requested in 42 CFR 434.70. This provision shall be monitored through review of the information listed in 42 CFR 417.479(h)(1) as submitted by the HMOs in accordance with the requirements of 42 CFR 434.70.~~

B. DMAS shall ensure that data on performance and patient results is collected. ~~Specifically, DMAS shall review, which may include on-site reviews, encounter data submitted by the HMOs as defined in the contracts. This review shall include, but not be limited to:~~

- ~~1. Whether services were properly authorized or excluded,~~
- ~~2. The adequacy and appropriateness of services provided or denied, and~~
- ~~3. Analysis of possible trends in increases or reductions of services.~~

C. DMAS shall ensure that quality outcomes information is provided to ~~HMOs~~ MCOs. DMAS shall ensure that changes which are determined to be needed as a result of quality control or utilization review are made.

12 VAC 30-120-410. Sanctions.

A. If DMAS determines that an ~~HMO~~ MCO is not in compliance with state or federal laws, regulations (including but not limited to the requirements of or pursuant to 12 VAC 30-120-380 F E), or their Medallion II contract, DMAS may impose sanctions on the ~~HMO~~ MCO. The sanctions may include but are not limited to:

1. Limiting enrollments in the ~~HMO~~ MCO by freezing voluntary recipient enrollments,
2. Freezing DMAS assignment of recipients to the ~~HMO~~ MCO,
3. Limiting ~~HMO~~ MCO enrollment to specific areas,
4. Denying, withholding, or retracting payments to the ~~HMO~~ MCO, and
5. Terminating the ~~HMO's~~ MCO's Medallion II contract, ~~and.~~
- ~~6. Developing procedures with which the HMO must comply to eliminate specific sanctions.~~

B. In the case of an ~~HMO~~ MCO that has repeatedly failed to meet the requirements of §§ 1903(m) and 1932 of the Social Security Act, DMAS shall, regardless of what other sanctions are imposed, impose the following sanctions.

1. Appoint a temporary manager to:
 - a. Oversee the operation of the Medicaid managed care organization upon a finding by DMAS that there is continued egregious behavior by the organization or there is a substantial risk to the health of enrollees; or

b. Assure the health of the organization's enrollees if there is a need for temporary management while (i) there is an orderly termination or reorganization of the ~~organizations~~ organization or (ii) improvements are made to remedy the violations found under subsection A of this section. Temporary management under this subdivision may not be terminated until DMAS has determined that the ~~HMO~~ MCO has the capability to ensure that the violations shall not recur.

2. Permit individuals enrolled with the ~~HMO~~ MCO to disenroll without cause. If this sanction is imposed, DMAS shall be responsible for notifying such individuals of the right to disenroll.

C. Prior to terminating a contract as permitted under subdivision A 5 of this section, DMAS shall provide the ~~HMO~~ MCO with a hearing. DMAS may not provide an ~~HMO~~ MCO with a pretermination hearing before the appointment of a temporary manager under subdivision B 1 of this section.

D. Prior to imposing any sanction other than termination of the ~~HMO's~~ MCO's contract, DMAS shall provide the ~~HMO~~ MCO with notice, *develop procedures with which the MCO must comply to eliminate specific sanctions*, and provide such other due process protections as the state may provide.

E. In accordance with the terms of the contract, ~~HMOs~~ MCOs shall have the right to appeal any adverse action taken by DMAS. For appeal procedures not addressed by the contract, the ~~HMO~~ MCO shall proceed in accordance with the appeals provisions of the Virginia Public Procurement Act (§ ~~41-35~~ 2.2-4300 et seq. of the Code of Virginia). Pursuant to §§ ~~41-70~~ 2.2-4364 and ~~41-74~~ 2.2-4365 of the Code of Virginia, DMAS ~~establishes~~ shall establish an administrative appeals procedure, through which the ~~HMO~~ MCO may elect to appeal decisions on disputes arising during the performance of its contract. Pursuant to § ~~41-74~~ 2.2-4365 of the Code of Virginia, such appeal shall be heard by a hearing officer; however, in no event shall the hearing officer be an employee of DMAS. In conducting the administrative appeal, the hearing officer shall follow the hearing procedure used in § ~~9-6.14.12~~ 2.2-4020 of the Code of Virginia.

F. When DMAS determines that an ~~HMO~~ MCO committed one of the violations specified in 12 VAC 30-120-400 A, DMAS shall implement the provisions of 42 CFR 434.67.

1. Any sanction imposed pursuant to this subsection shall be binding upon the ~~HMO~~ MCO.
2. The ~~HMO~~ MCO shall have the appeals rights for any sanction imposed pursuant to this subsection as specified in 42 CFR 434.67.

12 VAC 30-120-420. Client grievances.

A. The ~~HMOs~~ MCOs shall, whenever a client's request for covered services is reduced, denied or terminated, or payment for services is denied, provide a written notice in accordance with the notice provisions specified in 12 VAC 30-110-70 through 12 VAC 30-110-100; federal requirements at ~~42 CFR 431.211, 431.213 and 431.214, 42 CFR Part 431, Subpart E, Fair Hearings for Applicants and Recipients~~; and any other statutory or regulatory requirements.

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B. Disputes between the HMO MCO and the client concerning any aspect of service delivery, including medical necessity and specialist referral, shall be resolved through a verbal (informal) or written (formal) grievance process operated by the HMO MCO or through the DMAS appeals process. A provider may act on behalf of a client in the HMO's MCO's internal informal or formal grievance procedures.

1. A written request for a grievance or appeal shall be filed within 30 days of the client's receipt of the notice of adverse action, in accordance with the time limit for requests for appeal specified in 12 VAC 30-110-160 and 12 VAC 30-110-170. Any written communication from a client or his representative (including a provider acting on behalf of the client) which clearly expresses that he wants to present his case to a reviewing authority shall constitute an appeal request.

2. In compliance with 14 VAC 5-210-70 H 4, pending resolution of a written grievance filed by a client or his representative (including a provider acting on behalf of the client), coverage shall not be terminated for the client for any reason which is the subject of the written complaint. In addition, the HMO MCO shall not terminate or reduce services as specified in 12 VAC 30-110-100.

C. The HMO MCO shall develop written materials describing the informal and formal grievance system and its procedures and operation.

~~D. The HMO MCO shall designate a person or persons to be responsible for the receipt and timely processing of client grievances. The HMO must maintain a grievance log summarizing each grievance. The grievance log shall capture the dates of receipt and decision and the nature of the decision. The log shall distinguish between Medicaid clients and commercial clients unless the HMO maintains a separate system for Medicaid clients maintain a recordkeeping and tracking system for complaints, grievances, and appeals that includes a copy of the original written complaint, grievance, or appeal; the decision; and the nature of the decision. This system shall distinguish Medicaid from commercial enrollees, if the MCO does not have a separate system for Medicaid enrollees.~~

E. At the time of enrollment and at the time of any adverse actions, the HMO MCO shall notify the client, in writing, that:

1. Medical necessity, specialist referral or other service delivery issues may be resolved through a system of informal and formal grievances, within the HMO MCO or through the DMAS client appeals process,

2. Clients have the right to appeal directly to DMAS, and

3. The HMO MCO shall promptly provide grievance forms and written procedures to clients who wish to register written grievances.

F. The HMO MCO shall, within two days of receipt of any written request for a grievance, provide DMAS with a copy of the request.

G. The HMO MCO shall issue informal grievance decisions within seven days from the date of initial receipt of the

~~grievance as defined by the contract between DMAS and the MCO. The informal decision is not required to be in writing.~~

H. The HMO MCO shall issue formal grievance decisions within 14 days from the date of initial receipt of the formal grievance. The formal decision shall be required to be in writing and shall include but is not limited to:

1. The decision reached by the HMO MCO,

2. The reasons for the decision,

3. The policies or procedures which provide the basis for the decision, and

4. A clear explanation of further appeal rights and a timeframe for filing an appeal.

I. The HMO MCO shall provide DMAS with a copy of its formal grievance decision concurrently with the provision of the decision to the client.

J. An expedited grievance decision shall be issued within 48 hours in case of medical emergencies, in which delay could result in death or serious injury to a client. Written confirmation of the decision shall promptly follow the verbal notice of the expedited decision.

K. Any grievance decision by the HMO MCO may be appealed by the client to DMAS in accordance with the department's Client Appeals regulations at 12 VAC 30-110-10 through 12 VAC 30-110-380. DMAS shall conduct an evidentiary hearing in accordance with the Client Appeals regulations at 12 VAC 30-110-10 through 12 VAC 30-110-380 and shall not base any appealed decision on the record established by any grievance decision of the HMO MCO. The HMO MCO shall comply with the DMAS appeal decision. The DMAS decision in these matters shall be final and shall not be subject to appeal by the HMO MCO.

~~L. A client may appeal directly to DMAS in accordance with the department's client appeal process. DMAS shall conduct an evidentiary hearing in accordance with the Client Appeals regulations at 12 VAC 30-110-10 through 12 VAC 30-110-380 and shall not base any appealed decision on the record established by any decision of the HMO. The HMO shall comply with the DMAS appeal decision. The DMAS decision in these matters shall be final and shall not be subject to appeal by the HMO.~~

M. L. The HMO MCO shall provide information necessary for any DMAS appeal within timeframes established by DMAS.

VA.R. Doc. No. R02-85; Filed May 22, 2002, 4:01 p.m.



**TITLE 18. PROFESSIONAL AND
OCCUPATIONAL LICENSING**

BOARD OF OPTOMETRY

Title of Regulation: 18 VAC 105-20. Regulations of the Virginia Board of Optometry (amending 18 VAC 105-20-10, 18 VAC 105-20-15, 18 VAC 105-20-20, and 18 VAC 105-20-40 through 18 VAC 105-20-70).

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

Public Hearing Date: July 12, 2002 - 9 a.m.

Public comments may be submitted until August 16, 2002.

(See Calendar of Events section for additional information)

Agency Contact: Elaine J. Yeatts, Agency Regulatory Coordinator, Board of Optometry, 6606 W. Broad Street, Richmond, VA 23230, telephone (804) 662-9918, FAX (804) 662-9114 or e-mail elaine.yeatts@dhp.state.va.us.

Basis: Section 54.1-2400 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 statutory authority for licensure and regulation of optometrists, including the mandate for continuing education, is found in Chapter 32 of Title 54.1 of the Code of Virginia.

Purpose: The purpose of the amended regulation is to revise certain requirements for licensure by examination and to reduce the burden of reinstatement in order to facilitate licensure for some applicants. Fees are reduced or added for consistency with the principles for fee development, and certain provisions are clarified related to the use of professional designations. A requirement for notifying patients if a practice is to be terminated will address problems with records that consumers have faced in those situations.

Additional hours of continuing education in drug prescribing and administration are necessary to ensure that licensees maintain current knowledge as new drugs and new therapies are introduced. With the amended regulations, an optometrist may now include hours of CPR in the 16 required for renewal of licensure. Amendments for patient notification and additional continuing education are intended to improve consumer protection and increase the quality of optometric care in the delivery of health services to patients.

Substance: Substantive changes to the existing sections of the regulations include: (i) a change in the date after which the board will accept passage of the National Board Examination for initial licensure - anyone who passed the examination prior to the amended date is required to apply for licensure by endorsement; (ii) a requirement in the unprofessional conduct section for an optometrist to notify patients if his practice is to be terminated to give patients an opportunity to have his records sent to a like-provider or be destroyed; and (iii) an additional two hours of continuing education which may include record-keeping or CPR and a requirement that two of the 16 hours be in prescribing and administration of drugs if

the optometrist is certified to use therapeutic pharmaceutical agents.

Issues: The primary advantages to the public of implementing the amended regulations are as follows: (i) a change in date for acceptance of the national board examination offering a less burdensome avenue to initial licensure and a reduction in the hours of required continuing education for reinstatement of licensure may result in a very modest increase in the number of licensed optometrists available to provide services in the Commonwealth; (ii) specification that it is unprofessional conduct for an optometrist to fail to notify patients if a practice is to be terminated to give the patient the opportunity to have his records transferred or destroyed will benefit consumers and offer protection against records being lost or not available; and (iii) an additional requirement for two hours of continuing education in prescription drugs for optometrists who use therapeutic pharmaceutical agents will offer some assurance that the practitioner is current in his knowledge of appropriate drug therapies.

There are no disadvantages to the public as all amendments are intended to provide better access to qualified optometrists who have remained current in their knowledge and skills.

There is a definite advantage to the agency resulting from the elimination of board approval of individual continuing education courses. The amount of staff time consumed by that task will be available for licensing and disciplinary activities, and board members will no longer be burdened by hours of review and issues that often surrounded approval of courses. There will also be some modest reduction in expenditures of the board related to per diem for board member time. There is also the possibility that accepting continuing education hours in recordkeeping may encourage optometrists to take courses in that area and thereby reduce the investigative and disciplinary load by one or two cases a year. The board finds that failure to keep adequate, complete records on patients is sometimes the genesis for substandard care or unprofessional conduct.

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 § 2.2-4007 G of the Administrative Process Act and Executive Order Number 25 (98). Section 2.2-4007 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 Board of Optometry proposes several changes to the regulations governing the

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practice of optometry following a periodic review of this regulation. The proposed regulations:

1. Increase the continuing education requirement from 14 hours to 16 hours per year. For optometrists certified to use therapeutic pharmaceutical agents, the proposed regulations specify that at least two of those hours must be in courses directly related to prescribing and administering prescription drugs;
2. Change the acceptance date of the national board examination in order to allow more applicants to apply by examination rather than by endorsement;
3. Add a requirement for notifying patients if a practice is to be sold or closed to address problems with records that consumers have faced in these situations;
4. Remove provisions allowing the board to approve specific continuing education courses and instead require providers to seek approval by one of the approved sponsors listed in the regulation;
5. Reduce the late renewal fee from \$100 to \$50, add a \$10 fee for licensure verification, and add a \$20 fee for late renewal of a professional designation;
6. Make other editorial changes to clarify the use of professional designations and required documentation of continuing education hours.

Estimated economic impact.

Continuing Education Requirements. The most significant change proposed to the current regulations is the addition of two hours of continuing education (CE) required for the renewal of an active license. Compliance costs for meeting the increased CE requirements will differ across licensees. Based on information provided by the Board of Optometry, the average out-of-pocket costs for earning the required CE hours could range from \$0 to \$25+ per contact hour for each of the 1,300 licensees. Additionally, practitioners incur the cost of the time spent on pursuing such activities, whether in lost income or lost leisure time, and any costs associated with the additional documentation and maintenance of the records.

There is no empirical evidence currently available on how effective continuing education is on improving the quality of care provided by optometrists, nor is there any data on the economic value of incremental benefits in that quality of care as the amount of CE is increased. Thus, no conclusions can be drawn at this time about the net economic impact of the proposed increase in CE requirements.

Board Approval of Continuing Education Courses. The Board of Optometry currently will, for a fee of \$25, review courses offered by sponsors not listed in the regulation. However, due to the amount of staff time required to gather all necessary documentation sufficient for a board decision and the per diem paid to board members for the time spent in course review, the board determined to eliminate board-approved courses and instead require providers to seek approval by one of the approved sponsors listed in the regulation. There is likely to be some reduction in expenditures of the board related to per diem for board member time and staff time previously consumed by course approval will be available for licensing

and disciplinary activities. According to the board, the list of approved sponsors in the regulation is extensive enough to ensure that all potential continuing education providers can get approval for valid courses, and therefore this change should not reduce the availability of CE courses.

Reinstatement and Late Renewal Fees. The existing regulations require all individuals who do not renew their licenses within 30 days of the expiration date to reapply for licensure. This policy does not differentiate between persons who are merely late in renewing their license from persons who have chosen to let their license lapse for a lengthy period of time (i.e., someone who had left the state to practice in another jurisdiction, and then has returned to Virginia). The proposed regulation reduces the late fee, from \$100 to \$50, for licensees renewing within one year of the expiration date and requires reinstatement for the renewal of any licenses (now lapsed) beyond that time. The proposed reinstatement fee of \$450 covers the costs of application processing and document review, and the license renewal fee. Reinstatement of a lapsed license also requires documentation of having completed continued competency hours equal to the requirement for the length of time, not to exceed two years, that the license has been inactive. Currently, applicants must show documentation of having completed continuing education hours for the entire time since the license in Virginia expired.

Fee Changes. The proposed fees (i.e., \$10 for licensure verification, \$20 for late renewal of a professional designation) are intended to represent accurately the actual cost of service and provide consistency across boards within the Department of Health Professions. By charging individuals for the full costs incurred on their behalf, the proposed changes are both more efficient and equitable.

Businesses and entities affected. There are approximately 1,300 doctors of optometry currently licensed in Virginia, 940 of whom are certified to use therapeutic pharmaceutical agents.

Localities particularly affected. The proposed changes to this regulation should not disproportionately affect any particular locality.

Projected impact on employment. The proposed changes to this regulation are not expected to have any significant impact on employment in Virginia.

Effects on the use and value of private property. The proposed changes to this regulation are not expected to have any significant effects on the use and value of private property in Virginia.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The Board of Optometry concurs with the analysis of the Department of Planning and Budget for the regulatory review action on 18 VAC 105-20.

Summary:

The proposed amendments revise certain requirements of licensure by endorsement, reduce the burden of reinstatement, add some miscellaneous fees consistent with other boards, and clarify certain provisions related to the provision of patient records if a practice is to be terminated

and the use of professional designations. The board recommends several changes in requirements for continuing education including an increase in the number of continuing education hours to the statutory limit of 16 but allowing two of those hours to be in recordkeeping and two in CPR.

18 VAC 105-20-10. Licensure by examination.

A. The applicant, in order to be eligible for licensure by examination to practice optometry in the Commonwealth, shall:

1. Be a graduate of a school of optometry accredited by the Council on Optometric Education; have an official transcript verifying graduation sent to the board;
2. Request submission of an official report from the National Board of Examiners in Optometry of a score received on each required part of the examination of the National Board of Examiners in Optometry or other board-approved examination; and
3. Submit a completed application and the prescribed fee.

B. Applicants who passed the National Board Examination prior to ~~August 1993~~ *May 1985* shall apply for licensure by endorsement as provided for in 18 VAC 105-20-15.

C. Required examinations.

1. For the purpose of § 54.1-3211 of the Code of Virginia, the board adopts all parts of the examination of the National Board of Examiners in Optometry as its written examination for licensure. After July 1, 1997, the board shall require passage as determined by the board of Parts I, II, and III of the National Board Examination.
2. As part of the application for licensure, an applicant must sign a statement attesting that he has read, understands, and will comply with the statutes and regulations governing the practice of optometry in Virginia.

18 VAC 105-20-15. Licensure by endorsement.

A. An applicant for licensure by endorsement shall pay the fee as prescribed in 18 VAC 105-20-20 and file a completed application that certifies the following:

1. The applicant has successfully completed a licensing examination or certification in optometry in any jurisdiction of the United States that is approximately comparable to the Virginia examination at the time of initial licensure.
2. The applicant has been engaged in active clinical practice for at least 36 months out of the last 60 months immediately preceding application.
3. The applicant is not a respondent in a pending or unresolved malpractice claim.
4. Each jurisdiction in which the applicant is currently licensed has verified that:
 - a. The license is full and unrestricted, and all continuing education requirements have been completed, if applicable;

- b. The applicant is not a respondent in any pending or unresolved board action;
- c. The applicant has not committed any act which would constitute a violation of § 54.1-3204 or § 54.1-3215 of the Code of Virginia; and
- d. The applicant has graduated from an accredited school or college of optometry.

B. The applicant shall also provide proof of competency in the use of diagnostic pharmaceutical agents (DPAs) which shall consist of a report from the national board of passing scores on all sections of Parts I and II of the National Board Examination taken in ~~August 1993~~ *May 1985* or thereafter. If the applicant does not qualify through examination, he shall provide other proof of meeting the requirements for the use of DPA as provided in §§ 54.1-3220 and 54.1-3221 of the Code of Virginia.

C. As part of the application for licensure, an applicant must sign a statement attesting that he has read, understands, and will comply with the statutes and regulations governing the practice of optometry in Virginia.

D. In the case of a federal service optometrist, the commanding officer shall also verify that the applicant is in good standing and provide proof of credentialing and quality assurance review to satisfy compliance with applicable requirements of subsection A of this section.

E. In the event the examinations for initial licensure are determined not comparable, the board may require the applicant to take and pass a regional or national practical examination.

F. An optometrist previously licensed in Virginia is not eligible for licensure by endorsement but may apply for reinstatement of licensure under 18 VAC 105-20-60.

18 VAC 105-20-20. Fees.

A. Required fees.

Initial application and licensure	\$245
Endorsement of certification to use diagnostic pharmaceutical agents	\$100
Annual licensure renewal	\$150
Late renewal	\$100 \$50
Returned check	\$25
Professional designation application	\$100
Annual professional designation renewal (per location)	\$50
Late renewal of professional designation	\$20
Reinstatement application fee (including renewal and late fees)	\$250 \$450
Reinstatement application after disciplinary action	\$500
Continuing education review (per course)	\$25
Duplicate wall certificate	\$25

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Duplicate license	\$10
Licensure verification	\$10

B. Unless otherwise specified, all fees are nonrefundable.

18 VAC 105-20-40. Unprofessional conduct.

It shall be deemed unprofessional conduct for any licensed optometrist in the Commonwealth to violate any statute or regulation governing the practice of optometry or to fail to:

1. Use in connection with the optometrist's name wherever it appears relating to the practice of optometry one of the following: the word "optometrist," the abbreviation "O.D.," or the words "doctor of optometry."
2. Maintain records on each patient for not less than five years from the date of the most recent service rendered.
3. Post in an area of the optometric office which is conspicuous to the public, a chart or directory listing the names of all optometrists practicing at that particular location.
4. Maintain patient records, perform procedures or make recommendations during any eye examination, contact lens examination or treatment as necessary to protect the health and welfare of the patient.
5. *Notify patients in the event the practice is to be terminated, giving a reasonable time period within which the patient or an authorized representative can request in writing that the records or copies be sent to any other like-regulated provider of the patient's choice or destroyed.*

18 VAC 105-20-50. Professional designations.

A. In addition to the name of the optometrist as it appears on the license, an optometrist may practice in an office that uses ~~any~~ only one of the following:

1. The name of an optometrist who employs him and practices in the same office;
2. A partnership name composed of some or all names of optometrists practicing in the same office; or
3. A professional designation, if the conditions set forth in subsection B of this section are fulfilled.

B. Optometrists licensed in this Commonwealth who practice as individuals, partnerships, associations, or other group practices may use a professional designation for the optometric office in which they conduct their practices provided the following conditions are met:

1. ~~Each~~ A professional designation shall be registered with the board by a licensed optometrist who has an ownership or equity interest in the optometric practice and who must practice in any location with that registered designation and who shall assume responsibility for compliance with this section and with the statutes and regulations governing the practice of optometry.

~~Each~~ 2. A professional designation shall be approved by the board and a fee shall be paid as prescribed by board regulations prior to use of the name. Names which, in the

judgment of the board, are false, misleading, or deceptive will be prohibited.

~~2-~~ 3. No licensed optometrist may, at any time, register to practice optometry under more than one professional designation.

~~3-~~ 4. All advertisements, including but not limited to signs, printed advertisements, and letterheads, shall contain the word "optometry" or reasonably recognizable derivatives thereof unless the name of the optometrist is used with the professional designation with the O.D. designation, Doctor of Optometry or optometrist.

~~4-~~ 5. In the entrance or reception area of the optometric office, a chart or directory listing the names of all optometrists practicing at that particular location shall be kept at all times prominently and conspicuously displayed.

~~5-~~ 6. The names of all optometrists who practice under the professional designation shall be maintained in the records of the optometric office for five years following their departure from the practice.

~~6-~~ 7. The name of the licensed optometrist providing care shall appear on all statements of charges and receipts given to patients.

~~7-~~ 8. An optometrist may use a professional designation which contains the name of an inactive, retired, removed, or deceased optometrist for a period of no more than one year from the date of succession to a practice and so long as he does so in conjunction with his own name, together with the words, "succeeded by," "succeeding," or "successor to."

18 VAC 105-20-60. Renewal of licensure; reinstatement; renewal fees.

A. Every person authorized by the board to practice optometry shall, on or before ~~October~~ December 31 of every year, submit a completed renewal application and pay the prescribed annual licensure fee.

B. It shall be the duty and responsibility of each licensee to assure that the board has the licensee's current address. All changes of mailing address or name shall be furnished to the board within 30 days after the change occurs. All notices required by law or by these rules and regulations are to be deemed to be validly tendered when mailed to the address given and shall not relieve the licensee of the obligation to comply.

C. The license of every person who does not return the completed form and fee by ~~October~~ December 31 of each year may be ~~extended for 30 days until November 30 and may be renewed for up to one year by paying the prescribed renewal fee and late fee, postmarked no later than November 30,~~ provided the requirements of 18 VAC 105-20-70 have been met. After ~~November 30, an unrenewed license is invalid~~ December 31, a license that has not been renewed is lapsed. ~~Failure to renew~~ Practicing optometry in Virginia with a lapsed license may subject the licensee to disciplinary action and additional fines by the board.

D. An optometrist whose license has been lapsed for more than one year and who wishes to resume practice in Virginia shall

apply for reinstatement. The executive director may grant reinstatement provided that:

1. The applicant can demonstrate continuing competence;
2. The applicant has satisfied *current* requirements for continuing education ~~during for the lapsed period in which the license has been lapsed, not to exceed two years;~~ and
3. The applicant has paid the prescribed ~~late fee, the unpaid renewal fee for the previous year and the prescribed reinstatement application fee.~~

~~D.~~ E. The board may require an applicant who has allowed his license to expire and who cannot demonstrate continuing competency to pass all or parts of the board-approved examinations.

18 VAC 105-20-70. Requirements for continuing education.

A. Each license renewal shall be conditioned upon submission of evidence to the board of ~~44~~ 16 hours of continuing education taken by the applicant during the previous license period.

1. *Fourteen of the 16 hours shall pertain directly to the care of the patient. The 16 hours may include up to two hours of recordkeeping for patient care and up to two hours of training in cardiopulmonary resuscitation (CPR).*

2. *For optometrists who are certified in the use of therapeutic pharmaceutical agents, at least two of the required continuing education hours shall be directly related to the prescribing and administration of such drugs.*

3. *Courses that are solely designed to promote the sale of specific instruments or products and courses offering instruction on augmenting income are excluded and will not receive credit by the board.*

B. Each licensee shall attest to fulfillment of continuing education hours on the required annual renewal form. All continuing education shall be completed prior to ~~October~~ December 31 unless an extension or waiver has been granted by the Continuing Education Committee.

C. *All continuing education courses shall be offered by an approved sponsor listed in subsection G of this section. Courses that are not approved by a board-recognized sponsor in advance shall not be accepted for continuing education credit. For those courses that have a post-test requirement, credit will only be given if the optometrist receives a passing grade as indicated on the certificate.*

D. *Licensees shall maintain continuing education documentation for a period of not less than three years. A random audit of licensees may be conducted by the board which will require that the licensee provide evidence substantiating participation in required continuing education courses.*

E. *Documentation of hours shall clearly indicate the name of the continuing education provider and its affiliation with an approved sponsor as listed in subsection G of this section. Documents that do not have the required information shall not be accepted by the board for determining compliance.*

Correspondence courses shall be credited according to the date on which the post-test was graded as indicated on the continuing education certificate.

F. *A licensee shall be exempt from the continuing competency requirements for the first renewal following the date of initial licensure by examination in Virginia.*

~~G.~~ G. An approved continuing education course or program, whether offered by correspondence, electronically or in person, shall be sponsored by one of the following:

1. The American Optometric Association and its constituent organizations.
2. Regional optometric organizations.
3. State optometric associations and their affiliate local societies.
4. Accredited colleges and universities providing optometric or medical courses.
5. The American Academy of Optometry and its affiliate organizations.
6. The American Academy of Ophthalmology and its affiliate organizations.
7. The Virginia Academy of Optometry.
8. Council on Optometric Practitioner Education (C.O.P.E.).
9. State or federal governmental agencies.
10. College of Optometrists in Vision Development.
11. ~~Specialty organizations~~ *The Accreditation Council for Continuing Medical Education of the American Medical Association for Category 1 credit.*
12. ~~Journals or optometric information networks as recognized by the board~~ *Providers of training in cardiopulmonary resuscitation (CPR).*
13. Optometric Extension Program.

~~D.~~ For board approval of courses offered by other sponsors, the board will review courses for purposes of continuing education requirements if the course review fee as prescribed in ~~18 VAC 105-20-20~~ has been paid and the following is provided:

1. The title of the course;
2. The sponsoring organization(s);
3. The name of the lecturer;
4. The qualifications of the lecturer;
5. An outline of the course's content;
6. The length of the course in clock hours;
7. The method of certification of attendance or completion if offered as a correspondence course; and
8. Number of credit hours requested.

Proposed Regulations

~~E. Courses approved by the board will be kept on a list maintained by the board. All courses approved by the board shall pertain directly to the care of the patient.~~

F. Courses excluded by the board shall include:

- ~~1. Courses which are solely designed to promote the sale of specific instruments or products;~~
- ~~2. Courses offering instruction on augmenting income; and~~
- ~~3. Courses which are neither advertised nor in fact available to all optometrists.~~

NOTICE: The forms used in administering 18 VAC 105-20, Regulations of the Virginia Board of Optometry, are not being published due to the large number; however, the name of each form is listed below. The forms are available for public inspection at the Board of Optometry, 6606 W. Broad Street, Richmond, Virginia, or at the office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia.

FORMS

~~Optometry Licensure Applicant Instructions to Applicant (eff. 6/99 rev. 5/02).~~

~~Form A, Application for a License to Practice Optometry (eff. 6/99 rev. 5/02).~~

~~Form B, Licensure Verification (rev. 5/02).~~

~~Diagnostic Pharmaceutical Agents Endorsement Application (eff. 2/99 rev. 5/02).~~

~~Application for Approval of a Continuing Education Course (eff. 4/99).~~

~~Application for Professional Designation Application (eff. 7/99 rev. 5/02).~~

~~Professional Designation Application Letter (eff. 7/99 rev. 7/01).~~

~~Application for Reinstatement of License (eff. 6/01 rev. 5/02).~~

~~Renewal Notice and Application (eff. 4/99 rev. 5/02).~~

VA.R. Doc. No. R02-49; Filed May 28, 2002, 2:14 p.m.

* * * * *

Title of Regulation: 18 VAC 105-30. Regulations on Certification of Optometrists to Use Therapeutic Pharmaceutical Agents (amending 18 VAC 105-30-90, 18 VAC 105-30-100, and 18 VAC 105-30-120).

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

Public Hearing Date: July 12, 2002 - 9 a.m.

Public comments may be submitted until August 16, 2002.
(See Calendar of Events section for additional information)

Agency Contact: Elaine J. Yeatts, Agency Regulatory Coordinator, Department of Health Professions, 6606 W. Broad Street, Richmond, VA 23230, telephone (804) 662-9918, FAX (804) 662-9114 or e-mail elaine.yeatts@dhp.state.va.us.

Basis: Section 54.1-2400 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 statutory authority for licensure and regulation of optometrists, including the mandate for continuing education, is found in Chapter 32 (§ 54.1-3200 et seq.) of Title 54.1 of the Code of Virginia.

Purpose: The purpose of the amended regulation is to reduce the burden of reinstatement for a few optometrists who allow their TPA certification to expire. Fees are reduced or added for consistency with the principles for fee development. By requiring at least two hours of continuing education directed toward drug therapies, the board is seeking to protect the public health and safety by ensuring that optometrists who use therapeutic pharmaceutical agents have remained abreast of drug interactions and efficacy and are familiar with newer drugs as they are introduced.

Substance: Substantive changes to the existing sections of the regulations include: (i) an additional two hours of continuing education in prescribing and administration of drugs; (ii) the reduction or addition of certain fees consistent with the principles of fee development; and (iii) a provision for reinstatement of an expired certificate as opposed to requiring the optometrist to take the TPA examination and apply as a new applicant.

Issues: The primary advantages to the public of implementing the amended regulations are as follows: (i) a change in requirements for reinstatement of an expired TPA certificate may result in a few additional licensed optometrists being available to provide those services in the Commonwealth; and (ii) an additional requirement for two hours of continuing education in prescription drugs for optometrists who use therapeutic pharmaceutical agents will offer some assurance that the practitioner is current in his knowledge of appropriate drug therapies.

There are no disadvantages to the public as all amendments are intended to provide better access to qualified optometrists who have remained current in their knowledge and skills.

There are no advantages or disadvantages to the agency or the Commonwealth in the adoption of these regulations. While the addition of miscellaneous fees and the increase in the returned check charge may result in a very modest increase in income, the reduction in the late fee will likely offset that amount.

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 § 2.2-4007 G of the Administrative Process Act and Executive Order Number 25 (98). Section 2.2-4007 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 Board of Optometry proposes several changes to the regulations governing the practice of optometrists certified to use therapeutic pharmaceutical agents. The proposed regulations:

1. Specify that at least two of the continuing education hours required for licensure renewal must be in courses directly related to prescribing and administering prescription drugs;
2. Allow licensees whose certificates have expired to reinstate their certificate for \$300 rather than go through the reapplication process (\$275 plus \$50 late renewal fee); and
3. Reduce the late renewal fee from \$50 to \$25, add fees for duplicate certification (\$10), duplicate wall certificate (\$25), and increase the returned check fee from \$15 to \$25.

Estimated economic impact.

Continuing Education Requirements. The proposed regulation specifies that at least two of the continuing education hours required for licensure renewal must be in courses directly related to prescribing and administering prescription drugs. There is no empirical evidence currently available, however, to determine how effective continuing education is on improving the quality of care provided by optometrists.

Reinstatement and Late Renewal Fees. Current policy requires all individuals who do not renew their certifications within 30 days of the expiration date to reapply for licensure. This policy does not differentiate between persons who are merely late in renewing their certifications from persons who have chosen to let their certification lapse for a lengthy period of time (i.e., someone who had left the state to practice in another jurisdiction, and then has returned to Virginia). The proposed regulation reduces the late fee, from \$50 to \$25, for individuals renewing within one year of the expiration date and requires reinstatement for the renewal of any certifications (now lapsed) beyond that time. The proposed reinstatement fee of \$300 covers the costs of application processing and document review, and the renewal fee.

Fee Changes. The proposed fees (i.e., \$10 for licensure verification, \$20 for late renewal of a professional designation) are intended to represent accurately the actual cost of service and provide consistency across boards within the Department of Health Professions. By charging individuals for the full costs incurred on their behalf, the proposed changes are both more efficient and equitable.

Businesses and entities affected. There are approximately 1,300 doctors of optometry currently licensed in Virginia, 940 of whom are certified to use therapeutic pharmaceutical agents.

Localities particularly affected. The proposed changes to this regulation should not disproportionately affect any particular locality.

Projected impact on employment. The proposed changes to this regulation are not expected to have any significant impact on employment in Virginia.

Effects on the use and value of private property. The proposed changes to this regulation are not expected to have any significant effects on the use and value of private property in Virginia.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The Board of Optometry concurs with the analysis of the Department of Planning and Budget for the regulatory review action on 18 VAC 105-30.

Summary:

The proposed amendments reduce the burden of reinstating an expired certification, reduce the late renewal fee and add some miscellaneous fees consistent with other boards, and specify that two of the continuing education hours required for renewal of licensure must be directly related to prescribing and administration of prescription drugs.

18 VAC 105-30-90. Renewal of certification.

Every optometrist TPA-certified by the board shall renew his certification with the annual renewal of his license to practice optometry. *At least two of the continuing education hours required for renewal of an optometrist license shall be directly related to the prescribing and administration of therapeutic pharmaceutical agents.*

18 VAC 105-30-100. Expiration of certification.

An optometrist who allows his certification to expire shall be considered not certified by the board. An optometrist who proposes to resume the treatment of certain diseases and administer certain therapeutic pharmaceutical agents shall ~~make a new application for certification and meet the requirements of 18 VAC 105-30-30~~ *submit an application for reinstatement, pay the reinstatement fee and provide evidence of continued competency to resume such practice.*

18 VAC 105-30-120. Fees required by the board.

A. The following fees are required by the board:

Application for certification	\$200
Annual renewal of certification	\$75
Penalty for late renewal	\$50 25
Verification letter to another jurisdiction	\$10
Returned check	\$15 25
<i>Duplicate wall certificate</i>	\$25
<i>Duplicate certification</i>	\$10
<i>Reinstatement</i>	\$300

B. All fees are nonrefundable.

NOTICE: The forms used in administering 18 VAC 105-30, Regulations on Certification of Optometrists to Use Therapeutic Pharmaceutical Agents, are listed below. Any amended or added forms are reflected in the listing and are published following the listing.

Proposed Regulations

FORMS

TPA Certification Applicant Instructions (rev. 5/02).

Form C, Application for Therapeutic Pharmaceutical Agents Certification (rev. 8/24/98 5/02).

Form A D, Certificate of Training (rev. 2/2/99 5/02).

Form B, Clearance from Other State Boards (rev. 2/2/99).

Application for TPA Certification Reinstatement (rev. 5/02).

Renewal Notice and Application, C-46454 (eff. 7/1/97 rev. 5/02).

APPLICATION FOR THERAPEUTIC PHARMACEUTICAL AGENTS CERTIFICATION



To the Board of Optometry:

I hereby make application for a certificate to practice as a TPA Certified Optometrist in the Commonwealth of Virginia and submit the following statements:

APPLICANT: Please complete all sections (Print or type)

LAST NAME		FIRST		MIDDLE/MAIDEN	
HOUSE/APT #, STREET NAME	CITY	STATE	ZIP CODE		
TELEPHONE NUMBER	FAX NUMBER	E-MAIL ADDRESS			
DATE OF BIRTH	PLACE OF BIRTH	SOCIAL SECURITY NUMBER OR DMV NUMBER*			
Mo ___ Day ___ Yr ___					
GRADUATION DATE	Prof. School Degree	School, City, State			
Mo ___ Day ___ Yr ___					
PRINT NAME AS YOU WISH IT TO APPEAR ON WALL CERTIFICATE					

APPLICANTS DO NOT USE SPACES BELOW THIS LINE – FOR OFFICE USE ONLY

CLASS	APPLICANT NO.	FEE	SUPERIOR LICENSE NO.	TMOOD EXAM DATE
CERTIFICATE NUMBER		EXPIRATION DATE		ISSUE DATE

*In accordance with § 54.1-116 of the Code of Virginia, you are required to submit your Social Security Number or your control number issued by the Virginia Department of Motor Vehicles. If you fail to do so, the processing of your application will be suspended and fees will not be refunded.

This number will be used by the Department of Health Professions for identification and will not be disclosed for other purposes except as provided for by law. Federal and state law requires that this number be shared with other agencies for child support enforcement activities.

FORM C

TPA CERTIFICATION APPLICANT INSTRUCTIONS

In Virginia, a license to practice optometry, alone, does not entitle the holder to prescribe for and treat certain diseases or abnormal conditions of the human eye and its adnexa with certain therapeutic pharmaceutical agents (TPA's); a separate TPA certification is required. Please review all of the following instructions before submitting your application. The application will not be considered complete until all items have been forwarded to the Virginia Board office as specified.

- A Virginia optometry license with authorization to use diagnostic pharmaceutical agents is required. (NOTE: You may apply for TPA certification and licensure at the same time but you will not be issued a TPA certificate until your license has been issued. If you are licensed in Virginia, you do not have to request verification.) (See also "Optometry Licensure Applicant Instructions," the "Regulations of the Virginia Board of Optometry," "Regulations on Certification for Therapeutic Pharmaceutical Agents").
- A transcript verifying your doctorate in optometry must be sent directly from the registrar. (NOTE: If you are applying for licensure at this time, as well, one transcript will suffice for both licensure and TPA applications).
- Proof of TPA Training. Check the enclosed listing entitled, "Graduate Optometric Programs Approved" to determine whether you graduated before or after the curriculum met the requirements for approved TPA training.
 - If you graduated on or after the beginning graduation date adopted for approval in lieu of postdoctoral training, your O.D. transcript is all that is needed. Ignore the "Certificate of Training" (Form D).
 - If you graduated before the approved graduation date, check to see if your postgraduate program, residency or fellowship is on the list entitled, "Postgraduate TPA Optometric Programs Approved" or "Postdoctoral Residencies or Fellowships". If it is on the list, have the institution complete the "Certificate of Training" and have them return it directly to the Board office.
 - If you graduated prior to the approval date for graduate programs and your program is NOT on the approved postgraduate or postdoctoral lists, your course of study must be submitted to the Board for review. Have the institution complete the "Certificate of Training," and provide details of the curriculum and faculty and return the information directly to the Board office.
- Completed "Application for Therapeutic Pharmaceutical Agents Certification" – Form C
- Payment of the \$200 TPA application fee made payable to the Treasurer of Virginia.
- Passing score on the Treatment and Management of Ocular Disease Examination (TMOOD) taken from 1989 forward. The score must be sent directly from NBEO to the Board office.
- Licensure verification. If you are or ever have been licensed in any other jurisdiction, send a copy of "Clearance From Other State Boards" (Form B) with your signature on the front of this form to each state optometry board where you have ever been licensed and request that they verify your licensure status. They must send the verifications directly to the Virginia Board of Optometry. (NOTE: Just as with transcripts, if you are applying for licensure at this time, you need not duplicate the licensure verifications provided for licensure application.)

Contact Information:
 Carol Stamey
 Virginia Board of Optometry
 (804) 662-3910 or carol.stamey@vbp.state.va.us

g/tpainstr revised 5/10/2002

1. I hereby certify that I studied optometry and received the degree of _____
(Type of Degree)
_____ from _____
(Date) (School)
2. Do you hold a current license to practice optometry in Virginia? If Yes, give license number _____
3. List all jurisdictions in which you have been certified/licensed to practice optometry _____
4. List all didactic and clinical postgraduate training in the treatment of diseases or abnormal conditions of the human eye and its adnexa with therapeutic pharmaceutical agents: _____

ALL QUESTIONS MUST BE ANSWERED. If any of the following questions is answered yes, explain and substantiate with available documentation.

5. Have you ever been reprimanded, had your license suspended, or canceled, or revoked by a jurisdiction? If yes, give jurisdiction, reasons and dates. [] Yes [] No

6. Have you ever voluntarily surrendered your license in any state? If yes, give jurisdiction, reasons and dates.
7. Have you ever been convicted of a violation of or pled Nolo Contendere to any federal, state, or local statute, regulation or ordinance, or entered into any plea bargaining relating to a felony or misdemeanor? (Excluding traffic violations, except convictions for driving under the influence). [] Yes [] No
8. Have you ever had hospital privileges or any membership in a state or local professional society revoked, suspended, or sanctioned in any manner? [] Yes [] No
9. Have you voluntarily withdrawn from a hospital staff or from any professional society while under investigation? [] Yes [] No
10. Have you had any malpractice suits brought against you in the last ten years? If so, how many? _____ Provide a letter from your attorney explaining each case. [] Yes [] No
11. Have you, within the last two (2) years, received treatment for or been hospitalized for a nervous, emotional, or mental disorder which could impair your practice? If yes, please provide a letter from each of your treating professionals summarizing diagnosis, treatment, and prognosis. [] Yes [] No
12. Do you have a physical disease or diagnosis which could affect your performance of professional duties? If yes, please provide a letter from each of your treating professionals summarizing diagnosis, treatment and prognosis. [] Yes [] No
13. Have you, within the last two (2) years, been treated by, consulted with or been under the care of a professional for any substance abuse? If yes, please provide a letter from the treating professional summarizing diagnosis, treatment and prognosis. [] Yes [] No
14. Have you, within the last five (5) years, been adjudged mentally incompetent or been committed to a mental institution? If yes, please provide a letter from the treating professional summarizing diagnosis, treatment and prognosis. [] Yes [] No

Proposed Regulations

THIS SECTION MUST BE NOTARIZED

I, _____, being first duly sworn, depose and say that I am the person referred to in the foregoing application and supporting documents.

I hereby authorize all hospitals, institutions, or organizations, my references, personal physicians, employers (past and present), business and professional associates (past and present), and all governmental agencies and instrumentalities (local, state, federal, or foreign) to release to the Virginia Board of Optometry any information, files or records requested by the Board in connection with the processing of individuals and groups listed above, any information which is material to me and my application.

I have carefully read the questions in the foregoing application and have answered them completely, without reservations of any kind, and I declare under penalty of perjury that my answers and all statements made by me herein are true and correct. Should I furnish any false information in this application, I hereby agree that such act shall constitute cause for the denial, suspension or revocation of my certificate to practice as a certified optometrist in the Commonwealth of Virginia.

Signature of Applicant

City/County of _____ State of _____

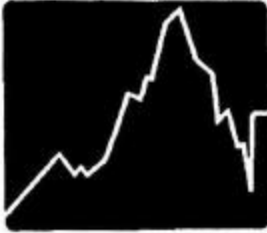
Subscribed and sworn to before me this _____ day of _____ 20____

My Commission expires _____

Signature of Notary Public

NOTARY SEAL

TPA_APPLICATION
Revised 5/17/2002



COMMONWEALTH OF VIRGINIA
Department of Health Professions

Board of Optometry
6606 West Broad Street, 4th Floor
Richmond, Virginia 23230-1717
(804) 662-9910
carol.stamey@dhp.state.va.us

CERTIFICATE OF TRAINING

Every applicant applying for certification to prescribe for and treat certain diseases, including abnormal conditions, of the human eye and its adnexa with certain therapeutic pharmaceutical agents shall provide evidence of having completed a full-time approved postgraduate optometric training program, or a full-time approved graduate optometric training program to the Board.

I hereby authorize the director of the postgraduate or graduate training program to release to the Virginia Board of Optometry the information listed below in connection with the processing of my application.

Signature of Applicant

It is hereby certified that _____ completed

the program for _____
Title of Postgraduate Optometric Program

from _____ to _____
(Month/Day/Year) (Month/Day/Year)

School of Optometry _____

Address _____

City, State, Zip Code _____

Program Director

Date

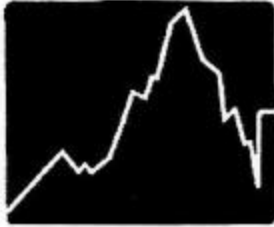
Please return to: Board of Optometry
6606 West Broad Street
Richmond, VA 23230-1717

SCHOOL SEAL

FORM D

Revised 5/8/2002
CERT_OF_TRAINING

Proposed Regulations



COMMONWEALTH OF VIRGINIA

BOARD OF OPTOMETRY

6606 West Broad Street, 4th Floor

Richmond, Virginia 23230-1717

(804) 662-9910 or e-mail: carol.stamey@dhp.state.va.us

APPLICATION FOR TPA CERTIFICATION REINSTATEMENT

APPLICANT - Please provide the information requested below and on the back of this page.				
NAME - LAST		FIRST	MIDDLE /MAIDEN	
STREET ADDRESS			CITY	STATE ZIP CODE
AREA CODE/TELEPHONE NUMBER			E-MAIL ADDRSS	
DATE OF BIRTH	TPA CERTIFICATION NUMBER		ORIGINAL ISSUE DATE	
Month Day Year				
Reinstatement requested due to lapse of license _____ or suspension or revocation of license _____				
1. Why do you seek reinstatement at this time? _____ _____				
2. Please attach a detailed summary of your professional activities, affiliations, employment and education since the expiration of your license. Be sure to explain any absences from practice and work. Please account for all time. (Include copies of CE certificates)				
3. Date(s) you took the NBEO examination(s): _____				
4. Do you have a mental, physical or chemical dependency condition which could interfere with your current ability to practice optometry? Yes ___ No ___. If yes, explain response in detail and have a letter from your treating licensed professional sent to the Board of Optometry.				
5. Has your license ever been voluntarily surrendered to a licensing authority in any jurisdiction _____ or revoked ___ suspended ___ placed on probation ___ otherwise disciplined ___ by any licensing authority in any jurisdiction? If yes, explain response in detail.				
6. Have you ever been convicted, pled guilty to or pled Nolo Contendere to the violation of any federal, state or other statute ordinance constituting a felony or misdemeanor? (Including convictions for driving under the influence, but excluding traffic violations. Yes ___ No ___ If yes, explain in detail and have a certified copy of the court order mailed to the Board of Optometry.				
7. List all states in which you are or have been licensed to practice optometry and request that each state provide licensure verification to: _____				

OFFICE SPACE ONLY Fees Paid \$ _____

APPROVED BY EXEC DIRECTOR _____ APPROVED BY BOARD _____

Applicant # _____ Reinstatement License # _____ Date Issued _____

Please enclose a check or money order in the amount of \$300 made payable to the Treasurer of Virginia. The total fee includes the reinstatement application fee, renewal fee of \$75 and late fee of \$25.

AFFIDAVIT

(To be completed before a notary public)

State of _____ County/City

of _____

Name _____, being duly sworn, says that he/she is the person who is referred to in the foregoing application for licensure as an optometrist in the Commonwealth of Virginia; that the statements herein contained are true in every respect; that he/she has complied with all requirements of the law; and that he/she has read and understands this affidavit.

Signature of Applicant

Subscribed to and sworn to before me this _____ day of _____ 20_____.

My commission expires on _____.

Signature of Notary Public

SEAL

Proposed Regulations

RECEIPT—KEEP THIS PORTION FOR YOUR RECORDS—DO NOT RETURN

«First Name» «Last Name»		Renewal Fee—Amount \$75.00
«License Type» - «License No»		
Renewal Period: «begin period» to «end period»	Current Expiration Date: «L Expiration Date»	

1. For name changes, cross out any incorrect information on the front of the renewal form, write the correct name and check the box on return envelope. Enclose a copy of your marriage license or court order for name changes.
2. Address changes, cross out any incorrect information on the front of the renewal form, write the correct address and check the box on return envelope.
3. Detach "renewal form" portion and return completed form with your check in attached return envelope.
4. Make checks payable to "Treasurer of Virginia." Visit our website at www.dhp.state.va.us

Please fold and tear on perforated line

Renewal Form for «License Type»		Amount Due:
«License No»	Renewal Period: «begin period» to «end period»	\$75.00
«First Name» «Middle Name» «Last Name»		
«L Address Line 1», «L Address Line 2», «L Address Line 3»		
List telephone number in space provided: { } - { }		
<input type="checkbox"/> Check here if you do not wish to renew, and sign.		
<input type="checkbox"/> I wish to renew and I certify that I have met or will meet all continuing education requirements to renew this license by October 31, 2001. I swear that I have not made any misrepresentation on this renewal application and understand that furnishing false information constitutes cause for loss of licensure to practice.		
Signature _____		
If Payment is Received by Board After «L Expiration Date», Amount Due \$125.00		
<i>Do not staple check to renewal form or fold renewal form.</i>		

«Scan_Line»

Detach Along Perforation
MOISTEN AND FOLD TO SEAL

VA.R. Doc. No. R02-50; Filed May 28, 2002, 2:15 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 § 2.2-4002 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. Rules Governing Retail Access to Competitive Energy Services (amending 20 VAC 5-312-90).

Statutory Authority: §§ 12.1-13 and 56-581.1 of the Code of Virginia.

Public Hearing Date: N/A -- Public comments may be submitted until June 27, 2002.

Agency Contact: Thomas E. Lamm, Assistant Director, Division of Energy Regulation, State Corporation Commission, P.O. Box 1197, Richmond, VA 23218, telephone (804) 371-9392, FAX (804) 371-9350, toll free 1-800-552-7945 or e-mail tlamm@scc.state.va.us.

Summary:

The proposed amendments modify 20 VAC 5-312-90 to include applicability to competitive service providers offering consolidated billing service to retail customers. Proposed amendments include the following:

- 1. Subsection A requires a competitive service provider to provide local distribution companies and the commission staff written notice at least 30 days in advance of its offering of consolidated billing service and establishes such financial security as the commission may require for its estimated liability associated with the collection and remittance of state and local consumption taxes.*
- 2. Subsection C requires that consolidated billing by the competitive service provider accommodate the local distribution company's normal billing and credit cycle requirements for distribution service.*
- 3. Subsection G requires local distribution companies to issue separate notices of pending disconnection action directly to retail customers that receive consolidated bills from competitive service providers.*
- 4. Subsection H specifies the remittance requirements for state and local consumption taxes and local consumer utility taxes by competitive service providers and local distribution companies.*
- 5. Subsection I requires that all consolidated bills provide the retail customer's local distribution company account number.*
- 6. Other subsections are amended to provide clarification and to impose reciprocal requirements on competitive*

service providers and local distribution companies offering consolidated billing service.

AT RICHMOND, MAY 28, 2002

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

CASE NO. PUE-2001-00297

Ex Parte: In the matter of establishing rules and regulations pursuant to the Virginia Electric Utility Restructuring Act for consolidated billing services

ORDER

On May 24, 2002, the Staff of the State Corporation Commission ("Staff") filed in this proceeding its Staff Report and proposed rules implementing the competitive billing services provisions, including consolidated billing, found in § 56-581.1 of the Virginia Electric Utility Restructuring Act, § 56-577 et seq. of the Code of Virginia ("Code").

The Commission directed the Staff to conduct an investigation, with input from a work group, and to file proposed rules as may be necessary to implement the offering of consolidated billing service by licensed competitive service providers to local distribution companies and retail customers. The Staff invited representatives of interested parties to participate in the work group to facilitate the development of the required regulations. The proposed rules are the result of extensive work group meetings identifying and evaluating consolidated billing issues.

Proposed amendments to 20 VAC 5-312-90 of the Commission's Rules Governing Retail Access to Competitive Energy Services are attached hereto as Attachment A. The proposed rules reflect the possibility of consolidated billing by a competitive service provider. Among other things, the proposed rules include the requirements that a competitive service provider must meet to offer consolidated billing services. A competitive service provider would be required to provide written advance notice to the local distribution company and the Commission's Division of Energy Regulation and Division of Economics and Finance prior to an initial offering of consolidated billing service. In addition, a competitive service provider would be required to establish such financial security as the Commission may require for such competitive service provider's estimated liability associated with the collection and remittance of state, local, and special regulatory consumption taxes. Other proposed rules address disconnection for nonpayment of regulated service charges to the local distribution company where the competitive service provider is the billing party as well as certain state, local, and special regulatory consumption tax collection processes.

NOW UPON CONSIDERATION of the Staff Report and the proposed rules, the Commission is of the opinion and finds that the proposed rules should be submitted to the Registrar of Regulations for publication in the *Virginia Register of Regulations*. We will direct that the Staff Report, this Order and Attachment A hereto be available for public inspection. As

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provided by previous orders issued in this proceeding, interested parties are afforded an opportunity to file written comments or to request a hearing on the proposed rules and the Staff Report on or before June 27, 2002.

Accordingly, IT IS ORDERED THAT:

(1) The Commission's Division of Information Resources shall forward this Order and Attachment A hereto to the Registrar of Regulations for publication in the *Virginia Register of Regulations*.

(2) A copy of the Staff Report and this Order and Attachment A hereto shall 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 A hereto shall also be made available on the Commission's website, <http://www.state.va.us/scc/caseinfo/orders.htm>. Interested persons may request a copy of the Staff Report by making a written request to Katharine A. Hart, Attorney, Office of General Counsel, State Corporation Commission, 1300 East Main Street, Richmond, Virginia 23219.

(3) Interested parties shall file written comments or requests for hearing in accordance with Ordering Paragraph (8) of the Commission's May 15, 2001, Order Establishing Proceedings, as amended by the Commission's February 14, 2002, Order Granting Motion for Extension.

(4) This matter is continued for further orders by the Commission.

AN ATTESTED COPY hereof shall be sent by the Clerk of the Commission to all persons on the official Service List in this matter. The Service List is available from the Clerk of the State Corporation Commission, c/o Document Control Center, 1300 East Main Street, First Floor, Tyler Building, Richmond, Virginia 23219.

20 VAC 5-312-90. Billing and payment.

A. A competitive service provider shall offer separate billing service or consolidated billing service ~~by, where either the local distribution company, or both the competitive service provider would be the billing party,~~ 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. *Where a competitive service provider would be the billing party, prior to an initial offering of consolidated billing service to customers within the service territory of each local distribution company, and after certification as required by 20 VAC 5-312-20 L, the competitive service provider shall abide by the following requirements:*

1. The competitive service provider shall provide written notice, at least 30 days in advance, to the local distribution company and to the State Corporation Commission's Division of Energy Regulation and Division of Economics and Finance. The written notification to the Division of Energy Regulation and the Division of Economics and Finance shall include:

a. The anticipated date of the initial consolidated billing service offering in each local distribution company service territory in which the service will be offered.

b. Any changes in information provided by the competitive service provider in its original license application pursuant to 20 VAC 5-312-40 A that have not been reported to the State Corporation Commission pursuant to 20 VAC 5-312-20 Q and 20 VAC 5-312-20 R.

c. The expected maximum market penetration for the provision of consolidated billing service to electricity customers during the following 12 months, including the estimated number of customers and associated annual consumption by customer type or load profile classification.

d. A representation that the electric competitive service provider has undertaken the necessary preliminary coordination efforts with tax officials of each potentially affected locality regarding the competitive service provider's obligation to collect and remit local consumption taxes and local utility consumer taxes.

2. The competitive service provider shall establish such financial security as the State Corporation Commission may require for such competitive service provider's estimated liability associated with the collection and remittance of state, local, and special regulatory consumption taxes.

B. A competitive service provider 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 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 billing party~~ to purchase the accounts receivable of the ~~competitive service provider nonbilling party~~.

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 exchange~~ billing information for ~~one~~ any customer account ~~from~~ with more than one competitive service provider or aggregator for the same billing period.

5. Accommodate the local distribution company's normal billing and credit cycle requirements for distribution service.

D. In the event a competitive service provider collects security deposits or prepayments, such funds shall be held in escrow by a third party in Virginia, and the competitive service provider shall provide to the State Corporation Commission

the name and address of the entity holding such deposits or prepayments.

E. A competitive service provider 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. *If a customer receives consolidated billing service and a competitive service provider is the billing party, the local distribution company shall advise the customer directly of any pending disconnection action for nonpayment through 10 days' notice by mail, separate from the consolidated bill. Such notice shall clearly identify the amount that must be paid and the date by which such amount must be received by, and also provide instructions for direct payment to, the local distribution company to avoid disconnection.*

H. *The provision of consolidated billing service shall conform to the following requirements:*

1. ~~The local distribution company~~ *billing party* 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 arrearages owed the competitive service provider; (iii) to regulated service current charges of the local distribution company; (iv) to competitive energy service current charges of the competitive service provider; and (v) to other charges.

2. Collections of state and local consumption taxes and local utility taxes shall be remitted as required by law. *The person responsible for collecting and remitting such taxes shall:*

a. Submit simultaneously, on or before the last day of the succeeding month of collection to the State Corporation Commission's Division of Public Service Taxation, the payment of the preceding month's state and special regulatory consumption taxes and associated Electric Utility or Natural Gas Consumption Tax Monthly Report.

b. Submit simultaneously, on or before the last day of the succeeding month of collection to each local government in whose jurisdiction the taxes have been collected, the payment of the preceding month's local consumption

taxes and local utility consumer taxes and associated monthly reports.

I. The local distribution company and a competitive service provider 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 toll-free telephone number for customer inquiries and complaints.

c. For consolidated bills, non-billing party name and toll-free telephone number for customer inquiries and complaints *and the customer's local distribution company account number.*

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 non-actual meter reads.

f. Previous bill amount *or account balance*, payments received since previous billing, balance forward, current charges, total amount due *or current account balance*, and ~~budget-billing~~ *payment plan* information.

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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 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 a customer's monthly energy consumption, numerically or graphically, for the previous 12 months; and

3. The investor-owned electric local distribution company shall provide on each bill a "price-to-compare" value, stated in cents per kilowatt-hour, 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 local distribution company shall develop and implement a program to provide "price-to-compare" information and assistance to customers. 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 ~~local distribution company~~ *billing party* shall, except as otherwise arranged through contractual agreement ~~between the local distribution company and a competitive service provider~~ *with the nonbilling party*, provide sufficient space on a consolidated bill to accommodate ~~a competitive service provider's~~ *the local distribution company's customer account number and the nonbilling party's name and toll-free telephone number, previous bill amount or account balance, payments applied since the previous billing, balance forward, total current charges, total amount due or current account*

balance, six additional numeric fields to detail current charges, and 240 additional text characters.

M. *If the local distribution company, as the billing party, provides consolidated billing service to a customer and continues to be the customer's billing party after the customer's service with a competitive service provider terminates*, the local distribution company shall, except as otherwise arranged through contractual agreement ~~between the local distribution company and a~~ *with such* competitive service provider, continue to track and bill customer account arrearages owed to ~~former such competitive service providers or aggregators~~ *provider* for two billing cycles after service has terminated. The bill shall list, at a minimum, the name, toll-free telephone number, and balance due for each former competitive service provider.

N. If the current charges of ~~a competitive service provider~~ *the nonbilling party* are not included on the consolidated bill issued by the ~~local distribution company~~ *billing party*, the bill shall note that such charges are not included.

O. If the current charges of ~~a competitive service provider~~ *the nonbilling party* are not included on the consolidated bill issued by the ~~local distribution company~~ *billing party* due to causes attributable to the ~~competitive service provider~~ *nonbilling party*, the charges shall be billed in the following month unless the two parties mutually agree to other arrangements.

P. If the current charges of ~~a competitive service provider~~ *the nonbilling party* are not included on the consolidated bill issued by the ~~local distribution company~~ *billing party* due to causes attributable to the ~~local distribution company~~ *billing party*, the bill shall be cancelled and reissued to include such charges unless the two parties mutually agree to other arrangements.

Q. The local distribution company or a competitive service provider 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.

VA.R. Doc. No. R02-191; Filed May 29, 2002, 9:52 a.m.



FINAL REGULATIONS

For information concerning Final Regulations, see Information Page.

Symbol Key

Roman type indicates existing text of regulations. *Italic type* indicates new text. Language which has been stricken indicates text to be deleted. [Bracketed language] indicates a change from the proposed text of the regulation.

TITLE 6. CRIMINAL JUSTICE AND CORRECTIONS

STATE BOARD OF CORRECTIONS

Title of Regulation: **6 VAC 15-40. Minimum Standards for Jails and Lockups** (amending 6 VAC 15-40-10, 6 VAC 15-40-40, 6 VAC 15-40-90 through 6 VAC 15-40-130, 6 VAC 15-40-150, 6 VAC 15-40-160, 6 VAC 15-40-280, 6 VAC 15-40-290, 6 VAC 15-40-360 through 6 VAC 15-40-410, 6 VAC 15-40-450, 6 VAC 15-40-460, 6 VAC 15-40-470, 6 VAC 15-40-490, [6 VAC 15-40-520,] 6 VAC 15-40-540 through 6 VAC 15-40-580, 6 VAC 15-40-620, 6 VAC 15-40-640 through 6 VAC 15-40-670, 6 VAC 15-40-690, 6 VAC 15-40-740, 6 VAC 15-40-800 through [6 VAC 15-40-840], [6 VAC 15-40-870,] 6 VAC 15-40-900 [, 6 VAC 15-40-910,] 6 VAC 15-40-920, 6 VAC 15-40-940 through 6 VAC 15-40-970, 6 VAC 15-40-1020, 6 VAC 15-40-1030, 6 VAC 15-40-1040, 6 VAC 15-40-1070, 6 VAC 15-40-1080, 6 VAC 15-40-1100, 6 VAC 15-40-1190, [6 VAC 15-40-1200,] 6 VAC 15-40-1330, and 6 VAC 15-40-1350; adding 6 VAC 15-40-155, [6 VAC 15-40-393,] 6 VAC 15-40-395, 6 VAC 15-40-833, 6 VAC 15-40-835, 6 VAC 15-40-1193, and 6 VAC 15-40-1195; repealing [6 VAC 15-40-1050,] 6 VAC 15-40-1110, and 6 VAC 15-40-1130).

Statutory Authority: §§ 53.1-5, 53.1-68, and 53.1-131 of the Code of Virginia.

Effective Date: July 17, 2002.

Summary:

The amendments reorganize and clarify the current standards to be more consistent with the actual practice in jails and lockups, and eliminate duplicative provisions.

The amendments concern the minimum standards for jails and lockups related to requirements for administration, management, programs, services, operation, and physical plants by clarifying the current language to be more consistent with the actual practice in jails and lockups. Some of the amendments are organizational in nature and move requirements from one section to another and delete repetitive language covered under multiple sections or department procedures.

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: Donna Lawrence, Supervisor, Compliance and Accreditation Unit, Department of Corrections, 6900 Atmore Drive, Richmond, VA 23225, telephone (804) 674-3237, FAX (804) 674-3587 or e-mail lawrencedc@vadoc.state.va.us.

REGISTRAR'S NOTICE: The proposed regulation was adopted as published in 18:12 VA.R. 1637-1645 February 25, 2002, with the additional changes shown below. Therefore, pursuant to § 2.2-4031 A of the Code of Virginia, the text of the final regulation is not set out at length. Only those sections that have changed since publication of the proposed regulation are set forth below.

6 VAC 15-40-10. Definitions.

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

"*Administrative segregation*" means a form of separation from the general population when the continued presence of the inmate in the general population would pose a serious threat to life, property, self, staff or other inmates, or to the security or orderly running of the institution. Inmates pending investigation for trial on a criminal act or pending transfer can also be included.

"*Annually*" means an action performed each calendar year.

"*Appeal*" means the procedure for review of an action by a higher authority.

~~"*Appropriate heating*" means temperatures appropriate to the summer and winter comfort zones.~~

"*Audit*" means the determination of facility compliance with standards through an examination of records and operations by a team of qualified professionals.

"*Certification*" means an official approval by the Board of Corrections ~~which that~~ allows a facility to operate.

"*Chief executive*" means the elected or appointed individual who by law or position has the overall responsibility for the facility's administration and operation.

"*Classification*" means the process for determining inmate housing, custody and program assignments.

"*Communication system*" means a mechanical audio transmission such as telephone, intercom, walkie talkie or T.V. monitor.

"*Contraband*" means any item possessed by inmates or found within the jail or lockup ~~which that~~ is illegal by law or not specifically approved for inmate possession by the administrator of the facility.

"*Daily log*" means a written *or electronic* record for the recording of daily activities or unusual incidents.

"*Department*" means the Department of Corrections.

"*Detainee*" means any person confined but not serving a sentence.

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

"Disciplinary detention" means the separation of an inmate from the general population for ~~major misconduct and/or~~ violations of ~~conduct or~~ regulations.

"Facility" means the actual physical setting in which a program or agency functions.

"Fire prevention practices and emergency plans" means the activities and written procedures utilized and rehearsed to ensure the safety of staff, inmates and public.

"Fire safety inspection" means an inspection conducted by the Office of State Fire Marshal or local fire department.

"Good time" means earned credits that will reduce an inmate's time served.

"Grievance procedure" means the method by which inmates may formally address complaints to the facility administration.

"Health care personnel" means individuals whose primary duties are to provide health services to inmates.

"Health inspection" means an inspection conducted by the local or state Department of Health.

"Impartial officer or committee" means individual(s) who are unbiased and are not directly involved in the particular incident or situation being reviewed.

"Inmate handbook" means a manual, pamphlet or handout ~~which that~~ contains information describing inmate activities and conduct.

"Inmate records" means written or electronic information concerning the individual's personal, criminal and medical history, behavior and activities while in custody.

"Juvenile" means a person less than 18 years of age [*who is not adjudicated as an adult*].

"Legal mail" means mail addressed to or received from an attorney or court.

"Local offender" means an individual who has a conviction but who is not a state offender in accordance with § 53.1-20 of the Code of Virginia.

"Lockup" means a temporary detention facility where detainees are held for not more than 12 hours.

~~"Major violations" means those institutional violations for which an inmate may be punished either by being placed in disciplinary detention or by losing statutory good time.~~

"Medical authority" means physician or nurse.

"Medical screening" means an observation and interview process within the booking procedure designed to obtain pertinent information regarding an individual's medical or mental health condition.

~~"Minor violations" means those institutional violations punishable by less severe sanctions such as reprimand or loss of privileges.~~

"Permanent ~~log~~ record" means a written or electronic record of a facility's activities ~~which that~~ cannot be altered or destroyed subject to state law.

"Pharmaceuticals" means prescription and nonprescription drugs.

"Policy and procedures manual" means a written or electronic record containing all policies and procedures needed for the operation of the facility in accordance with the law and the minimum standards for local jails and lockups.

"Post order" means a list of specific job functions and responsibilities required of each duty position.

"Program" means the plan or system through which a correctional agency works to meet its goals; often the program requires a distinct physical setting.

"Protective custody" means a form of separation from the general population for inmates requesting or requiring protection from other inmates.

"Quarterly" means an action ~~which that~~ occurs once every three months within a calendar year.

"Recreational activities" means any out-of-cell activity ranging from scheduled outside or inside recreation to informal tabletop games.

"State offender" means an individual sentenced to a term of incarceration in accordance with § 53.1-20 of the Code of Virginia. For the purpose of 6 VAC 15-40-230 and 6 VAC 15-40-240 relative to work release, educational release or rehabilitative release, a state offender shall be defined in terms of the intake schedule pursuant to § 53.1-20 of the Code of Virginia.

"Universal precautions" means a set of procedural directives and guidelines detailing placing barriers between staff and all blood and body fluids. These directives include provision of protective barrier devices, standardized labeling of biohazards, mandatory training of employees in universal precautions, management of exposure incidents, and availability to employees of immunization against Hepatitis B.

"Volunteer" means an individual who provides services to the detention facility without compensation.

"Work day" means Monday through Friday.

6 VAC 15-40-150. Inmate participation exercise.

Written policy, procedure and practice shall: *provide that all inmates have access to regular physical exercise. [Any exception shall be documented in writing.]*

- ~~1. Provide inmates access to recreational activities consistent with health and security regulations;~~
- ~~2. Provide all inmates access to regular physical exercise;~~
- ~~3. Specify eligibility for work assignments; and~~
- ~~4. Govern the administration of local work programs.~~

~~[Any exception] to the above [shall be documented in writing.]~~

6 VAC 15-40-160. Written procedures for release program eligibility criteria.

Written procedures outlining the eligibility criteria for participation in a work release, educational [release], *electronic monitoring*, or rehabilitation release program shall be developed by each facility with a work release, educational release, *electronic monitoring*, or rehabilitation program. Offenders shall meet the established eligibility requirements prior to being released to participate in the program.

[~~6 VAC 15-40-395~~ 6 VAC 15-40-393]. **Universal precautions.**

All regularly assigned facility staff shall be trained, competent and knowledgeable in the use of universal precautions. All training shall be documented.

[6 VAC 15-40-395. **Management of sharps.**

Written policy, procedure, and practice shall govern the control, storage, and use of sharps including at a minimum needles, scalpels, lancets, and dental tools.]

[6 VAC 15-40-520. **Acknowledgment in writing.**

Medical service fee debits to inmate accounts shall be acknowledged by the inmate in writing. *The acknowledgement shall be signed by a witness if the inmate refuses to sign.]*

[6 VAC 15-40-840. **Post to control security of jail.**

The facility shall maintain a designated post, ~~manne~~ *staffed* 24 hours a day, that controls activities and flow of people in and out of the secure area of the jail. *Main facility control posts may be staffed by civilian personnel who have been provided on-the-job training in facility security procedures and emergency plans, which shall be documented in writing with the same frequency as required by standards for all facility employees. Civilian personnel assigned to control posts shall not be assigned to other posts requiring direct prisoner contact and supervision.]*

[6 VAC 15-40-870. **Security and storage of security devices.**

Written policy, procedure and practice shall govern the security, storage and use of firearms, ammunition, chemical agents, and related security devices to ensure that:

1. The facility shall provide secure storage for firearms, ammunition, chemical agents, and related security equipment accessible to authorized personnel only and located outside the security perimeter or the inmate housing and activity areas.
2. Personnel who carry firearms and ammunition are assigned positions that are inaccessible to inmates (with the exception of emergencies).
3. Personnel who discharge firearms or use chemical agents *other than for training purposes*, submit written reports to the administrator or designated subordinate no later than the conclusion of the shift during which same are discharged or used.]

6 VAC 15-40-1050. [Institution inspection. (~~Repealed~~)

Supervisory staff shall inspect the institution daily. Such inspections shall be documented. Unusual findings shall be indicated in writing and submitted to the senior supervisor on duty for review.]

B. 6 VAC 15-40-1193. Separation [of juveniles].

Juveniles shall be so housed as to be separated by a wall or other barrier ~~which~~ *that* would result in preventing visual contact and normal verbal communication with adult prisoners.

G. 6 VAC 15-40-1195. Contact [with juveniles].

The facility shall have one or more persons on duty at all times responsible for auditory and visual contact with each juvenile at least every 30 minutes. Contact shall be at least every 15 minutes when juveniles exhibit self-destructive or violent behavior.

[6 VAC 15-40-1200. **Isolation and segregation of juveniles.**

Isolation cells or segregation within a cellblock shall be utilized only as a protective or disciplinary measure.]

VA.R. Doc. No. R01-66; Filed May 29, 2002, 10:55 a.m.



TITLE 9. ENVIRONMENT

STATE AIR POLLUTION CONTROL BOARD

Title of Regulations: **Regulations for the Control and Abatement of Air Pollution (Revision YY).**

9 VAC 5-50. New and Modified Stationary Sources (amending [9 VAC 5-50-240,] 9 VAC 5-50-250, 9 VAC 5-50-260 [, 9 VAC 5-50-320] and 9 VAC 5-50-390).

9 VAC 5-80. Permits for Stationary Sources (adding Article 6: 9 VAC 5-80-1100 through 9 VAC 5-80-1320; repealing 9 VAC 5-80-10 and 9 VAC 5-80-11).

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

Effective Date: September 1, 2002.

Summary:

The regulation applies to the construction or reconstruction of new stationary sources or expansions (modifications) to existing ones. Exemptions are provided for smaller facilities. With some exceptions, the owner must obtain a permit from the agency prior to the construction or modification of the source. The owner of the proposed new or modified source must provide information as needed to enable the agency to conduct a preconstruction review in order to determine compliance with applicable control technology and other standards and to assess the impact of the emissions from the facility on air quality. The regulation also provides the basis for the agency's final action (approval or disapproval) on the permit depending upon the results of the preconstruction review. The regulation provides a sourcewide perspective to determine applicability based

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solely upon the emissions changes directly resulting from the physical or operational change. Procedures for making changes to permits are included. The regulation also allows consideration of additional factors for making Best Available Control Technology determinations for sources subject to minor new source review.

The changes made to the repropoed regulation follow:

1. Provisions have been added to clarify the counting of fugitive emissions to determine applicability of minor new source review. Fugitive emissions are counted if quantifiable; however, if fugitive emissions are the only emissions that cause the new or modified source to be subject to minor new source review, they are not counted. [see 9 VAC 5-80-1100 D]

2. Provisions have been added to state that (i) exemption from minor new source review does not exempt a project from major new source review, and (ii) exemption from major new source review does not exempt a project from minor new source review. [see 9 VAC 5-80-1100 G]

3. Provisions have been added to allow permit terms and conditions that are state-only enforceable to be designated as such in the permit. [see 9 VAC 5-80-1100 H 4 and 9 VAC 5-80-1120 F]

4. The provisions to allow concurrent construction have been deleted. [see 9 VAC 5-80-1130]

5. Provisions have been added to require certification from the permit applicant that the applicant understands that issuance of the minor new source review permit (i) does not shield the applicant from enforcement of the major new source review permit program and (ii) does not relieve the applicant from compliance with the major new source review program. [see 9 VAC 5-80-1140 E]

6. The provisions covering public participation for sources of hazardous air pollutants have been changed to require a public comment period only for permit applications requiring a case-by-case maximum available control technology (MACT) determination under the federal hazardous air pollutant new source review program. [see 9 VAC 5-80-1170 D 1]

7. The provisions to allow plantwide applicability limits have been deleted and replaced with provisions that allow pollution control projects under this permit program and exempt them from major new source review. Pollution control projects are physical or operational changes at a source whose primary function is the reduction of emissions of targeted regulated air pollutants but which also result in an increase in emissions of nontargeted regulated air pollutants that qualify as a major modification subject to major source new source review. [see 9 VAC 5-80-1110 C, definitions of "pollution control project" and "targeted regulated air pollutant," and 9 VAC 5-80-1310]

8. The provisions concerning exemption levels have been simplified somewhat and clarified in some cases. [see 9 VAC 5-80-1320]

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: Alma Jenkins, Office of Air Regulatory Development, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4070, FAX (804) 698-4510, toll free 1-800-592-5482 or (804) 698-4021/TTY.

CHAPTER 50. NEW AND MODIFIED STATIONARY SOURCES.

PART II. EMISSION STANDARDS.

Article 4.

Standards of Performance for Stationary Sources (Rule 5-4).

[9 VAC 5-50-240. Applicability and designation of affected facility.

A. The affected facilities in stationary sources to which the provisions of this article apply are facilities that emit or cause air pollution.

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

C. *The provisions of this article apply only to affected facilities subject to the new source review program.]*

9 VAC 5-50-250. Definitions.

A. For the purpose of ~~these regulations~~ *the Regulations for the Control and Abatement of Air Pollution* and subsequent amendments or any orders issued by the board, the words or terms shall have the meanings given them in subsection C of this section.

B. As used in this article, all 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.

C. Terms defined.

"Best available control technology" means a standard of performance (including a visible emission standard) based on the maximum degree of emission reduction for any pollutant which would be emitted from any proposed stationary source which the board, on a case-by-case basis, taking into account energy, environmental and economic impacts and other costs, determines is achievable for such source through the application of production processes or available methods, systems and techniques, including fuel cleaning or treatment or innovative fuel combustion techniques for control of such pollutant. In no event shall application of best available control technology result in emissions of any pollutant which would exceed the emissions allowed by any applicable standard in Article 5 (9 VAC 5-50-400 et seq.) of this part or Article 1 (9 VAC 5-60-60 et seq.) of Part II of 9 VAC 5 Chapter 60. If the board determines that technological or economic limitations on the application of measurement methodology to particular emissions unit would make the imposition of an emission standard infeasible, a design, equipment, work practice, operational standard, or combination of them, may be prescribed instead of requiring the application of best available control technology. Such standard shall, to the

degree possible, set forth the emission reduction achievable by implementation of such design, equipment, work practice or operation, and shall provide for compliance by means which achieve equivalent results. *In determining best available control technology for stationary sources subject to Article 6 (9 VAC 5-80-1100 et seq.) of Part II of 9 VAC 5 Chapter 80, consideration shall be given to the nature and amount of the new emissions, emission control efficiencies achieved in the industry for the source type, and the cost effectiveness of the incremental emission reduction achieved.*

"Lowest achievable emission rate" means for any source, the more stringent rate of emissions based on the following:

- a- 1. The most stringent emissions limitation which is contained in the implementation plan of any state for such class or category of stationary source, unless the owner of the proposed stationary source demonstrates that such limitations are not achievable; or
- b- 2. The most stringent emissions limitation which is achieved in practice by such class or category of stationary source. This limitation, when applied to a modification, means the lowest achievable emissions rate for the new or modified emissions units within the stationary source. In no event shall the application of this term permit a proposed new or modified stationary source to emit any pollutant in excess of the amount allowable under an applicable new source standard of performance.

["New source review program" means a program for the preconstruction review and permitting of new stationary sources or expansions to existing ones in accordance with Article 6 (9 VAC 5-80-1100 et seq.), Article 7 (9 VAC 5-80-1400 et seq.), Article 8 (9 VAC 5-80-1700 et seq.), or Article 9 (9 VAC 5-80-2000 et seq.) of 9 VAC 5 Chapter 80.]

9 VAC 5-50-260. Standard for stationary sources.

A. No owner or other person shall cause or permit to be discharged into the atmosphere from any affected facility any emissions in excess of that resultant from using best available control technology, as reflected in any condition that may be placed upon the permit approval for the facility.

B. A [~~major~~] stationary source shall apply best available control technology for each regulated pollutant that it would have the potential to emit in amounts equal to or greater than the levels in 9 VAC 5-80-1320 C.

C. A modification shall apply best available control technology for each regulated pollutant for which it would result in a net emissions increase at the source. This requirement applies to each proposed emissions unit at which a net emissions increase in the pollutant would occur in amounts equal to or greater than the levels in 9 VAC 5-80-1320 D as a result of physical change or change in the method of operation in the unit.

D. For phased construction projects, the determination of best available control technology shall be reviewed and modified, as appropriate, at the latest reasonable time which occurs no later than 18 months prior to commencement of construction of each independent phase of the project. At such time, the owner of the applicable stationary source may be required to

demonstrate the adequacy of any previous determination of best available control technology for the source.

[9 VAC 5-50-320. Standard for toxic pollutants.

The provisions of ~~Article 3 (9 VAC 5-50-160 et seq.) of this chapter (Emission Standards for Toxic Pollutants, Rule 5-3) Article 5 (9 VAC 5-60-300 et seq.) of 9 VAC Chapter 60 (Emissions Standards for Toxic Pollutants from New and Modified Sources, Rule 6-5) apply.]~~

9 VAC 5-50-390. Permits.

A permit may be required prior to beginning any of the activities specified below ~~and if the provisions of this chapter and 9 VAC 5 Chapter 80 (9 VAC 5-80 [-40 et seq.]) may apply.~~ Owners contemplating such action should *review those provisions and* contact the appropriate regional office for guidance *on whether those provisions apply.*

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

CHAPTER 80.
PERMITS FOR STATIONARY SOURCES.

PART I.
[PERMITS FOR NEW AND MODIFIED SOURCES
RESERVED.]

PART II.
~~OPERATING PERMITS PERMIT PROCEDURES.~~

Article 6.
Permits for New and Modified Stationary Sources.

9 VAC 5-80-10. Permits new and modified stationary sources. (Repealed.)

A. 9 VAC 5-80-1100. Applicability.

~~1- A.~~ Except as provided in ~~subdivision A-3 subsection C~~ of this section, the provisions of this ~~section~~ article apply to the construction, reconstruction, relocation or modification of any stationary source.

~~2- B.~~ The provisions of this ~~section~~ article apply throughout the Commonwealth of Virginia.

~~3- C.~~ The provisions of this ~~section~~ article do not apply to any ~~facility exempted by 9 VAC 5-80-11 stationary source,~~ emissions unit or facility that is exempt under the provisions of 9 VAC 5-80-1320. Exemption from the requirement to obtain a permit under this ~~section~~ article shall not relieve any owner of the responsibility to comply with any other applicable provisions of ~~these~~ regulations of the board or any other applicable regulations, laws, ordinances and orders of the governmental entities having jurisdiction. Any ~~facility~~

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stationary source, emissions unit or facility which is exempt from the provisions of this section ~~article~~ based on the criteria in ~~9 VAC 5-80-11~~ 9 VAC 5-80-1320 but which exceeds the applicability thresholds for any applicable emission standard in 9 VAC 5 Chapter 40 (9 VAC 5-40-10 et seq.) if it were an existing source or any applicable standard of performance in 9 VAC 5 Chapter 50 (9 VAC 5-50-10 et seq.) shall be subject to the more restrictive of the provisions of either the emission standard in 9 VAC 5 Chapter 40 (9 VAC 5-40-10 et seq.) or the standard of performance in 9 VAC 5 Chapter 50 (9 VAC 5-50-10 et seq.).

~~4. Where a source is constructed or modified in contemporaneous increments which individually are not subject to approval under this section and which are not part of a program of construction or modification in planned incremental phases approved by the board, all such increments shall be added together for determining the applicability of this section. An incremental change is contemporaneous with the particular change only if it occurs between the date five years before construction on the particular change commences and the date that the increase from the particular change occurs.~~

D. The fugitive emissions of a stationary source [, to the extent quantifiable,] shall [~~not~~] be included in determining whether it is subject to this article. The provisions of this article do not apply to a stationary source or modification that would be subject to this article only if fugitive emissions, to the extent quantifiable, are considered in calculating the actual emissions of the source or net emissions increase.

E. An affected facility subject to Article 5 (9 VAC 5-50-400 et seq.) of Part II of 9 VAC 5 Chapter 50 shall not be exempt from the provisions of this article, except where [~~the affected facility is exempt under subsection C of this section and~~]:

1. The affected facility would be subject only to recordkeeping or reporting requirements or both under Article 5 (9 VAC 5-50-400 et seq.) of 9 VAC 5 Chapter 50; or

2. The affected facility is constructed, reconstructed or modified at [~~an existing a~~] stationary source which has a current permit for similar affected facilities [~~subject to that requires compliance with emission standards and other requirements that are not less stringent than~~] the provisions of Article 5 (9 VAC 5-50-400 et seq.) of 9 VAC 5 Chapter 50.

[~~F. A boiler, incinerator or industrial furnace as defined in 9 VAC 20-60-10 and subject to 9 VAC 20 Chapter 60 (9 VAC 20-60-10 et seq.) shall not be exempt from the provisions of this article.~~

~~G. F.] Regardless of the exemptions provided in this article, no owner or other person shall circumvent the requirements of this article by causing or allowing a pattern of ownership or development over a geographic area of a source which, except for the pattern of ownership or development, would otherwise require a permit.~~

[~~H. G. Except as provided in 9 VAC 5-80-1310,] no provision of this article shall be construed as exempting any stationary source or emissions unit from the provisions of [~~Article~~~~

~~8 (9 VAC 5-80-1700 et seq.) or Article 9 (9 VAC 5-80-2000 et seq.) of this part the major new source review program. Accordingly, no provision of the major new source review program regulations shall be construed as exempting any stationary source or emissions unit from this article] .~~

~~5. [~~H.] Unless specified otherwise, the provisions of this section article are applicable to various sources as follows:~~~~

~~a. 1. Provisions referring to "sources," "new or modified sources, or both" or "stationary sources" are applicable to the construction, reconstruction or modification of all stationary sources (including major stationary sources and major modifications) and the emissions from them to the extent that such sources and their emissions are not subject to the provisions of [~~Article 8 (9 VAC 5-80-1700 et seq.) or Article 9 (9 VAC 5-80-2000 et seq.) of this chapter or 9 VAC 5-80-30 part the major new source review program~~] .~~

~~b. 2. Provisions referring to "major stationary sources" are applicable to the construction [; or] reconstruction [~~or modification~~] of all major stationary sources [~~subject to this article. Provisions referring to "major modifications" are applicable to major modifications of stationary sources subject to this article~~] .~~

~~c. 3. In cases where the provisions of [~~Article 8 (9 VAC 5-80-1700 et seq.) or Article 9 (9 VAC 5-80-2000 et seq.) of this chapter or 9 VAC 5-80-30 part the major new source review program~~] conflict with those of this section article, the provisions of [~~Article 8 (9 VAC 5-80-1700 et seq.) or Article 9 (9 VAC 5-80-2000 et seq.) of this chapter or 9 VAC 5-80-30 part the major new source review program~~] shall prevail.~~

~~4. [~~For sources and pollutants not subject to federal requirements, the terms~~ Provisions referring to] "state and federally enforceable" [~~and or~~] "federally and state enforceable" or similar wording shall mean "state-only enforceable" [for terms and conditions of a permit designated state-only enforceable under 9 VAC 5-80-1120 F].~~

B. 9 VAC 5-80-1110. Definitions.

~~4. A. For the purpose of these regulations [applying this article in the context of] the Regulations for the Control and Abatement of Air Pollution and [~~subsequent amendments or any orders issued by the board related uses~~], the words or terms shall have the meanings given them in ~~subdivision B-3~~ subsection C of this section.~~

~~2. B. As used in this section article, all terms not defined here shall have the meanings given them in 9 VAC 5 Chapter 10 (9 VAC 5-10 [~~-40 et seq.~~]), unless otherwise required by context.~~

~~3. C. Terms defined.~~

"Actual emissions" means the actual rate of emissions (expressed in tons per year) of a pollutant from a stationary source or portion thereof, as determined in accordance with the provisions of this definition.

1. [~~Actual emissions shall be calculated using an emissions unit's actual operating hours, production rates, and types of~~

~~materials processed, stored, or combusted for any 12 consecutive months during the 120 consecutive months that precede the commencement of construction of a proposed physical or operational change at the source, and any current federally and state enforceable limitations on emissions. In cases where no current federally and state enforceable limitations on emissions exist, emission factors based on the uncontrolled emission rate or otherwise acceptable to the board shall be used. In general, actual emissions as of a particular date shall equal the average rate, in tons per year, at which the unit actually emitted the pollutant during a two-year period that precedes the particular date and that is representative of normal source operation. The board shall allow the use of a different time period upon a determination that it is more representative of normal source operation. Actual emissions shall be calculated using the unit's actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period.]~~

2. The board may presume that source-specific allowable emissions for the emissions unit are equivalent to the actual emissions of the unit.

3. For any emissions unit which has not begun normal operations on the particular date, actual emissions shall equal the potential to emit of the unit on that date.

~~[4. In lieu of subdivision 3 of this definition, actual emissions of an emissions unit following a physical or operational change shall equal the representative actual annual emissions of the unit, provided the owner maintains and submits to the board, on an annual basis for a period of five years from the date the unit resumes regular operation, information demonstrating that the physical or operational change did not result in an emissions increase. A longer period, not to exceed 10 years, may be required by the board if the board determines such a period to be more representative of normal source post-change operations.]~~

"Allowable emissions" means the emission rate of a stationary source calculated by using the maximum rated capacity of the source (unless the source is subject to state and federally enforceable limits which restrict the operating rate or hours of operation, or both) and the most stringent of the following:

- (1) 1. Applicable emission standards;
- (2) 2. The emission limitation specified as a state and federally enforceable permit condition, including those with a future compliance date; and
- (3) 3. Any other applicable emission limitation, including those with a future compliance date.

["Applicable federal requirement" means all of the following as they apply to emissions units in a source subject to this article (including requirements that have been promulgated or approved by the administrator through rulemaking at the time of permit issuance but have future-effective compliance dates):

1. Any standard or other requirement provided for in an implementation plan established pursuant to § 110, § 111(d)

or § 129 of the federal Clean Air Act, including any source-specific provisions such as consent agreements or orders.

2. Any limit or condition in any construction permit issued under the new source review program or in any operating permit issued pursuant to the state operating permit program.

3. Any emission standard, alternative emission standard, alternative emission limitation, equivalent emission limitation or other requirement established pursuant to § 112 or § 129 of the federal Clean Air Act as amended in 1990.

4. Any new source performance standard or other requirement established pursuant to § 111 of the federal Clean Air Act, and any emission standard or other requirement established pursuant to § 112 of the federal Clean Air Act before it was amended in 1990.

5. Any limitations and conditions or other requirement in a Virginia regulation or program that has been approved by EPA under Subpart E of 40 CFR Part 63 for the purposes of implementing and enforcing § 112 of the federal Clean Air Act.

6. Any requirement concerning accident prevention under § 112(r)(7) of the federal Clean Air Act.

7. Any compliance monitoring requirements established pursuant to either § 504(b) or § 114(a)(3) of the federal Clean Air Act.

8. Any standard or other requirement for consumer and commercial products under § 183(e) of the federal Clean Air Act.

9. Any standard or other requirement for tank vessels under § 183(f) of the federal Clean Air Act.

10. Any standard or other requirement in 40 CFR Part 55 to control air pollution from outer continental shelf sources.

11. Any standard or other requirement of the regulations promulgated to protect stratospheric ozone under Title VI of the federal Clean Air Act, unless the administrator has determined that such requirements need not be contained in a permit issued under this article.

12. With regard to temporary sources subject to 9 VAC 5-80-130, (i) any ambient air quality standard, except applicable state requirements and (ii) requirements regarding increments or visibility as provided in Article 8 (9 VAC 5-80-1700 et seq.) of this part.]w

"Begin actual construction" means initiation of permanent physical on-site construction of an emissions unit. This includes, but is not limited to, installation of building supports and foundations, laying of underground pipework, and construction of permanent storage structures. With respect to a change in method of operation, this term refers to those on-site activities other than preparatory activities which mark the initiation of the change. With respect to the initial location of a portable facility emissions unit, this term refers to the delivery of any portion of the portable facility emissions unit to the site.

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"Commence," as applied to the construction, reconstruction or modification of [an emissions unit ~~a stationary source~~], means that the owner has all necessary preconstruction approvals or permits and has either:

(1) 1. Begun, or caused to begin, a continuous program of actual on-site construction, reconstruction or modification of the [unit ~~source~~], to be completed within a reasonable time; or

(2) 2. Entered into binding agreements or contractual obligations, which cannot be canceled or modified without substantial loss to the owner, to undertake a program of actual construction, reconstruction or modification of the [unit ~~source~~], to be completed within a reasonable time.

"Complete application" means that the application contains all the information necessary for processing the application and that the provisions of § 10.1-1321.1 of the Virginia Air Pollution Control Law have been met. Designating an application complete for purposes of permit processing does not preclude the board from requesting or accepting additional information.

"Construction" means fabrication, erection or installation of an emissions unit.

"Emergency" means, in the context of 9 VAC 5-80-1320 B 2, a situation where immediate action on the part of a source is needed and where the timing of the action makes it impractical to meet the requirements of this article, such as sudden loss of power, fires, earthquakes, floods or similar occurrences.

"Emissions cap" means any limitation on the rate of emissions of any regulated air pollutant from one or more emissions units established and identified as an emissions cap in any permit issued pursuant to the new source review program or operating permit program.

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

"Enforceable as a practical matter" means that the permit contains emission limitations that are enforceable by the board or the department and meet the following criteria:

1. Are permanent;
2. Contain a legal obligation for the owner to adhere to the terms and conditions;
3. Do not allow a relaxation of a requirement of the [~~State~~] implementation plan;
4. Are technically accurate and quantifiable;
5. Include averaging times or other provisions that allow at least monthly (or a shorter period if necessary to be consistent with the [~~State~~] implementation plan) checks on compliance. This may include, but not be limited to, the following: compliance with annual limits in a rolling basis, monthly or shorter limits, and other provisions consistent with 9 VAC 5-80-1180 and other regulations of the board; and

6. Require a level of recordkeeping, reporting and monitoring sufficient to demonstrate compliance.

"Federal hazardous air pollutant new source review program" means a program for the preconstruction review and approval of new sources or expansions to existing ones in accordance with regulations specified below and promulgated to implement the requirements of § 112 (relating to [~~permits for~~] hazardous air pollutants) of the federal Clean Air Act.

1. The provisions of 40 CFR 61.05, 40 CFR 61.06, 40 CFR 61.07 [~~and~~ ,] 40 CFR 61.08 [and 40 CFR 61.15] for issuing approvals of the construction of any new source or modification of any existing source subject to the provisions of 40 CFR Part 61. [These provisions of the federal hazardous air pollutant new source review program shall be implemented through this article and Article 1 (9 VAC 5-60-60 et seq.) of 9 VAC 5 Chapter 60.]

2. The provisions of 40 CFR 63.5 for issuing approvals to construct a new source or reconstruct a source subject to the provisions of 40 CFR Part 63, except for Subparts B, [~~C~~] D and E. [These provisions of the federal hazardous air pollutant new source review program shall be implemented through this article and Article 2 (9 VAC 5-60-90 et seq.) of 9 VAC 5 Chapter 60.]

3. The provisions of [~~40 CFR 63.40 through 40 CFR 63.44 for issuing approvals to construct or reconstruct a major source of hazardous pollutants under 40 CFR 63.40 through 40 CFR 63.44~~] 40 CFR 63.50 through 40 CFR 63.56 for issuing Notices of MACT approval prior to the construction of a new emissions unit. These provisions of the federal hazardous air pollutant new source review program shall be implemented through this article and Article 3 (9 VAC 5-60-120 et seq.) of (9 VAC 5 Chapter 60).

"Federally enforceable" means all limitations and conditions which are enforceable by the administrator, ~~including those requirements developed pursuant to 40 CFR 60 and 61, requirements within the State Implementation Plan, and any permit requirements established pursuant to 40 CFR 52.21 or this chapter, including operating permits issued under an EPA approved program that is incorporated into the State Implementation Plan and expressly requires adherence to any permit issued under such program and citizens under the federal Clean Air Act or that are enforceable under other statutes administered by the administrator. Federally enforceable limitations and conditions include, but are not limited to, the following:~~

1. Emission standards, alternative emission standards, alternative emission limitations, and equivalent emission limitations established pursuant to § 112 of the federal Clean Air Act, as amended in 1990.
2. New source performance standards established pursuant to § 111 of the federal Clean Air Act, and emission standards established pursuant to § 112 of the federal Clean Air Act before it was amended in 1990.
3. All terms and conditions in a federal operating permit, including any provisions that limit a source's potential to emit, unless expressly designated as not federally enforceable.

4. Limitations and conditions that are part of an [~~approved State~~] implementation plan [~~(SIP) or a Federal Implementation Plan (FIP)~~] established pursuant to § 110, § 111(d) or § 129 of the federal Clean Air Act].

5. Limitations and conditions that are part of a federal construction permit issued under 40 CFR 52.21 or any construction permit issued under regulations approved by the EPA in accordance with 40 CFR Part 51.

6. Limitations and conditions that are part of an operating permit issued pursuant to a program approved by the EPA into [~~a SIP~~ an implementation plan] as meeting the EPA's minimum criteria for federal enforceability, including adequate notice and opportunity for EPA and public comment prior to issuance of the final permit and practicable enforceability.

7. Limitations and conditions in a Virginia regulation or program that has been approved by the EPA under Subpart E of 40 CFR Part 63 for the purposes of implementing and enforcing § 112 of the federal Clean Air Act.

8. Individual consent agreements that the EPA has legal authority to create.

"Fixed capital cost" means the capital needed to provide all the depreciable components.

"Fugitive emissions" means those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

"General permit" means a permit issued under this article that meets the requirements of 9 VAC 5-80-1250.

"Hazardous air pollutant" means any air pollutant listed in § 112(b) of the federal Clean Air Act, as amended by 40 CFR 63.60.

"Major modification" means any modification [defined as such in] ~~9 VAC 5-80-20 or 9 VAC 5-80-30, 9 VAC 5-80-1710 C or 9 VAC 5-80-2010 C, as may apply that would result in a significant net emissions increase of any regulated air pollutant emitted into the atmosphere by the source or which results in the emission in significant amounts of any regulated air pollutant into the atmosphere not previously emitted]~~.

"Major new source review (major NSR [program])" means a program for the preconstruction review of changes which are subject to review as new major stationary sources or major modifications under [Article 7 (9 VAC 5-80-1400 et seq.),] Article 8 (9 VAC 5-80-1700 et seq.) or Article 9 (9 VAC 5-80-2000 et seq.) of this part.

"Major stationary source" means any stationary source which emits, or has the potential to emit, 100 tons or more per year of any regulated air pollutant.

"Minor new source review (minor NSR [program])" means a program for the preconstruction review of changes which are subject to review as new or modified sources and which do not qualify as new major stationary sources or major modifications under [Article 7 (9 VAC 5-80-1400 et seq.),] Article 8 (9 VAC 5-80-1700 et seq.) or Article 9 (9 VAC 5-80-2000 et seq.) of this part.

"Modification" means any physical change in, change in the method of operation of, or addition to, ~~an emissions unit which increases the uncontrolled emission rate a stationary source that would result in a net emissions increase of any regulated air pollutant emitted into the atmosphere by the unit source or which results in the emission of any regulated air pollutant into the atmosphere not previously emitted, except that the following shall not, by themselves (unless previously limited by permit conditions), be considered modifications under this definition:~~

~~(1)~~ 1. Maintenance, repair and replacement which the board determines to be routine for a source type and which does not fall within the definition of reconstruction;

~~(2)~~ 2. An increase in the production rate of a unit, if that increase does not exceed the operating design capacity of that unit;

~~(3)~~ 3. An increase in the hours of operation;

~~(4)~~ 4. Use of an alternative fuel or raw material if, prior to the date any provision of ~~these regulations~~ the regulations of the board becomes applicable to the source type, the ~~emissions unit source~~ source was designed to accommodate that alternative use. A ~~unit source~~ source shall be considered to be designed to accommodate an alternative fuel or raw material if provisions for that use were included in the final construction specifications; ~~or~~

5. Use of an alternative fuel or raw material if, prior to the date any provision of the regulations of the board becomes applicable to the source type, the source was not designed to accommodate that alternative use and the owner demonstrates to the board that as a result of trial burns at the source or other sources or of other sufficient data that the emissions resulting from the use of the alternative fuel or raw material supply are decreased;

~~(5)~~ 6. The addition, *replacement* or use of any system or device whose primary function is the reduction of air pollutants, except when an ~~emission control~~ a system or device that is ~~removed or necessary to comply with applicable air pollution control laws and regulations is replaced by a system or device which the board considers to be less efficient in the control of air pollution emissions;~~ *or*

7. The removal of any system or device whose primary function is the reduction of air pollutants if the system or device is not necessary for the source to comply with any applicable air pollution control laws or regulations.

"Modified source" means any stationary source (or portion of it), the modification of which commenced on or after March 17, 1972.

"Necessary preconstruction approvals or permits" means those permits or approvals required under federal air quality control laws and regulations, and those air quality control laws and regulations which are part of the [State] implementation plan.

"Net emissions increase" means the amount by which the sum of the following exceeds zero: (i) any increase in actual emissions from a particular physical change or change in the

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method of operation at a stationary source and (ii) any other increases and decreases in actual emissions at the source that are concurrent with the particular change and are otherwise creditable. An increase or decrease in actual emissions is concurrent with the increase from the particular change only if it is directly resultant from the particular change. An increase or decrease in actual emissions is not creditable if the board has relied on it in issuing a permit for the source under the new source review program and that permit is in effect when the increase in actual emissions from the particular change occurs. Creditable increases and decreases shall be federally [~~and state~~] enforceable [~~or enforceable as a practical matter~~].

"New source" means any stationary source (or portion of it), the construction or relocation of which commenced on or after March 17, 1972; and any stationary source (or portion of it), the reconstruction of which commenced on or after December 10, 1976.

"New source review program" means a program for the preconstruction review and permitting of new stationary sources or expansions to existing ones in accordance with regulations promulgated to implement the requirements of §§ 110 (a)(2)(C), [112 (relating to permits for hazardous air pollutants),] 165 (relating to permits in prevention of significant deterioration areas), [and] 173 (relating to permits in nonattainment areas) [~~, and 112 (relating to permits for hazardous air pollutants)~~] of the federal Clean Air Act.

"Nonroad engine" means any internal combustion engine:

1. In or on a piece of equipment that is self-propelled or serves a dual purpose by both propelling itself and performing another function (such as garden tractors, off-highway mobile cranes and bulldozers);
2. In or on a piece of equipment that is intended to be propelled while performing its function (such as lawnmowers and string trimmers); or
3. That, by itself or in or on a piece of equipment, is portable or transportable, meaning designed to be capable of being carried or moved from one location to another. Indications of transportability include, but are not limited to, wheels, skids, carrying handles, dollies, trailers, or platforms.

An internal combustion engine is not a nonroad engine if:

1. The engine is used to propel a motor vehicle or a vehicle used solely for competition, or is subject to standards promulgated under § 202 of the federal Clean Air Act; or
2. The engine otherwise included in subdivision 3 above remains or will remain at a location for more than 12 consecutive months or a shorter period of time for an engine located at a seasonal source.

For purposes of this definition, a location is any single site at a building, structure, facility or installation. Any engine (or engines) that replaces an engine at a location and that is intended to perform the same or similar function as the engine replaced will be included in calculating the consecutive time period. An engine located at a seasonal source is an engine that remains at a seasonal source during the full annual operating period of the seasonal source. A seasonal source is

a stationary source that remains in a single location on a permanent basis (i.e., at least two years) and that operates at the single location approximately three months (or more) each year. This paragraph does not apply to an engine after the engine is removed from the location.

["~~Plantwide applicability limit~~" means a federally and state enforceable plantwide emission limitation established for a stationary source such that any subsequent physical or operational changes resulting in emissions that remain less than the limit, are excluded from the provisions of Article 8 (9 VAC 5-80-1700 et seq.) or Article 9 (9 VAC 5-80-2000 et seq.) of this part.

~~"Plantwide applicability limit modification" means, notwithstanding the definition of major modification and net emissions increase as defined in 9 VAC 5-80-1710 and 9 VAC 5-80-2010, any increase in the actual emissions rate (in tons per year) over the plantwide applicability limit. Any emissions increase of volatile organic compounds shall be considered an increase for ozone.~~

"Pollution control project" means physical or operational changes whose primary function is the reduction of emissions of targeted regulated air pollutants but which results in an increase in emissions of nontargeted regulated air pollutants that qualify as a major modification as defined in 9 VAC 5-80-1710 or 9 VAC 5-80-2010. The fabrication, manufacture or production of pollution control/prevention equipment and inherently less-polluting fuels or raw materials is not a pollution control project. A pollution control project shall be so designated by the board.]

"Portable," in reference to emissions units, means an emissions unit that is designed to have the capability of being moved from one location to another for the purpose of operating at multiple locations and storage when idle. [Indications of portability include, but are not limited to, wheels, skids, carrying handles, dollies, trailers, or platforms.]

"Potential to emit" means the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment, and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design only if the limitation or its effect on emissions is state and federally enforceable. Secondary emissions do not count in determining the potential to emit of a stationary source.

"Public comment period" means a time during which the public shall have the opportunity to comment on the new or modified source permit application information (exclusive of confidential information), the preliminary review and analysis of the effect of the source upon the ambient air quality, and the preliminary decision of the board regarding the permit application.

"Reactivation" means beginning operation of an emissions unit that has been shut down.

"Reconstruction" (4) means the replacement of an emissions unit or its components to such an extent that:

(a) 1. The fixed capital cost of the new components exceeds 50% of the fixed capital cost that would be required to construct a comparable entirely new unit; and;

2. The replacement significantly extends the life of the emissions unit; and

(b) 3. It is technologically and economically feasible to meet the applicable emission standards prescribed under these regulations of the board.

(2) Any determination by the board as to whether a proposed replacement constitutes reconstruction shall be based on:

(a) 1. The fixed capital cost of the replacements in comparison to the fixed capital cost of the construction of a comparable entirely new unit;

(b) 2. The estimated life of the unit after the replacements compared to the life of a comparable entirely new unit;

(c) 3. The extent to which the components being replaced cause or contribute to the emissions from the unit; and

(d) 4. Any economic or technical limitations on compliance with applicable standards of performance which are inherent in the proposed replacements.

"Regulated air pollutant" means any of the following:

1. Nitrogen oxides or any volatile organic compound;
2. Any pollutant for which an ambient air quality standard has been promulgated;
3. Any pollutant subject to any standard promulgated under § 111 of the federal Clean Air Act;
4. Any pollutant subject to a standard promulgated under or other requirements established under § 112 of the federal Clean Air Act concerning hazardous air pollutants and any pollutant regulated under 40 CFR Part 63; or
5. Any pollutant subject to a regulation adopted by the board.

"Relocation" means a change in physical location of a stationary source or an emissions unit from one stationary source to another stationary source.

"Secondary emissions" means emissions which occur or would occur as a result of the construction, reconstruction, modification or operation of a stationary source, but do not come from the stationary source itself. For the purpose of this section, secondary emissions must be specific, well-defined, and quantifiable; and must impact upon the same general areas as the stationary source which causes the secondary emissions. Secondary emissions include emissions from any off site support facility which would not be constructed or increase its emissions except as a result of the construction or operation of the stationary source. Secondary emissions do not include any emissions which come directly from a mobile source, such as emissions from the tailpipe of a motor vehicle, from a train, or from a vessel.

["Significant" means:

~~1. In reference to a plantwide applicability limit or net emissions increase for any of the following pollutants, a rate of emissions that would equal or exceed any of the following rates:~~

<i>Pollutant</i>	<i>Emissions Rate</i>
<i>Carbon Monoxide</i>	<i>100 tons per year (tpy)</i>
<i>Nitrogen Oxides</i>	<i>40 tpy</i>
<i>Sulfur Dioxide</i>	<i>40 tpy</i>
<i>Particulate Matter</i>	<i>25 tpy</i>
<i>PM₁₀</i>	<i>15 tpy</i>
<i>Ozone</i>	<i>40 tpy of volatile organic compounds</i>
<i>Lead</i>	<i>0.6 tpy</i>
<i>Fluorides</i>	<i>3 tpy</i>
<i>Sulfuric Acid Mist</i>	<i>7 tpy</i>
<i>Hydrogen Sulfide (H₂S)</i>	<i>10 tpy</i>
<i>Total Reduced Sulfur (including H₂S)</i>	<i>10 tpy</i>
<i>Reduced Sulfur Compounds (including H₂S)</i>	<i>10 tpy</i>
<i>Municipal waste combustor organics (measured as total tetra through octa-chlorinated dibenzo-p-dioxins and dibenzofurans)</i>	<i>3.5 x 10⁻⁶ tpy</i>
<i>Municipal waste combustor metals (measured as particulate matter)</i>	<i>15 tpy</i>
<i>Municipal waste combustor acid gases (measured as the sum of SO₂ and HCl)</i>	<i>40 tpy</i>
<i>Municipal solid waste landfill emissions (measured as nonmethane organic compounds)</i>	<i>50 tpy</i>

~~2. In reference to a plantwide applicability limit or net emissions increase for any regulated air pollutant that subdivision 1 of this definition does not list, any emissions rate. However, for purposes of the applicability of this definition, hazardous air pollutants are not considered regulated pollutants.]~~

"State enforceable" means all limitations and conditions which are enforceable by the board as a practical matter, including [any regulation of the board,] those requirements developed pursuant to 9 VAC 5-20-110 9 VAC 5-170-160, requirements within any applicable order or variance, and any permit requirements established pursuant to this chapter.

["State operating permit program" means a program for issuing limitations and conditions for stationary sources in accordance with Article 5 (9 VAC 5-80-800 et seq.) of this part, promulgated to meet EPA's minimum criteria for federal enforceability, including adequate notice and opportunity for EPA and public comment prior to issuance of the final permit, and practicable enforceability.]

"Stationary source" means any building, structure, facility or installation which emits or may emit any regulated air pollutant. A stationary source shall include all of the

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pollutant-emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control) except the activities of any ~~vessel watercraft or any nonroad engine~~. Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same "major group" (i.e., which have the same two-digit code) as described in the "Standard Industrial Classification Manual," as amended by the supplement (see 9 VAC 5-20-21).

"Synthetic minor" means a stationary source whose potential to emit is constrained by state enforceable and federally enforceable limits, so as to place that stationary source below the threshold at which it would be subject to permit or other requirements governing major stationary sources in regulations of the board or in the federal Clean Air Act.

["Targeted regulated air pollutants" means regulated air pollutants that are reduced as a result of physical or operational changes whose primary function is the reduction of emissions of regulated air pollutants to meet an applicable federal requirement, exclusive of the new source review program.]

["Uncontrolled emission rate" means the emission rate from a source when operating at maximum capacity without air pollution control equipment. Air pollutant pollution control equipment includes control equipment which is equipment that enables the source to conform to applicable air pollution control laws and regulations and that is not vital to its operation, except that its use enables the source to conform to applicable air pollution control laws and regulations. Annual uncontrolled emissions shall be based on the maximum annual rated capacity (based on 8760 hours of operation per year) of the source, unless the source is subject to state and federally enforceable permit conditions which limit the annual hours of operation. Enforceable permit conditions on the type or amount of material combusted or processed may be used in determining the uncontrolled emission rate of a source. Secondary emissions do not count in determining the uncontrolled emission rate of a stationary source.]

C. 9 VAC 5-80-1120. General.

4. A. [~~Except as provided in 9 VAC 5-80-1130,~~] No owner or other person shall begin actual construction, reconstruction or modification of any of the following types of sources stationary source without first obtaining from the board a permit to construct and operate or to modify and operate such the source:

a. Any stationary source; or

b. Any stationary source of hazardous air pollutants to which an emission standard prescribed under 9 VAC 5 Chapter 60 (9 VAC 5-60-10 et seq.) became applicable prior to the beginning of construction, reconstruction or modification. In the event that a new emission standard prescribed under 9 VAC 5 Chapter 60 (9 VAC 5-60-10 et seq.) becomes applicable after a permit is issued but prior to initial startup, a new permit must be obtained by the owner.

2. B. [~~Except as provided in 9 VAC 5-80-1320 A 1 c,~~] no owner or other person shall relocate any [stationary source or] emissions unit ~~subject to the provisions of 9 VAC 5-20-160 from one stationary source to another~~ without first obtaining from the board a permit to relocate the [source or] unit.

3. C. No owner or other person shall reduce the outlet elevation of any stack or chimney which discharges any pollutant from an affected facility ~~subject to the provisions of 9 VAC 5-20-160~~ without first obtaining a permit from the board.

4. D. The board may combine the requirements of and the permits for emissions units within a stationary source subject to 9 VAC 5-80-10, Article 8 (9 VAC 5-80-1700 et seq.) of this chapter, and 9 VAC 5-80-30 the new source review program into one permit. Likewise the board may require that applications for permits for emissions units within a stationary source required by 9 VAC 5-80-10, Article 8 (9 VAC 5-80-1700 et seq.) of this chapter, and 9 VAC 5-80-30 any provision of the new source review program be combined into one application.

E. The board [~~in evaluating permit applications and issuing permits shall not consider any consequences to the applicant of beginning actual construction or modification prior to receiving a permit whether or not it is done under the provisions of 9 VAC 5-80-1130~~] may incorporate the terms and conditions of a state operating permit into a permit issued pursuant to this article. The permit issued pursuant to this article may supersede the state operating permit provided the public participation provisions of the state operating permit program are followed. The board may incorporate the terms and conditions of a permit issued pursuant to this article into a state operating permit provided all of the permitted emissions units are operational and determined to be in compliance in accordance with 9 VAC 5-80-1200].

F. [~~No emission cap or similar provisions contained in any permit issued by the board shall be construed to be a plantwide applicability limit unless the permit is issued following the requirements of this article in effect after (insert effective date), including specifically 9 VAC 5-80-1170 E and 9 VAC 5-80-1310. All terms and conditions of any permit issued under this article shall be federally enforceable except those that are designated state-only enforceable under subdivision 1 of this subsection. Any term or condition that is not federally enforceable shall be designated as state-only enforceable as provided in subdivision 2 of this subsection.~~]

1. A term or condition of any permit issued under this article shall not be federally enforceable if it is derived from or is designed to implement Article 2 (9 VAC 5-40-130 et seq.) of 9 VAC 5 Chapter 40, Article 2 (9 VAC 5-50-130 et seq.) of 9 VAC 5 Chapter 50, Article 4 (9 VAC 5-60-200 et seq.) or Article 5 (9 VAC 5-60-300 et seq.) of 9 VAC 5 Chapter 60.

2. Any term or condition of any permit issued under this article that is not federally enforceable shall be marked in the permit as state-only enforceable and shall only be enforceable by the board. Incorrectly designating a term or condition as state-only enforceable shall not provide a shield from federal enforcement of a term or condition that is legally federally enforceable.]

G. Nothing in the regulations of the board shall be construed to prevent the board from granting permits for programs of construction or modification in planned incremental phases. In such cases, all net emissions increases from all emissions units covered by the program shall be added together for determining the applicability of this article.

H. For sources subject to the federal hazardous air pollutant new source review program, the provisions of the federal hazardous air pollutant new source review program shall be implemented through this article [and the applicable article of 9 VAC 5 Chapter 60 (9 VAC 5-60)]. Permits issued under this article shall be the administrative mechanism for issuing approvals under the provisions of federal hazardous air pollutant new source review program. [Except as noted below,] in cases where there are differences between the provisions of this article and the provisions of federal hazardous air pollutant new source review program, the more restrictive provisions shall apply. [The provisions of 9 VAC 5-80-1150 and 9 VAC 5-80-1160 shall not apply to sources subject to the federal hazardous air pollutant new source review program. Other sections of this article also provide requirements relative to the application of this article to sources subject to the federal hazardous air pollutant new source review program, in which case those provisions shall prevail.] This subsection applies only to the extent that the provisions of the federal hazardous air pollutant new source review program are not being implemented by other new source review program regulations of the board.

9 VAC 5-80-1130. [**Concurrent construction Reserved**].

[~~A. An owner may begin and complete actual construction of a modification to an existing stationary source prior to receiving a permit required by this article if each of the following conditions is met:~~

- ~~1. The owner has submitted an application for a permit for the modification with a notice of intent to begin actual construction of the modification;~~
- ~~2. The owner has submitted a certification that he (i) freely assumes all financial and other risks associated with beginning actual construction of the modification prior to receiving a permit and (ii) acknowledges that the board in evaluating permit applications may not consider any consequences to the applicant of beginning actual construction prior to receiving a permit;~~
- ~~3. The board has not, within 60 days of receipt of the permit application, issued a written notice to the owner based on concerns about air quality impacts or emissions control technology requiring the termination of construction as soon as practicable but no later than five business days after receipt of the notice;~~
- ~~4. The owner constructs the modification as described in the permit application; and~~
- ~~5. The owner does not commence operation of the modification until the permit has been issued.~~

~~B. An owner may begin actual construction or reconstruction of a new stationary source prior to receiving a permit required by this article in accordance with the following procedures:~~

~~1. If the requirement for a permit prior to construction will create an undue hardship to the applicant, the applicant may, prior to submitting a permit application, request a waiver to proceed with construction from the board.~~

~~2. The request for a waiver shall be in writing, shall explain the circumstances that will cause the undue hardship, and shall be signed by a responsible official. The request shall contain:~~

~~a. A certification that the owner (i) freely assumes all financial and other risks associated with beginning actual construction prior to receiving a permit and (ii) acknowledges that the board in evaluating permit applications may not consider any consequences to the applicant of beginning actual construction prior to receiving a permit.~~

~~b. Sufficient information for the board to make a determination as to whether the permit application is subject to Article 8 (9 VAC 5-80-1700 et seq.) or Article 9 (9 VAC 5-80-2000 et seq.) of this part.~~

~~3. If the request contains the information specified in subdivision 2 of this subsection and is complete within the context of § 10.1-1321.1 of the Virginia Air Pollution Control Law, the request for a waiver shall be acted upon by the board within 30 days.~~

~~4. Upon granting the waiver, the board shall determine what construction activities constitute the beginning of actual construction on that source, and what portions of the source the owner may construct prior to issuance of a permit. In doing so, the board shall consider (i) the extent to which such portions of the source may irrevocably determine the emissions of the completed source and (ii) the undue hardship upon the owner of delaying construction until the permit has been issued.~~

~~5. If a waiver is granted, the applicant shall submit the permit application for action by the board as soon as is reasonably practical but no later than 30 days after the waiver is granted. The applicant, after a waiver is granted, shall proceed at his own risk with construction of portions of the source allowed by the terms of the waiver; however, no operation of the source shall commence until a permit has been issued by the board authorizing the operation.~~

~~C. After construction, modification, or reconstruction has begun or been completed, if the plans, specifications, and completed installations do not meet applicable regulatory requirements, the application for a permit shall be denied, unless the alterations required to effect approval are made within a reasonable time as specified by the board.~~

~~D. No provision of this section shall be construed as applying to the following:~~

~~1. Any stationary source or emissions unit subject to the provisions of Article 8 (9 VAC 5-80-1700 et seq.) or Article 9 (9 VAC 5-80-2000 et seq.) of this part.~~

~~2. Any stationary source for which a plantwide applicability limit is established.~~

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~~3. Any synthetic minor or other stationary source receiving a permit under this article that would establish terms and conditions that would enable the source to avoid major new source review.]~~

~~D. 9 VAC 5-80-1140. Applications.~~

~~1. A. A single application is required identifying at a minimum each emissions point within the emissions unit subject to the provisions of this section article. The application shall be submitted according to procedures approved by acceptable to the board. However, where several emissions units are included in one project, a single application covering all units in the project may be submitted. A separate application is required for each location.~~

~~B. A separate application is required for each stationary source.~~

~~2. C. For projects with phased development, a single application should be submitted covering the entire project.~~

~~3. D. Any application [,] form, report, or [compliance] certification submitted to the board shall be signed by a responsible official. A responsible official is defined as follows: comply with the provisions of 9 VAC 5-20-230.~~

~~a. For a business entity, such as a corporation, association or cooperative, a responsible official is either:~~

~~(1) The president, secretary, treasurer, or a vice president of the business entity in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the business entity; or~~

~~(2) A duly authorized representative of such business entity if the representative is responsible for the overall operation of one or more manufacturing, production, or operating facilities applying for or subject to a permit and either (i) the facilities employ more than 250 persons or have gross annual sales or expenditures exceeding \$25 million (in second quarter 1980 dollars), or (ii) the authority to sign documents has been assigned or delegated to such representative in accordance with procedures of the business entity.~~

~~b. For a partnership or sole proprietorship, a responsible official is a general partner or the proprietor, respectively.~~

~~c. For a municipality, state, federal, or other public agency, a responsible official is either a principal executive officer or ranking elected official. A principal executive officer of a federal agency includes the chief executive officer having responsibility for the overall operations of a principal geographic unit of the agency.~~

~~4. Any person signing a document under subdivision D-3 above shall make the following certification:~~

~~"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering and~~

~~evaluating 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."~~

~~5. As required under § 10.1-1321.1 of the Virginia Air Pollution Control Law, applications shall not be deemed complete unless the applicant has provided a notice from the locality in which the source is located or is to be located that the site and operation of the source are consistent with all local ordinances adopted pursuant to Chapter 11 (§ 15.1-427 et seq.) of Title 15.1 of the Code of Virginia.~~

~~[E. Any application submitted pursuant to this article shall contain a certification signed by the applicant as follows:~~

~~"I certify that I understand that the existence of a permit under this article does not shield the source from potential enforcement of any regulation of the board governing the major new source review program and does not relieve the source of the responsibility to comply with any applicable provision of the major NSR regulations."]~~

~~E. 9 VAC 5-80-1150. Application information required.~~

~~A. The board shall furnish application forms to applicants. Completion of these forms serves as initial registration of new and modified sources.~~

~~1. B. Each application for a permit shall include such information as may be required by the board to determine the effect of the proposed source on the ambient air quality and to determine compliance with the emission standards which are applicable. The information required shall include, but is not limited to, the following:~~

~~a. That specified on applicable permit forms furnished by the board. Any calculations shall include sufficient detail to permit assessment of the validity of such calculations. Completion of these forms serves as initial registration of new and modified sources; and~~

~~1. Company name and address (or plant name and address if different from the company name), owner's name and agent, and telephone number and names of plant site manager or contact or both.~~

~~2. A description of the source's processes and products (by Standard Industrial Classification Code).~~

~~3. All emissions of regulated air pollutants.~~

~~a. A permit application shall describe all emissions of regulated air pollutants emitted from any emissions unit or group of emissions units to be covered by the permit.~~

~~b. Emissions shall be calculated as required in the permit application form or instructions [or in a manner acceptable to the board].~~

~~c. Fugitive emissions shall be included in the permit application to the extent quantifiable.~~

~~4. Emissions rates in tons per year and in such terms as are necessary to establish compliance consistent with the applicable standard reference test method.~~

5. Information needed to determine or regulate emissions as follows: fuels, fuel use, raw materials, production rates, loading rates, and operating schedules.

6. Identification and description of air pollution control equipment and compliance monitoring devices or activities.

7. Limitations on source operation affecting emissions or any work practice standards, where applicable, for all regulated air pollutants at the source.

8. Calculations on which the information in subdivisions 3 through 7 of this subsection is based. Any calculations shall include sufficient detail to permit assessment of the validity of such calculations.

~~b~~. 9. Any additional information or documentation that the board deems necessary to review and analyze the air pollution aspects of the *stationary source or emissions unit*, including the submission of measured air quality data at the proposed site prior to construction, reconstruction or modification. Such measurements shall be accomplished using procedures acceptable to the board.

~~2~~- C. The above information and analysis shall be determined and presented according to procedures and using methods acceptable to the board.

F. 9 VAC 5-80-1160. Action on permit application.

~~4~~- A. Within 30 days after receipt of an application, the board [~~shall will~~] notify the applicant of the status of the application. The notification of the initial determination with regard to the status of the application [~~shall will~~] be provided by the board in writing and [~~shall will~~] include (i) a determination as to which provisions of ~~this chapter~~ *the new source review program* are applicable, (ii) the identification of any deficiencies, and (iii) a determination as to whether the application contains sufficient information to begin application review. The determination that the application has sufficient information to begin review is not necessarily a determination that it is complete. Within 30 days after receipt of any additional information, the board [~~shall will~~] notify the applicant [*in writing*] of any deficiencies in such information. The date of receipt of a complete application for processing under ~~subdivision F-2 subsection B~~ of this section shall be the date on which the board received all required information *and the provisions of § 10.1-1321.1 of the Virginia Air Pollution Control Law have been met* [, if applicable].

~~2~~- B. If no public comment period is required, processing time for a permit is normally 90 days following receipt of a complete application. ~~Processing steps normally are as follows~~ *If a public comment period is required, processing time for a permit is normally 180 days following receipt of a complete application. The board may extend this time period if additional information is required [or if a public hearing is conducted under 9 VAC 5-80-1170]. Processing steps may include, but not be limited to, the following:*

~~a~~. 1. Completion of the preliminary review and analysis in accordance with ~~subsection I of this section~~ 9 VAC 5-80-1190 and the preliminary decision of the board. This step may constitute the final step if the provisions of ~~subsection~~

~~G of this section~~ 9 VAC 5-80-1170 concerning public participation are not applicable;

~~b~~. 2. When required, completion of the public participation requirements in ~~subsection G of this section~~; and 9 VAC 5-80-1170.

~~e~~. 3. Completion of the final review and analysis and the final decision of the board.

~~3~~. C. The board *will* normally ~~will~~ take action on all applications after completion of the review and analysis, or expiration of the public comment period (and consideration of comments from that) when required, unless more information is needed. The board shall notify the applicant in writing of its decision on the application, including its reasons, and shall also specify the applicable emission limitations. These emission limitations are applicable during any emission testing conducted in accordance with ~~subsection J of this section~~ 9 VAC 5-80-1200.

~~4~~. D. The applicant may appeal the decision pursuant to ~~9 VAC 5-20-99 Part VIII (9 VAC 5-170-190 et seq.) of 9 VAC 5 Chapter 170.~~

~~5~~. E. Within ~~5~~ *five* days after notification to the applicant pursuant to ~~subdivision F-3 subsection C~~ of this section, the notification and any comments received pursuant to the public comment period and public hearing shall be made available for public inspection at the same location as was the information in ~~subdivision G-5 a of this section~~ 9 VAC 5-80-1170 [~~F E~~] 1.

G. 9 VAC 5-80-1170. Public participation.

~~4~~. A. No later than 15 days after receiving the initial determination notification required under ~~subdivision F-1 of this section~~ 9 VAC 5-80-1160 A, the applicant for a permit for a major stationary source or a major modification ~~with a net emissions increase of 100 tons per year of any single pollutant~~ shall notify the public of the proposed [*major stationary*] source ~~as required or [major] modification in subdivision G-2 accordance with subsection B~~ of this section.

~~2~~- B. The public notice required ~~under this~~ by subsection A of *this section* shall be placed by the applicant in at least one newspaper of general circulation in the affected air quality control region. The notice shall be approved by the board and shall include, but not be limited to, the following:

~~a~~. 1. The source name, location, and type;

~~b~~. 2. The pollutants and the total quantity of each which the applicant estimates will be emitted, and a brief statement of the air quality impact of such pollutants;

~~e~~. 3. The control technology proposed to be used at the time of the publication of the notice; and

~~d~~. 4. The name and telephone number of a contact person, employed by the applicant, who can answer questions about the proposed source.

~~3~~. C. Upon a determination by the board that it will achieve the desired results in an equally effective manner, an applicant for a permit may implement an alternative plan for notifying the

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public as to that required in subdivision G-2 [subsection subsections] A [and B] of this section.

4- D. Prior to the decision of the board, permit applications as specified below shall be subject to a public comment period of at least 30 days [. At the end of the public comment period, a public hearing shall be held in accordance with subdivision G-5 subsection E] of this section[.:]

a- 1. Applications for stationary sources of hazardous air pollutants as specified in subdivision C-1 b of this section [~~subject to the federal hazardous air pollutant new source review program and~~] requiring a case-by-case maximum achievable control technology determination [under Article 3 (9 VAC 5-60-120 et seq.) of 9 VAC 5 Chapter 60].

b- 2. Applications for major stationary sources and major modifications with a net emissions increase of 100 tons per year of any single pollutant.

e- [3. Applications for stationary sources which have the potential for public interest concerning air quality issues, as determined by the board *in its discretion*. The identification of such sources shall *may* be made using the following *nonexclusive* criteria:]

(1) [a. Whether the project is opposed by any person;]

(2) [b. Whether the project has resulted in adverse media;]

(3) [c. Whether the project has generated adverse comment through any public participation or governmental review process initiated by any other governmental agency; and]

(4) [d. Whether the project has generated adverse comment by a local official, governing body or advisory board.]

e- [4. Applications for stationary sources for which any provision of the permit is to be based upon a good engineering practice (GEP) stack height that exceeds the height allowed by paragraphs subdivisions 1 and 2 of the GEP definition. The demonstration specified in paragraph subdivision 3 of the GEP definition must be available during the public comment period.

[E. Prior to the decision of the board, permit applications as specified below shall be subject to a public comment period of at least 30 days. At the end of the public comment period, a public hearing shall be held in accordance with subsection F of this section.

1. Applications to establish a plantwide applicability limit.

2. Applications for stationary sources which have the potential for public interest concerning air quality issues, as determined by the board. The identification of such sources shall be made using the following criteria:

a. Whether the project is opposed by any person;

b. Whether the project has resulted in adverse media;

c. Whether the project has generated adverse comment through any public participation or governmental review process initiated by any other governmental agency; and

~~d. Whether the project has generated adverse comment by a local official, governing body or advisory board.]~~

5- [F. E.] When a public comment period and public hearing are required, the board 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 G-5-a 1 of this section subsection. The notification shall be published at least 30 days prior to the day of the public hearing.

a- 1. Information on the permit application (exclusive of confidential information under 9 VAC 5-20-150 9 VAC 5-170-60), as well as the preliminary review and analysis and preliminary decision of the board, 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- 2. A copy of the notice shall be sent to all local air pollution control agencies having State Implementation Plan responsibilities jurisdiction 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.

3. Notices of [public comment periods and] public hearings for major stationary sources and major modifications published under this section shall meet the requirements of § 10.1-1307.01 of the Virginia Air Pollution Control Law.

[G. F.] In order to facilitate the efficient issuance of permits under Articles 1 (9 VAC 5-80-50 et seq.) and 3 (9 VAC 5-80-360 et seq.) of this part, upon request of the applicant the board shall process the permit application under this article using public participation procedures meeting the requirements of this section and 9 VAC 5-80-270 or 9 VAC 5-80-670, as applicable.

H. 9 VAC 5-80-1180. Standards and conditions for granting permits.

A. No permit will be granted pursuant to this section article unless it is shown to the satisfaction of the board that the source will [be designed, built and equipped to operate without causing a violation of the applicable provisions of] these regulations [the regulations of the board and that comply with] the following standards [have been met]:

1. The source shall be designed, built and equipped to comply with standards of performance prescribed under 9 VAC 5 Chapter 50 (9 VAC 5-50-10 et seq.) and with emission standards prescribed under 9 VAC 5 Chapter 60 (9 VAC 5-60-10 et seq.);

2. For sources subject to [permits issued in accordance with] the federal hazardous air pollutant new source review program, the source shall be designed, built, and equipped to comply with the applicable emission standard and other requirements prescribed in 40 CFR Part 61 or 63 [or Article 3 (9 VAC 5-60-120 et seq.) of 9 VAC 5 Chapter 60], as applicable;

2. 3. The source shall be designed, built and equipped to operate without preventing or interfering with the attainment or maintenance of any applicable ambient air quality standard and without causing or exacerbating a violation of any applicable ambient air quality standard; and

~~3. Stack evaluation reductions under 9 VAC 5-80-10 C 3.~~ 4. The source shall be designed, built and equipped to operate without preventing or interfering with the attainment or maintenance of any applicable ambient air quality standard and without causing or exacerbating a violation of any applicable ambient air quality standard causing a violation of the applicable provisions of regulations of the board [or the applicable control strategy portion of the implementation plan].

B. Permits may be granted to stationary sources or emissions units that contain [~~plantwide applicability limits and~~] emission caps provided the [~~limits or~~] caps are made enforceable as a practical matter using the elements set forth in subsection D of this section.

C. Permits granted pursuant to this article may contain emissions standards as necessary to implement the provisions of this article and 9 VAC 5-50-260. The following criteria [~~shall be met~~ apply] in establishing emission standards to the extent necessary to assure that emissions levels are enforceable as a practical matter:

1. Standards may include the level, quantity, rate, or concentration or any combination of them for each affected pollutant.

2. In no case shall a standard result in emissions which would exceed the emissions rate based on the potential to emit of the emissions unit.

[~~3. Standards shall only include limitations that are determined by the board to be achievable through application of production processes or available methods, systems, and techniques, including, but not limited to, any of the following: emissions control equipment, fuel cleaning or treatment, fuel combustion techniques, or substitution of less toxic or nontoxic materials.~~

4. 3.] The standard may prescribe, as an alternative to or a supplement to an emission limitation, an equipment, work practice, fuels specification, process materials, maintenance, or operational standard, or any combination of them.

D. Permits issued under this article [~~shall will~~] contain, but [need] not be limited to, any of the following elements as necessary to ensure that the permits are enforceable as a practical matter:

1. Emission standards.

2. Conditions necessary to enforce emission standards. Conditions may include, but not be limited to, any of the following:

a. Limit on fuel sulfur content.

b. Limit on production rates with time frames as appropriate to support the emission standards.

c. Limit on raw material usage rate.

d. Limits on the minimum required capture, removal and overall control efficiency for any air pollution control equipment.

3. Specifications for permitted equipment, identified as thoroughly as possible. The identification shall include, but not be limited to, type, rated capacity, and size. Specifications included in the permit under this subdivision are for informational purposes only and do not form enforceable terms or conditions of the permit unless the specifications are needed to form the basis for one or more of the other terms or conditions in the permit.

4. Specifications for air pollution control equipment installed or to be installed. Specifications included in the permit under this subdivision are for informational purposes only and do not form enforceable terms or conditions of the permit unless the specifications are needed to form the basis for one or more of the other terms or conditions in the permit.

5. Specifications for air pollution control equipment operating parameters and the circumstances under which such equipment shall be operated, where necessary to ensure that the required overall control efficiency is achieved. The operating parameters may include, but [need] not be limited to, any of the following:

a. Pressure indicators and required pressure drop.

b. Temperature indicators and required temperature.

c. pH indicators and required pH.

d. Flow indicators and required flow.

6. Requirements for proper operation and maintenance of any pollution control equipment, and appropriate spare parts inventory.

7. Stack test requirements.

8. Reporting or recordkeeping requirements, or both.

9. Continuous emission or air quality monitoring requirements, or both.

10. Other requirements as may be necessary to ensure compliance with the applicable regulations.

4. 9 VAC 5-80-1190. Application review and analysis.

No permit shall be granted pursuant to this ~~section~~ article unless compliance with the standards in ~~subsection H of this section~~ 9 VAC 5-80-1180 is demonstrated to the satisfaction of the board by a review and analysis of the application performed on a source-by-source basis as specified below:

1. ~~Stationary sources.~~ Applications for stationary sources shall be subject to the following review and analysis:

a. ~~Applications for stationary sources shall be subject to~~ A control technology review to determine if ~~such~~ the source will be designed, built and equipped to comply with all applicable standards of performance prescribed under 9 VAC 5 Chapter 50 (9 VAC 5-50-10 et seq.).

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b. ~~Applications shall be subject to~~ An air quality analysis to determine the impact of pollutant emissions as may be deemed appropriate by the board.

~~2. Stationary sources of hazardous air pollutants.~~ Applications for stationary sources of hazardous air pollutants shall be subject to a control technology review to determine if ~~such~~ the source will be designed, built and equipped to comply with all applicable emission standards prescribed under 9 VAC 5 Chapter 60 (9 VAC 5-60-10 et seq.).

~~3. Stack elevation reductions under 9 VAC 5-80-10 C 3.~~ Applications under ~~9 VAC 5-80-10~~ 9 VAC 5-80-1120 C 3 shall be subject to an air quality analysis to determine the impact of applicable criteria pollutant emissions.

~~4. Applications for sources subject to the federal hazardous air pollutant new source review program shall be subject to a control technology review to determine if the source will be designed, built and equipped to comply with all applicable emission standards prescribed under 40 CFR Part 61 or 63 [or Article 3 (9 VAC 5-60-120 et seq.) of 9 VAC 5 Chapter 60].~~

J. 9 VAC 5-80-1200. Compliance determination and verification by performance testing.

~~4. A.~~ For stationary sources other than those specified in ~~subdivision 2 subsection B~~ of this ~~subsection~~ section, compliance with standards of performance shall be determined in accordance with the provisions of 9 VAC 5-50-20 and shall be verified by performance tests in accordance with the provisions of 9 VAC 5-50-30.

~~2. B.~~ For stationary sources of hazardous air pollutants, compliance with emission standards shall be determined in accordance with the provisions of 9 VAC 5-60-20 and shall be verified by emission tests in accordance with the provisions of 9 VAC 5-60-30.

~~3. C.~~ Testing required by ~~subdivisions J 1 and 2 subsections A and B~~ of this section shall be conducted by the owner within 60 days after achieving the maximum production rate at which the new or modified source will be operated, but not later than 180 days after initial startup of the source; and 60 days thereafter the board shall be provided by the owner with [~~two one~~] or, upon request, more copies of a written report of the results of the tests.

~~4. D.~~ For sources subject to the provisions of ~~Article 5 (9 VAC 5-50-400 et seq.) of 9 VAC 5 Chapter 50 or Article 1 (9 VAC 5-60-60 et seq.) of 9 VAC 5 Chapter 60~~ 40 CFR [~~Parts Part~~] 60, 61 or 63, the [*compliance determination and performance test*] requirements of ~~subdivisions J 1 through 3 subsections A, B and C~~ of this section shall be met ~~in all cases as specified in those parts of Title 40 of the Code of Federal Regulations.~~

~~5. E.~~ For sources other than those specified in ~~subdivision J 4 subsection D~~ of this section, the requirements of ~~subdivisions J 1 through 3 subsections A, B and C~~ of this section shall be met unless the board:

a. 1. Specifies or approves, in specific cases, the use of a reference method with minor changes in methodology;

b. 2. Approves the use of an equivalent method;

e. 3. Approves the use of an alternative method, the results of which the board has determined to be adequate for indicating whether a specific source is in compliance;

e. 4. Waives the requirement for testing because, based upon a technical evaluation of the past performance of similar source types, using similar control methods, the board reasonably expects the new or modified source to perform in compliance with applicable standards; or

e. 5. Waives the requirement for testing because the owner of the source has demonstrated by other means to the board's satisfaction that the source is in compliance with the applicable standard.

~~6. F.~~ The provisions for the granting of waivers under ~~subdivision J 5 subsection E~~ of this section are intended for use in determining the initial compliance status of a source [~~and~~] The granting of a waiver does not obligate the board to [~~do so for determining compliance grant any waivers~~] once the source has been in operation for more than one year beyond the initial startup date.

[~~G.~~ *The granting of a waiver under this section does not shield the source from potential enforcement of any permit term or condition, applicable requirement of the implementation plan, or any other applicable federal requirement promulgated under the federal Clean Air Act.*]

K. 9 VAC 5-80-1210. Permit invalidation, [*suspension*,] revocation and enforcement.

~~4. A.~~ A permit granted pursuant to this ~~section~~ article shall become invalid if a program of continuous construction, reconstruction or modification is not commenced within the latest of the following time frames:

a. 1. Eighteen months from the date the permit is granted;

b. 2. Nine months from the date of the issuance of the last permit or other authorization (other than permits granted pursuant to this [~~section~~ article]) from any governmental entity; or

e. 3. Nine months from the date of the last resolution of any litigation concerning any such permits or authorizations (including permits granted pursuant to this ~~section~~ article).

~~2. B.~~ A permit granted pursuant to this ~~section~~ article shall become invalid if a program of construction, reconstruction or modification is discontinued for a period of 18 months or more, or if a program of construction, reconstruction or modification is not completed within a reasonable time. This provision does not apply to the period between construction of the approved phases of a phased construction project; each phase must commence construction within 18 months of the projected and approved commencement date.

~~3. C.~~ The board may extend the periods prescribed in ~~subdivisions K 1 and 2 subsections A and B~~ of this section upon a satisfactory demonstration that an extension is justified. Provided there is no substantive change to the application information, the review and analysis, and the decision of the board, such extensions may be granted [~~without being subject to the requirements of subsection G of~~

~~this section 9 VAC 5-80-1170 using the procedures for minor amendments in 9 VAC 5-80-1280].~~

~~4. D. Any owner who constructs or operates a new or modified source not in accordance (i) with the application submitted pursuant to this section or (ii) with the terms and conditions of any permit to construct or operate, or [, except as provided in 9 VAC 5-80-1130,] any owner of a new or modified source subject to this section article who commences construction or operation without applying for and receiving a permit hereunder, shall be subject to appropriate enforcement action including, but not limited to, any specified in this subsection section.~~

~~5. E. Permits issued under this section article shall be subject to such terms and conditions set forth in the permit as the board may deem necessary to ensure compliance with all applicable requirements of the regulations of the board.~~

~~6. F. The board may revoke any permit if the permittee:~~

- ~~a. 1. Knowingly makes material misstatements in the permit application or any amendments to it;~~
- ~~b. 2. Fails to comply with the terms or conditions of the permit;~~
- ~~c. 3. Fails to comply with any emission standards applicable to an emissions unit included in the permit;~~
- ~~d. 4. Causes emissions from the stationary source which result in violations of, or interfere with the attainment and maintenance of, any ambient air quality standard; or fails to operate in conformance with any applicable control strategy, including any emission standards or emission limitations, in the [State] implementation plan in effect at the time that an application is submitted; or~~
- ~~e. 5. Fails to comply with the applicable provisions of this section article.~~

~~7. G. The board may suspend, under such conditions and for such period of time as the board may prescribe, any permit for any of the grounds for revocation contained in subsection K-6 F of this section or for any other violations of these regulations the regulations of the board.~~

~~H. The permittee shall comply with all terms and conditions of the permit. Any permit noncompliance constitutes a violation of the Virginia Air Pollution Control Law and is grounds for (i) enforcement action or (ii) [termination suspension] or revocation.~~

~~8. I. Violation of these regulations the regulations of the board shall be grounds for revocation of permits issued under this section article and are subject to the civil charges, penalties and all other relief contained in Part II of these regulations Part V (9 VAC 5-170-120 et seq.) of 9 VAC 5 Chapter 170 and the Virginia Air Pollution Control Law.~~

~~9. J. The board shall notify the applicant in writing of its decision, with its reasons, to change, suspend or revoke a permit, or to render a permit invalid.~~

~~K. Nothing in the regulations of the board shall be construed to prevent the board and the owner from making a mutual~~

~~determination that a permit is invalid or revoked prior to any final decision rendered under subsection J of this section.~~

~~L. Nothing in the regulations of the board shall be construed to prevent the board and the owner from making a mutual determination that a permit is rescinded because all of the statutory or regulatory requirements (i) upon which the permit is based or (ii) that necessitated issuance of the permit are no longer applicable.~~

~~[M. Except with respect to permits issued in accordance with Article 3 (9 VAC 5-60-120 et seq.) of 9 VAC 5 Chapter 60, the provisions of subsections A, B and C shall not apply to sources subject to the federal hazardous air pollutant new source review programs.]~~

~~**L. 9 VAC 5-80-1220. Existence of permit no defense.**~~

~~The existence of a permit under this section article shall not constitute defense to a violation of the Virginia Air Pollution Control Law or these regulations the regulations of the board and shall not relieve any owner of the responsibility to comply with any applicable regulations, laws, ordinances and orders of the governmental entities having jurisdiction.~~

~~**M. 9 VAC 5-80-1230. Compliance with local zoning requirements.**~~

~~The owner shall No provision of this part or any permit issued thereunder shall relieve any owner from the responsibility to comply in all respects with any existing zoning ordinances and regulations in the locality in which the source is located or proposes to be located; provided, however, that such compliance does not relieve the board of its duty under 9 VAC 5-20-140 of these Regulations 9 VAC 5-170-170 and § 10.1-1307 E of the Virginia Air Pollution Control Law to independently consider relevant facts and circumstances.~~

~~**N. Reactivation and permanent shutdown.**~~

~~1. The reactivation of a stationary source is not subject to provisions of this section unless a decision concerning shutdown has been made pursuant to the provisions of subdivisions N2 through N4 of this section or 9 VAC 5-80-40 P 5.~~

~~2. Upon a final decision by the board that a stationary source is shut down permanently, the board shall revoke the permit by written notification to the owner and remove the source from the emission inventory or consider its emissions to be zero in any air quality analysis conducted; and the source shall not commence operation without a permit being issued under the applicable provisions of this chapter.~~

~~3. The final decision shall be rendered as follows:~~

- ~~a. Upon a determination that the source has not operated for a year or more, the board shall provide written notification to the owner (i) of its tentative decision that the source is considered to be shut down permanently; (ii) that the decision shall become final if the owner fails to provide, within three months of the notice, written response to the board that the shutdown is not to be considered permanent; and (iii) that the owner has a right to a formal hearing on this issue before the board makes~~

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~~a. final decision. The response from the owner shall include the basis for the assertion that the shutdown is not to be considered permanent and a projected date for restart up of the source and shall include a request for a formal hearing if the owner wishes to exercise that right.~~

~~b. If the board should find that the basis for the assertion is not sound or the projected restart up date allows for an unreasonably long period of inoperation, the board shall hold a formal hearing on the issue if one is requested or, if no hearing is requested, the decision to consider the shutdown permanent shall become final.~~

~~4. Nothing in these regulations shall be construed to prevent the board and the owner from making a mutual determination that a source is shutdown permanently prior to any final decision rendered under subdivision N 3 of this section.~~

9 VAC 5-80-1240. Transfer of permits.

~~1. A. No [persons person] shall transfer a permit from one location to another, or from one piece of equipment to another.~~

~~2. B. In the case of a transfer of ownership of a stationary source, the new owner shall abide by any current permit issued to the previous owner. The new owner shall notify the board of the change in ownership within 30 days of the transfer.~~

~~3. C. In the case of a name change of a stationary source, the owner shall abide by any current permit issued under the previous source name. The owner shall notify the board of the change in source name within 30 days of the name change.~~

~~4. D. The provisions of this subsection section concerning the transfer of a permit from one location to another shall not apply to the relocation of portable facilities emission units that are exempt from the provisions of this section article by 9 VAC 5-80-14 9 VAC 5-80-1320 A 1 c.~~

~~P. Circumvention. Regardless of the exemptions provided in this section, no owner or other person shall circumvent the requirements of this section by causing or allowing a pattern of ownership or development over a geographic area of a source which, except for the pattern of ownership or development, would otherwise require a permit.~~

9 VAC 5-80-1250. General permits.

~~A. The requirements for issuance of a general permit are as follows:~~

~~1. The board may issue a general permit covering a stationary source or emissions unit category containing numerous similar stationary sources or emissions units that meet the following criteria:~~

~~a. All stationary sources or emissions units in the category shall be essentially the same in terms of operations and processes and emit either the same pollutants or those with similar characteristics.~~

~~b. Stationary sources or emissions units shall not be subject to case-by-case standards or requirements.~~

~~c. Stationary sources or emissions units shall be subject to the same or substantially similar requirements governing operation, emissions, monitoring, reporting, or recordkeeping.~~

~~2. Stationary sources or emissions units [subject to operating under the general authority of] a general permit shall comply with all requirements applicable to other permits issued under this article.~~

~~3. General permits shall (i) identify the criteria by which stationary sources or emissions units may qualify for the general permit and (ii) describe the process for stationary sources or emissions units to use in applying for the general permit.~~

~~4. General permits shall be issued in accordance with § [9-6-14:4.1 C-11 2.2-4006 A 9] of the Administrative Process Act.~~

~~5. In addition to fulfilling the requirements specified by law, the notice of public comment shall include, but not be limited to, the following:~~

~~a. The name, address and telephone number of a department contact from whom interested persons may obtain additional information including copies of the draft general permit;~~

~~b. The criteria to be used in determining which stationary sources or emissions units qualify for [coverage under] the general permit;~~

~~c. A brief description of the stationary source or emissions unit category that the department believes qualifies for [coverage under] the general permit including, but not limited to, an estimate of the number of individual stationary sources or emissions units in the category;~~

~~[d. A narrative statement of the estimated air quality impact contributed by the stationary source or emissions unit category covered by the general permit including information regarding specific pollutants and the total quantity of each emitted pollutant and the type and quantity of fuels used, if applicable;~~

~~e. d.] A brief description of the application process to be used by stationary sources or emissions units to request coverage under the general permit; and~~

~~[f. e.] A brief description of the public comment procedures.~~

~~B. The requirements for application for [coverage under] a general permit are as follows:~~

~~1. Stationary sources or emissions units which qualify for [coverage under] a general permit may apply to the board for coverage under the terms of the general permit. Stationary sources or emissions units that do not qualify for [coverage under] a general permit shall apply for [coverage under] a permit issued under the other provisions of this article.~~

~~2. The application shall meet the requirements of this article and include all information necessary to determine~~

qualification for and to assure compliance with the general permit.

3. Stationary sources or emissions units that ~~become subject to~~ qualify for coverage under] the general permit after ~~[it is issued coverage is granted]~~ to other stationary sources or emissions units in the category addressed by the general permit shall file an application with the board using the application process described in the general permit. The board shall ~~[issue grant authority to operate under]~~ the general permit to the stationary source or emissions unit if it determines that the stationary source or emissions unit meets the criteria set out in the general permit.

C. The requirements for ~~[issuance of granting authority to operate under]~~ a general permit are as follows:

1. The board shall grant ~~[authority to operate under]~~ the conditions and terms of the general permit to stationary sources or emissions units that meet the criteria set out in the general permit covering the specific stationary source or emissions unit category.

2. ~~[The issuance of Granting authority to operate under]~~ a ~~[general]~~ permit to a stationary source or emissions unit covered by a general permit shall not require compliance with the public participation procedures under 9 VAC 5-80-1170.

3. A response to each general permit application may ~~[not]~~ be provided ~~[at the discretion of the board]~~. The general permit may specify a reasonable time period after which a stationary source or emissions unit that has submitted an application shall be deemed to be authorized to operate under the general permit.

4. Stationary sources or emissions units ~~[covered authorized to operate]~~ under a general permit may be issued a letter, a certificate, or a summary of the general permit provisions, limits, and requirements, or any other document which would attest that the stationary source or emissions unit is ~~[covered by authorized to operate under]~~ the general permit.

5. The general permit shall specify where the general permit and the letter, certificate, summary or other document shall be maintained by the source.

D. ~~[The requirements pertaining to enforcement of a general permit are as follows: 1.]~~ The stationary source or emissions unit shall be subject to enforcement action under 9 VAC 5-80-1210 for operation without a permit issued under this article if the stationary source or emissions unit is later determined by the board not to qualify for the conditions and terms of the general permit.

~~[2. The act of granting or denying a request for authorization to operate under a general permit shall not be subject to judicial review.]~~

9 VAC 5-80-1260. Changes to permits.

A. The general requirements for making changes to permits are as follows:

1. Changes to a permit issued under this article shall be made as specified under subsections B and C of this section and 9 VAC 5-80-1270 through 9 VAC 5-80-1300.

2. Changes to a permit issued under this article may be initiated by the permittee as specified in subsection B of this section or by the board as specified in subsection C of this section.

3. Changes to a permit issued under this article and incorporated into a permit issued under Article 1 (9 VAC 5-80-50 et seq.) [or Article 3 (9 VAC 5-80-360 et seq.)] of this part shall be made as specified in Article 1 (9 VAC 5-80-50 et seq.) or Article 3 (9 VAC 5-80-360 et seq.)] of this part.

4. This section shall not be applicable to general permits.

B. The requirements for changes initiated by the permittee are as follows:

1. The permittee may initiate a change to a permit by submitting a written request to the board for an administrative permit amendment, a minor permit amendment or a significant permit amendment. The requirements for these permit revisions can be found in 9 VAC 5-80-1270 through 9 VAC 5-80-1290.

2. A request for a change by a permittee shall include a statement of the reason for the proposed change.

C. The board may initiate a change to a permit through the use of permit reopenings as specified in 9 VAC 5-80-1300.

9 VAC 5-80-1270. Administrative permit amendments.

A. Administrative permit amendments shall be required for and limited to the following:

1. Correction of typographical or any other error, defect or irregularity which does not substantially affect the permit.

2. Identification of a change in the name, address, or phone number of any person identified in the permit, or of a similar minor administrative change at the source.

3. Change in ownership or operational control of a source where the board determines that no other change in the permit is necessary, provided that a written agreement containing a specific date for transfer of permit responsibility, coverage, and liability between the current and new permittee has been submitted to the board and the requirements of 9 VAC 5-80-1240 have been fulfilled.

4. The combining of permits under the new source review program as provided in 9 VAC 5-80-1120 D.

B. The administrative permit amendment procedures are as follows:

1. The board will normally take final action on a request for an administrative permit amendment no more than 60 days from receipt of the request.

2. The board ~~[shall will]~~ incorporate the changes without providing notice to the public under 9 VAC 5-80-1170 ~~[- However, any such permit revisions shall be designated and~~

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designate] in the permit amendment [~~as having~~ that such permit revisions have] been made pursuant to this section.

3. The owner may implement the changes addressed in the request for an administrative amendment immediately upon submittal of the request.

9 VAC 5-80-1280. Minor permit amendments.

A. Minor permit amendment procedures shall be used only for those permit amendments that:

1. Do not violate any applicable [federal] requirement;
2. Do not involve significant changes to existing monitoring, reporting, or recordkeeping requirements that would make the permit requirements less stringent, such as a change to the method of monitoring to be used, a change to the method of demonstrating compliance or a relaxation of reporting or recordkeeping requirements;
3. Do not require or change a case-by-case determination of an emission limitation or other standard;
4. Do not seek to establish or change a permit term or condition (i) for which there is no corresponding underlying applicable regulatory requirement and (ii) that the source has assumed to avoid an applicable regulatory requirement to which the source would otherwise be subject. Such terms and conditions include:
 - a. An emissions cap assumed to avoid classification as a modification under the new source review program or § 112 of the federal Clean Air Act; and
 - b. An alternative emissions limit approved pursuant to regulations promulgated under § 112(i)(5) of the federal Clean Air Act;
5. Are not modifications under the new source review program or under § 112 of the federal Clean Air Act; and
6. Are not required to be processed as a significant amendment under 9 VAC 5-80-1290 or as an administrative permit amendment under 9 VAC 5-80-1270.

B. Notwithstanding subsection A of this section, minor permit amendment procedures may be used for permit amendments [~~involving~~ that:

1. Involve] the use of economic incentives, emissions trading, and other similar approaches to the extent that such minor permit amendment procedures are explicitly provided for in a regulation of the board or a federally-approved program.

[~~Minor permit amendment procedures may also be used to~~

2.] Require more frequent monitoring or reporting by the permittee or [~~to reduce~~ a reduction in] the level of an emissions cap.

[3. Designate any term or permit condition that meets the criteria in 9 VAC 5-80-1120 F 1 (i) as state-only enforceable as provided in 9 VAC 5-80-1120 F 2 for any permit issued under this article or any regulation from which this article is derived.]

C. Notwithstanding subsection A of this section, minor permit amendment procedures may be used for permit amendments involving the rescission of a provision of a permit if the board and the owner make a mutual determination that the provision is rescinded because all of the statutory or regulatory requirements (i) upon which the provision is based or (ii) that necessitated inclusion of the provision are no longer applicable.

D. A request for the use of minor permit amendment procedures shall include all of the following:

1. A description of the change, the emissions resulting from the change, and any new applicable regulatory requirements that will apply if the change occurs.
2. A request that such procedures be used.

E. The public participation requirements of 9 VAC 5-80-1170 shall not extend to minor permit amendments.

F. Normally within 90 days of receipt by the board of a complete request under minor permit amendment procedures, the board will do one of the following:

1. Issue the permit amendment as proposed.
2. Deny the permit amendment request.
3. Determine that the requested amendment does not meet the minor permit amendment criteria and should be reviewed under the significant amendment procedures.

G. The requirements for making changes are as follow:

1. The owner may make the change proposed in the minor permit amendment request immediately after the request is filed.
2. After the change under subdivision 1 of this subsection is made, and until the board takes any of the actions specified in subsection F of this section, the source shall comply with both the applicable regulatory requirements governing the change and the proposed permit terms and conditions.
3. During the time period specified in subdivision 2 of this subsection, the owner need not comply with the existing permit terms and conditions he seeks to modify. However, if the owner fails to comply with the proposed permit terms and conditions during this time period, the existing permit terms and conditions he seeks to modify may be enforced against him.

9 VAC 5-80-1290. Significant amendment procedures.

A. The criteria for use of significant amendment procedures are as follows:

1. Significant amendment procedures shall be used for requesting permit amendments that do not qualify as minor permit amendments under 9 VAC 5-80-1280 or as administrative amendments under 9 VAC 5-80-1270.
2. Significant amendment procedures shall be used for those permit amendments that:
 - a. Involve significant changes to existing monitoring, reporting, or recordkeeping requirements that would make the permit requirements less stringent, such as a

change to the method of monitoring to be used, a change to the method of demonstrating compliance or a relaxation of reporting or recordkeeping requirements.

b. Require or change a case-by-case determination of an emission limitation or other standard.

c. Seek to establish or change a permit term or condition (i) for which there is no corresponding underlying applicable regulatory requirement and (ii) that the source has assumed to avoid an applicable regulatory requirement to which the source would otherwise be subject. Such terms and conditions include:

(1) An emissions cap assumed to avoid classification as a modification under the new source review program or § 112 of the federal Clean Air Act.

(2) An alternative emissions limit approved pursuant to regulations promulgated under § 112(i)(5) of the federal Clean Air Act.

B. A request for a significant permit amendment shall include a description of the change, the emissions resulting from the change, and any new applicable regulatory requirements that will apply if the change occurs. The applicant may, at his discretion, include a suggested draft permit amendment.

C. The provisions of 9 VAC 5-80-1170 shall apply to requests made under this section [if the permit is for a stationary source subject to 9 VAC 5-80-1170].

D. The board will normally take final action on significant permit amendments within 90 days after receipt of a complete request. [If a public comment period is required, processing time for a permit is normally 180 days following receipt of a complete application. The board may extend this time period if additional information is required or if a public hearing is conducted under 9 VAC 5-80-1170.]

E. The owner shall not make the change applied for in the significant amendment request until the amendment is approved by the board under subsection D of this section.

9 VAC 5-80-1300. Reopening for cause.

A. A permit may be reopened and amended under any of the following situations:

1. Additional regulatory requirements become applicable to the emissions units covered by the permit after a permit is issued but prior to commencement of construction.

2. The board determines that the permit contains a material mistake or that inaccurate statements were made in establishing the emissions standards or other terms or conditions of the permit.

3. The board determines that the permit must be amended to assure compliance with the applicable regulatory requirements or that the conditions of the permit are not sufficient to meet all of the standards and requirements contained in this article.

4. A new emission standard prescribed under 40 CFR Part 60, 61 or 63 becomes applicable after a permit is issued but prior to initial startup.

B. Proceedings to reopen and reissue a permit shall follow the same procedures as apply to initial permit issuance and shall affect only those parts of the permit for which cause to reopen exists. Such reopening shall be made as expeditiously as practicable.

C. Reopenings shall not be initiated before a notice of such intent is provided to the source by the board at least 30 days in advance of the date that the permit is to be reopened, except that the board may provide a shorter time period in the case of an emergency.

9 VAC 5-80-1310. [~~Plantwide applicability limit~~ Pollution control projects].

[~~A. The owner of a stationary source may request the board to approve a plantwide applicability limit for any one or more pollutants, and the board may approve a plantwide applicability limit for a stationary source in accordance with subsections B through F of this section.~~

~~B. A plantwide applicability limit may be established only after opportunity for public comment in accordance with 9 VAC 5-80-1170.~~

~~C. A plantwide applicability limit may not be established for hazardous air pollutants.~~

~~D. A plantwide applicability limit may not be established if it (i) will cause emissions from the stationary source which result in violations of or exacerbate violations of, or interfere with the attainment and maintenance of, any ambient air quality standard or (ii) is not in conformance with any applicable control strategy, including any emission standards or emission limitations, in the implementation plan.~~

~~E. The emissions limitations and conditions for a plantwide applicability limit shall be established in accordance with the following:~~

~~1. For the purposes of this section the term "actual emissions" means the actual rate of emissions of a pollutant from an emissions unit, as determined in accordance with subdivisions 1 a, b and c of this subsection:~~

~~a. In general, actual emissions as of a particular date shall equal the average rate, in tons per year, at which the unit actually emitted the pollutant during a two-year period which precedes the particular date and which is representative of normal source operation. The board shall allow the use of a different time period upon a determination that it is more representative of normal source operation. Actual emissions shall be calculated using the unit's actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period.~~

~~b. The board may presume that source-specific allowable emissions for the unit are equivalent to the actual emissions of the unit.~~

~~c. For any emissions unit which has not begun normal operations on the particular date, actual emissions shall equal the potential to emit of the unit on that date.~~

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~~2. A plantwide applicability limit shall be established based on either:~~

~~a. Plantwide actual emissions (not to exceed current allowable emissions), including a reasonable operating margin, less than the applicable significant emissions rate; or~~

~~b. Source-wide limits on annual emissions established in a permit issued within the immediately preceding five years pursuant to Article 9 (9 VAC 5-80-2000 et seq.) of this part, where the source-wide emissions limits were completely offset and relied upon in an attainment demonstration plan or maintenance plan approved by the Commonwealth.~~

~~3. Any plantwide applicability limit emissions limitations shall be achievable through application of production processes or available methods, systems, and techniques including, but not limited to, emissions control equipment, fuel cleaning or treatment, fuel combustion techniques, substitution of less polluting materials, or limits on production that represent normal source operations.~~

~~4. Plantwide applicability limits may include advanced approvals to make physical or operational changes to stationary sources that would be subject to this article provided the advanced approvals meet the following criteria:~~

~~a. Advanced approvals shall (i) identify the projects or alternative operating scenarios and the conditions and restrictions that apply and (ii) include, but not be limited to, pollutants covered, duration of advance approval and types of changes eligible.~~

~~b. Advanced approvals shall assure that the future changes comply with this article by including requirements that preapproved units in certain source categories employ certain, specified control equipment.~~

~~c. Advanced approvals that meet applicable requirements may apply not only to specifically identified new units, but may also apply to new units identified as part of a class, to the extent that associated regulations are written so as to regulate such units as a class. (For example, the federal new source performance standards, national emission standards for hazardous air pollutants, maximum achievable control technology standards, and most state implementation plan limits apply to certain source categories).~~

~~d. Advanced approvals of an alternative scenario proposed by an owner shall not be granted if the scenario: (i) does not comply with applicable requirements, including those of the new source review program; (ii) is not enforceable as a practical matter; or (iii) is not reasonably anticipated.~~

~~5. Any physical or operational changes not granted advance approval in a permit establishing a plantwide applicability limit are subject to the provisions of this article.~~

~~6. Specific terms and conditions that assure that plantwide applicability limit emissions limitations are enforceable as a practical matter shall be contained in a federally and state enforceable permit applicable to the source.~~

~~7. The emissions limitations and conditions established for a plantwide applicability limit shall not relieve any owner of the responsibility to comply fully with any applicable control technology requirements.~~

~~F. The requirements for plantwide applicability limit modifications shall be as follows:~~

~~1. Notwithstanding the definitions for major modification and net emissions increase, as defined in 9 VAC 5-80-1710 and 9 VAC 5-80-2010, any physical or operational change consistent with plantwide applicability limit terms and conditions of a permit issued under this article shall not constitute a major modification for the pollutants covered by the plantwide applicability limits. All decreases in emissions shall have approximately the same qualitative significance for public health and welfare as that attributed to the increase from the particular change;~~

~~2. The provisions of 9 VAC 5-80-1140 through 9 VAC 5-80-1200 shall apply to any plantwide applicability limit modification as if it were a modification, except that in lieu of 9 VAC 5-50-260, a plantwide applicability limit modification shall apply best available control technology for each regulated air pollutant if an emissions increase above the plantwide applicability limit would occur; and~~

~~3. The best available control technology requirement applies to each emissions unit that undergoes a physical or operational change and contributes to the emissions increase above the plantwide applicability limit.~~

~~G. The requirements for plantwide applicability limit reevaluations shall be as follows:~~

~~1. The board shall reevaluate the plantwide applicability limit emissions limitations pursuant to:~~

~~a. Permit renewal and public notification procedures under Articles 1 (9 VAC 5-80-50 et seq.) and 3 (9 VAC 5-80-360 et seq.) of this part; or~~

~~b. Any other proceeding with public notice and opportunity for public comment equivalent to that in 9 VAC 5-80-1170-E.~~

~~2. The board shall evaluate and may adjust the source's plantwide applicability limit emissions limitations to reflect new applicable requirements as they become effective.~~

~~H. The requirements for termination of plantwide applicability limits shall be as follows:~~

~~1. Nothing in the regulations of the board shall be construed to prevent the board and the owner from making a mutual determination that a plantwide applicability limit is rescinded.~~

~~2. In cases where a plantwide applicability limit is rescinded under the provisions of subdivision 1 of this subsection or 9 VAC 5-80-1210, the affected emissions units shall be subject to the requirements of this article as though the plantwide applicability limit had never been in effect.~~

~~A. This section shall apply only to pollution control projects at major stationary sources and shall be the administrative mechanism, along with the other applicable provisions of this~~

article, for issuing pollution control project permits. This section shall not apply to air pollution controls and emissions associated with a proposed new stationary source or emissions unit.

B. The approval of a permit for a proposed project under this section constitutes a determination by the board that the project is a pollution control project and qualifies for an exclusion from review under Article 8 (9 VAC 5-80-1700 et seq.) or Article 9 (9 VAC 5-80-2000 et seq.) of this part.

C. Notwithstanding the definitions for major modification and net emissions increase as defined in 9 VAC 5-80-1710 and 9 VAC 5-80-2010, any physical or operational change consistent with the terms and conditions of a pollution control project permit issued under this section (i) shall not constitute a major modification for the pollutants covered by the pollution control project and (ii) qualifies for the exclusion in subsection B of this section.

D. No owner or other person shall begin construction of a proposed project that may qualify as a pollution control project without a permit issued pursuant to this section.

E. The provisions of this article shall apply to any pollution control project, except that 9 VAC 5-50-260 shall not apply. This subsection shall not be construed as preventing the board from prescribing any control measure it finds necessary to make a determination under subdivision H 4 of this section.

F. Approval of a pollution control project permit shall not provide the owner the license to engage in any activity that (i) will cause emissions from the stationary source that result in violations of or exacerbate violations of, or interfere with the attainment and maintenance of, any ambient air quality standard or (ii) is not in conformance with any applicable control strategy, including any emission standards or emission limitations, in the implementation plan.

G. The owner of a stationary source may request the board to approve a pollution control project permit for any one or more pollutants by submitting an application that meets the following criteria:

1. The application shall meet the requirements of 9 VAC 5-80-1140.
2. The application shall contain the information required by 9 VAC 5-80-1150.
3. Where a significant increase in emissions has not been previously analyzed for its air quality impact and raises the possibility of (i) a violation of an ambient air quality standard or prevention of significant deterioration increment in 9 VAC 5-80-1730 or (ii) adversely affecting visibility or other air quality related values, the application shall include an air quality analysis sufficient to demonstrate the impact of the project.
4. In the case of nonattainment areas, the application shall include legally enforceable mechanisms to ensure offsetting emissions reductions will be available for any significant increase in a nonattainment pollutant from the pollution control project.

H. The board may approve a pollution control project for a stationary source in accordance with this subsection.

1. In considering this request, the board will afford the public an opportunity to review and comment on the source's application for this exclusion in accordance with 9 VAC 5-80-1170. The board will provide a copy of the public notice required by 9 VAC 5-80-1170 F, the permit, and any preliminary review and analysis documents to the regional administrator, U.S. Environmental Protection Agency, prior to promulgation of the public notice required by 9 VAC 5-80-1170 F.

2. The board will determine that the proposed pollution control project, after consideration of the reduction in the targeted regulated air pollutant and any collateral effects, will be environmentally beneficial. A project that would result in an unacceptable increased risk due to the release of air toxics shall not be considered environmentally beneficial. Unless there is reason to believe otherwise, the board will presume that the projects by their nature will result in reduced risk from air toxics. If a significant collateral increase of a nonattainment pollutant resulting from a pollution control project is not offset on at least a one-to-one ratio, the pollution control project shall not qualify as environmentally beneficial. Pollution prevention projects that increase utilization rate may not qualify as environmentally beneficial. Therefore, the emissions rate after the change would be the product of the new emissions rate times the existing utilization rate. However, if the increased utilization results from debottlenecking, these projects may qualify, but all the debottlenecked emissions increases should be viewed as collateral and evaluated to determine whether the project is still environmentally beneficial and meets all applicable safeguards.

3. The board will determine that the proposed pollution control project will not (i) cause or contribute to a violation of an ambient air quality standard or prevention of significant deterioration increment in 9 VAC 5-80-1730 or (ii) adversely affect visibility or other air quality related values. The analysis for this determination will include a case-by-case assessment of the pollution control project's net emissions and overall impact on the environment and the specific impact.

4. With regard to the increase in nontargeted regulated air pollutants, the board will determine that the collateral increase will be minimized and will not result in environmental harm.

5. The board will include in the permit terms and conditions to ensure that adverse collateral environmental impacts from the project are identified, minimized, and, where appropriate, mitigated.

6. The board will not approve as a pollution control project any project that constitutes the replacement of an existing emissions unit with a newer or different one (albeit more efficient and less polluting) or the reconstruction of an existing emissions unit.]

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9 VAC 5-80-11. Stationary source (Repealed.)

9 VAC 5-80-1320. Permit exemption levels.

A. ~~General.~~ The general requirements for permit exemption levels are as follows:

1. The provisions of this article do not apply to the following stationary sources or emissions units:

a. The construction, reconstruction, relocation or modification of any stationary source or emissions unit that is exempt under the provisions of subsections B through F of this section.

b. The reconstruction of any stationary source or emissions unit if the [emissions potential to emit] resulting from the reconstruction will not increase.

c. The relocation of a portable emissions unit provided that:

(1) The [new] emissions from the portable emissions unit are secondary emissions;

(2) The portable emissions unit has previously been permitted or is subject to a general permit;

(3) The unit would not undergo modification or reconstruction;

(4) The unit is suitable to the area in which it is to be located; and

(5) Reasonable notice is given to the board prior to the relocation identifying the proposed new location and the probable duration of operation at the new location. Such notice shall be given to the board not less than 15 days in advance of the proposed relocation unless a different time duration is previously approved by the board.

d. The reactivation of a stationary source unless a determination concerning shutdown has been made pursuant to the provisions of 9 VAC 5-20-220.

e. The use by any source of an alternative fuel or raw material, if the owner demonstrates to the board that [,] as a result of trial burns at their facility or other facilities or other sufficient data [that ,] the emissions resulting from the use of the alternative fuel or raw material supply are decreased.

~~2.~~ 2. In determining whether a facility source is exempt from the requirements of 9 VAC 5-80-10 provisions of this article, the provisions of subsections B through H D of this section are independent from the provisions of subsection ~~4~~ subsections E and F of this section. A facility source must be determined to be exempt both under the provisions of subsections B through H D taken as a group and under the provisions of subsection ~~4~~ E or F to be exempt from 9 VAC 5-80-10 this article.

~~3.~~ 3. In determining whether a facility is exempt from the requirements of 9 VAC 5-80-10 provisions of this article under the provisions of subsections subsection B and C of this section, the definitions in the rule in 9 VAC 5 Chapter 40 (9 VAC 5-40-10 et seq.) that would cover the facility if it

were an existing source shall be used unless deemed inappropriate by the board.

[4. Any owner claiming that a facility is exempt from this article under the provisions of this section shall keep records as may be necessary to demonstrate to the satisfaction of the board that the facility was exempt at the time a permit would have otherwise been required under this article.]

B. ~~New source exemption levels by size.~~ Facilities as specified below shall be exempt from the requirements of 9 VAC 5-80-10 provisions of this article as they pertain to construction, [modification,] reconstruction or relocation.

1. Fuel burning equipment- units (external combustion units, not engines and turbines) as follows:

a. ~~Any unit~~ Using solid fuel with a maximum heat input of less than 1,000,000 Btu per hour.

b. ~~Any unit~~ Using liquid fuel with a maximum heat input of less than 10,000,000 Btu per hour.

c. ~~Any unit~~ Using liquid and gaseous fuel with a maximum heat input of less than 10,000,000 Btu per hour.

d. ~~Any unit~~ Using gaseous fuel with a maximum heat input of less than 50,000,000 Btu per hour, unless subject to a new source performance standard in Article 5 (9 VAC 5-50-400 et seq.) of 9 VAC 5 Chapter 50.

e. ~~Any unit that powers a mobile source but is removed for maintenance or repair and testing.~~

2. Engines and turbines used for emergency purposes only and which do not exceed 500 hours of operation per year at a single stationary source as follows:

a. Gasoline engines with an aggregate rated brake (output) horsepower of less than 910 hp and [diesel gasoline] engines powering electrical generators having an aggregate rated electrical power output of less than 611 kilowatts.

b. Diesel engines with an aggregate rated brake (output) horsepower of less than 1,675 hp and diesel engines powering electrical generators having an aggregate rated electrical power output of less than 1125 kilowatts.

c. Combustion gas turbines with an aggregate of less than 10,000,000 Btu per hour heat input (low heating value).

3. Engines that power mobile sources during periods of maintenance, repair or testing.

~~4.~~ [4. Solvent metal cleaning operations] Any solvent metal cleaning operation with an uncontrolled emission rate [with a potential to emit of not more than seven tons per year, 40 pounds per day and eight pounds per hour of volatile organic compounds.]

~~5.~~ [5. 4.] Volatile organic compound storage and transfer operations. Any storage or transfer operation involving petroleum liquids and other volatile organic compounds with a vapor pressure less than 1.5 pounds per square inch absolute under actual storage conditions or, in the case of

loading or processing, under actual loading or processing conditions; and any operation specified below:

a. Volatile organic compound transfer operations-
involving:

(1) Any tank of 2,000 gallons or less storage capacity-;
or

(2) Any operation outside the volatile organic compound emissions control areas designated in 9 VAC 5-20-206.

b. Volatile organic compound storage operations-
involving any tank of 40,000 gallons or less storage capacity.

~~4. [6. Large appliance coating application systems. Any coating application system if it is within a plant that has an uncontrolled emission rate of stationary source if the potential to emit of the source is not more than seven tons per year, 40 pounds per day and eight pounds per hour of volatile organic compounds.]~~

~~5. [7. Magnet wire coating application systems. Any coating application system if it is within a plant that has an uncontrolled emission rate of stationary source if the potential to emit of the source is not more than seven tons per year, 40 pounds per day and eight pounds per hour of volatile organic compounds.]~~

~~6. [8. Automobile and light duty truck coating application systems. a. Any coating application system if it is within a plant that has an uncontrolled emission rate of stationary source if the potential to emit of the source is not more than seven tons per year, 40 pounds per day and eight pounds per hour of volatile organic compounds.]~~

~~b. Any vehicle refinishing operation-~~

~~7. [9. Can coating application systems. Any coating application system if it is within a plant that has an uncontrolled emission rate of stationary source if the potential to emit of the source is not more than seven tons per year, 40 pounds per day and eight pounds per hour of volatile organic compounds.]~~

~~8. [10. Metal coil coating application systems. Any coating application system if it is within a plant that has an uncontrolled emission rate of stationary source if the potential to emit of the source is not more than seven tons per year, 40 pounds per day and eight pounds per hour of volatile organic compounds.]~~

~~9. [11. Paper and fabric coating application system. Any coating application system if it is systems within a plant that has an uncontrolled emission rate of stationary source if the potential to emit of the source is not more than seven tons per year, 40 pounds per day and eight pounds per hour of volatile organic compounds.]~~

~~10. [12. Vinyl coating application systems. Any coating application system if it is within a plant that has an uncontrolled emission rate of stationary source if the potential to emit of the source is not more than seven tons per year,~~

~~40 pounds per day and eight pounds per hour of volatile organic compounds.]~~

~~11. [13. Metal furniture coating application systems. Any coating application system if it is within a plant that has an uncontrolled emission rate of stationary source if the potential to emit of the source is not more than seven tons per year, 40 pounds per day and eight pounds per hour of volatile organic compounds.]~~

~~12. [14. Miscellaneous metal parts and products coating application systems. a. Any coating application system if it is within a plant that has an uncontrolled emission rate of stationary source if the potential to emit of the source is not more than seven tons per year, 40 pounds per day and eight pounds per hour of volatile organic compounds.]~~

~~b. Any [15. 5.] Vehicle customizing coating operation operations, if production is less than 20 vehicles per day.~~

~~c. Any [16. 6.] Vehicle refinishing operation operations.~~

~~d. Any [17. 7.] Coating operations for the exterior of fully assembled aircraft or marine vessel exterior coating operation vessels.~~

~~13. [18. Flatwood paneling coating application systems. Any coating application system if it is within in a plant that has an uncontrolled emission rate of stationary source if the potential to emit of the source is not more than seven tons per year, 40 pounds per day and eight pounds per hour of volatile organic compounds.]~~

~~14. [19. Graphic arts (printing processes). Any printing process if it is within a plant that has an uncontrolled emission rate of stationary source if the potential to emit of the source is not more than seven tons per year, 40 pounds per day and eight pounds per hour of volatile organic compounds.]~~

~~15. [20. 8.] Petroleum liquid storage and transfer operations. Any storage or transfer operation involving petroleum liquids with a vapor pressure less than 1.5 pounds per square inch absolute under actual storage conditions or, in the case of loading or processing, under actual loading or processing conditions (kerosene and fuel oil used for household heating have vapor pressures of less than 1.5 pounds per square inch absolute under actual storage conditions; therefore, kerosene and fuel oil are not subject to the provisions of 9 VAC 5-80-10 this article when used or stored at ambient temperatures); and any operation [or facility] specified below:~~

~~a. Bulk terminals- Gasoline bulk loading operations. Any operation at bulk terminals located outside volatile organic compound emissions control areas designated in 9 VAC 5-20-206.~~

~~b. Gasoline dispensing facilities. Any gasoline dispensing facility.~~

~~c. Bulk plants- Gasoline bulk loading operations- at bulk plants:~~

~~(1) Any facility With an expected daily throughput of less than 4,000 gallons-, or~~

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(2) ~~Any operation~~ Located outside volatile organic compound emissions control areas designated in 9 VAC 5-20-206.

d. Account/tank trucks. ~~No permit is required for account/tank trucks, but; however,~~ permits issued for gasoline storage/transfer facilities should include a provision that all associated account/tank trucks meet the same requirements as those trucks serving existing facilities.

e. Petroleum liquid storage operations. *involving:*

(1) Any tank of 40,000 gallons or less storage capacity,;

(2) Any tank of less than 420,000 gallons storage capacity for crude oil or condensate stored, processed or treated at a drilling and production facility prior to custody transfer,; *or*

(3) Any tank storing waxy, heavy pour crude oil.

~~16. [21. 9. Petroleum]~~ dry cleaning plants. ~~Any petroleum dry cleaning plant~~ with a total manufacturers' rated solvent dryer capacity less than 84 pounds as determined by the applicable new source performance standard in 9 VAC 5-50-410.

~~17. Wood product manufacturing plants. [22. 10.]~~ Any addition of, relocation of or change to a woodworking machine within a *wood product manufacturing* plant provided the system air movement capacity, expressed as the cubic feet per minute of air, [*is not increased*] and maximum control efficiency of the control system [~~are is~~] not decreased.

~~18. [23. 11.]~~ Wood sawmills [*and planing mills primarily engaged in sawing rough lumber and timber from logs and bolts, or resawing cants and flitches into lumber, including box lumber and softwood cut stock; planing mills combined with sawmills; and separately operated planing mills that are engaged primarily in producing surfaced lumber and standard workings or patterns of lumber. This also includes facilities primarily engaged in sawing lath and railroad ties and in producing tobacco hoghead stock, wood chips, and snow fence lath. This exemption does not include any facility that engages in the kiln drying of lumber.*]

~~Any wood sawmill.~~

~~[24. 12.]~~ Exhaust flares at natural gas and coalbed methane extraction wells.

~~G. New sources with no exemptions. Facilities as specified below shall not be exempt, regardless of size or emission rate, from the requirements of 9 VAC 5-80-10 as they pertain to construction, reconstruction or relocation.~~

- ~~1. Petroleum refineries.~~
- ~~2. Asphalt plants.~~
- ~~3. Chemical fertilizer manufacturing plants.~~
- ~~4. Kraft pulp mills.~~
- ~~5. Sand and gravel processing facilities.~~
- ~~6. Coal preparation plants.~~

~~7. Stone quarrying and processing facilities.~~

~~8. Portland cement plants.~~

~~9. Wood product manufacturing plants.~~

~~10. Secondary metal operations.~~

~~11. Lightweight aggregate process operations.~~

~~12. Feed manufacturing plants.~~

~~13. Incinerators.~~

~~14. Coke ovens.~~

~~15. Sulfuric acid production units.~~

~~16. Sulfur recovery operations.~~

~~17. Primary metal operations.~~

~~18. Nitric acid production units.~~

~~19. Concrete batching plants.~~

~~20. Pharmaceutical products manufacturing plants.~~

~~21. Rubber tire manufacturing plants.~~

~~D. New source exemption levels by emission rate.~~

~~Facilities not covered by subsection B or C of this section~~

~~C. [The exemption of new and relocated sources shall be determined as specified below:]~~

~~1. Stationary sources with uncontrolled emission a potential to emit at rates less than all of the significant emission rates specified below shall be exempt from the requirements of 9 VAC 5-80-10 provisions of this article pertaining to construction, reconstruction or relocation.~~

EMISSION RATES.

Pollutant	Emissions Rate
Carbon Monoxide	100 tons per year (tpy)
Nitrogen dioxide Oxides	40 tpy
Sulfur Dioxide	40 tpy
Particulate Matter	25 tpy
Particulate Matter (PM ₁₀)	15 tpy
Volatile organic compounds	25 tpy
Lead	0.6 tpy
Fluorides	3 tpy
Sulfuric Acid Mist	[7 6] tpy
Hydrogen Sulfide (H ₂ S)	[40 9] tpy
Total Reduced Sulfur (including H ₂ S)	[40 9] tpy
Reduced Sulfur Compounds (including H ₂ S)	[40 9] tpy
Municipal waste combustor organics (measured as total tetra-through octa-chlorinated dibenzo-p-dioxins and dibenzofurans)	3.5 x 10 ⁶ tpy
Municipal waste combustor metals (measured as particulate matter)	[45 13] tpy
Municipal waste combustor acid gases (measured as the sum of SO ₂ and [He HCl])	[40 35] tpy
Municipal solid waste landfill	[50 22] tpy

emissions (measured as nonmethane organic compounds)

2. *Facilities exempted by subsection B of this section shall not be included in the determination of potential to emit of a stationary source for purposes of exempting sources under this subsection.*

[3. *If the particulate matter (PM₁₀) emissions for a stationary source can be determined in a manner acceptable to the board and the stationary source is deemed exempt using the emission rate for particulate matter (PM₁₀), the stationary source shall be considered to be exempt for particulate matter. If the emissions of particulate matter (PM₁₀) cannot be determined in a manner acceptable to the board, the emission rate for particulate matter shall be used to determine the exemption status.]*

~~E. Modified source exemption levels by emission rate. Facilities with increases in uncontrolled emission rates D. [The exemption of modified and reconstructed sources shall be determined as specified below:]~~

[1.] *Stationary sources with net emissions increases less than all of the emission rates specified below shall be exempt from the requirements of 9 VAC 5-80-10 provisions of this article pertaining to modification or reconstruction.*

EMISSION RATES.

Pollutant	Emissions Rate
Carbon Monoxide	100 tons per year (tpy)
Nitrogen dioxide Oxides	10 tpy
Sulfur Dioxide	10 tpy
Particulate Matter	15 tpy
Particulate Matter (PM ₁₀)	10 tpy
Volatile organic compounds	10 tpy
Lead	0.6 tpy
Fluorides	3 tpy
Sulfuric Acid Mist	[7 6] tpy
Hydrogen Sulfide (H ₂ S)	[40 9] tpy
Total Reduced Sulfur (including H ₂ S)	[40 9] tpy
Reduced Sulfur Compounds (including H ₂ S)	[40 9] tpy
Municipal waste combustor organics (measured as total tetra-through octa-chlorinated dibenzo-p-dioxins and dibenzofurans)	3.5 x 10 ⁻⁶ tpy
Municipal waste combustor metals (measured as particulate matter)	[45 13] tpy
Municipal waste combustor acid gases (measured as the sum of SO ₂ and [Hcl HCl])	[40 35] tpy
Municipal solid waste landfill emissions (measured as nonmethane organic compounds)	[50 22] tpy

[2. *Facilities exempted by subsection B of this section shall not be included in the determination of net emissions increase of a stationary source for purposes of exempting sources under this subsection. However, any other increases and decreases in actual emissions at the source that are concurrent with a particular change shall be*

included in the determination of net emissions increase of a stationary source for purposes of exempting sources under this subsection, and if the change is not exempt, the other increases shall be subject to 9 VAC 5-50-260 C.

3. *If the particulate matter (PM₁₀) emissions for a stationary source can be determined in a manner acceptable to the board and the stationary source is deemed exempt using the emission rate for particulate matter (PM₁₀), the stationary source shall be considered to be exempt for particulate matter. If the emissions of particulate matter (PM₁₀) cannot be determined in a manner acceptable to the board, the emission rate for particulate matter shall be used to determine the exemption status.]*

~~F. New source performance standards and national emission standards for hazardous air pollutants. Regardless of the provisions of subsections B, D and E of this section, affected facilities subject to Article 5 (9 VAC 5-50-400 et seq.) of 9 VAC 5 Chapter 50 or subject to Article 1 (9 VAC 5-60-60 et seq.) of 9 VAC 5 Chapter 60 shall not be exempt from the provisions of 9 VAC 5-80-10, with the exception of those facilities which would be subject only to recordkeeping or reporting requirements or both under Article 5 (9 VAC 5-50-400 et seq.) of 9 VAC 5 Chapter 50 or Article 1 (9 VAC 5-60-60 et seq.) of 9 VAC 5 Chapter 60.~~

~~G. Relocation of portable facilities. Regardless of the provisions of subsections B, C, D, E and F of this section, a permit will not be required for the relocation of a portable emissions unit for which a permit has been previously granted under 9 VAC 5 Chapter 80 (9 VAC 5-80-10 et seq.) provided that:~~

- ~~1. The emissions of the unit at the new location would be temporary;~~
- ~~2. The emissions from the unit would not exceed its allowable emissions;~~
- ~~3. The unit would not undergo modification or reconstruction;~~
- ~~4. The unit is suitable to the area in which it is to be located; and~~
- ~~5. Reasonable notice is given to the board prior to the relocation identifying the proposed new location and the probable duration of operation at the new location. Such notice shall be given to the board not less than 15 days in advance of the proposed relocation unless a different time duration is previously approved by the board.~~

~~H. Requirements for exempted facilities. Any facility exempted from the provisions of 9 VAC 5-80-10 by subsection B of this section shall be subject to the provisions of any rule which would apply to the facility if it were an existing source unless specifically exempted by that rule.~~

~~I. E. [Exemption levels Exemptions] for [stationary] sources of toxic pollutants: not subject to the federal hazardous air pollutant new source review program shall be as follows:~~

- ~~1. Facilities Stationary sources [with] an [a net emission increase] in the uncontrolled emission rate [of a toxic pollutant equal to or less than the exempt emission rate~~

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~~calculated using the exemption formulas for the applicable TLV[®] in subdivision] † [4 of this] section [subsection exempt from the requirements of Article 5 (9 VAC 5-60-300 et seq.) of 9 VAC 5 Chapter 60 as provided in 9 VAC 5-60-300 C 1, C 2, D or E] shall be exempt from the requirements of 9 VAC 5-80-10 provisions of this article [pertaining to modification, provided the *not emissions increase*] in the uncontrolled emission rate [of the pollutant does not exceed 22.8 pounds per hour or 100 tons per year].~~

[2.] Facilities [~~Stationary sources with~~] an uncontrolled emission rate [~~a potential to emit of a toxic pollutant equal to or less than the exempt emission rate calculated using the exemption formulas for the applicable TLV[®] in subdivision] 4 of this section] ~~subsection~~ [shall be exempt from the] requirements of 9 VAC 5-80-10 [~~provisions of this article pertaining to construction, reconstruction or relocation, provided the~~] uncontrolled emission rate [~~potential to emit of the pollutant does not exceed 22.8 pounds per hour or 100 tons per year.~~]~~

[3. If more than one exemption formula applies to a toxic pollutant emitted by a] facility [~~stationary source, the~~] uncontrolled emission rate of that pollutant shall be equal to or less than both applicable exemption formulas in order for the source to be exempt for that pollutant. The exemption formulas apply on an individual basis to each toxic pollutant for which a TLV[®] has been established.

[4.] Exemption formulas. [~~The formulas for making toxic pollutant exemption determinations shall be as follows:~~

a. For toxic pollutants with a TLV-C[®], the following exemption formula applies:

$$\text{Exempt Emission Rate (pounds per hour)} = \text{TLV-C}^{\circledast} (\text{mg/m}^3) \times 0.033$$

b. For toxic pollutants with both a TLV-STEL[®] and a TLV-TWA[®], the following exemption formulas apply:

$$\text{Exempt Emission Rate (pounds per hour)} = \text{TLV-STEL}^{\circledast} (\text{mg/m}^3) \times 0.033$$

$$\text{Exempt Emission Rate (tons per year)} = \text{TLV-TWA}^{\circledast} (\text{mg/m}^3) \times 0.145$$

c. For toxic pollutants with only a TLV-TWA[®], the following exemption formulas apply:

$$\text{Exempt Emission Rate (pounds per hour)} = \text{TLV-TWA}^{\circledast} (\text{mg/m}^3) \times 0.066$$

$$\text{Exempt Emission Rate (tons per year)} = \text{TLV-TWA}^{\circledast} (\text{mg/m}^3) \times 0.145$$

5. Exemption from the requirements of 9 VAC 5-80-10 ~~this article~~ for any facility which has an uncontrolled emission rate ~~stationary source~~ of any toxic pollutant without a TLV[®] shall be determined by the board using available health effects information.

6. The exemption determination shall be made by the board using information submitted by the owner at the request of the board as set out in 9 VAC 5-50-200.]

7. [2. Facilities as specified below shall not be exempt, regardless of size or emission rate, from the] requirements of ~~9 VAC 5-80-10 as they pertain to modification, construction, reconstruction or relocation.~~ [~~provisions of this article~~].

[a. Incinerators, unless the incinerator is used exclusively as air pollution control equipment.

b. Ethylene oxide sterilizers.

c. Boilers, ~~incinerators~~, or industrial furnaces] ~~burning hazardous waste fuel for energy recovery or destruction, or processing for materials recovery or as an ingredient as defined in 40 CFR 260.10 and subject to 9 VAC 20 Chapter 60 (9 VAC 20-60)] For the purposes of this subsection, hazardous waste fuel means (i) hazardous waste that is burned for energy recovery or (ii) fuel produced from hazardous waste by processing, blending or other treatment (see Hazardous Waste Management Regulations, 9 VAC 20-60-10 et seq.). Hazardous waste means a solid waste or combination of solid waste which, because of its quantity, concentration or physical, chemical or infectious characteristics, may (i) cause or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating illness, or (ii) pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, disposed of, or otherwise managed (§ 10.1-1400 of the Virginia Waste Management Act). This subdivision shall not apply to boilers or industrial furnaces burning used oil, which is defined as any oil that has been refined from crude oil, used, and as a result of such use, is contaminated by physical or chemical impurities (Hazardous Waste Management Regulations, 9 VAC 20-60-10 et seq.).~~

F. Any source [category or portion of a source category] subject to the federal hazardous air pollutant new source review program shall be exempt from the provisions of this article if specifically exempted from that program by 40 CFR Part 61 or 63.

V.A.R. Doc. No. R96-151; Filed May 28, 2002, 3:31 p.m.

* * * * *

Title of Regulation: 9 VAC 5-91. Regulations for the Control of Motor Vehicle Emissions in the Northern Virginia Area (amending 9 VAC 5-91-20, 9 VAC 5-91-30, 9 VAC 5-91-50, 9 VAC 5-91-70, 9 VAC 5-91-120, 9 VAC 5-91-160 through 9 VAC 5-91-230, 9 VAC 5-91-260, 9 VAC 5-91-270, 9 VAC 5-91-290 through 9 VAC 5-91-340, [9 VAC 5-91-360,] 9 VAC 5-91-370, 9 VAC 5-91-380, 9 VAC 5-91-410 through 9 VAC 5-91-450, 9 VAC 5-91-480 through [9 VAC 5-91-580, 9 VAC 5-91-600 through] 9 VAC 5-91-620, 9 VAC 5-91-650 [; through 9 VAC 5-91-720, 9 VAC 5-91-740, [9 VAC 5-91-750,] 9 VAC 5-91-790, and 9 VAC 5-91-800; repealing 9 VAC 5-91-41, 9 VAC 5-91-460, 9 VAC 5-91-470, 9 VAC 5-91-770, and 9 VAC 5-91-780) (Rev. MG).

Statutory Authority: § 46.2-1180 of the Code of Virginia.

Effective Date: October 1, 2002.

Summary:

The amendments make a number of revisions to conform to changes in Virginia law and federal regulations, as well as to conform to current testing procedures and to enhance program enforcement. One of the primary changes affecting the vehicle owner is a change in the model year coverage: from the testing of model year 1968 and newer to a rolling exemption for vehicles 25 years and older. This change actually has been in effect since July 1, 2000, in accordance with the Virginia statute.

Another major change involves implementation of on-board diagnostic (OBD) testing. In accordance with changes in federal regulation, OBD testing will be performed for vehicles of model year 1996 and newer beginning January 1, 2002. OBD testing will also be required for diesel-fueled vehicles so equipped (model year 1997 and newer) using the same testing equipment used for gasoline-powered vehicles.

Emissions standards for the two-speed idle (TSI) test are being tightened for some vehicles 1990 and newer, and the regulation is being revised to correct the order in which the TSI test modes are performed.

For the acceleration simulation mode (ASM) test, which is the test performed on the majority of vehicles subject to the emissions inspection program, the regulation is being revised to allow DEQ the flexibility to set standards less stringent than the federal "final" ASM standards. In addition, changes have been made to various permitting, licensing and enforcement procedures to reduce redundancy.

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: Alma Jenkins, Office of Air Regulatory Development, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4070, FAX (804) 698-4510, toll free 1-800-592-5482 or (804) 698-4021/TTY.

REGISTRAR'S NOTICE: The proposed regulation was adopted as published in 18:2 VA.R. 89-139 October 8, 2001, with the changes identified below. Pursuant to § 2.2-4031 of the Code of Virginia, the final regulation is not published at length; however, the sections that have changed since publication of the proposed are set out.

9 VAC 5-91-20. Terms defined.

["Aborted test" means an emissions inspection procedure that has been initiated by the inspector but stopped and not completed due to inspector error or a vehicular problem that prevents completion of the test. Aborted tests are not tests that cannot be completed due to a "failed/invalid" result caused by an exhaust dilution problem or an engine condition that prevents the inspection from being completed.]

"Access code" means the security phrase or number which allows emissions inspectors authorized station personnel, the department, and analyzer service technicians to perform

specific assigned functions using the certified analyzer system, as determined by the department. [Depending on the assigned function, the access code is a personal password, a state password or a service password. Access code is not an identification number, but is used as an authenticator along with the identification number where such number is needed to perform specific tasks.]

"Actual gross weight" means the weight of a motor vehicle as registered with the Department of Motor Vehicles and which may encompass the empty weight (EW), motorist-declared gross weight (GW), or gross vehicle weight rating (GVWR). For the purpose of determining applicability of emissions test procedures and standards, the GVWR shall be used, if available. [If GVWR is unavailable, the] GW shall be used. If neither is available, the EW shall be used [department may make a determination based on the best available evidence including manufacturer reference, information coded in the vehicle identification number, or other available sources of information from which to make the determination.]

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

"Affected motor vehicle" means any motor vehicle which:

1. Was manufactured for the 1968 model year or a more recent model year including the most recent model year or designated by the manufacturer as a model year less than 25 calendar years prior to January 1 of the present calendar year according to the formula, the current calendar year minus 24;
2. Is designed for the transportation of persons or property;
3. Is powered by an internal combustion engine; and
4. For the Northern Virginia Emissions Inspection Program, has [an actual gross weight a GVWR] of 10,000 pounds or less.

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

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

"Air intake systems" means those systems which allow for the induction of ambient air (to include preheated air) into the

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engine combustion chamber for the purpose of mixing with a fuel for combustion.

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

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

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

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

~~["Alternative evaporative system purge and pressure test" means a method and equipment, as approved by the administrator or the department, which performs evaporative system purge testing and evaporative system pressure testing by pressurizing and testing the evaporative system by means of introducing gases to the system at the fuel filler inlet, and detecting pressure integrity and exhaust gas concentrations, and by testing the integrity of the fuel filler cap.]~~

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

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

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

"Authorized personnel" means department personnel, [an] individual designated by analyzer manufacturer, station owner, licensed emissions inspector, station manager or other person as designated by the station manager.

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

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

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

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

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

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

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

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

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

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

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

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

"Certified thermometer" means a laboratory grade ambient temperature measuring device with a range of at least 20°F through 120°F, and an attested accuracy of at least 1°F with increments of 1°, with protective shielding.

~~"Chargeable inspection" means an initial a completed inspection, or a reinspection that occurs 15 days or later after~~

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

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

"Curb idle" means vehicle operation whereby the transmission is disengaged and the engine is operated with the throttle in the closed or idle stop position with the resultant engine speed between ~~300 400~~ and ~~4,100 1,250~~ revolutions per minute (rpm), or at another idle speed if so specified by the manufacturer.

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

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

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

"Dedicated [~~alternate alternative~~] fuel vehicle" means a vehicle that was configured by the vehicle manufacturer to operate only on one specific fuel other than (i) gasoline, (ii) diesel, or (iii) fuel mixtures containing more than 15% by volume of gasoline.

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

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

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

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

["Emissions control equipment" means any part, assembly or equipment originally installed by the manufacturer in or on a

motor vehicle for the sole or primary purpose of reducing emissions.]

"Emissions control systems" means [~~those any system consisting of~~] parts, assemblies [, or] equipment [~~or systems~~] originally installed by the manufacturer in or on a [motor] vehicle for the ~~sole~~ primary purpose of reducing emissions.

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

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

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

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

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

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

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

"Enhanced emissions inspection program" means a motor vehicle emissions inspection including procedures, emissions standards, and equipment required by 40 CFR Part 51, Subpart S or equivalent and consistent with applicable requirements of the federal Clean Air Act. The director shall administer the enhanced emissions inspection program. ~~Such~~ *Under the Virginia Motor Vehicle Emissions Control Law, the program shall require requires that affected motor vehicles, unless otherwise exempted, receive biennial inspections at official emissions inspection stations, which may be test and repair facilities, in accordance with this chapter. Nothing in this program shall bar enhanced emissions inspection stations or facilities from also performing vehicle repairs.*

"EPA" means the United States Environmental Protection Agency.

"Equivalent test weight (ETW)" or "emission test weight" means the weight of a motor vehicle as automatically determined by the emissions analyzer system based on vehicle make, model, body, style, model year, engine size,

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permanently installed equipment, and other manufacturer and aftermarket supplied information, and used for the purpose of assigning dynamometer resistance and exhaust emissions standards for the conduct of an exhaust emissions inspection.

"Evaporative system pressure test" or "pressure test" means a physical test of the evaporative emission control system on a motor vehicle to determine whether the evaporative system vents emissions of volatile organic compounds from the fuel tank and fuel system to an on-board emission control device, and prevents their release to the ambient air under normal vehicle operating conditions. [~~The feasibility and practicality of conducting such testing shall be determined by the director and contingent upon the availability and installation of equipment necessary for conducting the test. Such testing shall only be conducted at emissions inspection stations upon installation of approved equipment and software necessary for performing the test, as determined by the director.~~]

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

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

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

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

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

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

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

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

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

"Formal hearing" means a board or department process ~~which~~ that provides for the right of private parties to submit factual proofs as provided in § ~~9-6.14:12~~ 2.2-4020 of the Administrative Process Act in connection with case decisions. Formal hearings do not include the factual inquiries of an

informal nature provided in § ~~9-6.14:14~~ 2.2-4019 of the Administrative Process Act.

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

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

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

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

"Gross vehicle weight rating (GVWR)" means the maximum recommended combined weight of the motor vehicle and its load as prescribed by the manufacturer and is (i) expressed on a permanent identification label affixed to the motor vehicle; (ii) stated on the manufacturer's certificate of origin; or (iii) coded in the vehicle identification number. *If the GVWR can be determined it shall be one element used to determine emissions inspection standards and test type.* [*If the GVWR is unavailable, the department may make a determination based on the best available evidence including manufacturer reference, information coded in the vehicle identification number, or other available sources of information from which to make the determination.*]

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

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

[*"Identification number"* means the number assigned by the department to uniquely identify department personnel, an emissions inspection station, a certified emissions repair facility, a licensed emissions inspector, a certified emissions repair technician or other authorized personnel as necessary for specific tasks.]

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

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

[*"Implementation plan"* means the plan, including any revision thereof, that has been submitted by the Commonwealth and approved in Subpart VV of 40 CFR Part 52 by the

administrator under § 110 of the federal Clean Air Act, or promulgated in Subpart VV of 40 CFR Part 52 by the administrator under § 110(c) of the federal Clean Air Act, or promulgated or approved by the administrator pursuant to regulations promulgated under § 301(d) of the federal Clean Air Act and that implements the relevant requirements of the federal Clean Air Act.]

"*Informal fact finding*" means an informal conference or consultation proceeding used to ascertain the fact basis for case decisions as provided in § ~~9-6.14:14~~ 2.2-4019 of the Administrative Process Act.

"*Initial inspection*" means the first complete emissions inspection of a motor vehicle conducted in accordance with the biennial inspection requirement and for which a valid vehicle emissions inspection report was issued. Any test following the initial inspection is a retest or reinspection.

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

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

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

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

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

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

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

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

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

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

"*Loaded vehicle weight (LVW)*" or "*curb weight*" means the weight of a vehicle and its standard equipment; i.e., the empty

weight as recorded on the vehicle's registration or the base shipping weight as recorded in the vehicle identification number, whichever is greater; plus the weight of any permanent attachments, the weight of a nominally filled fuel tank, plus 300 pounds.

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

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

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

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

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

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

"*Motor vehicle inspection report*" [~~or "*vehicle inspection report (VIR)*"~~] means a *printed certificate of emissions inspection that is a report of the results of an emissions inspection, indicating. It indicates whether the motor vehicle has (i) passed, (ii) failed, (iii) been rejected, or (iv) (iii) obtained an a temporary emissions inspection waiver. It may also indicate whether the emissions inspection could not be completed due to an exhaust dilution or an engine condition that prevents the inspection from being completed.* The report shall accurately identify the motor vehicle and shall include inspection results, recall information *provided by the department*, warranty and repair information, and a unique identification number.

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

"*Nonconforming vehicle*" means a vehicle not manufactured for sale in the United States to conform to emissions standards established by the federal government.

"*Normal business hours*" for emissions inspection stations, means a daily eight-hour period Monday through Friday,

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between the hours of 8 a.m. and 6 p.m., with the exception of national holidays, *state holidays*, temporary closures noticed to the department and closures due to the inability to meet the requirements of this chapter. Nothing in this chapter shall prevent stations from performing inspections at other times in addition to the "normal business hours." *Emissions inspection stations may, with the approval of the department, substitute a combined total of eight hours, between 8 a.m. and 6 p.m., over a weekend period for one weekday as their "normal business hours" for conducting emission inspections. Emissions inspection stations shall post inspection hours.*

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

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

"*On-board diagnostic system*" or "*OBD system*" means the computerized emissions control diagnostic system installed on model year 1996 and newer [~~light-duty affected motor~~] vehicles [~~and light-duty trucks~~].

"*On-board diagnostic system test*" or "*OBD system test*" means an evaluation of the OBD system pursuant to 40 CFR 86.094-17 according to procedures specified in 40 CFR 85.2222 and this chapter.

"*On-board diagnostic vehicle*" or "*OBD vehicle*" means a model year 1996 and newer model [~~gasoline-powered affected motor~~] vehicle [~~or light-duty truck~~] equipped with an on-board diagnostic system and meeting the requirements of 40 CFR 85.2231.

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

"*Operated primarily*" means the area within which the affected motor vehicle is primarily driven. A vehicle is primarily driven in the program area if the vehicle is operated in the program area for an amount of annual mileage equal to or greater than (i) 50% of its annual mileage or (ii) 6,000 miles, whichever is greater, or routinely driven vehicle operation that constitutes a significant use in the program area. For the purpose of this definition, significant use shall be (i) mileage in excess of 6,000 miles per year or (ii) routine operation into or within the program area as determined evidenced by recordation of travel in the program area ~~more than~~ at least three times in a two-week period by remote sensing or on-road testing.

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

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

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

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

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

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

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

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

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

"*Reinspection*" or "*retest*" means a type of inspection selected by the department or the emissions inspector when a request for an inspection is accompanied by a completed motor vehicle inspection report indicating due to a previous failure. Any inspection that occurs 120 days or less following the most recent chargeable inspection is a retest.

"*Rejected*" or "*rejected from testing*" means that the vehicle cannot be inspected due to conditions in accordance with 9 VAC 5-91-420 C or 9 VAC 5-91-420 G 3.

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

"*Sensitive mission vehicle*" means any vehicle which, for law enforcement or national security reasons, cannot be tested in the public inspection system and must not be identified through the fleet testing system. For such vehicles, an autonomous fleet testing system may be established by agreement between the controlling agency and the director.

"*Span gas*" means gases of known concentration used as references to adjust or verify the accuracy of an exhaust gas

analyzer that are approved by the department and are so labeled.

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

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

[~~"State Implementation Plan" means the plan, including any revision thereof, which has been submitted by the Commonwealth and approved in Subpart VV of 40 CFR Part 52 by the administrator under § 110 of the federal Clean Air Act, or promulgated in Subpart VV of 40 CFR Part 52 by the administrator under § 110(c) of the federal Clean Air Act, or promulgated or approved by the administrator pursuant to regulations promulgated under § 304(d) of the federal Clean Air Act and which implements the relevant requirements of the federal Clean Air Act.~~]

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

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

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

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

~~"Thermometer, certified" means a laboratory grade ambient temperature measuring device with a range of at least 20°F through 120°F, and an attested accuracy of at least 1°F with increments of 1°, with protective shielding.~~

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

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

"True concentration" means the concentration of the gases of interest as measured by a standardized instrument which has

been calibrated with 1.0% precision gases traceable to the National Bureau of Standards.

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

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

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

"Visible smoke" means any air pollutant, other than visible water droplets, consisting of black, gray, blue or blue-black airborne particulate matter emanating from the exhaust system or crankcase. Visible smoke does not mean steam.

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

9 VAC 5-91-30. Applicability and authority of the department.

A. The provisions of this chapter, unless specified otherwise, apply to the following:

1. Any owner of an affected motor vehicle, including new motor vehicles, specified in subsection B of this section [~~(i) on October 9, 1997, or (ii) later upon written notification of the emissions inspection requirement by the Department of Environmental Quality or the Department of Motor Vehicles~~]. [*References made to responsibilities or requirements applicable to an affected motor vehicle shall mean that the owner shall be responsible for compliance with all applicable provisions of this chapter.*]

2. Any owner of an emissions inspection station or fleet emissions inspection station under the auspices of the enhanced emissions inspection program. [*References made to responsibilities or requirements of emissions inspection stations or fleet emissions inspection stations shall mean that the owner, permittee or certificate holder, as appropriate, shall be responsible for compliance with all applicable provisions of this chapter.*]

3. Any person who conducts an emissions inspection under the auspices of the enhanced emissions inspection program.

4. Any owner of an emissions repair facility performing emissions repairs on motor vehicles affected by this chapter. [*References made to responsibilities or requirements of certified emissions repair facilities shall mean that the owner, permittee or certificate holder, as appropriate, shall be responsible for compliance with all applicable provisions of this chapter.*]

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5. Any emissions repair technician performing emissions repairs on motor vehicles affected by this chapter.

B. The provisions of this chapter, unless specified otherwise, apply to the following affected motor vehicles:

1. Any affected motor vehicle, including new motor vehicles, registered by the Virginia Department of Motor Vehicles and garaged within the Northern Virginia program area.

2. Any affected motor vehicle, including new motor vehicles, registered by the Virginia Department of Motor Vehicles and garaged outside of the Northern Virginia program area but operated primarily in the Northern Virginia program area.

3. Any affected motor vehicle, including new motor vehicles, ~~(i) owned or operated by a United States government agency located within the Northern Virginia program area, (ii) operated on or commuting to a federal facility within the Northern Virginia program area, or (iii) owned or operated by a United States government agency located outside the Northern Virginia program area not registered by the Department of Motor Vehicles~~ but operated primarily in the Northern Virginia program area.

4. Any affected motor vehicle, including new motor vehicles [~~;(i) owned or operated [by as part of] a state or local government agency located within the Northern Virginia program area, (ii) operated on or commuting to a state or local government facility within the Northern Virginia program area, or (iii) owned or operated by a state or local government agency fleet~~ located outside the Northern Virginia program area but operated primarily in the Northern Virginia program area.

C. As provided in the Virginia Motor Vehicle Emissions Control Law, affected motor vehicles shall be submitted for biennial emissions inspections and [~~comply shall be in compliance~~] with this chapter.

1. Motor vehicles having obtained a valid enhanced emissions inspection pass ~~or waiver~~ from another program area or another state within the most recent 12 months may be determined by the director to [~~have complied be in compliance~~] with the enhanced emissions inspection required by this chapter for initial registration in Virginia. The valid period for such emissions inspection shall be ~~determined by the director, not to exceed~~ one year. The ~~subject motor vehicle and~~ proof of emissions inspection results from an enhanced emissions inspection program shall be presented to the Department of Motor Vehicles in such cases. *The vehicle and proof of compliance may be presented to the department for verification purposes in order to resolve questions or disputes.* Such vehicles are subject to all other provisions of this chapter.

2. The director may temporarily defer the emissions inspection requirement for motor vehicles registered in but temporarily located outside the program area at the time of such requirement based on information including, but not limited to, the location of the vehicle, the reason for and length of its temporary location, and demonstration that it is not practical or reasonable to return the vehicle to the program area for inspection. All such information shall be

provided by the ~~registered~~ owner and is subject to verification by the department.

~~G.~~ D. Motor vehicles being titled for the first time shall be considered to have an enhanced emissions inspection valid for two years. Such vehicles are not exempt from the emissions inspection program and are subject to all other provisions of this chapter.

~~D.~~ E. Pursuant to § 46.2-1180 B of the Motor Vehicle Emissions Control Law, motor vehicles of the current model year and the four immediately preceding model years, held for [~~sale resale~~] in a licensed motor vehicle dealer's inventory, may be registered for one year upon sale without obtaining an emissions inspection in accordance with conditions enumerated below.

1. The vehicle must be registered in the program area.

2. The vehicle has not failed *nor received a waiver during its* most recent emissions inspection.

3. The vehicle has not previously been registered under the provisions of this subsection.

4. The motor vehicle dealer guarantees in writing to the customer and to the department that the emissions equipment on the motor vehicle is operating in compliance with the warranty of the manufacturer or distributor, or both if applicable, at the time of sale.

a. The document supplied must describe the method by which this compliance was determined and provide a copy of any emissions readings obtained from the vehicle for the purpose of making this showing.

b. The document must state in prominent or bold print that the certification in no way warrants or guarantees that the vehicle complied with the emission standards used in the Virginia enhanced emissions inspection program, or similar language approved by the department and that the customer has a right to request an emissions inspection, which may be at the expense of the customer, in lieu of the one year emissions validation period authorized by this subsection.

5. A written request, including the documentation cited above, must be presented to the department not more than 30 days prior to the date of sale so that the department can record such temporary emissions validation period and furnish it to the Department of Motor Vehicles.

6. Such temporary validation period shall not be granted more than once for any motor vehicle.

7. For the purposes of *this* subsection ~~D of this section~~, any used motor vehicle will be considered to be one model year old on the first day of October of the next calendar year after the model year described on the vehicle title or registration, and shall increase in age by one year on the first day of each October thereafter.

F. Owners or operators of fleets, including fleets of government vehicles and sensitive mission vehicles, shall provide a report to the department annually containing information regarding vehicles operated in the program area sufficient to determine compliance with this chapter. The

report shall contain information deemed necessary by the department to determine compliance. Such information shall include, but not be limited to, (i) number of vehicles, (ii) compliance method, and (iii) results of any inspections. Reports shall be in a format and according to a schedule acceptable to the department.

~~E.~~ G. Manufacturers and distributors of emissions testing equipment are prohibited from directly or indirectly owning or operating any emissions testing facility or having any direct or indirect financial interest in any such facility other than the leasing of or providing financing for equipment related to emissions testing.

~~F.~~ H. The provisions of this chapter, unless specified otherwise, apply only to those pollutants for which emission standards are set forth in Part III (9 VAC 5-91-160 et seq.) and Part XIV (9 VAC 5-91-790 et seq.).

~~G.~~ I. Applicants for inspection station permits and emissions repair facility certificates shall have a Virginia business license and the application shall only be for a facility in Virginia.

~~H.~~ J. By the adoption of this chapter, the board confers upon the department the administrative, enforcement and decision making authority enumerated herein.

9 VAC 5-91-41. [No change from proposed.]

9 VAC 5-91-50. Documents incorporated by reference.

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

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

Additional information on key federal regulations and nonstatutory documents incorporated by reference and their availability may be found in ~~subsections~~ subsection E and ~~F~~ of this section.

B. Any reference in this chapter to any provision of the Code of Federal Regulations (CFR) shall be considered as the adoption by reference of that provision. The specific version of the provision adopted by reference shall be that contained in the latest revision to the CFR in effect on July 1, ~~1996~~ 2001. In making reference to the Code of Federal Regulations, 40 CFR Part 35 means Part 35 of Title 40 of the Code of Federal Regulations; 40 CFR 35.20 means § 35.20 in Part 35 of Title 40 of the Code of Federal Regulations.

C. Failure to include in this ~~part~~ section any document referenced in ~~the regulation~~ this chapter shall not invalidate the applicability of the referenced document.

D. Copies of materials incorporated by reference in this ~~part~~ section may be examined by the public at the ~~headquarters~~ central office of the Department of Environmental Quality, Air

Division, Eighth Floor, 629 East Main Street, Richmond, Virginia, between 8:30 a.m. and 4:30 p.m. of each business day.

~~E.~~ Information on federal regulations and nonstatutory documents incorporated by reference and their availability may be found below in this subsection.

~~E.~~ 1. Code of Federal Regulations.

~~1.~~ a. The provisions specified below from the Code of Federal Regulations (CFR) are incorporated herein by reference:

~~a.~~ (1) 40 CFR Part 51 - Requirements for Preparation, Adoption and Submittal of Implementation Plans, specifically Subpart S (Inspection and Maintenance Program Requirements).

~~b.~~ (2) 40 CFR Part 85 - Control of Air Pollution from Motor Vehicles and Motor Vehicle Engines, specifically Subpart W (Emission Control System Performance Warranty Short Tests).

~~2.~~ b. Copies may be obtained from: Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402; phone (202) 783-3238.

~~F.~~ 2. Environmental Protection Agency, Motor Vehicle Emissions Laboratory.

~~1.~~ a. The following document [~~from the Environmental Protection Agency~~] is incorporated herein by reference: Environmental Protection Agency technical report, "EPA Recommended Practice for Naming I/M Calibration Gas," EPA-AA-TSS-83-8-B, September 1983.

~~2.~~ b. The following document [~~from the Environmental Protection Agency~~] is incorporated herein by reference: Environmental Protection Agency technical guidance, Acceleration Simulation Mode Test Procedures, Emission Standards, Quality Control Requirements, and Equipment Specifications," EPA-AA-RSPD-IM-96-2, July 1996.

~~3.~~ c. Copies may be obtained from: Environmental Protection Agency, ~~Motor Vehicle Emissions Laboratory, 2565 Plymouth Road Office of Transportation and Air Quality, 2000 Traverwood, Ann Arbor, MI 48105.~~

~~G.~~ [~~3.~~ California Bureau of Automotive Repair.

~~1.~~ a. The following document from the California Bureau of Automotive Repair is incorporated herein by reference: BAR 97, Test Analyzer System Specifications, 1996.

~~2.~~ b. Copies may be obtained from: Department of Consumer Affairs, Bureau of Automotive Repair, California Vehicle Inspection Program, 3116 Bradshaw Road, Sacramento, California 95827.

3. Building Officials & Code Administrators International, Inc.

a. The following document is incorporated herein by reference: The BOCA National Mechanical Code/1993, Eighth Edition.

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b. Copies may be obtained from: Building Officials & Code Administrators International, Inc., 4051 West Flossmoor Road, Country Club Hills, Illinois 60478-5795.]

9 VAC 5-91-70. Appeal of case decisions.

A. Any owner, emissions inspector, emissions repair technician, or other party significantly affected by any action of the director or the department taken without a formal hearing may request a formal hearing in accordance with ~~§ 9-6.14:12~~ 2.2-4020 of the Administrative Process Act, provided a formal hearing has not been waived and a petition requesting such formal hearing is filed with the director within 30 days after notice of the action is mailed or delivered to such owner, emissions inspector, emissions repair technician, or party requesting notification of such action.

B. In cases where the director or the department fails to make a case decision within the time frame specified by ~~§§ 9-6.14:11 and 9-6.14:12~~ 2.2-4021, the owner, emissions inspector, emissions repair technician, or other party significantly affected, may provide written notice to the director that a decision is due in accordance with ~~§ 9-6.14:11 or § 9-6.14:12~~ 2.2-4021 of the Administrative Process Act. Appeals thereafter shall be in accordance with the Administrative Process Act.

C. Prior to any formal hearing, an informal fact finding shall be held pursuant to ~~§ 9-6.14:14~~ 2.2-4019 of the Administrative Process Act, unless the named party and the director consent to waive the informal fact finding and go directly to a formal hearing.

D. Any decision of the director resulting from a formal hearing or from an informal fact finding wherein the parties have agreed to waive a formal hearing shall constitute the final decision [~~appealable to court for purposes of Article V (§ 2.2-4025 et seq.) of the Administrative Process Act~~].

E. Judicial review of any final decision shall be [~~afforded~~] in accordance with ~~§ 9-6.14:16 [2.2-4026 Article V (§ 2.2-4025 et seq.)]~~ of the Administrative Process Act.

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

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

9 VAC 5-91-120. [No change from proposed.]

9 VAC 5-91-160. [No change from proposed.]

9 VAC 5-91-170. Exhaust emission standards for ASM testing in enhanced emissions inspection programs.

A. No motor vehicle shall discharge carbon monoxide (CO), hydrocarbons (HC), or oxides of nitrogen (NO_x) in its exhaust emissions in excess of standards set forth in tables in Part XIV (9 VAC 5-91-790 et seq.) when measured with a certified analyzer system and in accordance with the ASM inspection procedures prescribed in Part VI (9 VAC 5-91-410 et seq.).

B. The director may determine, based on results of emissions inspections verified by the department and in consultation with

vehicle manufacturers, EPA or appropriate research organizations that emissions standards for [~~affected or~~] specific vehicle models, model years, or weight classifications shall remain at the phase-in level as specified in 9 VAC 5-91-790 ~~rather than or be set at interim standards [for a period of time determined by the department according to analysis of fail rates before less stringent than the final standards rather than]~~ being adjusted automatically to the final standards specified in 9 VAC 5-91-800.

9 VAC 5-91-180. [No change from proposed.]

9 VAC 5-91-190. [No change from proposed.]

9 VAC 5-91-200. Evaporative emissions systems standards.

A. Standards for evaporative emissions inspections shall be those described in 9 VAC 5-91-450 ~~and 9 VAC 5-91-460~~ for applicable motor vehicles.

B. Evaporative system fuel filler cap (gas cap) standards shall apply beginning January 5, 1998.

C. Evaporative system pressure ~~test testing~~ standards shall apply ~~beginning July 1, 1998 provided [a demonstration, based upon the results of testing performed by the department, other states' programs or emissions inspection stations, shows that such testing is applicable to and can be accurately performed on a majority of the vehicles subject to the enhanced emissions inspection program. The director shall determine whether such demonstration is valid and shall notify all permittees, licensees and certificate holders of the decision to implement evaporative system pressure testing standards no later than one year in advance of the anticipated implementation date such testing is mandated by the EPA for appropriate implementation plan credits. Such testing shall only be conducted at emissions inspection stations upon installation of approved equipment and software necessary for performing the test, as determined by the director]~~.

~~D. Evaporative system purge testing standards shall apply January 4, 1999, unless a demonstration, based on the results of voluntary testing performed by the department or emissions inspection stations, shows that such testing is applicable to and can be accurately performed on less than a majority of the vehicles subject to the enhanced emissions inspection program. The director shall determine whether such demonstration warrants the delay of evaporative system purge test standards, and shall notify all permittees, licensee, and certificate holders of the decision to delay implementation no later than July 1, 1998.~~

9 VAC 5-91-210. [No change from proposed.]

9 VAC 5-91-220. General provisions.

A. The director shall issue, suspend, revoke or deny permits and establish procedures and other instructions for the operation of emissions inspection stations.

B. An emissions inspection station permit is valid only for the facility and owner identified on the permit and is not transferable to any other owner or facility. No facility shall be represented as an emissions inspection station unless the owner holds a valid permit issued by the director.

C. [~~Any permit transfer due to a change in ownership, transfer or sale of business, partnership or address is prohibited~~ Transfer or sale of business, or changes in partnership, name or location shall require notification to the department and shall require a new permit]. The emissions inspection station permit holder shall inform the department of any transfer or sale of the business or change in the name of the station, ownership, partnership, or name of lessee lessee or operator within 10 days of such change.

D. All documents, permits, data media and other inspection related materials shall revert to the ownership of the department if the emissions inspection station is abandoned or if the emissions inspection business is discontinued by the permit holder.

E. Emissions inspection stations shall inspect all subject vehicles, which they are required by permit to inspect, in a timely manner and without prior repair or adjustment except to remedy ~~rejection~~ conditions for which the vehicle is rejected from testing under the provisions of 9 VAC 5-91-420 C.

F. All emissions inspections, including retests, *except for aborted tests*, shall be conducted in their entirety according to the ~~phase in schedules for~~ emission standards and test components contained in Parts III (~~9 VAC 5-91-60~~ 9 VAC 5-91-160 et seq.) and, VI (9 VAC 5-91-410 et seq.) and XIV (9 VAC 5-91-790 et seq.) of ~~the~~ this chapter.

9 VAC 5-91-230. [No change from proposed.]

9 VAC 5-91-260. Emissions inspection station permits, categories.

A. A permit shall be issued to a qualified applicant in the following categories, as determined by the department.

1. Emissions inspection station.
2. Fleet emissions inspection station meeting the requirements of 9 VAC 5-91-370.
3. Sensitive mission vehicle emissions fleet inspection station.

B. In accordance with § 46.2-1180 A [5 4] of the Code of Virginia, the director may issue special permits for the operation of emissions inspections facilities in geographic areas which have been determined by the department, based on the number of available emissions inspection facilities or lanes relative to vehicle population density, to be inadequately ~~provided for~~ covered. Such stations may have special permit conditions which restrict their operational hours, geographic location, data connection, quality control or other processes in order to effectively address the need and the intent of the Virginia Motor Vehicle Emissions Control Law.

~~B.~~ C. A permit shall be valid only for the emissions inspection station and operator, owner or lessee lessee to which it is issued and shall not be valid for any other emissions inspection station nor any other operator, owner or lessee lessee.

~~C.~~ D. A permit shall be valid for time periods determined by the department, not to exceed three years from the end of the month in which the permit or permit renewal was issued.

~~D.~~ E. Upon expiration of the permit, the emissions inspection station shall no longer be authorized to perform inspections.

~~E.~~ F. A permit shall expire whenever the owner voluntarily discontinues the operation of an emissions inspection station. Remaining emissions inspection materials shall be returned to the department immediately.

~~F.~~ G. A permit shall expire and documents or data media related to emissions inspections, re inspections, waivers and audits shall become the property of the department when the owner of record abandons the place of business and cannot be located.

9 VAC 5-91-270. [No change from proposed.]

9 VAC 5-91-290. Emissions inspection station operations.

A. Emissions inspection station operations shall be conducted in accordance with applicable statutes and this chapter.

B. Emissions inspection stations shall cooperate with the department during the conduct of audits, investigations and complaint resolutions.

C. Emissions inspection stations, except fleet emissions inspection stations permitted under 9 VAC 5-91-370, shall conduct emissions inspections during normal business hours and shall inspect every vehicle presented for inspection within a reasonable time period.

D. Emissions inspection stations ~~which~~ that have performed a chargeable *initial* inspection that resulted in a test failure [*or failed invalid result*] shall provide one free reinspection *on the same vehicle* upon request within 14 calendar days of the ~~first~~ *initial inspection* test failure *or failed invalid result*.

E. Emissions inspection stations finding it necessary to suspend inspections due to analyzer system malfunction or any other reason shall refund any inspection fee collected when a station cannot accommodate a customer's request for a free reinspection in accordance with *subsection D of this section* and 9 VAC 5-91-420 M.

F. Emissions inspection stations shall notify the department when they are unable to perform emission inspections *for any reason* and shall notify the department when they are able to resume inspections.

G. Emissions inspection stations shall:

1. Employ at least one emissions inspector.
2. Have an emissions inspector on duty during posted emissions inspection hours, ~~if applicable~~ *except for fleet emissions inspection stations permitted under 9 VAC 5-91-370*.
3. Only allow licensed emissions inspectors to conduct inspections.

H. Emissions inspection stations shall provide to emissions inspection customers any information which has been provided to the emissions inspection station by the department and which is intended to be provided to the customer.

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I. Emissions inspection stations shall allow emissions inspection customers to have viewing access to the inspection process.

9 VAC 5-91-300. Emissions inspection station records.

A. Emissions inspection stations shall have records available at the station for inspection by the department any time during normal business hours.

B. Test, waiver, and repair records, as appropriate, shall be maintained by the permittee for 12 months or until transferred to the department.

C. Certificates of vehicle emissions inspection and motor vehicle inspection reports shall be issued only by emissions inspection stations holding valid permits issued by the department.

D. Documents and data pertaining to emissions inspections and waivers shall be kept in a secure location and only be available to emissions inspectors or authorized personnel, as approved by the department.

E. Missing or stolen emissions inspection data or other official documents shall be reported to the department within 24 hours.

F. Emissions inspection stations shall be accountable for all documents and media issued to them by the department. Emissions inspection stations shall be subject to quality assurance and control procedures as defined in 40 CFR 51.363.

G. Emissions inspection stations shall maintain a file of the name, address, and inspector [*identification*] number of all currently employed emissions inspectors authorized by the permittee to perform emissions inspections at that emissions inspection station and shall notify the department of any changes *within 10 days of such changes*. The emissions inspection station shall provide the file to the department upon request.

9 VAC 5-91-310. [No change from proposed.]

9 VAC 5-91-320. Equipment and facility requirements.

A. Emissions inspection stations shall have adequate facilities and equipment, including all current reference and application guides, as specified in subsection D of this section to perform all elements of the emissions inspection.

B. Emissions inspection stations shall be equipped in accordance with this chapter and applicable statutes.

C. Emissions inspection stations which no longer meet the requirements of this part shall cease inspection operations and may be subject to enforcement actions in accordance with Part IX (9 VAC 5-91-590 et seq.).

D. Emissions inspection stations shall be equipped with the following equipment, tools and reference materials at all times. Fleet and mobile fleet emissions inspection stations shall be so equipped during inspection periods reported to the department.

1. A certified analyzer system in accordance with Part X (9 VAC 5-91-640 et seq.) *capable of conducting OBD testing as specified in 9 VAC 5-91-420 G 3.*

2. Span gases approved by the department and equipment for performing gas span checks.

3. Hand tools and equipment for the proper performance of all inspections as approved by the department.

~~4. Suitable nonreactive exhaust hoses.~~

~~5.~~ 4. A current emissions control systems application guide which contains a quick reference for emissions control systems and their uses on specific make, model, and model year vehicles. This may be in an electronic form.

~~6.~~ 5. Analyzer manufacturer's maintenance and calibration manual.

~~7.~~ 6. Certified thermometer.

~~8.~~ 7. *Suitable nonreactive exhaust hoses or a ventilation system [which that] conforms to [the Building Officials and Code Administrators (BOCA) mechanical code The BOCA National Mechanical Code/1993 (see 9 VAC 5-91-50)]* for automotive service stations and for facilities in which vehicle engines are operated in excess of 10 continuous seconds and which conforms to the applicable local building or safety code, zoning ordinance, or [*OSHA Occupational Safety and Health Administration*] requirement.

a. The ventilation system shall discharge the vehicle exhaust outside the building.

b. The flow of the exhaust collection system shall not cause dilution of the exhaust at the sample point in the probe.

~~9.~~ 8. A cooling fan, used to ventilate the engine compartment, which is capable of generating at least 3,000 standard cubic feet per minute of air flow directed at the vehicle's cooling system at a distance of 12 inches.

~~10.~~ 9. This regulation (9 VAC 5-91 [~~40 et seq.~~]).

~~11.~~ 10. Telephone.

~~12.~~ 11. Dedicated phone line for use by the analyzer system in emissions inspection stations except fleet emissions inspection stations which have been authorized by the director to use a nondedicated phone line pursuant to an agreement between the director and the fleet emissions inspection station, based on vehicle maintenance or registration cycles.

~~13.~~ 12. Department approved paper for use in the analyzer system printer.

13. *Reference material suitable for making a determination, as applicable, of the proper exhaust emissions test type to be administered. This may [include the emissions inspection station having regular access to the Internet be in electronic form].*

E. Emissions inspection stations shall maintain equipment, tools, and reference materials in proper working order and available at the emissions inspection station at all times.

F. It is the responsibility of the permit holder to maintain a safe and healthy working environment for the conduct of emissions inspections.

9 VAC 5-91-330. Analyzer system operation.

A. Emissions inspection stations shall maintain the analyzer in such a manner that will permit the proper operation in accordance with the requirements of the manufacturer, this chapter, applicable statutes, and any procedures developed by the department.

B. The analyzer shall be gas spanned and leak checked according to 40 CFR Part 51, Appendix A to Subpart S or other procedure as approved by the department.

C. No additions or modifications shall be made to the analyzer unless approved by the analyzer manufacturer and the department.

1. All repairs to the analyzer system must be performed by an authorized manufacturer representative *according to 9 VAC 5-91-670 B and C.*

2. No analyzer replacement parts shall be used that are not original equipment replacement, or equivalent, as approved by the department.

D. No person shall tamper [*with*] or circumvent any system or function of the analyzer.

E. Emissions inspection stations shall be responsible for preventing any tampering [*with*] or unauthorized use of the analyzer or its functions.

F. Analyzer lockout conditions shall be removed only by authorized service or department personnel.

G. The analyzer system shall be capable of electronically transmitting to and receiving data from the department computer network related to the administration of the Virginia Vehicle Emissions Control Program.

9 VAC 5-91-340. Motor vehicle inspection report; certificate of emissions inspection.

A. Emission inspection stations and emissions inspectors shall be responsible for ensuring that all motor vehicle inspection reports are legible, and properly completed and printed with ~~all~~ *correct* information appearing in the correct location on the form *and shall notify immediately the department and the vehicle operator of any incorrect information appearing on the form.*

B. Emissions inspectors and emissions inspection stations shall be responsible for ensuring that all emissions inspection results are properly communicated to the department *and to the vehicle operator. The use of the [motor] vehicle inspection report may serve as proper communication to the vehicle operator.*

C. Certificates of vehicle emissions inspection shall be used only for documentation of official test results ~~and registration of vehicles as appropriate.~~

D. Certificates of emission inspections and motor vehicle inspection reports shall be issued only by licensed emissions

inspectors employed by permitted emissions inspection stations.

[9 VAC 5-91-360. Inspector *identification* number and access code usage.

A. The department shall assign each emissions inspector a unique number and numerical code known as *an inspector identification number* and an access code to gain access to the analyzer at the inspector's place of employment.

B. Access codes and ~~inspector~~ *inspector identification* numbers shall be added and deleted only by department personnel.

C. *An inspector identification number* and access code shall be used only by the inspector to whom it was assigned.

D. An inspector's name printed on a motor vehicle inspection report shall be an endorsement that the entire test was performed by the inspector whose name appears on the vehicle inspection report. Each inspector must sign his full name on the vehicle inspection report for each emission inspection conducted.

E. Emissions inspection stations and emissions inspectors shall report any unauthorized use of an *inspector identification number* or access code to the department within 24 hours of the discovery of unauthorized use.

F. Emissions inspection stations and inspectors shall be responsible for any violation or fraudulent inspection which occurs using *inspector identification* numbers or access codes.

G. Emissions inspection stations shall be responsible for all certificates of vehicle emissions inspection and motor vehicle inspection reports issued by that emissions inspection station.]

9 VAC 5-91-370. Fleet emissions inspection stations; mobile fleet emissions inspection stations.

A. ~~A person by whom there are 20 or more vehicles commonly owned, operated, leased or rented~~ *The owner of a fleet may be permitted issued a permit* as a fleet emissions inspection station and may conduct inspections of that fleet or contract to have such inspections conducted. As a fleet inspection station, inspections shall be conducted only on vehicles commonly owned, operated, leased, or rented by that person or political subdivision and not for employees or the general public. A fleet emissions inspection station [*owner*] shall comply with all applicable requirements for emissions inspection stations except those from which they are specifically exempted *by this chapter or by special terms or conditions of a special permit issued according to 9 VAC 5-91-260 A 3.*

B. Fleet emissions [~~inspections stations~~ *inspection station owners*] may, upon application and granted permit, have fleet vehicles inspected through the use of mobile emissions inspection stations which have obtained a permit from the director to conduct inspections of that fleet.

C. Fleet emissions inspection [~~stations~~ *station owners*] using mobile fleet emissions inspections equipment shall notify the department of the planned dates, times and location of

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intended inspections not later than two weeks prior to testing and, upon request by the department, shall provide a list of vehicles to be inspected.

D. Each fleet emissions inspection station [*owner*] is responsible for all vehicle emissions inspection records and data for vehicles inspected in that facility.

E. [~~Fleets~~ *Fleet owners*] and fleet emissions inspection [~~stations~~ *station owners*] shall provide a list *that includes vehicle compliance status*, updated annually, of *affected* [*motor*] vehicles ~~not registered in the program area but otherwise subject to this chapter~~.

9 VAC 5-91-380. Emissions inspector licenses and renewals.

A. The director shall issue, suspend, revoke or deny licenses, and establish procedures and other instructions for emissions inspectors.

B. Applicants shall qualify under 9 VAC 5-91-390 and shall demonstrate to the department proof of identification and the ability to properly conduct vehicle emissions inspections according to this chapter prior to being issued an emissions inspector license.

C. Application for licenses shall be made to, and in accordance with procedures approved by, the department.

D. Licenses ~~are~~ *shall be* valid for time periods determined by the department, not to exceed three years *from the end of the month in which issued*.

1. Upon expiration of the license, the emissions inspector shall no longer be authorized to perform emissions inspections.

2. Upon expiration of the license, the applicant shall be required to pass the testing requirements in 9 VAC 5-91-390 before being relicensed.

E. When supported by justification which the department deems adequate, the director may, upon written request by an emissions inspector, extend the expiration date of a license by a period not to exceed ~~90 days~~ *three months beyond the original expiration date* for the purpose of allowing sufficient time for an inspector to correct such deficiencies in the application, such as completion of the required instruction, as have been identified by the department and to allow completion of the application review by the department. Such application for license extension may require demonstration of the applicant's ability to perform an emissions inspection at an emissions inspection or referee facility to the satisfaction of the department.

F. No person shall represent themselves as an emissions inspector without holding a valid *emissions inspector* license issued by the director *and a valid motor vehicle driver's or operator's license*.

1. *All required* licenses shall be made available to department personnel upon request.

2. It is the responsibility of the emissions inspector to have *both a current valid emissions inspector and a valid motor vehicle driver's or operator's license*. The department will

endeavor to notify inspectors prior to the expiration of their *emissions inspector* license.

3. Licenses ~~are~~ *shall be* valid only for the person to whom they are issued.

4. Emissions inspector [*identification numbers and*] access codes are valid only for the person to whom they are issued. Emissions inspectors shall not provide [*identification numbers or*] access codes to anyone [*except department personnel upon request*].

G. Upon notification of revocation, the inspector shall surrender to the department all licenses issued by the director. It is the responsibility of the emissions inspector to notify the department of the termination of a suspension period.

H. Emissions inspectors shall keep their current mailing address and place of employment on file with the department and must notify the department of any changes in employment or mailing address.

I. Emissions inspectors may perform emissions inspections at more than one permitted emission inspection station after notification to the department and with the authorization of the emissions inspection station owners.

J. The provisions of this part apply to ~~both initial licenses and any renewals~~ *current license holders and applicants for initial, renewal or reinstatement of licenses*.

K. *Requalification may be required at any time by the department based on the results of monitoring of the performance of the emissions inspector or based on changes in applicable vehicle emissions control or inspection technology. Inspectors may be required to complete instruction or testing to satisfy any deficiencies identified by the department and, if necessary, require demonstration of the inspector's ability to perform an emissions inspection at an emissions inspection station or referee facility. Failure to requalify within three months of notification shall result in expiration of the emissions inspector's licenses.*

9 VAC 5-91-410. General.

A. The key steps in the emissions inspection procedure are as follows:

1. Preliminary inspection of the vehicle to determine whether to accept the vehicle for testing or reject it, as approved by the department and according to 9 VAC 5-91-420 C, ~~based on safety and health concerns as related to the safe performance of an emissions inspection~~. *If the vehicle is rejected*, the results of such preliminary inspection shall be provided to the customer.

2. Advise the customer of the ability of the emissions inspection station to perform emissions related repairs including the availability of certified emissions repair technicians and necessary equipment. If the vehicle failed the test, inform the customer of their right to seek repairs elsewhere.

3. An agreement between the customer and the emissions inspection station, oral or written, that an emissions inspection will be performed and the requisite fee paid.

4. Determination of the type of ~~exhaust~~ *exhaust emissions* test required, ~~either~~ *either* ASM or two-speed idle test, or OBD system test for OBD vehicles. [For certain OBD vehicles, the director may require an exhaust test (ASM or two-speed idle) in addition to the OBD system test if he conducts appropriate studies and determines that (i) the expected failure rate for exhaust testing for these certain vehicles would be greater than 5.0%, (ii) additional emission reductions would be achieved, and (iii) the EPA acknowledges such emission reduction benefits.]

5. The inspection of emissions control equipment *and an evaluation for the presence of visible smoke.*

6. The test of exhaust emissions levels, *or the vehicle's on-board diagnostic system if applicable,* using a certified analyzer system.

7. The evaporative system pressure test, [~~or pressure test of the~~ , if applicable, and] fuel filler cap [*pressure test*], and evaporative system purge test [~~or both,~~] as applicable [~~and~~] according to the procedure determined automatically by the analyzer system.

8. The distribution of documents and emissions inspection results. *The emissions inspector shall sign each motor vehicle emissions inspection report for each emissions inspection performed by that inspector. The inspector's identification number [~~and access code,~~] or the inspector's signature, or both, shall be an endorsement that all aspects of the emissions inspection were performed by the inspector in accordance with this chapter.*

9. Advise customers of emissions inspection results, options for waiver if applicable, and the obligation of the station to perform a free retest within 14 days for failed vehicles and the conditions placed on the motorist in regard to free retests.

10. Conduct free retest, if necessary, within 14 days of *original a chargeable initial* test.

B. The emissions inspection station may charge a fee not to exceed the amount specified in § 46.2-1182 of the Code of Virginia.

9 VAC 5-91-420. Inspection procedure; rejection, pass, fail, waiver.

A. All aspects of the inspection shall be performed by an emissions inspector, using the instructions programmed in the certified analyzer system and procedures approved by the department, within the designated inspection area, and on the permitted premises.

B. The emissions inspection station shall notify the customer prior to initiating an emissions inspection that the emissions inspection station is either able or unable to perform the emission related repairs required by 9 VAC 5-91-480 for that particular vehicle should that vehicle fail the inspection. The emissions inspector shall not conduct an inspection on a motor vehicle unless the customer gives approval after being so notified.

C. The emissions inspector shall not conduct an inspection on a motor vehicle if the vehicle is in an unsafe condition for

testing according to the following conditions. The customer shall be informed of any such condition.

1. The vehicle shall not have holes or detectable leaks in the exhaust system. The inspector may check the system for leaks by listening *or visually inspecting* for such leaks or by measuring carbon dioxide. The presence of leaks shall cause the vehicle to be rejected from testing.

2. The motor vehicle shall be evaluated for the presence of visible smoke emissions. Those vehicles exhibiting any *visible* smoke emissions from the engine crankcase or exhaust system or both, shall be rejected from testing.

3. The vehicle shall not have any mechanical problems, such as engine, brake, or transmission problems or engine, radiator, or transmission fluid leaks which would create a safety hazard for the applicable test, or bias test results. Such conditions shall cause the vehicle to be rejected from testing.

4. For vehicles receiving a test while operating on a dynamometer, the vehicle shall be rejected from testing if drive wheel *tire* tread wear indicators, tire cords, bubbles, cuts, or other damage are visible. Such vehicles shall be rejected from testing if space-saver spare tires are being used on a drive axle or if they do not have reasonably sized tires on the drive axle or axles based on dynamometer manufacturer safety criteria or if the set of tires is a mixture of radial and bias ply. Vehicles may be rejected if they have different sized tires on the drive axle or axles. Drive wheel tires shall be checked ~~with a gauge~~ for appropriate tire pressure and adjusted as necessary as recommended by the tire or vehicle manufacturer.

5. The vehicle shall be rejected from testing if the fuel filler cap (gas cap) is missing *or cannot be removed.*

6. The vehicle shall be rejected from testing if a known, emissions-related, manufacturers recall has not been satisfied according to Part XI (9 VAC 5-91-720 et seq.).

7. Vehicles ~~which~~ *that* are overheated shall be rejected from testing. *Vehicles that indicate that an overheated condition will be achieved during testing may be rejected from testing at the discretion of the inspector.*

8. *Provided the [OBD] provisions of [~~subsection subdivision~~] G [3 b] of this section are being implemented, OBD vehicles shall be rejected from testing for any of the following:*

a. *The OBD data link cannot be accessed physically or electronically.*

b. *The testing equipment indicates that the OBD system is in a "not ready" status. [~~Unless information discovered in this or other state programs or received from motor vehicle manufacturers or the EPA indicates otherwise,~~] A "not ready" status shall be indicated by the following:*

(1) *For model year 1996 through 2000, three or more monitors indicate "not ready."*

(2) *For model year 2001 and newer, two or more monitors indicate "not ready."*

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[c. The director, based on information discovered in this or other state programs or received from motor vehicle manufacturers or the EPA, may determine that a "not ready" status is indicated by more than the minimum number of monitors that indicate "not ready" as set forth in subdivision 8 b of this subsection.]

D. The emissions inspection procedure shall be performed under the following conditions:

1. For vehicles subject to exhaust emissions testing, the entire vehicle shall be in normal operating condition as indicated by a temperature gauge or touch test on the radiator hose. If ASM testing is performed, a cooling fan shall be directed at the engine cooling system if the ambient temperature exceeds 72°F.

2. The inspection shall be performed with the transmission in park or neutral for two-speed idle testing, or in drive (if automatic), ~~second or third~~ or the appropriate gear to achieve necessary RPM range (if manual), ~~as appropriate~~, for ASM testing; and with all accessories off.

3. All electronic and mechanical testing equipment shall be properly attached according to vehicle and analyzer manufacturer requirements and instructions.

4. For the purpose of conducting the evaporative system pressure test ~~and, or gas cap [pressure] test, or both~~, the vehicle ~~shall~~ may be turned off unless the vehicle manufacturer has instructed otherwise.

5. For vehicles subject to exhaust emissions testing, the analyzer probe shall be properly inserted into the exhaust system.

a. The analyzer probe shall be inserted into the tailpipe as recommended by the analyzer manufacturer for a quality sample, or at least 10 inches if not specified by the manufacturer.

b. If a baffle or screen prevents probe insertion to an adequate depth, a suitable probe adapter or extension boot which effectively lengthens the tail pipe must be used.

c. If the vehicle is equipped with multiple *unique* exhaust outlets, a suitable analyzer manufacturer recommended adapter or other apparatus shall be used in order to provide a single supply of the sample exhaust to the analyzer.

d. Vehicle exhaust shall be vented safely out of the inspection area and facility.

6. If the vehicle stops running or the engine stalls during the test it shall be started as soon as possible and, for vehicles subject to exhaust emissions testing, shall be running for at least 30 seconds prior to the restart of the test.

7. For vehicles subject to exhaust emissions testing, the exhaust test shall be terminated upon reaching the overall maximum test time for the applicable test, or if CO plus CO₂ concentration falls below 6.0% as determined by the analyzer system.

8. Each emissions inspection, whether initial or retest, shall be conducted in its entirety with the exception of: (i) conditions which require that the vehicle be rejected from testing in accordance with 9 VAC 5-91-420 C, (ii) invalid test conditions, or (iii) conditions beyond the emissions inspector's control that cause the test to be aborted.

E. In consideration of maintaining inspection integrity:

1. The temperature of the inspection area shall be between 41°F and 110°F during the inspection. Inspection area temperatures shall be accurately measured in a well-ventilated location away from vehicle engine and exhaust heat sources and out of direct sunlight. The analyzer shall not be operated when the temperature of the inspection area is not within the range stated above.

2. The analyzer system shall be kept in a stable environment which affords adequate protection from the weather and local sources of hydrocarbons or other pollutants that may interfere with analyzer performance or accuracy of test results, or both.

3. The electrical supply to the analyzer system shall be able to meet the manufacturer's requirements for voltage and frequency stability.

4. The inspection location shall meet all applicable zoning requirements.

5. The analyzer system shall be operated according to quality assurance procedures and other procedures approved by the department.

F. The emissions inspector shall accurately identify and enter vehicle ~~and owner~~ information, *visual component and visible smoke inspection results* as ~~required~~ applicable for vehicle emissions inspection records. The data entered into the *certified analyzer system* and recorded on the certificate of vehicle emissions inspection shall be the data from the vehicle being inspected and must be obtained from that vehicle.

G. ~~For 1973 and newer model year vehicles~~, The emissions inspector shall perform an inspection of the emissions control systems. The inspection shall include [*the following*]:

1. [*An*] examination of the emissions control information decal (sticker) under the hood, reference manual, and applications guide to determine if the vehicle, as manufactured or certified for sale or use within the United States, should be equipped with a catalytic converter system, air injection system, fuel evaporative emissions control system, positive crankcase ventilation system, exhaust gas recirculation valve, on-board diagnostic system, or thermostatic air cleaner system, as appropriate.

2. *Based on the determinations made in 9 VAC 5-91-420 G 1*, a visual inspection for the presence and operability of the *catalytic converter system and, for vehicles subject to exhaust emissions testing, the air injection system, catalytic converter system*, fuel evaporative emissions control system, positive crankcase ventilation system, exhaust gas recirculation ~~valve, system~~ and thermostatic air cleaner system ~~based on determinations made in 9 VAC 5-91-420 G-4~~.

4. If any of these parts or systems are inoperable, or have been removed or damaged, or rendered inoperable, the

vehicle will not qualify for a ~~certificate of~~ an emissions inspection approval or waiver. If systems are missing which the reference manual or applications guide indicates should be present, the motor vehicle manufacturer's emissions control information provided for that vehicle shall apply. *The inspector shall enter the result of the visual inspection, "pass," "fail," or "not applicable" as appropriate into the certified analyzer system.*

The department may issue a temporary waiver [~~for~~ because of] the unavailability of component parts listed in subdivision 2 of this subsection if it is determined that the subject components or parts are not available provided the following conditions have been met:

a. The owner of the vehicle obtains a signed statement from the manufacturer's dealer or automotive parts source that supplies parts for the vehicle model indicating the nonavailability of such parts.

b. The statement submitted must be on letterhead or other official form or document and signed by an officer, owner or other responsible official of the automotive parts source.

c. The statement must identify the parts by description and part number and must indicate whether the parts are not currently stocked, have been superseded by other parts, or are out of production.

d. The department may conduct an independent investigation to locate any such parts or to verify the information on the statement prior to the issuance of any vehicle inspection report. The vehicle shall be held to all applicable inspection parameters, test type and standards or other conditions with the exception of the emissions control components and parts that have been verified as unavailable.

e. Any additional requirements to repair the vehicle to meet the applicable emissions standards or to qualify for an emissions inspection waiver under 9 VAC 5-91-420 N shall apply.

f. If the department is able to determine that (i) the unavailable part, or parts, is the only method of controlling the emissions for which the vehicle has failed an emissions inspection or (ii) no other repairs will be effective in reducing such emissions, the department may issue a temporary waiver notwithstanding the provisions of 9 VAC 5-91-420 N.

3. For ~~1996 and newer~~ OBD vehicles ~~so equipped~~, an electronic inspection of the applicable on-board diagnostic (OBD) system according to manufacturer specifications and procedures approved by the EPA. The exhaust emissions test may also be performed on a limited basis as specified by the department for quality control or program evaluation purposes.

a. ~~Beginning January 4, 1999~~ Pending availability and installation of necessary hardware and software, emissions-related results of sensing of OBD ~~phase II~~ systems for OBD vehicles shall be recorded in the inspection record in addition to the exhaust emissions test

procedures and reported to the customer. The OBD results shall not cause the vehicle to be rejected from testing or to fail the emissions inspection.

b. Beginning ~~January 3, 2000 [(effective date)~~ October 1, 2002,] or [a] later date as determined by the department pending availability and installation of necessary hardware and software, emissions-related failure codes that cause the malfunction indicator lamp to be commanded "on" provided by OBD ~~phase II~~ systems of ~~vehicle model years 1996 and newer~~ OBD vehicles shall cause the vehicle to fail the emissions inspection. If testing equipment or visual inspection indicates that the malfunction indicator lamp is inoperable, the vehicle shall fail the emissions inspection. If the testing equipment indicates that the OBD system is in a "not ready" status, the vehicle shall be rejected from testing according to 9 VAC 5-91-420 C 8.

c. Beginning [~~(effective date plus 2 years)~~ October 1, 2004], [~~or later date as determined by the department pending availability and installation of necessary hardware and software,] emissions-related failure codes [~~which that~~] cause the malfunction indicator lamp to be commanded "on" as provided by OBD systems of light duty diesel powered vehicles of model years 1997 and newer shall cause the vehicle to fail the inspection. In addition, if the testing equipment or visual examination indicates that the malfunction indicator lamp is inoperable, the vehicle shall fail the emissions inspection. [~~The department may set standards for the number of "not ready" monitors allowed based on an analysis of the program data, data from other state's programs and the EPA.~~ If the testing equipment indicates that the OBD system is in a "not ready" status, the vehicle shall be rejected from testing according to subdivision C 8 of this section. The director may increase the number of "not ready" monitors allowed based on an analysis of the program data, data from other state's programs and the EPA. If the director finds that the necessary hardware and software necessary to perform this OBD test are not available or installed by October 1, 2004, the effective date shall be October 1, 2006.]~~

d. The department may exempt vehicle models or some classes of vehicles from OBD testing due to known OBD system problems or anomalies associated with such vehicles. If exempted from OBD testing, such vehicles shall receive the ASM or TSI test as applicable.

*H. For vehicles otherwise subject to ASM testing based on model year and weight classification, the department may determine, due to complications identified in *this or other state programs*, or consultation with vehicle manufacturers, that certain vehicle makes or models shall be tested using the two-speed idle test in lieu of the ASM test or using a mixture of test modes such as an ASM 2525 coupled with an idle test.*

*I. For 1981 model year and newer vehicles with a GVWR up to and including 8,500 pounds, the exhaust emissions inspection procedure, *if applicable*, shall be an ASM, two-mode (ASM 5015 plus ASM 2525), loaded test, performed while the vehicle is operating on the analyzer system*

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dynamometer. The test shall be preceded by a 30-90 second preconditioning period, as determined by the department, using the ASM 2525 load simulation.

J. The exhaust emissions inspection procedure, *if applicable*, shall be a two-speed idle test as specified in [~~paragraph section~~] (II) of Appendix B of 40 CFR Part 51, Subpart S, and 9 VAC 5-91-440 for the following *affected* [*motor*] vehicles:

1. Vehicles with a GVWR greater than 8,500 pounds and up to and including 10,000 pounds,
2. Vehicles of model years ~~1968 through~~ 1980 and older,
3. Vehicles which employ full-time four wheel drive systems,
4. Vehicles which have traction control or anti-lock brake systems which have been determined by the manufacturer, or the department to permanently interfere with proper ASM testing; or
5. Vehicles which have some other configuration which has been determined by the department to permanently interfere with proper ASM testing.

K. *For vehicles originally factory equipped with an evaporative emissions control system*, the vehicle's evaporative emissions control system shall be checked by performing (i) an evaporative system pressure test [, *if applicable*,] ; (ii) [~~or and~~] a fuel filler cap pressure test, (iii) ~~an evaporative system purge test, or (iv) any combination thereof [or both]~~, as applicable [and] according to the phase-in of testing specified in 9 VAC 5-91-200.

~~1. Beginning January 5, 1998, the evaporative system pressure test shall be performed on vehicles of model year 1973 and newer and the results recorded in the inspection record and reported to the customer. Beginning July 1, 1998, a failure of the evaporative system pressure test shall cause the vehicle to fail the inspection.~~

~~2. A separate fuel filler cap pressure test shall be performed on vehicles of model year 1973 and newer unless the evaporative system pressure test will be performed and the method employed includes a test of the fuel filler cap.~~

~~3. Beginning July 1, 1998, unless determined to the contrary by the director by March 1, 1998, the evaporative system purge test shall be performed on vehicles of model year 1981 and newer which receive ASM exhaust emissions testing, according to the phase-in standards in Part III (9 VAC 5-91-160 et seq.) and the test results recorded in the record and reported to the customer. Beginning January 4, 1999, a failure of the evaporative system purge test shall cause the vehicle to fail the emissions inspection.~~

L. In order to obtain a vehicle registration from the Department of Motor Vehicles, a certificate of *emissions inspection* shall be issued by an emissions inspector or the department indicating that the vehicle has either passed the emissions inspection or has received a waiver as specified below. A motor vehicle shall pass the emissions inspection and a certificate of vehicle emissions inspection and a motor vehicle inspection report indicating the vehicle has passed shall be issued if [*the following conditions are met*]:

1. The motor vehicle meets the applicable emissions control systems inspection requirements [; .]

2. *For vehicles subject to exhaust emissions testing*, the vehicle emissions levels are the same as or less than the applicable exhaust emission standards in Part III (9 VAC 5-91-160 et seq.) and ~~Appendix A Part XIV~~ (9 VAC 5-91-790 et seq.), as applicable; [*or for vehicles subject to OBD, the vehicle passes the OBD test and exhaust emissions test, if applicable.*]

3. There are no *visible* smoke emissions ~~visible~~ from the vehicle engine crankcase or tail pipe, or both[;] and [.]

4. The vehicle passes the [*applicable*] evaporative system pressure and ~~purge tests test~~ [*or* , *if applicable*, and] fuel filler cap pressure test as [~~or both~~; and .]

[~~5. The vehicle passes the OBD test if applicable.~~]

M. If the vehicle fails the initial emissions inspection, a certificate of emissions inspection and a motor vehicle inspection report shall be issued indicating a failure, and the owner shall have 14 days in which to have repairs or adjustments made and return the vehicle to the emissions inspection station which performed the initial inspection for one free reinspection.

N. A certificate of vehicle emissions inspection waiver may be issued if all of the following conditions are met:

1. The vehicle passes the emissions control systems inspection (~~1973 and newer model year vehicles only~~) described by subsection G of this section *if applicable*.

2. There are no *visible* smoke emissions ~~visible~~ from the vehicle engine crankcase or exhaust system, or both.

3. *The vehicle passes the* [*applicable*] evaporative system pressure test [*or* , *if applicable*, and] fuel filler cap pressure test [, ~~or both~~].

~~3.~~ 4. The vehicle continues to exceed applicable emissions standards after emissions related repairs required by 9 VAC 5-91-480 have been performed.

4. 5. An amount equal to or greater than the adjusted waiver cost for enhanced emissions inspection programs [, ~~listed below~~, *specified in subsection O of this section*] has been spent on emissions related repairs as specified in 9 VAC 5-91-480 and according to 40 CFR 51.360 (a) (1) (as amended in 60 Federal Register 20934, April 28, 1995) provided that (i):

a. Proof that ~~appropriate~~ *emission related* repairs have been accomplished and costs for that specific vehicle have been provided to the emissions inspection station in the form of an itemized bill, invoice, paid work order, or statement in which emissions related parts or repairs, or both, are specifically identified, (ii) *and to the extent practical, the inspector can confirm the repairs by visual examination*;

b. The emissions inspector has ~~confirmed~~ *been provided with a properly completed emissions repair data form indicating that the repair work was performed or approved by at a certified emissions repair facility and that the*

repairs were performed by or under the supervision or approval of a certified emissions repair technician at a certified emissions repair facility; and

(iii) c. The repair work was performed no earlier than 60 days prior to the initial inspection.

~~5. [6. O.] Beginning January 1 [after the effective date of the regulation , 2003], the repair cost requirements for waiver eligibility for the enhanced emissions inspection program shall be [\$450] adjusted [annually] to reflect the increase in the Consumer Price Index (CPI) [and adjusted annually thereafter], as described at 40 CFR 51.360(a)(7), and shall be phased in as follows: \$450 unless delayed by an action of the director [and § 46.2-1181 C of the Code of Virginia]. The director may delay each phase in by up to 12 months if it is determined that such a delay will not cause the waiver rate to exceed 3.0% of failed vehicles.~~

~~a. Through January 4, 1998, the amount shall be \$250 multiplied by the CPI as provided by the Environmental Protection Agency (EPA) according to the Clean Air Act.~~

~~b. From January 5, 1998, through June 30, 1998, the amount shall be \$350 multiplied by the CPI as described above.~~

~~c. From July 1, 1998, and henceforward, the amount shall be \$450 multiplied annually by the CPI as described above.~~

~~6. [7. P.] A waiver shall not be issued for a vehicle which is eligible for the emissions control systems performance warranty, under the provisions of § 207(b) of the federal Clean Air Act. In accordance with the provisions of § 207(b) of the federal Clean Air Act, the repair costs necessary for compliance with emissions standards specified in Part III (9 VAC 5-91-160 et seq.) and Part XIV (9 VAC 5-91-790 et seq.) will be borne by the vehicle manufacturer or authorized dealer representative.~~

~~[8. Q.] The analyzer system shall generate an electronic record of the certificate of emissions inspection and transmit the appropriate data to the department and the emissions inspector shall make distribution of the vehicle inspection report to the customer.~~

~~[9. R.] The emissions inspector shall advise the customer shall be advised as specified below upon completion or termination of the inspection procedure.~~

~~1. If the test is terminated prior to completion, explain reasons for failure of the problem with the vehicle or equipment and, if applicable, advise of free retest and time limit, if applicable.~~

~~2. If the vehicle passes or receives a waiver, provide a motor vehicle inspection report and advise motorist of registration requirement and process, including the process to be used in case of interruption of the electronic data transfer system.~~

~~3. If the vehicle fails:~~

~~a. Give vehicle inspection report of failure to customer;~~

~~b. Advise of type of failure;~~

c. Advise of free retest and time limit;

d. Advise of repair facility information as provided by the department; and

e. Advise of waiver requirements, if applicable.

~~[10. S.] In cases of complaints or disputes between the emissions inspector or emissions inspection station and the customer, the customer shall be advised of the location and phone number of a department representative to be contacted to obtain assistance in resolving disputes.~~

9 VAC 5-91-430. ASM test procedure.

A. The ASM equipment shall be in proper operating condition according to [manufacturers the manufacturer's] instructions prior to initiating a test.

1. The vehicle shall be maneuvered onto the dynamometer with the drive wheels positioned on the dynamometer rolls. Prior to test initiation, the rolls shall be rotated until the vehicle laterally stabilizes on the dynamometer. Vehicles that cannot be stabilized on the dynamometer shall be rejected from testing. Drive wheel tires shall be dried if necessary to prevent slippage.

2. Prior to initiating the ASM exhaust test procedure:

a. Vehicles which that are also required to receive OBD or evaporative emissions testing shall be connected to the appropriate test equipment according to 9 VAC 5-91-450 and vehicle and analyzer manufacturer instructions.

b. The OBD test, evaporative [emissions system] pressure test and [, or , if applicable, and] fuel filler cap [pressure] test [, or both], including second chance fuel filler cap [pressure] test if required, shall be performed prior to the ASM test.

~~c. The evaporative emissions pressure test and fuel filler cap test shall only be performed while the vehicle is not running unless the vehicle manufacturer has instructed otherwise.~~

~~d. Vehicles which are required to receive the evaporative system purge test shall be connected to the appropriate test equipment according to 9 VAC 5-91-460 and vehicle and analyzer manufacturer instructions.~~

3. When ambient temperatures exceed 72°F, testing shall not begin until the cooling fan is positioned and activated. The cooling fan shall be positioned to direct air to the vehicle cooling system, but shall not be directed at the catalytic converter.

4. Testing shall not begin until the vehicle is properly restrained according to the instructions provided by the analyzer equipment manufacturer. In addition, the parking brake shall be set for front wheel drive vehicles prior to the start of the test, unless parking brake functions on front axle or if is automatically disengaged when in gear for ASM testing.

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5. Testing shall not begin until the exhaust ventilation system is properly functioning and attached or positioned as necessary.

6. To ensure that the motor vehicle and the dynamometer are in a warmed-up condition prior to official testing, a 30-90 second preconditioning, as determined by the department, shall be performed using the ASM 2525 load simulation.

7. Prior to each test or mode of a test, the system shall automatically select the load setting of the dynamometer.

8. Engine speed shall be monitored by means of an RPM sensor and recorded in the test record.

B. The test sequence shall consist of first chance and, if applicable, second chance tests in both ASM modes described in this section. Vehicles that fail the first chance test as described within 150% of the standard shall receive a second chance test. *The department may increase this percentage to 200% when interim or final standards take effect according to 9 VAC 5-91-170 B.* The second chance test shall consist of a repetition of the mode or modes that were failed in the first chance test. *The department may eliminate the need to do a second chance test if the vehicle has already failed an emission component check.*

C. The ASM 2525 mode timer shall start when the dynamometer speed (and corresponding power) are maintained at 25 ±1.0 miles per hour for five continuous seconds. If the acceleration simulation exceeds the tolerance specified by the analyzer equipment manufacturer for more than five consecutive seconds after the mode timer is started, the test mode timer shall be reset. Should this happen a ~~second~~ *third* time, the test shall be aborted and another started. The dynamometer shall apply the required torque load for 25.0 mph at any testing speed within the tolerance of 25 ±1.0 miles per hour (i.e., constant torque load over speed range). The torque tolerance shall be ±5.0% of the correct torque at 25 mph.

1. The analyzer shall automatically select the proper load setting for the dynamometer and test standards, based on the Equivalent Test Weight (ETW) and the look-up table in Part XIV (9 VAC 5-91-790 et seq.), using vehicle identification information. ~~[Vehicles for which a load setting is not automatically selected, and for which a test weight is not available shall be tested using the following default settings:~~

DEFAULT ASM 2525 DYNAMOMETER HORSEPOWER SETTINGS FOR 8.6" ROLLERS BASED ON NUMBER OF ENGINE CYLINDERS

VEHICLE TYPE	3 CYL.	4 CYL.	5 & 6 CYL.	8 CYL.	> 8 CYL.
SEDAN	6.9	9.5	11.5	13.7	13.3
STATION WAGON	6.8	9.7	11.5	13.4	13.3
MINI VAN	8.8	11.7	13.2	14.9	15.3
PICKUP TRUCK	8.0	10.9	13.6	16.0	17.8
SPORT/UTILITY	8.8	11.2	12.9	16.1	17.8
FULL VAN	9.0	11.6	14.7	16.3	17.2

DEFAULT ASM 2525 DYNAMOMETER HORSEPOWER SETTINGS FOR 20" ROLLERS BASED ON NUMBER OF ENGINE CYLINDERS

VEHICLE TYPE	3 CYL.	4 CYL.	5 & 6 CYL.	8 CYL.	> 8 CYL.
SEDAN	6.9	10.1	12.3	14.5	14.3
STATION WAGON	7.0	10.4	12.2	14.2	14.4
MINI VAN	8.9	12.5	14.0	15.9	16.3
PICKUP TRUCK	8.1	11.4	14.4	16.9	18.8
SPORT/UTILITY	8.9	11.8	13.6	17.1	18.8
FULL VAN	9.1	12.5	15.5	17.3	18.3

The department may revise these settings based upon EPA guidance.]

2. If the dynamometer speed or torque falls outside the speed or torque tolerance for more than two consecutive seconds, or for more than five seconds total, the test mode time shall reset to zero and resume timing. The minimum mode length shall be 45 seconds. The maximum mode length shall be 90 seconds elapsed time.

3. During the 10 second period used for the pass/fail decision, dynamometer speed shall not fall more than 0.5 mph (absolute drop, not cumulative). If the speed at the end of the 10 second period is more than 0.5 mph less than the speed at the start of the 10 second period, testing shall continue until the speed stabilizes enough to meet this criterion.

4. The pass/fail analysis shall begin after an elapsed time of 30 seconds, *which may include up to 15 seconds of the preconditioning time period if the ASM 2525 torque and speed tolerances are maintained.* A pass or fail determination shall be made for the vehicle and the mode shall be terminated as follows:

a. The vehicle shall pass the ASM 2525 mode and the mode shall be immediately terminated if, at any point between an elapsed time of 30 seconds and 90 seconds, the 10 second running average measured values for each pollutant are simultaneously less than or equal to the applicable test standards described in Part XIV (9 VAC 5-91-790 et seq.).

b. The vehicle shall fail the ASM 2525 mode and the mode shall be terminated if subdivision C 4 a of this section is not satisfied by an elapsed time of 90 seconds.

5. Upon termination of the ASM 2525 mode, the vehicle and dynamometer shall immediately begin a transition to the speed required for the ASM 5015 mode. The dynamometer torque shall smoothly transition during the transition period and shall automatically reset to the load

required for the ASM 5015 mode as specified in subdivision D 1 of this subsection.

D. The ASM 5015 mode timer shall start when the dynamometer speed (and corresponding power) are maintained [~~within~~ *at*] 15 ±1.0 miles per hour for five continuous seconds. If the acceleration simulation exceeds the tolerance specified by the analyzer system manufacturer for more than five consecutive seconds after the mode timer is started, the test mode timer shall be reset. Should this happen a ~~second~~ *third* time, the test shall be aborted and another started. The dynamometer shall apply the required torque for 15.0 mph at any testing speed within the tolerance of 15 ±1.0 miles per hour (i.e., constant torque load over speed range). The torque tolerance shall be ±5.0% of the correct torque at 15 mph.

1. The analyzer shall automatically select the proper load setting for the dynamometer and test standards, based on the ETW and the look-up table in Part XIV (9 VAC 5-91-790 et seq.), using vehicle identification information. [~~Vehicles for which a load setting is not automatically selected, and for which a test weight is not available shall be tested using the following default settings:~~

~~DEFAULT ASM 5015 DYNAMOMETER HORSEPOWER SETTINGS FOR 8.6" ROLLERS BASED ON NUMBER OF ENGINE CYLINDERS~~

VEHICLE TYPE	3 CYL.	4 CYL.	5 & 6 CYL.	8 CYL.	≥ 8 CYL.
SEDAN	7.9	11.4	13.8	16.4	16.0
STATION WAGON	8.4	11.7	13.8	16.4	16.1
MINI VAN	10.2	14.1	15.8	17.9	18.2
PICKUP TRUCK	9.6	13.4	16.4	19.2	21.1
SPORT/UTILITY	10.1	13.4	15.5	19.4	21.1
FULL VAN	10.3	13.9	17.7	19.6	20.5

~~DEFAULT ASM 5015 DYNAMOMETER HORSEPOWER SETTINGS FOR 20" ROLLERS BASED ON NUMBER OF ENGINE CYLINDERS~~

VEHICLE TYPE	3 CYL.	4 CYL.	5 & 6 CYL.	8 CYL.	≥ 8 CYL.
SEDAN	8.4	11.8	14.3	16.9	16.6
STATION WAGON	8.3	12.1	14.2	16.6	16.6
MINI VAN	10.4	14.5	16.3	18.5	18.7
PICKUP TRUCK	9.8	13.4	16.8	19.8	21.7
SPORT/UTILITY	10.5	13.8	15.9	19.9	21.7
FULL VAN	10.8	14.4	18.2	20.2	21.1

~~The department may revise these settings based upon EPA guidance.]~~

2. If the dynamometer speed or torque falls outside the speed or torque tolerance for more than two consecutive seconds, or for more than five seconds total, the mode timer shall reset to zero and resume timing. The minimum mode length shall be 40 seconds. The maximum mode length shall be 90 seconds elapsed time.

3. During the 10 second period used for the pass/fail decision, dynamometer speed shall not fall more than 0.5 mph (absolute drop, not cumulative). If the speed at the end of the 10 second period is more than 0.5 mph less than the speed at the start of the 10 second period, testing shall continue until the speed stabilizes enough to meet this criterion.

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4. The pass/fail analysis shall begin after an elapsed time of 30 seconds. A pass or fail determination shall be made for the vehicle and the mode shall be terminated as follows:

a. The vehicle shall pass the ASM 5015 mode if, at any point between an elapsed time of 30 seconds and 90 seconds, the 10-second running average measured values for each pollutant are simultaneously less than or equal to the applicable test standards described in Part XIV (9 VAC 5-91-790 et seq.). If the vehicle passed the ASM 2525 mode, the ASM 5015 mode shall be terminated upon obtaining passing scores for all three pollutants.

b. The vehicle shall fail the first chance ASM 5015 mode if subdivision D 4 a of this section is not satisfied by an elapsed time of 90 seconds.

E. The inspector shall perform a second chance test on vehicles which fail either mode of the previous test sequence as follows:

1. If the vehicle fails the first-chance test, the test timer shall reset to zero and a second-chance test shall be performed, except as noted below. The second-chance test shall have an overall maximum test time of 145 seconds if one mode is repeated, an overall maximum time of 290 seconds if two modes are repeated.

2. If the vehicle failed only the ASM 2525 mode of the first chance test, then that mode shall be repeated upon completion of the first chance ASM 5015 mode. The repeated mode shall be performed as described in this section except that the provisions of subdivision C 5 of this section shall be omitted.

3. If the vehicle failed only the ASM 5015 mode of the first chance test, then the first chance ASM 5015 mode shall not end at 90 seconds but shall continue for up to 180 seconds.

4. If the vehicle failed both ASM 5015 and ASM 2525 modes of the first chance test, then the vehicle shall receive a second-chance test for the ASM 2525 mode immediately following the first chance ASM 5015 mode. If the vehicle fails the second-chance ASM 2525 mode, then the vehicle shall fail the test, otherwise the vehicle shall also receive a second-chance ASM 5015 mode test.

9 VAC 5-91-440. Two-speed idle test procedure.

A. The emissions inspection procedure shall be a two-speed idle test as specified in [~~paragraph~~ section] (II) of Appendix B of 40 CFR Part 51, Subpart S.

1. The two-speed idle test shall consist of a test of the vehicle's exhaust emissions at idle and at 2500 rpm while the vehicle's gear selector is in neutral or park.

2. The idle test shall be administered ~~prior to~~ after the 2500 rpm test. The tests shall be run consecutively.

3. The complete test shall consist of a first chance ~~idle~~ 2500 RPM mode test; followed by a first chance ~~2500-RPM~~ idle mode test; ~~;~~ If either first chance mode fails, the first chance shall be followed by a preconditioning at 2500 RPM for up to three minutes and a second chance 2500 RPM mode test ~~if the first one was failed~~; followed by a second chance idle

~~mode if the first one was failed and if the 2500-RPM mode test was passed. The department may eliminate the need to repeat a mode that passed the first chance test.~~

4. If the vehicle fails the first chance test, the second chance test ~~and preconditioning~~ shall be omitted if no exhaust hydrocarbon concentration less than 1800 ppm is detected within an elapsed time of 30 seconds. ~~The department may eliminate the need to do a second chance test if the vehicle has already failed an emission component check.~~

5. Motor vehicle manufacturers and the Environmental Protection Agency may issue special test instructions for specific vehicle models which shall be followed in lieu of the test procedures specified in this section if such instructions are provided through the administrator.

6. In order to pass the two-speed idle test, the vehicle's exhaust shall not exceed the standards listed in 9 VAC 5-91-160.

7. Prior to initiating the two-speed idle exhaust test procedure [~~the following conditions shall be met~~]:

a. Vehicles which are required to receive OBD or evaporative emissions testing shall be connected to the appropriate test equipment according to 9 VAC 5-91-450 and vehicle and analyzer manufacturer instructions.

b. The OBD test, evaporative [~~emissions system~~] pressure test ~~and~~ [, if applicable,] or fuel filler cap [~~pressure~~] test [~~or both~~], including second chance fuel filler cap [~~pressure~~] test if required, shall be performed prior to the two-speed idle test.

~~c. The evaporative emissions pressure test and fuel filler cap test shall only be performed while the vehicle is not running unless the vehicle manufacturer has instructed otherwise.~~

B. The idle test mode shall be performed as follows:

1. The vehicle transmission shall be in neutral or park and the parking brake applied; the engine shall be operating at curb idle ~~according to manufacturer specifications~~, and there shall not be any manipulation of the engine throttle mechanism.

2. The engine speed (RPM) shall be obtained and shall be between ~~350~~ 400 and ~~4400~~ 1250 RPM for the duration of the test mode.

3. The pass/fail analysis shall begin after an elapsed time of 10 seconds.

4. The ~~minimum~~ idle mode elapsed time shall be 30 seconds ~~and the maximum idle mode elapsed time shall be 90 seconds.~~

5. The exhaust concentrations shall be measured as percent carbon monoxide and parts per million hydrocarbons after stabilized readings are obtained ~~or~~ averaged over the last five seconds at the end of ~~30~~ seconds, ~~whichever occurs first~~ the idle test mode.

C. The 2500 RPM test mode shall be performed as follows:

1. The vehicle transmission shall be in neutral or park.
2. The vehicle engine speed shall be increased from idle to between 2200 and 2800 RPM and maintained at that level.
3. If the engine speed varies outside the parameters of 2200 to 2800 RPM for more than two seconds during a sampling period, the ~~value 2500 RPM mode shall be invalid and the 2500 RPM test duration extended to allow another sampling shall be restarted.~~ If the engine speed varies outside such parameters ~~more for more than a cumulative total of 10 seconds,~~ the 2500 RPM test mode shall be invalid and another initiated.
4. The pass/fail analysis shall begin after an elapsed time of 10 seconds.
5. The ~~minimum 2500 RPM mode elapsed time shall be 30 seconds, unless the vehicle failed the first chance idle mode, and the maximum first chance 2500 RPM mode elapsed time shall not exceed 90 seconds. If the vehicle failed the first chance idle mode the 2500 RPM mode shall continue for 90 seconds.~~
6. ~~If a second chance 2500 RPM mode is conducted immediately thereafter, the maximum total 2500 RPM mode elapsed time shall not exceed 180 seconds.~~
7. 6. The exhaust concentrations shall be measured as percent carbon monoxide and parts per million hydrocarbons after stabilized readings are obtained ~~of and averaged over the last five seconds at the end of 30 seconds, whichever occurs first the 2500 RPM test mode.~~

9 VAC 5-91-450. [Fuel Evaporative] system [evaporative] pressure test and gas cap pressure test procedure.

A. The evaporative [system] pressure test and [~~or~~ , if applicable, and] fuel filler cap pressure test [~~or both~~ ,] shall be performed according to the requirements of 40 CFR 51.357(a)(10) and (b)(3), or according to alternate procedures approved by the Environmental Protection Agency and approved by the department as part of a certified analyzer system.

B. [~~If the certified analyzer system uses the procedures in 40 CFR 51.357(a)(10),~~] The [evaporative system pressure] test shall be performed as follows:

1. The gas cap shall be removed and the appropriate adapter connected to the fuel filler inlet.
2. The gas cap shall be connected to an appropriate adapter, either as part of the adapter connected to the fuel filler inlet or as part of a separate gas cap [pressure] test rig.
3. The vapor hose or line in the fuel system connecting the evaporative canister to the fuel tank shall be clamped as close as possible to the canister. If the vapor line cannot be clamped to prevent vapor passage, it shall be disconnected from the canister and plugged to prevent vapor passage.
4. The fuel tank shall be pressurized with ambient air, or a suitable, equivalent gas, to a pressure of 14 inches, ± 0.5 inches, of water.

5. The flow shall be turned off and the decay of pressure monitored for up to two minutes.

6. If at any time during the two minutes the fuel tank vapor system is being monitored the pressure drops from the starting pressure by more than six inches of water, the test shall be terminated and the vehicle shall be determined to fail the evaporative [system] pressure test.

7. After two minutes, the clamp shall be removed from the vapor line or the line shall be unplugged and the system monitored for a drop in pressure. If a pressure drop is detected, and the fuel tank vapor system did not fail the conditions in step 6 above, the vehicle shall pass the [~~fuel tank portion of the~~] evaporative [system] pressure test. If the gas cap is also connected to the fuel filler neck adapter during the [~~fuel tank~~] evaporative [system] pressure test [,] then the [gas cap vehicle] shall also pass [~~and the vehicle shall pass the evaporative system~~ the gas cap] pressure test.

8. If no pressure drop was detected after unclamping or unplugging the vapor line, the fuel tank, and cap if attached to the fuel inlet adapter, shall be pressurized to a pressure of 28 inches, ± 1.0 inches, of water, and steps 5, 6, and 7 above repeated.

[~~9. If the gas cap was connected to an adapter on a separate gas cap test rig, the gas cap shall be pressurized to a pressure of 28 inches, ± 1.0 inches, of water.~~

~~10. The flow shall be turned off and the decay of pressure monitored for up to two minutes.~~

~~11. If at any time during the two minutes the gas cap test rig is being monitored the pressure drops from the starting pressure by more than six inches of water, the test shall be terminated and the vehicle shall be determined to fail the evaporative pressure test; otherwise the vehicle shall pass the gas cap test.~~

~~12. If both the fuel tank and gas cap pressures tests are passed, the vehicle shall pass the evaporative system pressure test.~~

[~~13. 9.] At the termination of the test, the vapor hose and gas cap shall be reinstalled.~~

[C. The gas cap pressure test shall be performed using the following procedures:

1. The gas cap shall be connected to an adapter on a separate gas cap pressure test rig and shall be pressurized to a pressure of 28 inches, ± 1.0 inches, of water.

2. The flow shall be turned off and the decay of pressure monitored for up to two minutes.

3. If at any time during the two minutes the gas cap pressure test rig is being monitored the pressure drops from the starting pressure by more than six inches of water, the test shall be terminated and the vehicle shall be determined to fail the evaporative system pressure test; otherwise the vehicle shall pass the gas cap pressure test.

4. Vehicles equipped with more than one functional fuel tank shall have all gas caps tested.]

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~~[C. D.] If the vehicle fails the [evaporative system pressure test solely because of the failure of the] gas cap [pressure] test, a new gas cap may be installed and a second chance gas cap [pressure] test performed. Any failure and subsequent pass under this second chance testing must be recorded as part of the emissions inspection and reported to the customer.~~

~~[D. Vehicles equipped with more than one functional fuel tank shall have all gas caps tested.]~~

9 VAC 5-91-460. [No change from proposed.]

9 VAC 5-91-470. [No change from proposed.]

9 VAC 5-91-480. Emissions related repairs.

A. Emissions related repairs generally include only those adjustments to and maintenance and repair of the motor vehicle components and systems which are directly related to the reduction of exhaust and evaporative emissions necessary to comply with the applicable emissions standards. The expenditure for emissions related repairs does not include the inspection fee as specified in § 46.2-1182 of the Virginia Motor Vehicle Emissions Control Law, ~~the expense of emissions related adjustments, repairs or replacements required by subdivision G 2 of 9 VAC 5-91-420~~ or the expenses associated with the adjustments to and maintenance, replacement, and repair of emissions control equipment ~~on the vehicle~~ if the need for such adjustment, maintenance, or repair is due to obvious disconnection of, tampering with, or abuse to such emissions control equipment. ~~[Emissions control equipment means any part, assembly or system originally installed by the manufacturer for the sole or primary purpose of reducing emissions.]~~

B. Repairs and maintenance including but not limited to the following systems may qualify as emissions related repairs insofar as the purpose is to reduce exhaust or evaporative emissions:

1. Air intake systems.
2. Ignition systems.
3. Electrical systems.
4. Fuel control systems.
5. Emissions control systems.
6. Basic engine systems.
7. Engine cooling systems for microprocessor based air and fuel control systems.
8. On-board diagnostic systems.

C. The cost of emissions related repairs may qualify for repair costs applicable toward the waiver cost threshold under 9 VAC 5-91-420 N 5 only if performed at a certified emissions repair facility. The repairs shall be performed by or under the supervision or approval of a certified emissions repair technician.

9 VAC 5-91-490. [No change from proposed.]

9 VAC 5-91-500. [No change from proposed.]

9 VAC 5-91-510. Certification qualifications.

A. Application for certification shall be made to the department in accordance with procedures approved by the department.

B. Applicants shall demonstrate to the department the ability to conform to this chapter.

C. Certifications shall be valid only to the emissions repair facility, owner, or ~~lessee~~ lessee for which it is issued and may not be transferred or used at any other emissions repair facility nor by any other owner.

D. Transfer or sale of business, or changes in *partnership* [,] name or location ~~will~~ shall require notification to the department and ~~may~~ shall require new certification.

E. The department may require proof of business ownership, articles of incorporation, partnership agreements and lease agreements prior to certification of an emissions repair facility.

F. All emissions repair facility certification documentation shall be posted in a conspicuous place on the certified premises, within view of the public and approved by the department.

G. Certification is valid for time periods determined by the department, not to exceed three years *from the end of the month in which certified*. The director may extend such certification once, for up to ~~180 days~~ *six months from the original expiration date*, if shown that the availability of training or equipment prevent recertification prior to expiration.

H. Equipment, tools, and reference materials, including but not limited to the following list, are required to be available in certified emissions repair facilities contingent on commercial availability.

1. For vehicles subject to the Northern Virginia emissions inspection program and serviced by that emissions repair facility, current reference material, either in manual or electronic form, to include:

- a. Emissions control systems and application guides.
- b. Emissions related repair guides.

2. Necessary tools and equipment, either as components or as a complete system, for emissions related repairs as listed below:

- a. A four-gas exhaust emissions analyzer capable of analyzing exhaust emissions from vehicles on which emissions repairs are being performed.
- b. Oscilloscope or other automotive analyzer capable of displaying ignition patterns, cylinder power contributions, and square wave and injection patterns of vehicles.
- c. Ammeter, DC.
- d. Ohmmeter.
- e. Voltmeter, AC/DC.
- f. Tachometer, RPM meter.

g. Fuel pressure gauge capable of fuel injection diagnosis.

~~h. Cam angle dwell meter.~~

~~i. h.~~ Ignition timing light with timing advance meter and adjustment.

~~j. i.~~ Compression test gauge and cylinder leak-down tester.

~~k. j.~~ Vacuum pump with gauge for applying simulated manifold vacuum to emissions control devices.

~~l. Temperature gauge (32° to 300°F) for measuring engine coolant temperature.~~

~~m. k.~~ Scan tools, supplemental analyzer provisions, or detailed reference materials sufficient to allow the extraction and interpretation of computer fault codes from any vehicle being repaired that is equipped with an exhaust gas oxygen sensor and malfunction indicator light.

l. OBD scan tool designed to interface with OBD vehicles meeting the requirements of 40 CFR 85.2231.

9 VAC 5-91-520. Expiration, reinstatement, renewal, and requalification.

A. Upon expiration, [~~temporary inactive status due to inability to conform to the qualifications for certification,~~] suspension, or revocation of certification [~~or inability to conform to the qualifications for certification,~~] vehicle emissions related repairs [~~henceforth~~] performed by the emissions repair facility shall no longer be applicable toward a vehicle emissions inspection waiver as described in 9 VAC 5-91-420 N *until such time as the facility's certification is reinstated or the [facility's status is reactivated facility meets the qualifications for certification]*.

B. A new application is required after revocation or expiration of the certification.

C. The director shall reinstate an emissions repair facility certification at the end of a suspension period upon notification by the facility that the suspension period has ended.

D. Requalification may be required at any time by the department based on the results of monitoring of emissions repair facility performance or changes in applicable vehicle emissions control or repair technology.

E. If an emissions repair facility fails to become requalified within 90 days after notice of requalification requirement by the department, the certification shall expire.

F. The department will endeavor to notify facilities prior to the expiration of certification. However, it is the responsibility of the emissions repair facility to have a current valid certification.

G. Expiration of certification or revocation of certification shall require reapplication.

H. Upon expiration or notification of revocation, the emissions repair facility shall surrender to the department all certification documents issued by the department.

I. Any applicant whose certification has been revoked shall make a showing to the director that the condition causing the revocation has been corrected to the satisfaction of the director.

9 VAC 5-91-530 through 9 VAC 5-91-580. [No change from proposed.]

[9 VAC 5-91-590. Enforcement of regulations, permits, licenses, certifications and orders.

A. Licensees, permittees, certified emissions repair technicians and certified emissions repair facilities shall be subject to the provisions of this chapter, be responsible for their own actions and be responsible for the actions of persons employed by them.

B. A violation of the Virginia Motor Vehicle Emissions Control Law, any provision of this chapter or any permit, license, certification or order shall be cause for a notice of violation to be served on the alleged violator, citing the applicable provisions of the Virginia Motor Vehicle Emissions Control Law, this chapter, the permit, license, certification requirement or order, or any combination thereof involved, and the facts on which the alleged violation is based.

C. Owners are responsible for the overall operation of the emissions inspection station or emissions repair facilities including the actions of its employees and any licensed emissions inspector or certified emissions repair technician working at that station or facility and may be issued a notice of violation for any violation of this chapter by such persons.

D. A notice of violation may be addressed through a consent order or through the informal fact finding or formal hearing process.

E. The director or a designated representative shall issue and sign consent orders, conduct informal fact findings and formal hearings and make all case decisions. *Formal hearings shall be conducted in accordance with § 2.2-4020 of the Administrative Process Act.*

F. Nothing in this chapter shall prevent the department from negotiating a consent order in lieu of a penalty in any case.]

9 VAC 5-91-600. General enforcement process.

A. Upon issuance of a notice of violation, attempts shall be made to negotiate a consent order. The negotiation process may take the form of two tiers, the first involving negotiations with the department field staff. The second tier involves subsequent negotiations with the department's management personnel for regional compliance, mobile sources operations, or enforcement if the first tier negotiations are unsuccessful and the alleged violator wishes to continue negotiations.

B. If the parties cannot agree on a consent order, an informal fact finding shall be held after reasonable notice in accordance with § ~~9-6-14-14~~ 2.2-4019 of the [Virginia] Administrative Process Act. Upon consent of all parties, the informal fact finding may be waived and a formal hearing shall be held after reasonable notice in accordance with § ~~9-6-14-12~~

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2.2-4020 of the [Virginia] Administrative Process Act. During these proceedings, the department and the alleged violator may present facts and circumstances surrounding the alleged violation in accordance with the [Virginia] Administrative Process Act.

C. A formal hearing shall be held to suspend emissions inspection station permits, unless the parties agree to hold an informal fact finding and waive a formal hearing and agree that the decision from the informal fact finding is the final decision ~~appealable [which may be appealed to court for purposes of Article V (§ 2.2-4025 et seq.) of the Administrative Process Act.]~~. An emissions inspection station permit may be suspended pursuant to an informal fact finding, provided [~~the department holds~~] a formal hearing [*is held*] within 10 days from the date of suspension in accordance with § 46.2-1185 of the Virginia Motor Vehicle Emissions Control Law [*and § 2.2-4020 of the Administrative Process Act*] .

D. As provided in § 46.2-1185 of the Virginia Motor Vehicle Emissions Control Law, the director can summarily suspend an emissions inspection station permit without a formal hearing and require the permit holder to immediately cease performing emissions inspections. Within 10 days of such action, [~~the director shall hold~~] a formal hearing [*shall be held*] to affirm, modify, amend, or cancel the suspension unless the affected party agrees to waive the formal hearing and allow the suspension to remain in effect.

[~~E. For all formal hearings, the department shall issue a prehearing order which shall indicate the manner in which the hearing will be conducted and shall address issues regarding witnesses, the profiling of exhibits, and proposed findings of fact and conclusions of law.~~]

[~~F. E.~~] With respect to appeals of penalties imposed pursuant to an informal fact finding, the presiding officer shall be a designee of the director other than the regional emissions inspection program manager or any emissions inspection program staff member.

[~~G. F.~~] Any case decision made pursuant to an informal fact finding must be in writing, must inform the alleged violator of the penalty being imposed and the basis for any adverse decision, and must inform the named party of his right to appeal.

1. Any affected party has the right to request a formal hearing to appeal an adverse decision from an informal fact finding unless the parties agree before the decision is rendered to waive the formal hearing and that the decision shall be considered a final decision ~~appealable [which may be appealed to court for purposes of Article V (§ 2.2-4025 et seq.) of the Administrative Process Act]~~.

2. A written informal fact finding decision shall contain a statement that the affected party has the right to request a formal hearing in order to appeal the decision within 10 days of notification of the decision or, if previously agreed by the parties, that the decision is final and the affected party has the right to appeal the decision to court.

3. Any request for a formal hearing shall be made within 10 days of notification of the decision by the affected party, in

writing, to the department representative who made the informal fact finding decision.

[~~H. G.~~] Case decisions made pursuant to a formal hearing shall be made by the director or a designated representative. They must be in writing and contain findings of fact and conclusions of law that set forth the basis for any adverse decision, inform the alleged violator of the penalty being imposed and inform the named party of his right to appeal that decision to court.

[~~I. H.~~] All permits, licenses and certifications shall be surrendered to the department upon notice of revocation. Emissions inspection stations and emissions repair facilities shall also surrender to the department all forms, data media and documents issued by or purchased from the department.

[~~J. I.~~] If the case decision is a final decision ~~appealable [which may be appealed to court for purposes of Article V (§ 2.2-4025 et seq.) of the Administrative Process Act]~~, the department need not act further except to enforce any penalty or order issued pursuant to the decision.

[~~K. J.~~] If the director determines that a permittee, licensee, or holder of a certification is not complying with the Virginia Motor Vehicle Emissions Control Law, this chapter, any case decision, penalty or consent order issued pursuant to this chapter, the director may seek appropriate criminal or civil judicial enforcement, or both, in accordance with §§ 46.2-1187 and § 46.2-1187.2 of the [~~Code of Virginia~~ *Virginia Motor Vehicle Emissions Control Law*] .

9 VAC 5-91-610. Consent orders and penalties for violations.

A. Penalties for violations of the Virginia Motor Vehicle [*Emissions*] Control Law, this chapter, permits, licenses, certifications, and orders include letters of reprimand, probation, suspension, and revocation.

B. Penalties may be imposed as a result of an informal fact finding or formal hearing, and may be negotiated by the parties for inclusion in consent orders.

C. A consent order shall contain an agreed-to penalty in the form of a letter of reprimand, probationary period, or suspension, or a civil charge, a combination thereof, or other agreed upon actions.

D. For any minor violation, as described in 9 VAC 5-91-630, the director may negotiate or impose pursuant to an informal fact finding or formal hearing:

1. A letter of reprimand.

2. For the second minor violation within 24 months, a letter of reprimand and a probationary period not to exceed 12 months.

E. For any major violation, as described in 9 VAC 5-91-620, the director may negotiate or impose pursuant to an informal fact finding or formal hearing:

1. A letter of reprimand.

2. A letter of reprimand and a probationary period not to exceed 12 months.

3. A suspension of a permit, license or certification followed by a probationary period not to exceed 12 months.

4. A revocation of a permit, license or certification.

F. Suspensions shall be for a period not to exceed one year.

G. In the case of multiple violations, suspensions may run concurrently.

H. No application for a permit, license, or certification from a person whose permit, license, or certification has been revoked shall be considered by the director until (i) 12 months have elapsed from the date of revocation and (ii) until the conditions of 9 VAC 5-91-240 D, 9 VAC 5-91-390 D, 9 VAC 5-91-520 I or 9 VAC 5-91-560 G have been satisfied.

I. Emissions inspectors ~~and~~, *certified* emissions repair technicians *and certified emissions repair facilities* are subject to the same penalties that may be imposed on emissions inspection station permit holders. Such penalties shall be imposed separately on each affected party only as part of a consent order or through an informal fact finding or formal hearing. The director shall consider a party's level of responsibility for the violation in negotiating a consent order or in imposing a particular level of penalty pursuant to an informal fact finding or a formal hearing.

J. Any intentional falsification of an emissions inspection shall result in a revocation; or in a suspension of the inspector's license, or the station permit for not less than six months, or an equivalent civil charge, or both.

K. As a condition of probation, terms may be imposed during the probationary period that must be complied with by the violator. The terms may include a requirement that the permittee, licensee, or certified repair technician perform additional or periodic demonstrations of competency or obtain additional training. Completion of such terms to the satisfaction of the department may serve as a basis for reducing the probationary period.

9 VAC 5-91-620. [No change from proposed.]

9 VAC 5-91-650. Design goals.

A. The analyzer system shall be designed for maximum operational simplicity with a minimum number of operational decisions required by the emissions inspector in the performance of a complete emissions analysis including exhaust tests, evaporative [~~emissions system~~] or fuel filler cap [*pressure*] tests, other emissions-related electronic or mechanical tests, or a combination of such tests.

B. The analyzer system shall be unaffected by ambient conditions in a typical emissions inspection station environment and its use shall be primarily for compliance inspection purposes. It shall be capable of providing emissions characteristics, independent of the inspection function, which can be used for vehicle diagnostic work as well.

C. The analyzer system shall be of a design which can perform ASM testing using [~~a BAR-97 an~~] analyzer [*certified under 9 VAC 5-91-680*] with the addition of (i) a dynamometer, (ii) a NO_x analyzer, (iii) evaporative [~~emissions control~~] system pressure test equipment, (iv) fuel filler cap [

pressure] test equipment, and (v) a two-dimensional bar code reader and laser printer.

D. The analyzer shall be readily upgradable, without replacing the existing central processing unit, to incorporate on-board diagnostic (OBD) ~~phase II~~ testing equipment, ~~evaporative system purge test equipment~~, and additional electronic vehicle identification equipment such as video and audio processes.

[9 VAC 5-91-660. Warranty; service contract.

A. A certified emissions analyzer system shall include, at a minimum, a *one-year* warranty, including parts and labor, which shall begin on the day of the ~~enhanced emissions inspection program implementation and continue in force for one year that the emissions inspection station is permitted by the department, or that the emissions analyzer system is installed and operational, whichever is later.~~ The disk drive system in the central processing unit shall be warranted for two years.

B. Emissions analyzer system manufacturers or vendors shall offer, at a price to be stated at the time such system is offered for sale, an extended warranty for an additional five years beyond the initial one-year warranty.

C. Emissions analyzer system manufacturers or vendors shall offer, at a price to be stated at the time such system is offered for sale, a maintenance service contract for the period of time remaining from the startup date to a date six years afterward.]

[9 VAC 5-91-670. Owner-provided services.

A. The owner of an emissions inspection station shall enter into an agreement with a manufacturer or its authorized representative to provide the following services to the emissions inspection station at an initial fixed cost per analyzer system to be agreed upon by both parties.

1. Delivery, installation, calibration, and verification of the proper operating condition of an analyzer system which has been certified in writing by the department.

2. Training of all inspectors employed by the emissions inspection station at the time of installation in (i) the proper use, maintenance, and operation of the exhaust analyzer system, (ii) the step-by-step procedure for performing an emissions inspection and any evaporative emissions control system test or fuel filler cap *pressure* test required, and (iii) proper safety precautions for dynamometer use and exhaust and calibration gas ventilation procedures.

3. Annual updates, except those to be performed by department personnel, of the preexisting internal computer software of the analyzer as specified by the department including, but not limited to:

- a. Changes to the emissions standards;
- b. Changes to the listed vehicle codes;
- c. Changes to the items in the printing system to correspond to changes in other requirements; and
- d. Additions or changes to the emissions control equipment list.

Final Regulations

B. Emissions inspection stations shall maintain their analyzer systems in good working condition such that they continue to meet certification requirements. Any further arrangements regarding service or maintenance are at the discretion of the emissions inspection station and the manufacturer or equipment vendor.

C. Repair or replacement of analyzer system components, other than for normal maintenance, must be performed by the analyzer system manufacturer or authorized agent.]

9 VAC 5-91-680. Certification of analyzer systems.

A. No analyzer system may be installed, sold or represented as a certified enhanced analyzer system without prior written certification by the department.

B. The analyzer system must have a certificate from the manufacturer that it meets the specifications of 40 CFR Part 85, Subpart W. This certification is necessary so that inspections performed using that analyzer will qualify applicable vehicles for warranty repair coverage according to the provisions of [~~the Emissions Control System Performance Warranty-~~] § 207(b) of the federal Clean Air Act []].

C. A person requesting the certification of an emissions analyzer system for use in the Virginia Motor Vehicle Emissions Control Program shall make application to the department using procedures approved by the department.

D. The analyzer system, in order to become certified for use and be used for emissions inspections, shall conform to the equipment specifications and quality control requirements of EPA Technical Guidance document EPA-AA-RSPD-IM-96-2 [(see 9 VAC 5-91-50)] unless requirements contained therein are excluded or superseded by requirements of this chapter as enumerated below.

1. Vehicles powered by a fuel other than gasoline are not covered by ~~this program~~ *ASM testing* and references to emissions standards and correction factors to test such vehicles do not currently apply to ~~this program~~ *ASM testing*. (Ref. [~~EPA-AA-RPSD-IM-92-2 EPA-AA-RSPD-IM-96-2,~~] § 85.1(b)(1)(iv)).

2. The emissions inspection equipment is not required to incorporate vehicle brake sensing. (Ref. [~~EPA-AA-RPSD-IM-92-2 EPA-AA-RSPD-IM-96-2,~~] § 85.2(a)(5)).

3. The preconditioning period for all vehicles undergoing an ASM test ~~shall~~ *may be up to* 90 seconds. System prompts regarding queuing time are unnecessary. (Ref. [~~EPA-AA-RPSD-IM-92-2 EPA-AA-RSPD-IM-96-2,~~] § 8521(b)(10)(i) and (ii)(C)).

4. All *OBD* vehicles of ~~model year 1996 and newer~~ equipped with the SAE standardized OBD connection shall have engine RPM and emissions-related information read through the OBD connection ~~beginning January 4, 1999~~ *pending availability and installation of necessary hardware and software or January 1, [2002 2003], whichever [first] occurs [last]*. Emissions inspection equipment shall have the necessary equipment to perform such testing by this date, *or as specified in 9 VAC 5-91-420 G [4 3]*. (Ref.

[~~EPA-AA-RPSD-IM-92-2 EPA-AA-RSPD-IM-96-2,~~] § 85.1(c)(9) and § 85.3(c)(5)).

5. Vehicles subject to ASM testing shall receive the ASM 2525 and ASM 5015 modes in that sequence, followed by any second chance testing for which the vehicle is eligible in the same sequence. Second chance tests shall only be performed on vehicles which failed the first chance test within ~~450%~~ *the software specifications* of all applicable standards. (Ref. [~~EPA-AA-RPSD-IM-92-2 EPA-AA-RSPD-IM-96-2,~~] § 85.2(d) and (e)).

6. Dynamometers shall be calibrated through a coast-down procedure every 72 hours. (Ref. [~~EPA-AA-RPSD-IM-92-2 EPA-AA-RSPD-IM-96-2,~~] § 85.4(b)(1)).

[~~7. The allowable tolerances for the low range audit gas in § 85.4(d)(2)(iii)(B) shall be: ±10 ppm HC, ±0.025% CO, ±0.36% CO₂, and ±28 ppm NO. For the time period in which phase in exhaust emissions standards are in use, analyzers shall not lock out unless the low range gas audit has been out of tolerance for more than 72 hours. However, for any reading out of tolerance with the low range audit, the system shall prompt the inspector to have the analyzer serviced.~~

~~8. 7.]~~ Analyzer calibration gas bottles shall be bar-coded or have bar-coded labels providing the specifications of the gas contained within and the analyzer system shall require a reading of these specifications, through the system bar code reader, whenever the bottles are changed. The calibration gases, therefore, may have up to a 5.0% blend tolerance. (Ref. [~~EPA-AA-RPSD-IM-92-2 EPA-AA-RSPD-IM-96-2,~~] § 85.4(d)(2)(iv)).

~~9. The analyzer shall prompt for gas audits to be performed quarterly. (Ref. EPA-AA-RPSD-IM-92-2 § 85.4(d)(3)(i)).~~

~~10. [9. 8.]~~ Analyzer audit gas bottles shall be bar-coded or have bar-coded labels providing the specifications of the gas contained within and the analyzer system shall require a reading of these specifications, through the system bar code reader, whenever the audit is conducted. The calibration gases, therefore, may have up to a 5.0% blend tolerance. (Ref. [~~EPA-AA-RPSD-IM-92-2 EPA-AA-RSPD-IM-96-2,~~] § 85.4(d)(3)(iv)).

[9 VAC 5-91-690. Span gases; gases for calibration purposes.

A. The gases used by *emissions inspection stations* in the emissions inspection shall be approved by the department and shall comply with the ~~"Virginia Approved Span Gas Verification Program"~~ requirements ~~as established by the department of this section~~.

~~1. Gases shall be manufactured in accordance with U.S. Environmental Protection Agency technical report, "EPA Recommended Practice for Naming I/M Calibration Gas."~~

~~2. The station owner shall maintain a comprehensive, up-to-date list provided by the department, including addresses and phone numbers, of gas blenders approved by the department.~~

B. The gas concentrations, requirements, and tolerances of gases used by emissions inspection stations shall conform to the specifications contained in the *EPA Technical Guidance document*, EPA-AA-RSPD-IM-96-2 (see 9 VAC 5-91-50), and each container shall bear a bar-coded label containing concentration and tolerance information as required for calibration and audit purposes.

C. Gases shall be supplied in containers which meet all the provisions of the Occupational Safety and Health Administration as specified in ~~36 Federal Register 105, dated May 29, 1974~~ 29 CFR 1910.101, Subpart H.

D. Gases shall be manufactured in accordance with the U.S. Environmental Protection Agency technical report, EPA-AA-TSS-83-8-B (see 9 VAC 5-91-50).

E. The station owner shall maintain a comprehensive, up-to-date list provided by the department, including addresses and phone numbers, of gas blenders approved by the department.

~~D.~~ F. Each analyzer instrument shall be permanently labeled with its optical correction factor (also referred to as "C" factor, propane equivalency factor, or propane to hexane conversion factor), carried to at least two decimal places (within the gas accuracy limits), e.g., (0.52). Factor confirmation shall be made on each assembled analyzer by measuring both N-hexane and propane on assembly line quality checks.]

9 VAC 5-91-700. [No change from proposed.]

9 VAC 5-91-710. Upgrade of analyzer system.

A. Any requirement to upgrade a certified emissions analyzer system beyond the specifications and requirements described in this chapter and EPA-AA-RSPD-IM-96-2 shall apply to all such systems certified under this chapter and shall require an amendment to this chapter.

B. Such upgrade may include, but not be limited to, enhanced on-board diagnostic (OBD) testing equipment, any evaporative [~~emissions control~~] system pressure test or ~~purge test equipment not already in use~~, and electronic vehicle identification systems such as video and audio processes.

9 VAC 5-91-720. [No change from proposed.]

9 VAC 5-91-740. [No change from proposed.]

[9 VAC 5-91-750. Operating procedures; violation of standards.

A. Remote sensing equipment shall be operated in accordance with the remote sensing equipment manufacturers operating instructions and any contract or agreement between the department and the equipment operator.

B. Motor vehicles determined by remote sensing equipment to have exceeded the applicable emissions standard in Table III-B in ~~9 VAC 5-91-170~~ 9 VAC 5-91-180 twice within 90 days shall be considered to have violated such emissions standards.

1. Owners of such motor vehicles shall be issued a notice of violation and shall be subject to the civil charges in 9 VAC 5-91-760 unless waived pursuant to this section.

2. Upon a determination by the department that a violation has occurred, motorists shall be informed by the department or its representative of the failure to comply with emissions standards and of the dates, times, and places such remote sensing occurred.

C. Civil charges assessed pursuant to this part shall be waived if, within 90 days of the date of the notice of the violation, the motor vehicle owner provides proof to the department that since the date of the violation, (i) the vehicle has passed a vehicle emissions inspection, (ii) the vehicle has received an emissions inspection waiver, or (iii) the vehicle has qualified for a waiver within the 12 months prior to the violation.

D. The requirement for an emissions inspection, based on a remote sensing failure, may be waived by the department if the motor vehicle in question is, by virtue of its registration date, required to have an emissions inspection within 90 days of the date of the notice of violation.]

9 VAC 5-91-770. [No change from proposed.]

9 VAC 5-91-780. [No change from proposed.]

9 VAC 5-91-790. ASM start-up standards.

The following standards shall apply upon implementation of the emissions inspection program. The exhaust emissions standards for the following model years are cross-referenced by using the number in the column in Table 14.1 to locate the column that lists the appropriate standards in the [look up] tables in 9 VAC 5-91-810. Each column reference below corresponds to two columns, one for the ASM 5015 and one for the ASM 2525, in 9 VAC 5-91-810. The test standards are then listed in the appropriate column according to the Equivalent Test Weight.

TABLE 14.1

Light Duty Vehicles.			
Model Years	Hydrocarbons 9 VAC 5-91-810 A	Carbon Monoxide 9 VAC 5-91-810 B	Oxides of Nitrogen 9 VAC 5-91-810 C
1994+ Tier 4 1996 and later	1	21	41
1991-1995	2	22	42
1983-1990	4	23	43
1981-1982	4	26	43
1980	4	26	48
1977-1979	11	30	48
1975-1976	11	30	50
1973-1974	13	34	50
1968-1972	13	34	51
Light Duty Trucks 1 (less than 6000 pounds GVWR).			
Model Years	Hydrocarbons 9 VAC 5-91-810 A	Carbon Monoxide 9 VAC 5-91-810 B	Oxides of Nitrogen 9 VAC 5-91-810 C
1994+ Tier 4 1996 and			

Final Regulations

<i>later</i>			
(≤ £ 3750 LVW)	1	21	41
(> 3750 LVW)	2	22	42
1991-1995	5	26	43
1988-1990	7	29	44
1984-1987	7	29	49
1979-1983	11	31	49
1975-1978	12	32	50
1973-1974	13	34	50
1968-1972	13	34	51
Light Duty Trucks 2 (greater than 6000 pounds GVWR).			
Model Years	Hydrocarbons 9 VAC 5-91-810 A	Carbon Monoxide 9 VAC 5-91-810 B	Oxides of Nitrogen 9 VAC 5-91-810 C
1994+ Tier 4 1997 and later			
(≤ £ 5750 LVW)	2	22	42
(> 5750 LVW)	5	26	45
1991- 1995 1996	5	26	46
1988-1990	7	29	47
1984-1987	7	29	49
1979-1983	11	31	49
1975-1978	12	32	50
1973-1974	13	34	50
1968-1972	13	34	51

9 VAC 5-91-800. ASM final standards.

The following standards shall apply ~~beginning one year after program implementation~~ [unless except as] specifically determined according to 9 VAC 5-91-170 [~~to apply at a later date~~]. The exhaust emissions standards for the following model years are cross-referenced by using the number in the column in Table 14.2 to locate the column that lists the appropriate standards in the tables in 9 VAC 5-91-810. Each column reference below corresponds to two columns, one for the ASM 5015 and one for the ASM 2525, in 9 VAC 5-91-810. The test standards are then listed in the appropriate column according to the equivalent test weight.

TABLE 14.2

Light Duty Vehicles.			
Model Years	Hydrocarbons 9 VAC 5-91-810 A	Carbon Monoxide 9 VAC 5-91-810 B	Oxides of Nitrogen 9 VAC 5-91-810 C
1994+ Tier 4 1996 and later	1	21	41
1983-1995	1	21	41
1981-1982	1	23	41
1980	1	23	45

1977-1979	6	27	45
1975-1976	6	27	48
1973-1974	10	32	48
1968-1972	10	32	49
Light Duty Trucks 1 (less than 6000 pounds GVWR).			
Model Years	Hydrocarbons 9 VAC 5-91-810 A	Carbon Monoxide 9 VAC 5-91-810 B	Oxides of Nitrogen 9 VAC 5-91-810 C
1994+ Tier 4 1996 and later			
(≤ £ 3750 LVW)	1	21	41
(>3750 LVW)	1	21	41
1988-1995	3	24	42
1984-1987	3	24	46
1979-1983	8	28	46
1975-1978	9	29	48
1973-1974	10	32	48
1968-1972	10	32	49
Light Duty Trucks 2 (greater than 6000 pounds GVWR).			
Model Years	Hydrocarbons 9 VAC 5-91-810 A	Carbon Monoxide 9 VAC 5-91-810 B	Oxides of Nitrogen 9 VAC 5-91-810 C
1994+ Tier 4 1997 and later			
(≤ £ 5750 LVW)	1	21	41
(>5750 LVW)	1	21	41
1988- 1995 1996	3	24	44
1984-1987	3	24	46
1979-1983	8	28	46
1975-1978	9	29	48
1973-1974	10	32	48
1968-1972	10	32	49

NOTICE: The forms used in administering 9 VAC 5-91 are listed below. Any amended or added forms are reflected in the listing and are published following the listing.

FORMS

Application for Official Emissions Inspection Station, MSOS 101 (rev. 12/00)
Application for Official Virginia Certified Emissions Repair Facility, MSOS 201 (rev. 1/01)
Vehicle Emissions Inspector License Application, MSOS 1001 (rev. 7/98)
Inspector License Extension Request, MSOS 1101 (12/00)
 [*Certified Emissions Repair Technician Application, MSOS 701 (rev. 2/01)*]

*National Institute for Automotive Service Excellence Transcript
Request Form (9/01)
Field Inspection Report (9/01)
Inspection Station Notice of Violation (6/99)
Consent Order (9/01)
Letter of Reprimand (9/01)
Vehicle Emissions Inspection Report (1998)
Notice of Rejection from Vehicle Emissions Testing (9/01)
Request for Deferral of Vehicle Emissions Inspection
Requirement, MSOS 1 (rev. 8/00)*

DEPARTMENT OF ENVIRONMENTAL QUALITY

Northern Virginia Regional Office
 Mobile Source Operations Section
 13901 Crown Court
 Woodbridge, Virginia 22193-1453



EIS

APPLICATION FOR OFFICIAL EMISSIONS INSPECTION STATION

(PLEASE TYPE OR PRINT)

Application for (Check One): New Permit Permit Renewal Reinstatement

Facility or Trade Name: _____

Location: _____

City: _____ State: _____ Zip: _____

County: _____ Phone: _____

Fax: _____ E-mail: _____

Type of Facility (Check One): Repair Shop Service Station Fleet Station - Private

Fleet Station - Government Dealer - New Cars Dealer - Used Cars OTHER

Type of Organization (Check One): Corporation Partnership Individual Government

Organization or Owner Name: _____

Organization Address: _____

City: _____ State: _____ Zip: _____

Phone #: _____ Fax: _____

Do you presently employ a Virginia Licensed emissions inspector? YES NO

Inspector's Name: _____ Identification #: _____

Inspector's Name: _____ Identification #: _____

In accordance with the rules and regulations of the Department of Environmental Quality, emissions inspections shall be performed only by those individuals who are licensed as inspectors and approved for emissions testing by the Department.

Continue on Reverse Side

MSOS 101 (Rev. 12/20/2000)

COMPLETE THIS SECTION FOR NEW PERMIT ONLY

1. Have you ever had an emissions inspection appointment? YES NO

If yes, under what name: _____ What city: _____

2. Have you ever been refused an emissions inspection appointment? YES NO

If yes, under what name: _____ What city: _____

3. Has this location ever been an official emissions inspection station? YES NO

If yes, under what name: _____

The necessary space, equipment and personnel will be provided and maintained in a manner satisfactory to the Department of Environmental Quality (DEQ). All owner(s)/managers, and official emissions inspectors will read and be thoroughly familiar with the instructions and regulations furnished for Official Emissions Inspection Stations and will abide by these regulations, and carefully inspect every vehicle presented for inspection. The operations of this facility will be conducted in strict accord with the Air Pollution Control Law and the rules and regulations furnished by DEQ. The appointment of this facility, if made, may be suspended or revoked in accordance with the regulations, and will automatically be canceled if the station changes its ownership, name, or location.

Are you in any way a manufacturer or distributor of emissions testing equipment?

YES NO

* (If yes, then you may not in any way, own, operate, or have any direct or indirect financial interest in an emissions inspection facility other than the leasing of or providing financing for equipment related to emissions testing.)

Does your business conform with local zoning, use, or business licensing laws, ordinances or regulations as well as any applicable OSHA requirements?

YES NO

I (we) have read the requirements for appointment and agree to the conditions as stated.


Name: _____ Title: _____
(Please Print Full Name) (President, or other duly authorized agent of the corporation in writing, Partner, Owner)

Signature: _____ Date: _____

Name: _____ Title: _____
(Please Print Full Name) (President, or other duly authorized agent of the corporation in writing, Partner, Owner)

Signature: _____ Date: _____

If you have any questions, please call the Department of Environmental Quality at (703) 583-3900 or toll-free in Virginia at 1-800-275-3844



DEPARTMENT OF ENVIRONMENTAL QUALITY
 Northern Virginia Regional Office
Mobile Source Operations Section
 13901 Crown Court
 Woodbridge, Virginia 22193-1453

CRF

**APPLICATION FOR OFFICIAL VIRGINIA
 CERTIFIED EMISSIONS REPAIR FACILITY**
(PLEASE TYPE OR PRINT)

Application for (Check One):		<input type="checkbox"/> New Permit	<input type="checkbox"/> Permit Renewal	<input type="checkbox"/> Reinstatement
Facility or Trade Name:	_____			
Location:	_____			
City:	State:	Zip:	_____	
County:	Phone:	_____		
Fax:	E-mail:	_____		
Type of Facility (Check One):	<input type="checkbox"/> Repair Shop	<input type="checkbox"/> Service Station	<input type="checkbox"/> Fleet Station - Private	<input type="checkbox"/>
Fleet Station - Government:	<input type="checkbox"/> Dealer - New Cars	<input type="checkbox"/> Dealer - Used Cars	<input type="checkbox"/> OTHER	<input type="checkbox"/>
<i>List make(s) of vehicle(s) only if the facility repairs specific make(s):</i> _____				
Type of Organization (Check One):	<input type="checkbox"/> Corporation	<input type="checkbox"/> Partnership	<input type="checkbox"/> Individual	<input type="checkbox"/> Government
Organization or Owner Name:	_____			
Organization Address:	_____			
City:	State:	Zip:	_____	
Phone #:	Fax:	_____		
Emissions Inspection Station number if applicable:	_____			
Do you presently employ a Virginia Certified emissions repair technician:	YES	<input type="checkbox"/>	NO	<input type="checkbox"/>
Technician's Name:	_____			
Technician's Name:	Identification #:	_____		
Technician's Name:	Identification #:	_____		

200405-201 (Rev. 06/21/2001) Continue on Reverse Side

COMPLETE THIS SECTION FOR NEW CERTIFICATION ONLY

- Have you ever had an emissions repair appointment? YES NO
 If yes, under what name: _____ What city: _____
- Have you ever been refused an emissions repair appointment? YES NO
 If yes, under what name: _____ What city: _____
- Has this location ever been an official emissions repair station? YES NO
 If yes, under what name: _____

Emissions related repairs of motor vehicles applicable towards a vehicle emissions inspection waiver, as required under the Air Pollution Control Law of Virginia and the Regulation for the Control of Motor Vehicle Emissions in the Northern Virginia Area, shall be performed at a Virginia Certified Emissions Repair Facility, and such repairs shall be performed or approved by a Virginia Certified Emissions Repair Technician(s) employed by that facility.

The necessary space, equipment and personnel will be provided and maintained by this facility in a manner satisfactory to the Department of Environmental Quality (DEQ). All owner(s)/manager(s), and Virginia Certified Emissions Repair Technicians, will read and be thoroughly familiar with the instructions and regulations furnished for Virginia Certified Emissions Repair Facilities; we will abide by these regulations, and strive to conduct the diagnosis and repair of motor vehicles in a manner appropriate to the cause(s) of vehicle emissions inspection failures. The operations of this facility will be conducted in strict accord with the Air Pollution Control Law and the rules and regulations furnished by DEQ. The appointment of this facility, if made, may be suspended or revoked in accordance with the regulations, transfers of ownership, name, or location will require recertification.

I (we) have read the requirements for appointment and agree to the conditions as stated.

Name: _____ Title: _____ (Corp. Officer, Partner, Owner)
 Signature: _____ Date: _____
 Name: _____ Title: _____ (Corp. Officer, Partner, Owner)
 Signature: _____ Date: _____

If you have any questions, please call the Department of Environmental Quality at (703) 583-3900 or toll-free in Virginia at 1-800-275-3844

**DEPARTMENT OF ENVIRONMENTAL QUALITY
NORTHERN VIRGINIA REGIONAL OFFICE
MOBILE SOURCE OPERATIONS SECTION**

VEHICLE EMISSIONS INSPECTOR LICENSE APPLICATION
(Please Print or Type)

Check one: New _____ Renewal _____ Reinstatement _____

Name: _____ (Last) _____ (First) _____ (MI) SSN: _____

Address: _____ (Street) _____ (City/State) _____ (Zip)

Date of Birth: _____ Hm. Phone: _____ Wk. Phone: _____

Operator's License No.: _____ State: _____ Exp. Date: _____

Height: _____ Weight: _____ Color Eyes: _____ Color Hair: _____

Station Name: _____ Station #: _____

Station Address: _____ (Street) _____ (City/State) _____ (Zip)

Have you ever been licensed as a Virginia Vehicle Emissions Inspector?
NO () YES () If Yes, Expiration date of license: _____

*I certify that the information provided above is true and complete to the best of my knowledge.
Submission of false information may result in license revocation.*

Signature: _____ Date: _____

**DO NOT WRITE BELOW THIS LINE - FOR DEPARTMENT USE ONLY
THIS SECTION TO BE COMPLETED BY NOVA INSTRUCTOR**

Completion Date: _____ Grade: _____

School Attended: _____ Campus: _____

Course Title: _____ Course No. _____

Instructor's Name: _____ Signature: _____

MS05-1001 (Revised 07/06/1998)

VECOs - COMPLETE THIS SECTION UPON FIELD CERTIFICATION

Knowledge of Virginia Enhanced I/M Program regulations: _____ Satisfactory () Unsatisfactory ()

Ability to conduct Pre-inspection Safety Check: _____ Satisfactory () Unsatisfactory ()

Ability to conduct visual emissions component inspections: _____ Satisfactory () Unsatisfactory ()

Ability to test vehicle using certified analyzer system: _____ Satisfactory () Unsatisfactory ()

Ability to conduct span gas calibration, leak, and dynamometer check: _____ Satisfactory () Unsatisfactory ()

Type of analyzer system used: _____

Remarks: (Explain any unsatisfactory or other pertinent information)

Information on front side verified? Yes () No ()

Date Field Certified: _____ Expiration Date: _____

Date of Data Entry: _____ V.E.C.O.'S Initials: _____

VECOs - COMPLETE THIS SECTION UPON RECERTIFICATION

Date of Data Entry: _____ Expiration Date: _____

V.E.C.O.'s Initials: _____

Date Licensed Mailed: _____ Initials: _____

COMMONWEALTH OF VIRGINIA
 DEPARTMENT OF ENVIRONMENTAL QUALITY
 Northern Virginia Regional Office
 Mobile Source Operations Section
INSPECTOR LICENSE EXTENSION REQUEST
 (Please Print)

Name: _____ ID#: _____
 Street: _____ Lic. Exp. Date: _____
 City, State, Zip: _____
 Home Phone: _____ Work Phone: _____
 Employed by: _____ Station ID#: _____

Use the space below to describe why re-licensing requirement(s) cannot be met prior to your original license expiration date. If you have registered for an inspector class, include information on class registration (campus, section number and starting date)

NOTE: If approved, your emissions inspector license will be extended for a maximum of ninety (90) days from the date of original expiration; no extensions beyond ninety (90) days are permitted for any reason. Upon expiration of your license, original or extended, you must cease performing emissions inspections until such time as your license has been renewed. Field certification may be required prior to extension approval and/or for license renewal.

Inspector's Signature _____ Date _____
 [Do not Write Below This Line]
 VECO Initials _____ Date _____ Original Exp. Date _____ New Exp. Date _____

MSOS-1101 (1/2/2000)

DEPARTMENT OF ENVIRONMENTAL QUALITY
 NORTHERN VIRGINIA REGIONAL OFFICE
 MOBILE SOURCE OPERATIONS SECTION

CERTIFIED EMISSIONS REPAIR TECHNICIAN APPLICATION

Check One: New Renewal Reinstatement
 (Please Print or Type)
 Name: _____ (First) _____ (MI) _____ (Last) _____ SSN: _____

Address: _____ (Street) _____ (City) _____ (State) _____ (Zip)
 Home Ph: _____ Work Ph: _____ Fax: _____
 Date of Birth: _____ E-Mail: _____

Operator's License No.: _____ State: _____ Exp. Date: _____
 Height: _____ Weight _____ Color eyes: _____ Color Hair: _____

Repair Facility Name: _____ CRF #: _____
 Facility Address: _____ (Street) _____ (City) _____ (State) _____ (Zip)

Are you currently ASE L-1 certified? NO YES If Yes, Expiration Date: _____
 If you are applying for certification on the ASE option, please arrange for ASE transcripts to be sent to DEQ/MSOS. Your application cannot be processed until your ASE transcripts have been received.

Have you ever been certified as a Virginia Certified Emissions Repair Technician? NO YES
 If Yes, Certification Expiration Date: _____ CRT ID #: _____
 I certify that the information provided above is true and complete to the best of my knowledge.
 Submission of false information may result in certification revocation.

Signature: _____ Date: _____

DO NOT WRITE BELOW THIS LINE - FOR DEPARTMENT USE ONLY
 THIS SECTION TO BE COMPLETED BY NVCC & DEPARTMENT PERSONNEL

Completion Date: _____ Grade: _____ School _____ Attended: _____ Course No.: _____

Campus: _____ Course Title: _____ Signature: _____

VECOs COMPLETE THIS SECTION FOR TECHNICIAN CERTIFICATION
 Date of Data Entry: _____ Exp. Date: _____ VECO's Initials: _____
 If ASE Certified, Exp. Date: _____ (Attach Transcripts)

Date Certification Mailed: _____ Initials: _____

MSOS-701 (Rev. 02/02/2001)

COMMONWEALTH OF VIRGINIA Department of Environmental Quality Mobile Source Operations Section Field Inspection Report Emissions Inspection Station (EIS)	
Station Number: Station Name: Street Address: City: Regular Inspection:	State: Other Inspection: Zip: Date:
Inspections Results To:	
INSPECTION CHECKLIST	
S - SATISFACTORY U - UNSATISFACTORY N - NOT APPLICABLE	
1. Permit properly displayed 2. Poster properly displayed 3. Record keeping/document security 4. Required equipment/references 5. Emissions inspection manual 6. Inspector license(s) 7. Calibration gases	8. Analyzer system 9. DEQ Scan Gas Check 10. Dynamometer 11. Inspection area/Station operation 12. Inspection procedures 13. Inspections observed 14. Other (Explain Below)
REMARKS	
NVI Issued To:	Station:
V.E.C. Officer:	Inspector:
V.E.C. Officer Signature:	Date:
Received By:	Time:



National Institute for
AUTOMOTIVE SERVICE EXCELLENCE

**TRANSCRIPT REQUEST FORM FOR
 THE VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY**

To obtain a verified listing of the ASE certifications that you currently hold, fill out the form below. One copy will be sent to you, and one copy will be sent to the DEQ Mobile Source Operations Section, 13901 Crown Court, Woodbridge, VA 22193-1453.

(Technician's Name)	(Zip Code)
(ASE ID Number)	(State)
(Street Address)	(City)
(Technician's Signature)	

Technician: Mail this completed request form with a check or money order for \$5.00 to:

ASE Transcript Service
National Institute for
AUTOMOTIVE SERVICE EXCELLENCE
13505 Dulles Technology Drive
Herndon, Virginia 20171-3421

If you have any questions regarding this request, please contact Jan Cohill with ASE at (703) 713-3800 ext. 238, or call the Virginia Department of Environmental Quality at 703-583-3900.



COMMONWEALTH OF VIRGINIA
DEPARTMENT OF ENVIRONMENTAL QUALITY

Northern Virginia Regional Office
13901 Crown Court
Woodbridge, VA 22193-1453
(703) 583-3800 fax (703) 583-3801
http://www.deq.state.va.us

Dennis H. Treacy
Director
Gregory L. Clayton
Regional Director

James S. Gilmore, III
Governor
John Paul Woodley, Jr.
Secretary of Natural Resources

COMMONWEALTH OF VIRGINIA
Department of Environmental Quality
Northern Virginia Regional Office
Mobile Source Operations Section

Inspection Station Notice of Violation

Date: 06/15/1999
ID: 1233 Name: Department of Environmental Quality/MSOS
Address: 13901 Crown Court State: VA Zip Code: 22193 1453
City: Woodbridge

VIOLATION(S) CITED
Part: VI Paragraph: 420.A. Class: MAJOR Counts: 1 NOV No. 1

TO: Station Owner/Manager
DEQ has reason to believe that you may be in violation of the Regulation for the Control of Motor Vehicle Emissions in the Northern Virginia Area (9 VAC 5-91) as specified above and indicated on the FIELD Inspection Report as dated herein. Please indicate your response to this notice by checking the appropriate block and signing your name. The entry after NOV NO. indicates the number of actual violations within the last twenty-four months for this class, but does not include any of the alleged violations.

LETTER OF REPRIMAND / SUSPENSION / REVOCATION AND/OR PROBATIONARY PERIOD MAY RESULT

- I understand and admit to the alleged violation(s) as cited.
- I wish to negotiate a suspension period or civil charge, letter of reprimand and/or terms/conditions of probation.
- I understand but do not admit to the alleged violation(s) as cited.
- I nonetheless wish to negotiate a suspension period or civil charge, letter of reprimand and/or terms/conditions of probation.
- I do not admit to the alleged violation(s) as cited and request an administrative proceeding.

Signature: _____ Title: _____
Date: _____
Print Name: _____
V.E.C. Officer: _____

The above alleged violation(s) is subject to the Regulation for the Control of Motor Vehicle Emissions (9 VAC 5-91). All negotiated penalties and terms of probation are subject to approval; final terms will be included in a consent order. This Notice of Violation is not an agency proceeding or determination which may be considered a case decision under the Virginia Administrative Process Act, Va. Code Sections 9-6.14:1 et seq. You are not required to take any action pursuant to this notice, but may do so voluntarily.

DATE

TO: VA Emissions Control, Inc.
T/A Mobile Source Operations Section
13901 Crown Court
Woodbridge, VA 22193-1453

Identification No. 99999

SUBJECT: CONSENT ORDER

It is understood and agreed that the above named [inspector/stations/technician/facility] has been served notice for the following alleged violation(s):

[Reference the alleged violation(s), date(s), and report number if applicable]

Ref: [Regulatory Section(s) & Paragraph(s)] Counts: [# of Counts]

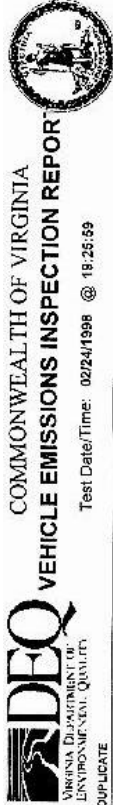
It is acknowledged that the violation(s) did occur as cited. I understand that I have the right to contest the violation(s) and appear for an informal fact finding proceeding and/or a formal hearing according to the Virginia Administrative Process Act. However, I do not wish to contest the violation(s), and agree to the following condition(s):

1. Voluntary suspension of [appropriate activity] privileges for thirty (30) days beginning Monday, May 1, 1996 through Tuesday, May 30, 1996.
2. A probationary period of six (6) months following reinstatement.

As a condition of continued participation in the Vehicle Emissions Inspection Program, I agree to fully comply with all applicable program regulations. I understand that this consent order will serve as the disposition of the Notice of Violation (NOV) in this matter and, as such, will be included on the Violation History Report and considered for future NOV action determinations if necessary.

Signature: _____ Date: _____
Signature: _____ Date: _____
Station Representative: Emissions Control DFO Representative: Dennis H. Treacy
Title: President, VA Emissions Control, Inc. Title: Director

An Agency of the Natural Resources Secretariat



COMMONWEALTH OF VIRGINIA
VEHICLE EMISSIONS INSPECTION REPORT
 Test Date/Time: 02/24/1998 @ 19:26:59
 DUPLICATE

VEHICLE INFORMATION			
Year: 1994	Make: FORD	Model: TAURUS	Cylinders: 06
VIN: 1234	Engine Size: 03.0L	Inspection Type: I	
GVWR: 0000	Estimated Test Weight: 3500		

ASM 2 TAILPIPE EMISSIONS INSPECTION			
Limit	Reading	Result	Limit
HC ppm	0124	0007	PASS
CO %	00.69	00.00	PASS
NO ppm	0937	0036	PASS
PM	1714	1714	VALID
Smoke	15.2	15.2	VALID

EMISSIONS CONTROL SYSTEMS INSPECTION			
Air Injection System:	PASS		
Exhaust Gas Recirculation System:	PASS		
Positive Crankcase Ventilation System:	PASS		
Catalytic Converter:	PASS		
Fuel Evaporative System:	PASS		
Thermostatic Air Cleaner System:	PASS		
Gas Cap Pressure Test:	PASS		
Evaporative System Pressure Test:	N/A		
Evaporative System Purge Test:	N/A		
O.B.D. Fault Code Inspection:	N/A		

OVERALL TEST RESULTS: PASS

Transcription Identification Number: 37446970

PLEASE RETAIN THIS DOCUMENT FOR YOUR RECORDS.

The results of the emissions inspection for this vehicle have been transmitted to DMV. You may now register this vehicle for a permit of up to two (2) years.

STATION NAME: Department of Environmental Quality/MSCS	REPORT NUMBER: 000033
ADDRESS: 1391 Crown Court	STATION NUMBER: 1233
PHONE: (703) 583-3900	ANALYZER NUMBER: A1133
INSPECTOR NAME: John M. Trajeser	SOFTWARE VERSION: 1.14

VEHICLE EMISSIONS INSPECTION QUESTIONS
 For additional information, please contact the Department of Environmental Quality, Mobile Sources Operations Section.
 (703) 583-3900

Inspector's Signature: _____



COMMONWEALTH of VIRGINIA
 DEPARTMENT OF ENVIRONMENTAL QUALITY
 Northern Virginia Regional Office
 13911 Crown Court
 Woodbridge, VA 22191-1453
 (703) 583-3800 fax (703) 583-1801
 http://www.deq.state.va.us

Dennis H. Treacy
 Director

Gregory L. Clayton
 Regional Director

James S. Gilmore, II
 Governor

John Paul Woodley, Jr.
 Secretary of Natural Resources

Identification No: xxxxx

[Name]
 [Address]
 [City, State, Zip]

[DATE]

SUBJECT: LETTER OF REPRIMAND

You have been cited for an alleged violation(s) of the Virginia Motor Vehicle Emissions Control Law, the Regulation for the Control of Motor Vehicle Emissions in the Northern Virginia Area, and/or the provision(s) of a permit, license, certification or order as follows:

[enter the regulatory section(s), or other provision violated]

In accordance with the provisions of 9 VAC 5 Chapter 91, Regulation for the Control of Motor Vehicle Emissions in the Northern Virginia Area, you are hereby **officially reprimanded** for the cited violation(s). A violation(s) of any such provision is a serious matter, and may affect the integrity, credibility, and/or emissions reduction or overall effectiveness, of the vehicle emissions inspection program.

This Letter of Reprimand represents a penalty for the violation(s), and may be in addition to a term(s) or condition(s) of probation as described in a consent order in reference to this matter. The violation(s) will remain active on your Violation History Report for a period of twenty-four (24) months.

J. Michael Thompson, Jr.
 I/M Program Manager

c: file

An Agency of the Natural Resources Secretariat

NOTICE OF REJECTION FROM VEHICLE EMISSIONS TESTING

STATION NAME: _____ STATION NO.: _____

YEAR/MAKE/MODEL: _____

Your vehicle could not be tested safely on state approved equipment. Please note the checked box(es) below indicating what item(s) will need to be repaired before proper emissions testing can be performed on your vehicle:

<input type="checkbox"/>	TIRES (ASM Test Only) ▶	<input type="checkbox"/>	Exposed tire cords
<input type="checkbox"/>		<input type="checkbox"/>	Bubbles (self separation)
<input type="checkbox"/>		<input type="checkbox"/>	Cuts
<input type="checkbox"/>		<input type="checkbox"/>	Tread wear indicators exposed
<input type="checkbox"/>		<input type="checkbox"/>	"space saver" type spare tire mounted on drive axle
<input type="checkbox"/>		<input type="checkbox"/>	Radii and Bias Ply tires mixed on drive axle
<input type="checkbox"/>		<input type="checkbox"/>	Different sized tires mixed on drive axle
<input type="checkbox"/>		<input type="checkbox"/>	Other

<input type="checkbox"/>	Visible Smoke ▶	<input type="checkbox"/>	Tailpipe
<input type="checkbox"/>		<input type="checkbox"/>	Crankcase

<input type="checkbox"/>	Mechanical Integrity ▶	<input type="checkbox"/>	Engine
<input type="checkbox"/>		<input type="checkbox"/>	Transmission
<input type="checkbox"/>		<input type="checkbox"/>	Fluid Leak
<input type="checkbox"/>	Exhaust System Leak	<input type="checkbox"/>	Brakes
<input type="checkbox"/>		<input type="checkbox"/>	Overheating
<input type="checkbox"/>	Missing Fuel Filler Cap	<input type="checkbox"/>	Other

A manufacturer's emissions recall indicates that this vehicle is eligible for emissions related repair/service. Please contact your vehicle dealer for further details and assistance.

This vehicle is found to be in excess of 10,000 lbs. Gross Vehicle Weight Rating (GVWR). Please contact the Mobile Source Operations Section for assistance at (703) 583-3900 or toll-free in Virginia at 1-800-275-3844.

Emissions Inspector's Signature _____ Date _____



REQUEST FOR DEFERRAL OF VEHICLE EMISSIONS INSPECTION REQUIREMENT

INSTRUCTIONS
This form must be completed in its entirety. Failure to provide all the information requested on this form will result in denial of the deferral request.

The request for deferral of the vehicle emissions inspection requirement will be reviewed for completeness, and will be granted only if it is determined that it is unreasonable to have the vehicle returned to the Northern Virginia program area for the emissions inspection. Normally, a drive time of four (4) hours or less will not qualify for a deferral. If the deferral is granted, a memorandum will be sent to you, which you may submit to DMV with your registration renewal form.

Return this form along with a copy (not original) of the DMV registration renewal form to:

DEPARTMENT OF ENVIRONMENTAL QUALITY
MOBILE SOURCE OPERATIONS SECTION
13901 CROWN COURT
WOODBRIIDGE, VIRGINIA 22193-1453

For questions regarding this request, contact the Mobile Source Operations Section at 703-583-3900 or Toll-free in Virginia: 1-800-275-3844

OWNER INFORMATION	
Name: _____	_____
Address: _____	_____
_____	_____
Phone: (H) _____	(W) _____
VEHICLE INFORMATION	
Year: _____	Make: _____ Model: _____
Vehicle Identification Number (VIN): _____	
Plate Number: _____	Expiration Date: _____

MSOS-1 (Revised 08/2009) (Continue on Reverse Side)

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1. Address where vehicle is currently located: _____ _____ _____	2. Vehicle has been there since _____ (Enter Date) and will be there until _____ (Enter Date)	3. Reason for deferral request: _____ _____ _____ _____ _____ _____ _____ _____	4. Address where you want the deferral letter to be sent: _____ _____ _____	5. The information that is provided on this form is true and correct. I agree to obtain a vehicle emissions inspection within 15 days after returning the vehicle to Northern Virginia. Name: _____ (Please Print) Signature: _____ Date: _____
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DOCUMENTS INCORPORATED BY REFERENCE

EPA Recommended Practice for Naming I/M Calibration Gas, EPA-AA-TSS-83-8-B, Environmental Protection Agency, September 1983.

Acceleration Simulation Mode Test Procedures, Emission Standards, Quality Control Requirements and Equipment Specifications, EPA-AA-RSPD-IM-96-2, Environmental Protection Agency, July 1996.

[~~California Bureau of Automotive Repair, BAR-97, Emissions Inspection System Specifications, May 1996.~~]

[~~The BOCA National Mechanical Code/1993, Eighth Edition, Building Officials [and] Code Administrators [(BOCA) Mechanical Code, International, Inc.~~]

[~~Virginia Approved Span Gas Verification Requirements, Department of Environmental Quality.~~]

VA.R. Doc. No. R01-20; Filed May 28, 2002, 3:25 p.m.

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

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

Effective Date: July 17, 2002.

Summary:

The 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 subject to a specific limited budget (measured in tons) during the summer months of May 1 through September 30, otherwise known as the control period. The NO_x budget 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 budget limit, additional allowances may be purchased or the source may use banked allowances to offset the amount of NO_x generated above the budget limit.

An allocation set-aside budget is available to accommodate new sources that receive permits and commence operation after the distribution to the qualifying units (those in operation at least two years before the distribution date).

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.

Substantial Changes Made Since the Proposed Stage:

1. The 25-ton exemption has been changed to limit its use to only those units that burn gas or oil and to use the allocation methodology in 40 CFR Part 97 to allocate allowances. [9 VAC 5-140-40 B]
2. The applicability definitions and criteria have been changed to use the provisions from 40 CFR Part 97 for non-EGUs, as opposed to those found in 40 CFR Part 96. [9 VAC 5-140-20 and 9 VAC 5-140-40 A]
3. The values of the emissions budgets for both EGUs and non-EGUs and the compliance supplement pool have been changed to use the EPA numbers from 40 CFR Part 97. [9 VAC 5-140-910, 9 VAC 5-140-920 and 9 VAC 5-140-930]

4. The method for promulgating the emissions budget for EGUs and the compliance supplement pool has been changed to incorporate the EPA numbers (from 40 CFR Part 97) by reference, as opposed to including the budget numbers in the regulation. [9 VAC 5-140-910 and 9 VAC 5-140-920]

5. The initial allocations for the individual units are not included in the regulation. The initial and subsequent allocations will be accomplished outside the regulatory process. [9 VAC 5-140-940 and 9 VAC 5-140-950]

6. The allocation periods have been changed to use the periods in 40 CFR Part 97, as opposed to the initial allocation period of 10 years and subsequent period of one year. 40 CFR Part 97 provides the same initial and subsequent allocation periods (five years) for both EGUs and non-EGUs. [9 VAC 5-140-410 A through C and 9 VAC 5-140-420 A through C]

7. The basis for the allocations for new sources (those commencing operation after May 1, 1998) has been changed to provide that the allocation be based on the lesser of the most stringent state or federal emission limitation or the core emission rate, as opposed to the lesser of the permit limit or core emission rate. In cases where a unit is subject to a permit which provides for the use of multiple fuels, the primary fuel shall be used as the basis to determine the most stringent state or federal NO_x emissions limitation. [9 VAC 5-140-20 and 9 VAC 5-140-420 B, C and D]

8. Provisions for a new source allocation set-aside have been added to the regulation. The set-aside is formed by withholding allowances from both (EGU and non-EGU) source categories. The set-aside from the EGU budget is 5.0% for the years 2004 through 2008 and 2.0% for the years 2009 and later. The set-aside from the non-EGU budget is the difference between the sum of the initial allocations for the individual units and the non-EGU emissions budget in 40 CFR Part 97. [9 VAC 5-140-20 and 9 VAC 5-140-420 D and E]

9. The methodology in 40 CFR Part 97 is used for distribution of the new source set-asides for both EGUs and non-EGUs. Although the set-aside comes from the emissions budget for each of the two source categories, there is only one set-aside that may be distributed to any unit regardless of source category. The set-aside is distributed pro-rata to all requesting a portion of the set-aside. This provides a system whereby any unit is eligible for the set-aside if it did not receive an initial allocation and was issued a first time permit prior to January 1 of the year of distribution of the set-asides. EPA will confiscate the allocations for any control period, or portion thereof, during which the unit does not operate. [9 VAC 5-140-420 D, E and F]

10. The regulation, which is based on 40 CFR Part 96, has been changed to be consistent with some of the more flexible provisions of 40 CFR Part 97.

Summary of Public Comment and Agency Response: A summary of comments made by the public and the agency's

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response may be obtained from the promulgating agency or viewed at the Office of the Registrar of Regulations.

Agency Contact: Alma Jenkins, Office of Air Regulatory Development, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4070, FAX (804) 698-4510, toll free 1-800-592-5482 or (804) 698-4021/TTY.

REGISTRAR'S NOTICE: Action on the final regulation published in 18:14 VA.R. 1853-1892 March 25, 2002, was suspended in 18:14 VA.R. 1892-1893 March 25, 2002, in order to solicit additional public comments. The regulation was adopted as published in 18:14 VA.R. 1853-1892 March 25, 2002, with the additional changes shown below. Therefore, pursuant to § 2.2-4031 A of the Code of Virginia, the text of the final regulation is not set out at length; however, the changes from the regulation published in 18:14 VA.R. 1853-1892 March 25, 2002, are printed below.

**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. [No change from final.]

9 VAC 5-140-20. Definitions.

A. As used in this ~~chapter~~ part, 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~~ part 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.

"Adjusted trading program budget" means the total number of NO_x allowances equal to the state trading program budget set forth in 9 VAC 5-140-900, less the sum of the NO_x emission limitations (in tons) for each unit exempt under 9 VAC 5-140-40 B that is not allocated any NO_x allowances under 9 VAC 5-140-420 B or C for the control period and whose NO_x emission limitation (in tons of NO_x) is not included in the

amount calculated under 9 VAC 5-140-420 D 5 b (2) for the control period.

"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.

"Allocation set-aside budget" means the sum of:

1. For NO_x Budget units under 9 VAC 5-140-40 A 1, the adjusted trading program budget for the control period to which the allocation set-aside applies multiplied by the set-aside percentage, rounded to the nearest whole number of NO_x allowances as appropriate.
2. For NO_x Budget units under 9 VAC 5-140-40 A 2, [~~4,177~~ 1,000] tons per control period.

EDITOR'S NOTICE: There are no changes in the remainder of this section; therefore, the remaining text is not set out.

9 VAC 5-140-30 through 9 VAC 5-140-90. [No change from final.]

Article 2.

NO_x Authorized Account Representative for NO_x Budget Sources.

9 VAC 5-140-100 through 9 VAC 5-140-190. [No change from final.]

Article 3.

Permits.

9 VAC 5-140-200. [No change from final.]

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~~ 2001], 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~~ by the permitting authority's Title V operating permits regulations for final action on a permit application authority) 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~~ 2001], 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 by the permitting authority's Title V operating permits regulations for final action on a permit application authority) 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 2001], 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 by the permitting authority's state operating permits regulations for final action on a permit application authority) 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 2001], 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 by the permitting authority's state operating permits regulations for final action on a permit application authority) 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 through 9 VAC 5-140-290. [No change from final.]

Article 4.
Compliance Certification.

9 VAC 5-140-300 through 9 VAC 5-140-390. [No change from final.]

Article 5.
NO_x Allowance Allocations.

9 VAC 5-140-400 through 9 VAC 5-140-490. [No change from final.]

Article 6.
NO_x Allowance Tracking System.

9 VAC 5-140-500 through 9 VAC 5-140-540. [No change from final.]

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 will 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 will 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 (except deductions pursuant to 9 VAC 5-140-540 D 2), and that was allocated for that control period or a control period in a prior year .

B. Each year starting in [2005 2006], 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 will 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 will 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 will 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 will 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

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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 through 9 VAC 5-140-590. [No change from final.]

Article 7.
NO_x Allowance Transfers.

9 VAC 5-140-600 through 9 VAC 5-140-690. [No change from final.]

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 75.71 and 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~~ have complied 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 2003], 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 2003], 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 2003], and that report on a control [~~season~~ period] 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~~ period] 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. The owner or operator of a NO_x Budget unit under subdivision C 3, C 4, C 5, or C 6 of this section shall determine, record and report NO_x mass emissions, heat input rate, and any other values required to determine NO_x mass emissions (e.g., NO_x emission rate and heat input rate, or NO_x concentration and stack flow rate) in accordance with 40 CFR 75.70(g), from the date and hour that~~

the unit starts operating until the date and hour on which the continuous emission monitoring system, excepted monitoring system under Appendix D or E of 40 CFR Part 75, or excepted monitoring methodology under 40 CFR 75.19 is provisionally certified.

~~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 through 9 VAC 5-140-790. [No change from final.]

Article 9.
Individual Unit Opt-ins.

9 VAC 5-140-800 through 9 VAC 5-140-890. [No change from final.]

Article 10.
State Trading Program Budget and Compliance Supplement Pool.

9 VAC 5-140-900 through 9 VAC 5-140-940. [No change from final.]

VA.R. Doc. No. R99-149; Filed May 28, 2002, 3:28 p.m.

STATE WATER CONTROL BOARD

REGISTRAR'S NOTICE: The following regulatory action is exempt from the Administrative Process Act in accordance with § 2.2-4006 A 4 a of the Code of Virginia, which excludes regulations that are necessary to conform to changes in Virginia statutory law where no agency discretion is involved.

Title of Regulation: 9 VAC 25-60. Sewerage Regulations (REPEALED).

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

Effective Date: July 17, 2002.

Summary:

The Sewerage Regulations established implementation procedures for the joint supervision of the regulation of sewerage systems and sewage treatment works by the State Department of Health and the State Water Control Board. In 1991, amendments to the Code of Virginia revised the system and Chapter 194 of the 1991 Acts of Assembly provided that the Sewerage Regulations would remain in effect until new regulations were adopted by the State Board of Health. The State Board of Health's new regulations became effective on February 27, 2002. Thus, the Sewerage Regulations are being repealed.

VA.R. Doc. No. R02-189; Filed May 24, 2002, 1:53 p.m.

Title of Regulation: 9 VAC 25-260. Water Quality Standards (amending 9 VAC 25-260-5, [9 VAC 25-260-140,] 9 VAC 25-260-160, 9 VAC 25-260-170, 9 VAC 25-260-310, and 9 VAC 25-260-390 [; adding 9 VAC 25-260-155]).

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

Effective Date: 30 days after notice in the Virginia Register of EPA approval.

Summary:

Water Quality Standards consist of designated uses of the water body and narrative and numeric criteria that protect those uses by describing water quality in general terms and specifically as numerical limits for physical, chemical and biological characteristics of water.

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The amendments update the statewide bacteria criteria to match updates published by the Environmental Protection Agency (EPA). The bacteria criteria proposed are designed to protect all state waters for primary contact recreation (swimming). Also included are reworded shellfish bacteria criteria that reflect the National Shellfish Sanitation Commission recommendations for fecal coliform levels in shellfish waters. The amendments also incorporate a site-specific chronic ammonia criterion for some Potomac River tributaries. All of these amendments will be used in calculating Virginia Pollutant Discharge Elimination System permit limits where appropriate and for water quality assessments per the Clean Water Act 305(b) and 303(d) reports.

The State Water Control Board deferred making a decision on 9 VAC 25-260-140 and 9 VAC 25-260-155, which included revised statewide ammonia criteria. The criteria will be reconsidered at the July State Water Control Board meeting.

The adopted amendments to 9 VAC 25-260-5, 9 VAC 25-260-160, 9 VAC 25-260-170, 9 VAC 25-260-310 and 9 VAC 25-260-390 will become effective 30 days after publication in the Virginia Register of Regulations of a notice that the amendments have been approved by the U.S. Environmental Protection Agency.

Summary of Public Comments and Agency's Response: A summary of comments made by the public and the agency's may be obtained from the promulgating agency or viewed at the office of the Registrar of Regulations.

Agency Contact: Eleanor Daub, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4111 or e-mail emdaub@deq.state.va.us.

9 VAC 25-260-5. Definitions.

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

"Board" means State Water Control Board.

"Criteria" means elements of the board's water quality standards, expressed as constituent concentrations, levels, or narrative statements, representing a quality of water that supports a particular use. When criteria are met, water quality will generally protect the designated use.

"Designated uses" means those uses specified in water quality standards for each water body or segment whether or not they are being attained.

"Existing uses" means those uses actually attained in the water body on or after November 28, 1975, whether or not they are included in the water quality standards.

"Primary contact recreation" means any water-based form of recreation, the practice of which has a high probability for total body immersion or ingestion of water (examples include but are not limited to swimming, water skiing, canoeing and kayaking).

"Use attainability analysis" means a structured scientific assessment of the factors affecting the attainment of the use which may include physical, chemical, biological, and economic factors as described in 9 VAC 25-260-10 G.

"Water quality standards" means provisions of state or federal law which consist of a designated use or uses for the waters of the Commonwealth and water quality criteria for such waters based upon such uses. Water quality standards are to protect the public health or welfare, enhance the quality of water and serve the purposes of the State Water Control Law (§ 62.1-44.2 et seq. of the Code of Virginia) and the federal Clean Water Act (33 USC § 1251 et seq.).

REGISTRAR'S NOTICE: The proposed amendments to 9 VAC 25-260-140 and the addition of 9 VAC 25-260-155 that were published in 18:4 VA.R. 495-518 November 5, 2001, were deferred by the State Water Control Board and not adopted in final form. Therefore, those sections have been removed and are not being printed in this final regulatory action.

9 VAC 25-260-160. Fecal coliform bacteria; shellfish waters.

In all open ocean or estuarine waters capable of propagating shellfish or in specific areas where public or leased private shellfish beds are present, and including those waters on which condemnation or restriction classifications are established by the State Department of Health, the following criteria for fecal coliform bacteria shall apply:

The ~~median~~ *geometric mean* fecal coliform value for a sampling station shall not exceed an MPN (most probable number) of 14 per 100 milliliters. ~~Not more than 10% of samples~~ The 90th percentile shall not exceed an MPN of 43 for a 5-tube, 3-dilution test or 49 for a 3-tube, 3-dilution test.

9 VAC 25-260-170. ~~Fecal coliform~~ Bacteria; other waters.

A. ~~General requirements.~~ In all surface waters, except shellfish waters and certain waters ~~addressed~~ *identified* in subsection B of this section, the *following criteria shall apply to protect primary contact recreational uses:*

1. Fecal coliform bacteria shall not exceed a geometric mean of 200 fecal coliform bacteria per 100 ml of water for two or more samples over a ~~30-day period, or a fecal coliform bacteria level of 1,000 per 100 ml at any time~~ *calendar month nor shall more than 10% of the total samples taken during any calendar month exceed 400 fecal coliform bacteria per 100 ml of water. This criterion shall not apply for a sampling station after the bacterial indicators described in subdivision 2 of this subsection have a minimum of 12 data points or after June 30, 2008, whichever comes first.*

2. *E. coli and enterococci bacteria per 100 ml of water shall not exceed the following:*

	Geometric Mean ¹	Single Sample Maximum ²
Fresh [and Transition Zone Waters³		
enterococci	33	64
E. coli	126	235
Saltwater [and Transition Zone³]		
enterococci	35	104

¹ ~~[Calendar month average]~~ For two or more samples [taken during any calendar month].

² No single sample maximum for enterococci and E. coli shall exceed a 75% upper one-sided confidence limit based on a site-specific log standard deviation. If site data are insufficient to establish a site-specific log standard deviation, then 0.4 shall be used as the log standard deviation in fresh [and transition zone waters water] and 0.7 shall be as the log standard deviation in saltwater [and transition zone]. Values shown are based on a log standard deviation of 0.4 in freshwater and 0.7 in saltwater.

³ See 9 VAC 25-260-140 C for fresh [water] and transition zone [waters] delineation.

~~B. Disinfection policy. In waters that receive Notwithstanding the above, all sewage discharges, all the designated uses in these waters shall be protected disinfected to achieve the applicable bacteria concentrations in [subsection subdivision] A [2] of this section prior to discharge. The board's disinfection policy applies to these waters.~~

~~1. Sewage discharges in relation to water supply intakes. Discharges located within 15 miles upstream or one tidal cycle downstream of a water supply intake shall be disinfected in order to achieve a fecal coliform geometric mean value in the effluent equal to or less than 200 per 100 milliliters.~~

~~2. Sewage discharges into shellfish waters. When sewage discharges are permitted to or within five miles upstream of shellfish waters, they shall be disinfected in order to achieve a fecal coliform geometric mean value in the effluent equal to or less than 200 per 100 milliliters.~~

~~3. Sewage discharges into other waters. Sewage discharges into other waters shall be adequately treated and disinfected as necessary to protect all the designated uses in these waters. Generally, these discharges shall achieve a fecal coliform geometric mean value in the effluent equal to or less than 200 per 100 milliliters.~~

However, the board, with the advice of the State Department of Health, may determine that reduced or no disinfection of a discharge is appropriate on a seasonal or year-round basis. In making such a determination, the board shall consider the designated uses of these waters and the seasonal nature of those uses. Such determinations will be made during the process of approving, issuing, or reissuing the discharge permit and shall be in conformance with a board approved site-specific use-attainability analysis performed by the permittee. When making a case-by-case determination concerning the appropriate level of disinfection for sewage discharges into these waters, the board shall provide a 45-day public notice period and opportunity for a public hearing.

9 VAC 25-260-310. Special standards and requirements.

The special standards are shown in small letters to correspond to lettering in the basin tables. The special standards are as follows:

a. Shellfish waters. In all open ocean or estuarine waters capable of propagating shellfish or in specific areas where public or leased private shellfish beds are present, including those waters on which condemnation or restriction classifications are established by the State Department of Health, the following criteria for fecal coliform bacteria will apply:

The [~~median geometric mean~~] fecal coliform value for a sampling station shall not exceed an MPN of 14 per 100 ml of sample and [~~not more than 10% of samples the 90th percentile~~] shall [~~not~~] exceed 43 for a 5-tube, 3-dilution test or 49 for a 3-tube, 3-dilution test.

The shellfish area is not to be so contaminated by radionuclides, pesticides, herbicides, or fecal material that the consumption of shellfish might be hazardous.

b. Policy for the Potomac Embayments. At its meeting on September 12, 1996, the board adopted a policy (9 VAC 25-415-40 et seq. Policy for the Potomac Embayments) to control point source discharges of conventional pollutants into the Virginia embayment waters of the Potomac River, and their tributaries, from the fall line at Chain Bridge in Arlington County to the Route 301 bridge in King George County. The policy sets effluent limits for BOD₅, total suspended solids, phosphorus, and ammonia, to protect the water quality of these high profile waterbodies.

c. Cancelled.

d. Aquia Creek. No proposal resulting in the discharge of treated wastes to Aquia Creek will be approved unless the following is provided:

(1) At least 100 days' storage to allow complete elimination of discharges during the low-flow summer months; or

(2) Other treatment, based on sound engineering concepts (preferably with experimental data to show their feasibility), for nutrient removal prior to discharge.

e. Cancelled.

f. Cancelled.

g. Occoquan watershed policy. At its meeting on July 26, 1971 (Minute 10), the board adopted a comprehensive pollution abatement and water quality management policy for the Occoquan watershed. The policy set stringent treatment and discharge requirements in order to improve and protect water quality, particularly since the waters are an important water supply for Northern Virginia. Following a public hearing on November 20, 1980, the board, at its December 10-12, 1980, meeting, adopted as of February 1, 1981, revisions to this policy (Minute 20). These revisions became effective March 4, 1981. Additional amendments were made following a public hearing on August 22, 1990, and adopted by the board at its

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September 24, 1990, meeting (Minute 24) and became effective on December 5, 1990. Copies are available upon request from the Department of Environmental Quality.

h. Cancelled.

i. Cancelled.

j. Cancelled.

k. Cancelled.

l. Cancelled.

m. The following effluent standards apply to the entire Chickahominy watershed above Walker's Dam:

CONSTITUENT	CONCENTRATION
1. Biochemical Oxygen demand 5-day at 20	6.0 mg/l monthly average, with not more than 5.0% of individual samples to exceed 8.0 mg/l
2. Settleable Solids	Not to exceed 0.1 ml/l
3. Suspended Solids	5.0 mg/l monthly average, with not more than 5.0% of individual samples to exceed 7.5 mg/l
4. Ammonia Nitrogen	Not to exceed 2.0 mg/l as N
5. Total Phosphorus	Not to exceed 0.1 mg/l monthly average for all discharges with the exception of [Holly Farms Poultry Industries <i>Tyson Foods</i>], Inc., which shall meet 0.3 mg/l monthly average and 0.5 mg/l daily maximum.
6. Other Physical and Chemical Constituents	Other physical or chemical constituents not specifically mentioned will be covered by additional specifications as conditions detrimental to the stream arise. The specific mention of items 1 through 5 does not necessarily mean that the addition of other physical or chemical constituents will be condoned.

n. No sewage discharges, regardless of degree of treatment, should be allowed into the James River between Boshier and Williams Island Dams.

o. The concentration and total amount of impurities in Tuckahoe Creek and its tributaries of sewage origin shall be limited to those amounts from sewage, industrial wastes, and other wastes which are now present in the stream from natural sources and from existing discharges in the watershed.

p. Cancelled.

q. Rappahannock River Basin.

The following effluent standards (adopted in Minute 17 from the proceedings of the board at its meeting on

September 17-18, 1972) apply to all waste discharges to the Rappahannock River Basin above the proposed Salem Church Dam in accordance with subdivisions (1) and (2) below:

CONSTITUENT	FINAL EFFLUENT REQUIREMENTS (WEEKLY AVERAGE)
BOD - mg/l	1
COD - mg/l	10
Suspended solids - mg/l	0 (unmeasurable)
MBAS - mg/l	0.1
Turbidity (Jackson Units)	0.4
Fecal Coliform Bacteria per 100 ml sample	Less than 2
Nitrogen - mg/l	1
Phosphorus - mg/l	0.1

(1) After the date of Congressional authorization for actual construction of the dam has been given, all new proposals shall comply fully with the adopted standards of the paragraph above and all existing owners shall immediately commence the necessary planning, financing and design to ensure that facilities are completed prior to final completion of the construction of the dam; and

(2) Any new proposals for waste discharges to the area encompassed by the standards shall provide such conventional treatment that in the opinion of the State Department of Health, the staff and the board, satisfactory advanced waste treatment units can readily be added when funds for construction of the Salem Church Dam have been authorized.

r. Cancelled.

s. Chlorides not to exceed 40 mg/l at any time.

t. Cancelled.

u. Maximum temperature for the New River Basin from West Virginia state line upstream to the Giles-Montgomery County line:

The maximum temperature shall be 27°C (81°F) unless caused by natural conditions; the maximum rise above natural temperatures shall not exceed 2.8°C (5°F).

This maximum temperature limit of 81°F was established in the 1970 water quality standards amendments so that Virginia temperature criteria for the New River would be consistent with those of West Virginia, since the stream flows into that state.

v. The maximum temperature of the New River and its tributaries (except trout waters) from the Montgomery-Giles County line upstream to the Virginia-North Carolina state line shall be 29°C (84°F).

w. Cancelled.

x. Clinch River from the confluence of Dumps Creek at river mile 268 at Carbo downstream to river mile 255.4. The special water quality criteria for copper (measured as total recoverable) in this section of the Clinch River are 12.4 µg/l for protection from chronic effects and 19.5 µg/l for protection from acute effects. These site-specific criteria are needed to provide protection to several endangered species of freshwater mussels.

y. Tidal freshwater Potomac River and tributaries that enter the tidal freshwater Potomac River from Cockpit Point (below Occoquan Bay) to the fall line at Chain Bridge. During November 1 through February 14 of each year the [~~chronic ammonia criterion for early life stage of fish absent shall apply (see 9 VAC 25-260-155 C). This special standard is adopted in accordance with 9 VAC 5-260-155 C 1 b.~~ 30-day average concentration of total ammonia nitrogen (in mg N/L) shall not exceed, more than once every three years on the average, the following chronic ammonia criterion:

$$\left(\frac{0.0577}{1 + 10^{7.688-pH}} + \frac{2.487}{1 + 10^{pH-7.688}} \right) \times 1.45(10^{0.028(25-MAX)})$$

MAX = temperature in °C or 7, whichever is greater.

The default design flow for calculating steady state waste load allocations for this chronic ammonia criterion is the 30Q10, unless statistically valid methods are employed which demonstrate compliance with the duration and return frequency of this water quality criterion.]

9 VAC 25-260-390. [No change from proposed.]

FORMS

[No change from proposed.]

DOCUMENTS INCORPORATED BY REFERENCE

[No change from proposed.]

VA.R. Doc. No. R01-13; Filed May 17, 2002, 1:56 p.m.

TITLE 11. GAMING

VIRGINIA RACING COMMISSION

REGISTRAR'S NOTICE: The Virginia Racing Commission is exempt from the Administrative Process Act pursuant to subdivision B 22 of § 2.2-4002 of the Code of Virginia when promulgating regulations regulating the types of pari-mutuel wagering pools available for live or simulcast horse racing.

Title of Regulation: 11 VAC 10-20. Regulations Pertaining to Horse Racing with Pari-Mutuel Wagering (amending 11 VAC 10-20-260 through 11 VAC 10-20-310, 11 VAC 10-20-330, and 11 VAC 10-20-340).

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

Effective Date: May 22, 2002.

Summary:

The amendments provide for the placement of any underpayment by a licensee in a pari-mutuel wagering pool to be added to the pool for the next race meeting of the same breed. In addition, the amendments set forth provisions for handling situations where commingling cannot take place in simulcast horse racing due to a failure in communications.

Agency Contact: William H. Anderson, Director of Policy and Planning, Virginia Racing Commission, 10700 Horsemen's Road, New Kent, VA 23124, telephone (804) 966-7404, e-mail Anderson@vrc.state.va.us.

11 VAC 10-20-260. Generally.

All permitted wagering shall be under a pari-mutuel wagering system whereby the holders of winning tickets divide the total amount wagered, less retainage, in proportion to the sums they have wagered individually. All other systems of wagering other than pari-mutuel, e.g., bookmaking and auction-pool selling, are prohibited and any person participating or attempting to participate in prohibited wagering shall be excluded from the enclosure or satellite facility.

A. Persons under the age of 18 are prohibited from wagering. No person under the age of 18 shall be permitted by any licensee to purchase or cash a pari-mutuel ticket. No employee of the licensee shall knowingly sell or cash any pari-mutuel ticket for a person under the age of 18.

B. Posted order of finish. Payment of valid pari-mutuel tickets shall be made on the basis of the order of finish as posted on the display devices and declared "official" by the stewards. Any subsequent change in the order of finish or award of purse money as may result from a ruling by the stewards or commission shall in no way affect the pari-mutuel payout.

C. Errors in payment. The licensee shall be responsible for the correctness of all payouts posted as "official" on the display devices. If an error is made in posting the payout figures on the display devices and discovered before any tickets are cashed, the error shall be corrected accompanied by a public address announcement, and only the correct amounts shall be used in the payout, irrespective of the initial error on the display devices.

1. The licensee shall compare the two independent final pool totals and payouts calculated by the totalizator prior to posting them on the display devices. In the event of a discrepancy between the two sets of pool totals and payouts and the inability of the totalizator to determine which of the sets is correct, the highest pool total and payouts shall be used.

2. If an error is made in posting the payout figures on the display devices and discovered after tickets have been cashed, where the public is underpaid, the amount of the underpayment shall be added to the same pool immediately following. Where the public is overpaid, the amount of the overpayment shall be absorbed by the licensee.

3. If any underpayment is discovered after the close of the horse race meeting or an opportunity does not exist to add the amount of the underpayment to the same pool, the total

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underpayment shall be paid to the Commonwealth of Virginia in a manner prescribed by the commission placed in an interest-bearing account and added to the same pool at the next race meeting of the same breed.

D. Minimum wagers. The minimum wager for straight wagering shall be \$2.00. The licensee may determine the minimum wager for multiple wagering, which shall be no less than \$1.00.

E. Minimum payouts. The licensee shall pay to the holder of any ticket entitling the holder to participate in the distribution of a pari-mutuel pool the amount wagered by the holder plus a minimum profit of 5.0%. If such a payout creates a deficiency in the pari-mutuel pool, the licensee shall make up the deficiency from its share of the pari-mutuel wagering.

The licensee, with the approval of the stewards, may bar wagering on a horse or entry in any or all pari-mutuel pools in a stakes race, handicap, futurity or other special event where the licensee has good and sufficient reason to believe that accepting wagers on the horse or entry may result in a deficiency or minus pool. The decision to bar wagering on a horse or entry shall be announced publicly before wagers are accepted on that race.

F. Posting of regulations. A general explanation of this chapter may be posted for the benefit of the public in the wagering areas of the enclosure and satellite facilities.

G. Identification of holder. The licensee shall require positive identification of a holder of a valid winning pari-mutuel ticket before the payment when, in the stewards' discretion, circumstances warrant this action.

H. Wagers placed in cash. The licensee shall only accept wagers placed in cash or vouchers and then only at the racetrack or satellite facilities. It shall be the responsibility of the licensee to instruct the mutuel clerks to accept wagers on a "cash only" basis.

11 VAC 10-20-270. Request for types of pari-mutuel pools.

A. Generally. Each licensee shall submit a request in writing to the commission for approval of the types of pari-mutuel wagering pools that are to be offered to the public during the horse race meeting. The request for approval of types of pari-mutuel wagering pools shall be submitted to the commission in writing no less than 30 days before the scheduled opening day of the horse race meeting.

~~B. Where to file request. The licensee shall submit the request in writing to the general business office of the commission.~~

~~1. A request delivered by hand or by certified mail will be timely only if received at the general business office of the commission by 5 p.m. on or before the date prescribed.~~

~~2. Delivery to other than the commission's general business office or to commission personnel by hand or by mail is not acceptable.~~

~~3. The licensee assumes full responsibility for the method chosen to deliver the request.~~

~~G. B. Content of request. The licensee's request in writing shall include a statement of how the request will provide for~~

the promotion, sustenance and growth of a native industry, in a manner consistent with the health, safety and welfare of the people, except that the commission, in its discretion, may waive the foregoing.

~~D. Revision of request. A licensee may make a revision of a properly submitted request for types of pari-mutuel wagering pools.~~

11 VAC 10-20-280. Approval of pools.

A. Generally. The commission shall promptly consider a request for types of pari-mutuel wagering pools.

B. Consideration of requests. Upon receipt of a request for approval or modification of types of pari-mutuel wagering pools, the commission shall consider the request at its next regularly scheduled meeting, and may, in its discretion, approve the types of pari-mutuel wagering pools as requested, modify the request, or deny the request.

C. Criteria for approval of pools. The commission, in making its determination, must consider the success and integrity of horse racing; the public health and safety, and welfare; and public interest, necessity, and convenience.

~~D. Approving types of pari-mutuel pools. The commission shall approve, deny or modify a request for types of pari-mutuel wagering pools.~~

11 VAC 10-20-290. Pari-mutuel tickets.

A. Generally. A valid pari-mutuel ticket is evidence of a contribution to the pari-mutuel pool operated by the licensee and is evidence of the obligation of the licensee to pay to the holder the portion of the distributable amount of the pari-mutuel pool as is represented by the ticket.

B. Valid pari-mutuel tickets. To be deemed a valid pari-mutuel ticket, the ticket must have been issued by a pari-mutuel ticket machine operated by the licensee and recorded as a ticket entitled to a share of the pari-mutuel pool, and contain imprinted information as to:

1. The name of the licensee;
2. A unique identifying number or code;
3. *The name of the track at which the wager is placed;*
- ~~3.~~ 4. Identification of the terminal at which the ticket was issued;
4. 5. A designation of the racing day for which the wagering transaction was issued;
- ~~5.~~ 6. The race number for which the pool was conducted;
- ~~6.~~ 7. The types or types of wagers represented;
- ~~7.~~ 8. The number or numbers representing the wagering interests for which the wager was made; and
- ~~8.~~ 9. The amount or amounts of the contributions to the pari-mutuel pool or pools for which the ticket is evidence.

C. Ticket cancellation. All tickets with a total value of \$250 or less on live or simulcast races may be cancelled at any window at any time prior to post time for that race. All tickets exceeding \$250 may also be cancelled at any time prior to

post time for the race on which the wager was made. However, this cancellation requires the approval of the mutuel manager or his designee. It shall be the responsibility of the mutuel manager or his designee to determine if the approval of the cancellation will considerably alter or manipulate the pari-mutuel pool, *and a written report must be submitted to the commission.*

D. Invalid claims. There shall be no refunds or payouts for lost or destroyed tickets, or tickets which have been mutilated beyond identification.

E. Identification of tickets. The responsibility for identifying valid pari-mutuel tickets rests with the licensee.

F. Limits on cashing tickets. Payment on valid pari-mutuel tickets, including tickets where refunds are ordered, shall be made only upon presentation and surrender of valid pari-mutuel tickets to the licensee within 180 days after the purchase of the ticket. Failure to present any valid pari-mutuel ticket to the licensee within 180 days after the purchase of the ticket shall constitute a waiver of the right to payment.

11 VAC 10-20-300. Operations of the mutuel department.

A. Generally. Each licensee shall strive to keep the daily program of racing progressing as expeditiously as possible with due regard for the health, safety, and comfort of the public and participants. The licensee shall provide a sufficient number of mutuel windows and clerks so that the public will be conveniently accommodated.

B. Post time. Post time for the first race on each racing day shall be approved by the commission upon written request by the licensee. Post time for subsequent races on the same program shall be fixed by the mutuel manager. Where heat racing is utilized in harness racing, the time between separate heats of a single race shall not be less than 40 minutes.

C. Termination of wagering. The pari-mutuel machines shall be locked by a steward immediately upon the start of the race through an electrical control in the stewards' stand or before the start of a race through a method subject to the approval of the commission.

D. Unwarranted delays. If the start of the race is delayed two minutes or more beyond the official post time, as shown on the display devices, for no good reason, the stewards may, in their discretion, lock the ticket-issuing machines.

E. Commencement of wagering. Mutuel windows shall open no less than 30 minutes before the first race. Cashing of tickets shall begin, and selling shall resume, as soon as possible after the official results of a race have been posted on the display devices.

F. Interruptions of wagering. If, for any reason, including a malfunction of the totalizator, the ticket-issuing machines are locked during the wagering on a race before the start, they shall remain locked until after the race. Wagering shall cease on that race, and the payout for that race shall be computed on the sums then wagered in each pool. However, in the event the ticket-issuing machines are inadvertently locked through some human error or mechanical problem, the ticket-issuing machines shall be reopened only on the approval of

the stewards, if the system balances when it is again operational.

G. Conclusion of wagering. No pari-mutuel tickets may be sold after the totalizator has been locked, and the licensee shall not be responsible for pari-mutuel ticket sales entered into but not completed by issuance of a ticket before the totalizator has been locked.

H. Designated windows. No pari-mutuel tickets shall be sold except by the licensee, and pari-mutuel tickets shall only be sold at regular windows properly designated by signs and freestanding self-service or ticket issuing devices.

I. Compliance with tax regulations. All payouts on winning tickets shall be subject to withholding of federal and state taxes when the amount of the payout exceeds the dollar threshold set by the U.S. Internal Revenue Service. In those cases where the payouts require identification and deduction of withholding taxes prior to cashing pari-mutuel tickets to holders, the licensee shall comply with the applicable regulations of the Internal Revenue Service and the statutes of the Commonwealth of Virginia requiring identification and deduction of withholding taxes.

J. Emergency situations. If any emergency arises in connection with the operation of the mutuel department at a racetrack or satellite facility and the emergency is not covered by these regulations and an immediate decision is necessary, the mutuel manager shall make the decision, and make a prompt report of the facts to the stewards and the commission.

K. Simulcast pools. When wagers are commingled at a racetrack in another jurisdiction, the licensee shall make payouts on winning wagers at the price posted at the racetrack where the live race took place. However, once wagering has commenced and circumstances prevent commingling *some or all* of the wagers to the racetrack in the other jurisdiction, ~~there shall be a refund of all wagers~~ *the licensee, through a previously established written policy approved by the commission, shall:*

1. *Pay prices posted by the racetrack in the other jurisdiction;*

2. *Establish its own pools using the wagers that were not commingled with the racetrack in the other jurisdiction;*

~~3.~~ *Refund all wagers, if an announcement is made not less than two minutes prior to the post time that commingling cannot be accomplished and the circumstances ~~involves~~ involve only one race; or*

~~4.~~ *Refund all wagers, if the wager involves more than one race and an announcement that commingling cannot be accomplished by the start of the first race or not more than 10 minutes after the finish of the first race of the wager, unless there is a payout due a wager as a result of the first race.*

11 VAC 10-20-310. Wagering interests.

A. Generally. The licensee shall be responsible for the coupling of horses for wagering purposes in accordance with these regulations and shall provide wagering opportunities in

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accordance with the success and integrity of horse racing as well as the public interest.

B. Coupled entries. When two or more horses run in a race and are coupled for wagering purposes, a wager on one of the horses shall be a wager on all of them. The horses so coupled are called "an entry."

C. Mutuel field. When the individual horses competing in a race exceed the numbering capacity of the display devices, the highest numbered horses within the capacity of the display devices and all horses of a higher number shall be grouped together and called the "mutuel field," and a wager on one of them shall be a wager on all of them.

D. Pools dependent upon wagering interests. Unless the commission otherwise provides, at the time the pools are opened for wagering, the licensee:

1. May offer win, place and show wagering on all races with six or more wagering interests;
2. May be allowed to prohibit show wagering on any race with five or fewer wagering interests scheduled to start;
3. May be allowed to prohibit place wagering on any race with four or fewer wagering interests scheduled to start;
4. May be allowed to prohibit quinella wagering on any race with three or fewer wagering interests scheduled to start;
5. May be allowed to prohibit exacta wagering on any race with three or fewer wagering interests scheduled to start;
6. ~~Shall~~ May prohibit twin trifectas wagering on any race with seven or fewer wagering interests scheduled to start; and
7. ~~Shall~~ May prohibit twin superfecta wagering on any race with seven or fewer wagering interests scheduled to start.

E. Extraordinary circumstances. In extraordinary circumstances, discretion is vested in the stewards to cancel any trifecta, ~~perfecta exacta~~, quinella, or any other multiple wager pool, and assign multiple wagering pools to other races when the stewards believe it would best maintain in horse racing complete honesty and integrity.

F. Stake races and special events. In the case of stake races, handicaps, futurities, and other special events, the licensee may offer any straight and multiple wagering pools regardless of the number of wagering interest upon submission of a request in writing to the commission and approval from the commission or its executive secretary.

11 VAC 10-20-330. Multiple wagering.

A. Generally. Daily double, quinella, ~~perfecta exacta~~, trifecta, quinella double, pick (n), twin trifecta, and superfecta pari-mutuel wagering pools shall be considered "multiple wagering." In any race or races, the daily double, quinella, ~~perfecta exacta~~, trifecta, quinella double, pick (n), twin trifecta, and superfecta pools are treated separately and the distribution of the pools are calculated independently of each other. The "net pool" to be distributed shall be all sums wagered in the pool, less retainage and breakage, as defined elsewhere.

B. Daily double pools. The daily double wager is the purchase of a pari-mutuel ticket to select the two horses that will finish first in the two races specified as the daily double. If either of the selections fails to win, the pari-mutuel ticket is void, except as otherwise provided. The amount wagered on the winning combination, the horse or wagering interest which finishes first in the first race coupled with the horse or wagering interest finishing first in the second race of the daily double, is deducted from the net pool to determine the profit. The profit is divided by the amount wagered on the winning combination, the quotient being the profit per dollar wagered on the winning daily double. The return to the holder includes the amount wagered and the profit. In addition, the following provisions apply to daily double pools:

1. If there is a dead heat for first including two different wagering interests in one of the two daily double races, the daily double pool is distributed as if it were a place pool, with one-half of the net pool allocated to wagers combining the single winner of one daily double race and one of the wagering interests involved in the dead heat in the other daily double race, and with the other one-half of the net pool allocated to the wagers combining the single winner of one daily double race and the other wagering interest involved in the dead heat in the other daily double race.

2. If there are dead heats for first involving different wagering interests in each of the daily double races which result in winning combinations, the net pool shall be allocated equally to the winning combinations after first deducting from the net pool the amount wagered on all winning combinations for proportionate allocation to the winning daily double combinations.

3. If no daily double ticket is sold combining the horse or wagering interest which finishes first in one of the daily double races, the daily double pool is distributed as if it were a win pool, with the net pool allocated to wagering combinations which include the horse or wagering interest which finished first in one of the daily double races.

4. If no daily double ticket is sold combining the horses or wagering interests which finish first in both the first and second race of the daily double, then the winning combinations for distribution of the daily double profit shall be that combining the horses or wagering interests which finished second in each of the daily double races.

5. If, after daily double wagering has begun, a horse not coupled with another as a wagering interest in the first race of the daily double is excused by the stewards or is prevented from obtaining a fair start, then daily double wagers combining the horse shall be deducted from the daily double pool and shall be promptly refunded.

6. If, after the first race of the daily double has been run, a horse not coupled with another as a wagering interest in the second race of the daily double is excused by the stewards or prevented from obtaining a fair start, then daily double wagers combining the winner of the first daily double race with the horse, which was excused or was prevented from obtaining a fair start, shall be allocated a consolation daily double.

7. Consolation daily double payoffs shall be determined by dividing the net daily double pool by the amount wagered combining the winner of the first daily double race with every horse or wagering interest scheduled to start in the second daily double race, the quotient being the consolation payoff per dollar wagered combining the winner of the first daily double race with the horse prevented from racing in the second daily double race. The return to the holder includes the amount wagered and the profit. The consolation payoff shall be deducted from the net daily double pool before calculation and allocation of wagers on the winning daily double combination.

8. If for any reason the first race of the daily double is cancelled and declared "no contest" a full and complete refund shall be promptly made of the daily double pool.

9. If for any reason the second race of the daily double is cancelled and declared "no contest," the net daily double pool shall be paid to the holders of daily double tickets which include the winner of the first race. If no such ticket is sold, then the net daily double pool shall be paid to the holders of daily double tickets which include the second place horse. If no daily double tickets were sold on the second place horse, then the licensee shall make a prompt refund.

C. Quinella pools. The quinella wager is the purchase of a pari-mutuel ticket to select the first two horses to finish in the race. The order in which the horses finish is immaterial. The amount wagered on the winning combination, the first two finishers irrespective of which horse finishes first and which horse finishes second, is deducted from the net pool to determine the profit. The net pool is divided by the amount wagered on the winning combination. The return to the holder includes the amount wagered and the profit. In addition, the following provisions apply to the quinella pools:

1. If there is a dead heat for first between horses including two different wagering interests, the net quinella pool is distributed as if no dead heat occurred. If there is a dead heat among horses involving three different wagering interests, the net quinella pool is distributed as if it were a show pool and the pool is allocated to wagers combining any of the three horses finishing in the dead heat for first.

2. If there is a dead heat for second between horses including two different wagering interests, the net quinella pool is distributed as if it were a place pool and it is allocated to wagers combining the first finisher with either horse finishing in a dead heat for second. If the dead heat is among horses involving three different wagering interests, the net quinella pool is distributed as if it were a show pool and it is allocated to wagers combining the first horse with each of the three horses finishing in a dead heat for second.

3. If horses representing a single wagering interest finish first and second, the net quinella pool shall be allocated to wagers combining the single wagering interest with the horse or wagering interest with the horses or wagering interest which finishes third.

4. If no quinella ticket is sold combining the first finisher with one of the horses finishing in a dead heat for second, then the net quinella pool is allocated to wagers combining the

first finisher with the other horse finishing in a dead heat for second.

5. If no quinella ticket is sold combining the first finisher with either of the horses finishing in a dead heat for second, then the net quinella pool is allocated to wagers combining the two horses which finished in the dead heat for second.

6. If no quinella ticket is sold combining the first finisher with either of the horses finishing in a dead heat for second, or combining the two horses which finished in a dead heat for second, the net quinella pool is distributed as if it were a show pool and it is allocated to wagers combining any of the first three finishers with any other horses.

7. If no quinella ticket is sold combining the first two finishers, then the net quinella pool shall be distributed as if it were a place pool and it is allocated to wagers combining the first finisher with any other horses and to wagers combining the second finisher with any other horse.

8. If no quinella ticket is sold combining horses or wagering interests as would require distribution, a full and complete refund shall be made of the entire quinella pool.

9. If a horse is excused by the stewards, no further quinella tickets shall be issued designating that horse, and all quinella tickets previously issued designating that horse shall be refunded and deducted from the gross pool.

D. ~~Perfecta~~ *Exacta* pools. The ~~perfecta~~ *exacta* wager is the purchase of a pari-mutuel ticket to select the two horses that will finish first and second in a race. Payment of the ticket shall be made only to the purchaser who has selected the same order of finish as officially posted. The amount wagered on the winning combination, the horse finishing first and the horse finishing second, in exact order, is the amount to be deducted from the net ~~perfecta~~ *exacta* pool to determine the profit. The profit is divided by the amount wagered on the winning combination, the quotient being the profit per dollar wagered on the winning ~~perfecta~~ *exacta* combination. The return to the holder includes the amount wagered and the profit. In addition, the following provisions apply to the ~~perfecta~~ *exacta* pool:

1. If no ticket is sold on the winning combination of a ~~perfecta~~ *an exacta* pool, the net ~~perfecta~~ *exacta* pool shall be distributed equally between holders of tickets selecting the winning horse to finish first and holders of tickets selecting the second place horse to finish second.

2. If there is a dead heat between two horses for first place, the net ~~perfecta~~ *exacta* pool shall be calculated and distributed as a place pool, one-half of the net ~~perfecta~~ *exacta* pool being distributed to holders of tickets selecting each of the horses in the dead heat to finish first with the other horse to finish second.

In case of a dead heat between two horses for second place, the net ~~perfecta~~ *exacta* pool shall be calculated as a place pool, one-half of the net ~~perfecta~~ *exacta* pool being distributed to holders of tickets selecting the horse to finish first and one horse in the dead heat, and the other one-half being distributed to holders selecting the horse to finish first and the other horse in the dead heat.

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3. If there is a dead heat for second place and if no ticket is sold on one of the two winning combinations, the entire net ~~perfecta exacta~~ pool shall be calculated as a win pool and distributed to holders of the other winning combination. If no tickets combine the winning horse with either of the place horses in the dead heat, the net ~~perfecta exacta~~ pool shall be calculated and distributed as a place pool to holders of tickets representing any interest in the net pool.
 4. If an entry finishes first and second, or mutuel field horses finish first and second, the net pool shall be distributed to holders of tickets selecting the entry to win combined with the horses having finished third.
 5. If no ticket is sold that would require distribution of a ~~perfecta an exacta~~ pool, the licensee shall make a complete and full refund of the ~~perfecta exacta~~ pool.
 6. If a horse is excused by the stewards, no further ~~perfecta exacta~~ tickets shall be issued designating that horse, and all ~~perfecta exacta~~ tickets previously issued designating that horse shall be refunded and deducted from the gross pool.
- E. Trifecta pools. The trifecta wager is purchase of a pari-mutuel ticket to select the three horses that will finish first, second, and third in a race. Payment of the ticket shall be made only to the holder who has selected the same order of finish as officially posted. The amount wagered on the winning combination, the horse finishing first, the horse finishing second, and the horse finishing third, in exact order, is deducted from the pool to determine the profit. The profit is divided by the amount wagered on the winning combination, the quotient being the profit per dollar wagered on the winning combination. The return to the holder includes the amount wagered and the profit.
1. If no ticket is sold on the winning combination, the net trifecta pool shall be distributed equally among holders of tickets designating the first two horses in order.
 2. If no ticket is sold designating, in order, the first two horses, the net trifecta pool shall be distributed equally among holders of tickets designating the horse to finish first.
 3. If no ticket is sold designating the first horse to win, the net trifecta pool shall be distributed equally among holders of tickets designating the second and third horses in order. If no such ticket is sold, then the licensee shall make a prompt refund.
 4. If less than three horses finish, the payout shall be made on tickets selecting the actual finishing horses, in order, ignoring the balance of the selection.
 5. If there is a dead heat, all trifecta tickets selecting the correct order of finish, counting a horse in a dead heat as finishing in either position involved in the dead heat, shall be winning tickets. The net trifecta pool shall be calculated as a place pool.
 6. The uncoupling for wagering purposes of horses having common ties is prohibited in races upon which trifecta wagering is conducted *except for stakes, futurities, and other special events*.
7. If a horse is excused by the stewards, no further trifecta tickets shall be issued designating that horse, and all trifecta tickets previously issued designating the horse shall be refunded and deducted from the gross pool.
- F. Quinella double pools. The quinella double requires selection of the first two finishers, irrespective of order, in each of two specified races.
1. The net quinella double pool shall be distributed to winning wagers in the following precedence, based upon the official order of finish:
 - a. If a coupled entry or mutuel field finishes as the first two contestants in either race, as a single price pool to those selecting the coupled entry or mutuel field combined with the next separate wagering interest in the official order of finish for that race, as well as the first two finishers in the alternate quinella double race; otherwise
 - b. As a single price pool to those who selected the first two finishers in each of the two quinella double races; but if there are no such wagers, then
 - c. As a profit split to those who selected the first two finishers in either of the two quinella double races; but if there are no such wagers on one of those races, then
 - d. As a single price pool to those who selected the first two finishers in the one covered quinella double race; but if there were no such wagers, then
 - e. The entire pool shall be refunded on quinella double wagers for those races.
 2. If there is a dead heat for first in either of the two quinella double races involving:
 - a. Horses representing the same wagering interest, the quinella double pool shall be distributed to those selecting the coupled entry or mutuel field combined with the next separate wagering interest in the official order of finish for that race.
 - b. Horses representing two wagering interests, the quinella double pool shall be distributed as if no dead heat occurred.
 - c. Horses representing three or more wagering interests, the quinella double pool shall be distributed as a profit split.
 3. If there is a dead heat for second in either of the quinella double races involving horses representing the same wagering interest, the quinella double pool shall be distributed as if no dead heat occurred.
 4. If there is a dead heat for second in either of the quinella double races involving horses representing two or more wagering interests, the quinella double pool shall be distributed as profit split.
 5. Should a wagering interest in the first half of the quinella double be scratched prior to the first quinella pool race being declared official, all money wagered on combinations including the scratched wagering interest shall be deducted from the quinella double pool and refunded.

6. Should a wagering interest in the second half of the quinella double be scratched prior to the close of wagering on the first quinella double contest, all money wagered on combinations including the scratched wagering interest shall be deducted from the quinella double pool and refunded.

7. Should a wagering interest in the second half of the quinella double be scratched after the close of wagering on the first quinella double race, all wagers combining the winning combination in the first race with a combination including the scratched wagering interest in the second race shall be allocated a consolation payout. In calculating the consolation payout, the net quinella double pool shall be divided by the total amount wagered on the winning combination in the first race and an unbroken consolation price obtained. The unbroken consolation price is multiplied by the dollar value of wagers on the winning combination in the first race combined with a combination including the scratched wagering interest in the second race to obtain the consolation payout. Breakage is not declared in this calculation. The consolation payout is deducted from the net quinella double pool before calculation and distribution of the winning quinella double payout. In the event of a dead heat involving separate wagering interests, the net quinella double pool shall be distributed as a profit split.

8. If either of the quinella double races is cancelled prior to the first quinella double race or the first quinella double race is declared "no contest," the entire quinella double pool shall be refunded on quinella double wagers for those races.

9. If the second quinella double race is cancelled or declared "no contest" after the conclusion of the first quinella double race, the net quinella double pool shall be distributed as a single price pool to wagers selecting the winning combination in the first quinella double race. If there are no wagers selecting the winning combination in the first quinella double race, the entire quinella double pool shall be refunded on quinella double wagers for those races.

G. Pick (n) pools. The pick (n) pool requires selection of the first-place finisher in each of a designated number of races. The licensee must obtain approval from the commission or its executive secretary concerning the scheduling of pick (n) contests, the designation of one of the methods prescribed in subdivision 1 of this subsection and the amount of any cap to be set on the carryover. Any changes to the approved pick (n) format require prior approval from the commission or its executive secretary.

1. The pick (n) pool shall be apportioned under one of the following methods:

a. Method 1, pick (n) with carryover. The net pick (n) pool and carryover, if any, shall be distributed as a single price pool to those who selected the first-place finisher in each of the pick (n) races, based upon the official order of finish. If there are no such wagers, then a designated percentage of the net pool shall be distributed as a single price pool to those who selected the first-place finisher in the greatest number of pick (n) races; and the remainder shall be added to the carryover.

b. Method 2, pick (n) with minor pool and carryover. The major share of the net pick (n) pool and carryover, if any, shall be distributed to those who selected the first-place finisher in each of the pick (n) races, based upon the official order of finish. The minor share of the net pick (n) pool shall be distributed to those who selected the first-place finisher in the second greatest number of pick (n) races, based upon the official order of finish. If there are no wagers selecting the first-place finisher of all pick (n) contests, the minor share of the pick (n) pool shall be distributed as a single price pool to those who selected the first-place finisher in the greatest number of pick (n) races; and the major share shall be added to the carryover.

c. Method 3, pick (n) with no minor pool and no carryover. The net pick (n) pool shall be distributed as a single price pool to those who selected the first-place finisher in the greatest number of pick (n) races, based upon the official order of finish. If there are no winning wagers, the pool is refunded.

d. Method 4, pick (n) with minor pool and no carryover. The major share of the net pick (n) pool shall be distributed to those who selected the first place finisher in the greatest number of pick (n) races, based upon the official order of finish. The minor share of the net pick (n) pool shall be distributed to those who selected the first-place finisher in the second greatest number of pick (n) races, based upon the official order of finish. If there are no wagers selecting the first-place finisher in a second greatest number of pick (n) races, the minor share of the net pick (n) pool shall be combined with the major share for distribution as a single price pool to those who selected the first-place finisher in the greatest number of pick (n) races. If the greatest number of first-place finishers selected is one, the major and minor shares are combined for distribution as a single price pool. If there are no winning wagers, the pool is refunded.

e. Method 5, pick (n) with minor pool and no carryover. The major share of net pick (n) pool shall be distributed to those who selected the first-place finisher in each of the pick (n) races, based on the official order of finish. The minor share of the net pick (n) pool shall be distributed to those who selected the first-place finisher in the second greatest number of pick (n) races, based upon the official order of finish. If there are no wagers selecting the first-place finisher in all pick (n) races, the entire net pick (n) pool shall be distributed as a single price pool to those who selected the first-place finisher in the greatest number of pick (n) races. If there are no wagers selecting the first-place finisher in a second greatest number of pick (n) races, the minor share of the pick (n) pool shall be combined with the major share for distribution as a single price pool to those who selected the first-place finisher in each of the pick (n) races. If there are no winning wagers, the pool is refunded.

f. Method 6, pick (n) with minor pool, jackpot, major carryover and jackpot carryover. Predetermined percentages of the net pick (n) pool shall be set aside as a major pool, minor pool, and jackpot pool. The major

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share of the net pick (n) pool and the major carryover, if any, shall be distributed to those who selected the first-place finisher of each of the pick (n) races, based on the official order of finish. If there are no tickets selecting the first-place finisher in each of the pick (n) races, the major net pool shall be added to the major carryover. If there is only one single ticket selecting the first-place finisher of each of the pick (n) races, based on the official order of finish, the jackpot share of the net pick (n) pool and the jackpot carryover, if any, shall be distributed to the holder of that single ticket, along with the major net pool and the major carryover, if any. If more than one ticket selects the first-place finisher of each of the pick (n) races, the jackpot net pool shall be added to the jackpot carryover. The minor share of the net pick (n) pool shall be distributed to those who selected the first-place finisher of the second greatest number of pick (n) races, based on the official order of finish. If there are no wagers selecting the first-place finisher of all pick (n) races, the minor net pool of the pick (n) pool shall be distributed as a single price pool to those who selected the first-place finisher of the greatest number of pick (n) races.

2. If there is a dead heat for first in any of the pick (n) races involving:

a. Horses representing the same wagering interest, the pick (n) pool shall be distributed as if no dead heat occurred.

b. Horses representing two or more wagering interests, the pick (n) pool shall be distributed as a single price pool with each winning wager receiving an equal share of the profit.

3. Should a wagering interest in any of the pick (n) races be scratched, the actual favorite, as evidenced by total amounts wagered in the win pool at the host track for the race at the close of wagering on that race, shall be substituted for the scratched wagering interest for all purposes, including pool calculations. In the event that the win pool total for two or more favorites is identical, the substitute selection shall be the wagering interest with the lowest program number. The totalizator shall produce reports showing each of the wagering combinations with substituted wagering interests which became winners as a result of the substitution, in addition to the normal winning combination.

4. The pick (n) pool shall be cancelled and pick (n) wagers for the individual performance shall be refunded if:

a. At least two races included as part of a pick three are cancelled or declared "no contest."

b. At least three races included as part of a pick four, pick five or pick six are cancelled or declared "no contest."

c. At least four races included as part of a pick seven, pick eight or pick nine are cancelled or declared "no contest."

d. At least five races included as part of a pick 10 are cancelled or declared "no contest."

5. If at least one race included as part of a pick (n) is cancelled or declared "no contest," but not more than the number specified in subdivision 4 of this subsection, the net pool shall be distributed as a single price pool to those whose selection finished first in the greatest number of pick (n) races for that program. The distribution shall include the portion ordinarily retained for the pick (n) carryover but not the carryover from previous performances.

6. The pick (n) carryover may be capped at a designated level approved by the commission so that if, at the close of any program, the amount in the pick (n) carryover equals or exceeds the designated cap, the pick (n) carryover will be frozen until it is won or distributed under other provisions of this chapter. After the pick (n) carryover is frozen, 100% of the net pool, part of which ordinarily would be added to the pick (n) carryover, shall be distributed to those whose selection finished first in the greatest number of pick (n) races for that program.

7. A licensee may request permission from the commission to distribute the pick (n) carryover on a specific program. The request must contain justification for the distribution, an explanation of the benefit to be derived and the intended date and program for the distribution.

8. Should the pick (n) carryover be designated for distribution on a specified date and performance in which there are no wagers selecting the first-place finisher in each of the pick (n) races, the entire pool shall be distributed as a single price pool to those whose selection finished first in the greatest number of pick (n) races. The pick (n) carryover shall be designated for distribution on a specified date and program only under the following circumstances:

a. Upon approval from the commission as provided in subdivision 7 of this subsection;

b. Upon approval from the commission when there is a change in the carryover cap, a change from one type of pick (n) wagering to another, or when the pick (n) is discontinued;

c. On the closing program of a race meeting.

9. If, for any reason, the pick (n) carryover must be held to the corresponding pick (n) pool to a subsequent race meeting, the carryover shall be deposited in an interest-bearing account approved by the commission. The pick (n) carryover plus accrued interest shall then be added to the net pick (n) pool on a date and program of the race meeting designated by the commission.

10. With the approval of the commission, a licensee may contribute to the pick (n) carryover a sum of money up to the amount of any designated cap.

11. Providing information to any person regarding the covered combinations, amounts wagered on specific combinations, number of tickets sold or number of live tickets remaining is strictly prohibited. This chapter shall not prohibit necessary communication between totalizator and mutuel employees for processing of pool data.

12. The licensee may suspend previously approved pick (n) wagering with the approval of the commission. Any

carryover shall be held until the suspended pick (n) wagering is reinstated. The licensee may request approval of a pick (n) wager or separate wagering pool for specific programs.

H. Superfecta pools. The superfecta pool requires selection of the first four finishers, in their exact order, for a single race.

1. The net superfecta pool shall be distributed to winning wagers in the following precedence based upon the official order of finish:

a. As a single price pool to those whose combination finished in correct sequence as the first four wagering interests; but if there are no such wagers, then

b. As a single price pool to those whose combination included, in correct sequence, the first three wagering interests; but if there are no such wagers, then

c. As a single price pool to those whose combination included, in correct sequence, the first two wagering interests; but if there are no such wagers, then

d. As a single price pool to those whose combination correctly selected the first-place wagering interest only; but if there are no such wagers, then

e. The entire pool shall be refunded on superfecta wagers for that race.

2. If less than four wagering interests finish and the race is declared official, payouts will be made based upon the order of finish of those wagering interests completing the race. The balance of any selection beyond the number of wagering interests completing the race shall be ignored.

3. If there is a dead heat for first involving:

a. Horses representing four or more wagering interests, all of the wagering combinations selecting four wagering interests which correspond with any of the wagering interests involved in the dead heat shall share in a profit split.

b. Horses representing three wagering interests, all of the wagering combinations selecting the three dead-heated wagering interests, irrespective of order, along with the fourth-place wagering interest shall share in a profit split.

c. Horses representing two wagering interests, both of the wagering combinations selecting the two dead-heated wagering interests, irrespective of order, along with the third and fourth-place wagering interests shall share in a profit split.

4. If there is a dead heat for second involving:

a. Horses representing three or more wagering interests, all of the wagering combinations correctly selecting the winner combined with any of the three wagering interests involved in the dead heat for second shall share in a profit split.

b. Horses representing two wagering interests, all of the wagering combinations correctly selecting the winner, the two dead-heated wagering interests, irrespective of order,

and the fourth-place wagering interest shall share in a profit split.

5. If there is a dead heat for third, all wagering combinations correctly selecting the first two finishers, in correct sequence, along with any two of the wagering interests involved in the dead heat for fourth shall share in a profit split.

6. If there is a dead heat for fourth, all wagering combinations correctly selecting the first three finishers, in correct sequence, along with any of the wagering interests involved in the dead heat for fourth shall share in a profit split.

~~7. Coupled entries and mutual fields shall be prohibited in superfecta races.~~

I. Twin trifecta pools. The twin trifecta pool requires selection of the first three finishers in their exact order, in each of two designated races. Each winning ticket for the first twin trifecta race must be exchanged for a free ticket on the second twin trifecta race in order to remain eligible for the second-half twin trifecta pool. The tickets may be exchanged only at attended windows prior to the second twin trifecta race. Winning first-half twin trifecta wagers will receive both an exchange and a monetary payout. Both of the designated twin trifecta races shall be included in only one twin trifecta pool.

1. After wagering closes for the first-half of the twin trifecta and retainage has been deducted from the pool, the net pool shall then be divided into separate pools: the first-half twin trifecta pool and the second-half twin trifecta pool.

2. In the first twin trifecta race only, winning wagers shall be determined using the following precedence, based upon the official order of finish for the first twin trifecta race:

a. As a single price pool to those whose combination finished in correct sequence as the first three wagering interests; but if there is no winning wager, then

b. As a single price pool to those whose combination included, in correct sequence, the first two wagering interests; but if there is no winning wager, then

c. As a single price pool to those whose combination correctly selected the first-place wagering interest only; but if there is no winning wager, then

d. The entire twin trifecta pool shall be refunded to twin trifecta wagers for that race and the second-half race shall be cancelled.

3. If no first-half twin trifecta ticket selects the first three finishers of that race in exact order, winning ticket holders shall not receive any exchange tickets for the second-half twin trifecta pool. In this case, the second-half twin trifecta pool shall be retained and added to any existing twin trifecta carryover pool.

4. Winning tickets from the first-half of the twin trifecta shall be exchanged for tickets selecting the first three finishers of the second-half of the twin trifecta. The second-half twin trifecta pool shall be distributed to winning wagers in the following precedence, based upon the official order of finish for the second twin trifecta race:

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a. As a single price pool, including any existing carryover moneys, to those whose combination finished in correct sequence as the first three wagering interests; but if there are no winning tickets, then

b. The entire second-half twin trifecta pool for that race shall be added to any existing carryover moneys and retained for the corresponding second-half twin trifecta pool of the next consecutive program.

5. If a winning first-half twin trifecta ticket is not presented for cashing and exchange prior to the second-half twin trifecta race, the ticket holder may still collect the monetary value associated with the first-half twin trifecta pool but forfeits all rights to any distribution of the second-half twin trifecta pool.

~~6. Coupled entries and mutuel fields shall be prohibited in twin trifecta races.~~

~~7.~~ 6. Should a wagering interest in the first-half of the twin trifecta be scratched, those twin trifecta wagers including the scratched wagering shall be refunded.

~~8.~~ 7. Should a wagering interest in the second-half of the twin trifecta be scratched, announcement concerning the scratch shall be made and a reasonable amount of time shall be provided for exchange of tickets that include the scratched wagering interest. If tickets have not been exchanged prior to the close of wagering of the second twin trifecta race, the ticket holder forfeits all rights to the second-half twin trifecta pool. However, if the scratch in the second-half of the twin trifecta occurs five minutes or less prior to post time, then the licensee shall have discretion to cancel all twin trifecta wagers and make a prompt refund.

~~9.~~ 8. If, due to a late scratch, the number of wagering interests in the second-half of the twin trifecta is reduced to fewer than the minimum, all exchange tickets and outstanding first-half winning tickets shall be entitled to the second-half twin trifecta pool for that contest as a single price pool, but not the twin trifecta carryover.

~~10.~~ 9. If there is a dead heat or multiple dead heats in either the first or second-half of the twin trifecta, all twin trifecta wagers selecting the correct order of finish, counting a wagering interest involved in a dead heat as finishing in any dead-heated position, shall be a winner. In the case of a dead heat occurring in:

a. The first-half of the twin trifecta, the payout shall be calculated as a profit split; and

b. The second-half of the twin trifecta, the payout shall be calculated as a single price pool.

44- 10. If either of the twin trifecta races are cancelled prior to the first twin trifecta race or the first twin trifecta race is declared "no contest," the entire twin trifecta pool shall be refunded in twin trifecta wagers for that race and the second-half shall be cancelled.

42- 11. If the second-half twin trifecta race is cancelled or declared "no contest," all exchange tickets and outstanding first-half winning twin trifecta tickets shall be entitled to the net twin trifecta pool for that race as a single price pool, but

not twin trifecta carryover. If there are no such tickets, the net twin trifecta pool shall be distributed as described in subdivision 3 of this subsection.

~~43-~~ 12. The twin trifecta carryover may be capped at a designated level approved by the commission so that if, at the close of any program, the amount in the twin trifecta carryover equals or exceeds the designated cap, the twin trifecta carryover will be frozen until it is won or distributed under other provisions of this chapter. After the twin trifecta carryover is frozen, 100% of the net twin trifecta pool for each individual race shall be distributed to winners of the first-half of the twin trifecta pool.

44- 13. A written request for permission to distribute the twin trifecta carryover on a specific program may be submitted to the commission. The request must contain justification for the distribution, an explanation of the benefit to be derived and the intended date and program for the distribution.

~~45-~~ 14. Should the twin trifecta carryover be designated for distribution on a specified date and program, the following precedence will be followed in determining winning tickets for the second-half of the twin trifecta after completion of the first-half of the twin trifecta:

a. As a single price pool to those whose combination finished in correct sequence as the first three wagering interests; but if there are no such wagers, then

b. As a single price pool to those whose combination included, in correct sequence, the first two wagering interests; but if there are no such wagers, then

c. As a single price pool to those whose combination correctly selected the first-place wagering interest only; but if there are no such wagers, then

d. As a single price pool to holders of valid exchange tickets.

e. As a single price pool to holders of outstanding first-half winning tickets.

46- 15. During a program designated by the commission to distribute the twin trifecta carryover, exchange tickets will be issued for those combinations selecting the greatest number of wagering interests in their correct order of finish for the first-half of the twin trifecta. If there are no wagers correctly selecting the first, second or third-place finishers, in their exact order, then exchange tickets shall be issued for combinations correctly selecting the first and second-place wagering interests. If there are no wagers correctly selecting the first and second place finishers, in their exact order, then exchange tickets shall be issued for combinations correctly selecting the first-place wagering interest only. If there are no wagers selecting the first-place wagering interest only in the first-half of the twin trifecta, all first-half tickets will become winners and will receive 100% of that day's net twin trifecta pool and any existing twin trifecta carryover.

47- 16. The twin trifecta carryover shall be designated for distribution on a specified date and program only under the following circumstances:

- a. Upon written approval from the commission as provided in subdivision 14 of this subsection.
- b. Upon written approval from the commission when there is a change in the carryover cap or when the twin trifecta is discontinued.
- c. On the closing program of the race meeting.

18. 17. If, for any reason, the twin trifecta carryover must be held over to the corresponding twin trifecta pool of a subsequent meet, the carryover shall be deposited in an interest-bearing account approved by the commission. The twin trifecta carryover plus accrued interest shall then be added to the second-half twin trifecta pool of the following meet on a date and program so designated by the commission.

19. 18. Providing information to any person regarding covered combinations, amounts wagered on specific combinations, number of tickets sold or number of valid exchange tickets is prohibited. This shall not prohibit necessary communication between totalizator and pari-mutuel department employees for processing of pool data.

20. 19. The licensee must obtain written approval from the commission concerning the scheduling of twin trifecta contests, the percentages of the net pool added to the first-half pool and second-half pool, and the amount of any cap to be set on the carryover. Any changes to the approved twin trifecta format require prior approval from the commission.

11 VAC 10-20-340. Refunds.

A. Generally. For all wagers other than the daily double, pick three or pick six, a refund at face value shall be made to all holders of pari-mutuel tickets on horses that have been excused by the stewards, participated in a race where no horse finished, or a race, where in the discretion of the stewards, was declared "no contest" for wagering purposes. Unless otherwise provided for in this chapter, no refund shall be made if the horse excused by the stewards is part of a coupled entry or the field.

~~B. Nonstarters in straight wagering. If any horse is prevented from obtaining a fair start by failure of the starting gate or other untoward events, the entire amount in the win, place and show pools wagered on that horse shall be promptly refunded and the horse declared a nonstarter stewards, in their discretion, may order a prompt refund in any pool on that horse.~~

~~C. Nonstarters in multiple wagering. In races on which multiple wagering is permitted, except on the second half of the daily double, pick three or pick six, if a horse is prevented from obtaining a fair start, the entire amount wagered on any combination including that horse shall be promptly refunded and the horse declared a nonstarter.~~

~~D. C. Cancelling pools due to nonstarters. If any horse or horses are prevented from obtaining a fair start so that it would reduce the total number of starters below six, the following shall apply:~~

1. If horses representing five wagering interests obtain a fair start, the licensee may refund the entire amount wagered in the show pool;

2. If horses representing four or fewer wagering interests obtain a fair start, the licensee may refund the entire amount wagered in the show pool as well as place pool; and

3. If horses representing fewer than two interests obtain a fair start, the race may be declared "no contest" and the entire amount wagered in the win, place and show pools shall be promptly refunded.

~~E. D. Cancelling pools due to late scratches. After wagering has commenced on a race and prior to the race being run, should a horse or horses be excused by the stewards resulting in a field of less than six different wagering interests, the following apply:~~

1. If horses representing five wagering interests will start, the licensee may refund the entire amount wagered in the show pool;

2. If horses representing five or fewer wagering interests will start, the licensee may refund the entire amount wagered in the show pool as well as place pool;

3. If horses representing fewer than two interests will start, the race may be cancelled and the entire amount wagered in the win, place and show pools shall be promptly refunded. However, the horse or horses shall race for the purse as nonwagering event.

~~F. E. No refunds. If a horse is left at the post at the start, or the rider or driver is unseated, there shall be no refund.~~

~~G. F. Scratches in entries. If two or more horses in a race are coupled as a wagering interest or the field, there shall be no refund unless all of the horses so coupled are excused by the stewards or all of the horses so coupled are prevented from obtaining a fair start. Discretion, however, is vested in the stewards to order a refund where a part of an entry in a stake, handicap, futurity or other special event is excused by the stewards or prevented from obtaining a fair start, where it is in the public interest to do so. In this instance, the remaining part of the entry shall may race for the purse only.~~

~~H. G. Postponed races. In the case of a race postponed beyond the day originally scheduled, all money wagered on the race shall be refunded.~~

~~I. H. Cancelling turf races. In the event conditions require a race to be moved from the turf to the main racing surface, any advance wager shall be refunded at the request of the holder of the pari-mutuel ticket up until post time of the race immediately preceding the scheduled turf race. This regulation does not apply to pick three or pick six (n) wagering.~~

~~J. I. Announcement of refunds. In those cases where a refund is due the public or a pari-mutuel pool is cancelled, the licensee shall promptly inform the public through the public address system and other appropriate means of communication.~~

VA.R. Doc. No. R02-187; Filed May 22, 2002, 2:30 p.m.

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REGISTRAR'S NOTICE: The Virginia Racing Commission is exempt from the Administrative Process Act pursuant to subdivision B 21 of § 2.2-4002 of the Code of Virginia when promulgating regulations regulating the Virginia Breeders Fund created pursuant to § 59.1-372 of the Code of Virginia.

Title of Regulation: 11 VAC 10-130. Virginia Breeders Fund (amending 11 VAC 10-130-10, 11 VAC 10-130-20, 11 VAC 10-130-51 and 11 VAC 10-130-60; adding 11 VAC 10-130-52).

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

Effective Date: May 22, 2002.

Summary:

The amendments reflect an effort to expand participation in the Virginia Breeders Fund by (i) defining "registered" and "Virginia-sired Thoroughbred," (ii) mandating that registration requirements be completed prior to entry, and (iii) setting forth registration procedures and limitations upon Virginia-sired Thoroughbreds.

Agency Contact: William H. Anderson, Director of Policy and Planning, Virginia Racing Commission, 10700 Horsemen's Road, New Kent, VA 23124, telephone (804) 966-7404, FAX (804) 966-7418 or e-mail Anderson@vrc.state.va.us.

11 VAC 10-130-10. Definitions.

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

"Breeding season" means a period of time beginning on February 1 and ending on August 1 of each year. For Standardbreds, the breeding season means a period of time beginning February 15 and ending on July 15 of each year.

"Registered" means the completion of the process of filing an application with the commission or its designee to satisfy the requirements for participation in the Virginia Breeders Fund.

"Stallion owner" means an owner or lessee of record of a stallion that covered mares in the Commonwealth of Virginia during the breeding season in which it sired a Virginia-bred horse.

"Virginia-bred Arabian horse" means a registered Arabian horse foaled in the Commonwealth of Virginia.

"Virginia Arabian horse breeder" means the owner or lessee of record of the mare at the time of foaling of a Virginia-bred Arabian horse.

"Virginia Arabian sire" means a registered Arabian stallion that covered mares only in the Commonwealth of Virginia during the breeding season in which it sired a Virginia-bred Arabian horse.

"Virginia-bred Quarter Horse" means a registered Quarter Horse foaled or conceived in the Commonwealth of Virginia.

"Virginia Quarter Horse breeder" means the owner or lessee of record of the mare at the time of conception of a Virginia-bred Quarter Horse.

"Virginia Quarter Horse sire" means a registered Quarter Horse stallion or registered Virginia Thoroughbred stallion that covered mares only in the Commonwealth of Virginia during the breeding season in which it sired a Virginia-bred Quarter Horse.

"Virginia-bred Standardbred horse" means a registered Standardbred horse foaled or conceived in the Commonwealth of Virginia, sired by a Virginia Standardbred sire or purchased or owned by a Virginia resident and meeting the following requirements:

1. During the first nine calendar years of live pari-mutuel harness racing in the Commonwealth, a foal not meeting the requirements of the previous paragraph may still be registered as Virginia bred providing it is registered by a Virginia resident and owner with the commission or its designee by submitting documentation proving that the horse was purchased prior to April 1 of its two-year-old year and prior to making its first start in a nonqualifying race. For purposes of registration under this subdivision, neither the stallion owner of a sire standing outside the Commonwealth nor the breeder of a Standardbred foaled outside the Commonwealth shall be eligible for any award from the Virginia Breeders Fund;
2. For purposes of determining the eligibility for an owner to register a Virginia Standardbred, a Virginia resident and owner shall be defined as a person legally required to file a resident income tax return with the Commonwealth that year or a partnership, corporation, stable name or other entity that is solely owned by Virginia residents and owners legally required to file resident income tax returns with the Commonwealth that year; and
3. After December 31 of the seventh calendar year of live harness racing in the Commonwealth, foals of that year and each succeeding year must be sired by a Virginia Standardbred sire to qualify as Virginia-bred Standardbreds.

"Virginia Standardbred horse breeder" means the owner or lessee of record of the mare at the time of conception of a Virginia-bred Standardbred horse.

"Virginia Standardbred sire" means a registered Standardbred stallion that stood only in the Commonwealth of Virginia during the breeding season in which it sired a Virginia-bred Standardbred horse. Shipment of semen for the breeding of mares outside the Commonwealth shall be permitted so long as any resulting foals meet the requirements of this chapter in all other respects.

"Virginia-bred Thoroughbred horse" means a registered Thoroughbred horse ~~sired by a Virginia Thoroughbred sire or~~ foaled in Virginia and, if foaled in the Commonwealth after December 31, 1999, shall also satisfy one of the following additional requirements:

1. The foal was sired by a Virginia Thoroughbred sire; or
2. If not so sired, the dam, if bred back that same breeding season, is bred to a Virginia Thoroughbred sire; or
3. If not so sired, or the dam is not bred back that same breeding season or is bred to a sire other than a Virginia Thoroughbred sire, the dam remains continuously in the

Commonwealth from September 1 to date of foaling, or if barren to February 1 of the following year.

"Virginia-sired Thoroughbred horse" means a registered Thoroughbred horse sired by a Virginia Thoroughbred sire, but not foaled in Virginia or not otherwise satisfying the requirements for a Virginia-bred Thoroughbred horse.

"Virginia Thoroughbred horse breeder" means the owner or lessee of record of the mare at the time of foaling a Virginia-bred Thoroughbred horse.

"Virginia Thoroughbred sire" means a registered Thoroughbred stallion that covers mares, other than test mares, only in the Commonwealth during the breeding season in which it sires a Virginia-bred Thoroughbred horse, or only during that part of the breeding season after entering the Commonwealth.

11 VAC 10-130-20. Generally.

The purpose of this chapter is to establish procedures for the administration of the Virginia Breeders Fund by the Virginia Racing Commission as provided for in § 59.1-372 of the Code of Virginia.

A. Certification. The commission or its designee shall certify that a racehorse is Virginia bred for eligibility for entry into races restricted to Virginia-bred horses, and to qualify its owner, the stallion owner, if applicable, and breeder for awards.

B. Determination of eligibility. The final determination of all questions, disputes or protests relating to the registration, eligibility for certification or breeding of a Virginia-bred horse and the final determination of eligibility of any horse to enter a race restricted to Virginia-bred horses shall rest solely with the commission.

C. Documentation. In making its determination, the commission or its designee, in its discretion, may require the submission of any certificate of foal registration, eligibility paper or any other registration document, affidavits or other substantive proof to support or deny any claim concerning registration of a horse as Virginia bred.

D. False statements. Any person who submits false or misleading information to a breed registry, to the commission or its designee, or to any racing official may be fined, have his permit suspended or revoked, be denied participation in the Virginia Breeders Fund for a period of time deemed appropriate by the commission, or any or all of the foregoing.

E. Forfeiture of awards and purse moneys. Any person who is denied participation in the Virginia Breeders Fund under the provisions of this chapter shall forfeit and restore to the fund any awards and purse moneys received based upon the submission of false or misleading information. Until the awards and purse moneys are restored, the commission may suspend the person's permit to participate in horse racing at licensed facilities.

F. Recognized registries. The commission shall recognize certificates of registration from the following breed registries:

1. Thoroughbred: The Jockey Club;
2. Standardbred: The United States Trotting Association;

3. Quarter Horse: The American Quarter Horse Association; and

4. Arabian horse: The Arabian Horse Registry of America.

G. Payment of awards. All awards for owners, stallion owners and breeders shall be distributed from the Virginia Breeders Fund in a manner prescribed by the commission. The following provisions shall apply to payment of owner, stallion owner and breeder awards:

1. Determination of individual distributions to a stallion owner shall be in the same ratio as the amount of first-place purse money won by the Virginia-bred horse at the race meeting, which qualifies the stallion owner for an award, to the total amount of first-place purse money won by all Virginia-bred horses that qualify stallion owners for awards at the race meeting;

2. Determination of individual distributions to a breeder shall be in the same ratio as the amount of first-place purse money won by the Virginia-bred horse at the race meeting, which qualifies the breeder for an award, to the total amount of first-place purse money won by all Virginia-bred horses at the race meeting;

3. Determination of individual distributions to an owner shall be in the same ratio as the amount of nonsupplemented first-place purse money won by the Virginia-bred horse at the race meeting that qualifies the owner for an award to the total amount of nonsupplemented first-place purse money won by all Virginia-bred horses at the race meeting;

4. To become eligible for an owner, a stallion owner or a breeder award from the Virginia Breeders Fund, the owner, stallion owner or breeder must be certified by the commission *or its designee* prior to receiving any award, unless his racehorse, stallion or foal has been previously registered with the commission or its designee;

5. A stallion owner or breeder will have 25 days after the closing of the race meeting, at which he becomes eligible for an award, to be certified by the commission *or its designee* unless his stallion or foal has been previously registered with the commission *or its designee*;

6. A stallion owner or breeder need only be certified once per racehorse; and

7. Any unclaimed awards from the Virginia Breeders Fund shall be remitted to the fund.

H. Distribution by breeds. The funds generated by the breed of horse through pari-mutuel wagering at a race meeting shall be distributed to that breed of horse through owner awards, stallion owner awards, breeder awards, purses and purse supplements.

I. Reimbursement of funds. The source of funding is 1.0% of all pari-mutuel pools, which shall be paid to the commission within five days of the date that the funds were generated. Purse moneys shall be paid from the horsemen's account when approval is granted by the stewards. The commission shall reimburse the horsemen's account to the extent that funds are available from the Virginia Breeders Fund.

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J. Restrictions. In disbursing the Virginia Breeders Fund, the following restrictions shall apply:

1. Supplements to purses from the Virginia Breeders Fund shall not be considered in determining owner awards;
2. The amount of the purses for races restricted to Virginia-bred horses or any adjustments must be fair, equitable and appropriate to the quality of the horses competing for those purses;
3. Purses from the Virginia Breeders Fund shall be considered for stallion owner and breeder awards.
4. Funds allocated for purses shall be credited to the owner's account by the horsemen's bookkeeper in accordance with procedures established elsewhere in this chapter; and
5. Underpayment of moneys generated by each breed shall be remitted to the Virginia Breeders Fund.

K. Reservation of funds. The commission may set aside funds for distribution in future years if the commission, in its discretion, determines that there is an insufficient supply of Virginia-bred horses of a certain breed to warrant a distribution. In this event, the funds shall be deposited in an interest-bearing account for future distribution of awards and purse supplements to the breed that generated the funds so set aside.

L. Assignment of awards. Awards distributable to breeders and stallion owners are only assignable pursuant to a court order.

M. Advisory committee. To assist it in establishing this awards and incentive program to foster the industry of breeding racehorses in Virginia, the commission shall appoint an advisory committee composed of two members from each of the registered breed associations representing each breed of horse participating in the fund program, one member representing the owners and operators of racetracks and one member representing all the meets sanctioned by the National Steeplechase Association.

The commission, in its discretion, may establish and appoint the members of subcommittees of the advisory committee for each breed of horse participating in the fund program. Each subcommittee shall be composed of one commissioner, the executive secretary of the commission, two advisory committee members, a member representing an owner or operator of a horse racing facility, and an at-large member associated with the breed of horse participating in the fund program. All appointments shall be approved by the commission.

11 VAC 10-130-51. Foal registration.

A. Requirements. For an owner or lessee of a dam to be certified to receive breeder awards from the Virginia Breeders Fund, the owner or lessee must register his foal with the commission or its designee by satisfying the following requirements:

1. The owner, lessee or his authorized agent must submit an application on a form approved by the commission, including the name of the stallion; the name of the dam; the

sire of the dam; the sex; color; year of birth; the location of foaling; and name, address and telephone number of the owner, lessee or his authorized agent;

2. The application must be signed and dated by the owner, lessee, or his authorized agent;

3. If the dam is held under a lease, a statement to that effect and a copy of the lease which must include a statement that the lessee is authorized to register the foal must accompany the application;

4. If the dam of the foal was not bred to a Virginia Thoroughbred sire or is not bred back to a Virginia Thoroughbred sire, then the owner, lessee or his authorized agent must sign the affidavit stating that the dam has been domiciled in the Commonwealth of Virginia from September 1 of the preceding year to February 1; and

5. As of September 1, 1999, all Virginia-bred Thoroughbred horses must be registered with the commission or its designee prior to ~~running~~ *being entered* in any race at race meeting designated by the commission for purse supplements or awards from the Virginia Breeders Fund.

B. Registration fees. A foal may be registered by December 31 of its year of foaling by submitting a \$25 fee ~~which~~ *that* must accompany the application for foal registration. A yearling may be registered by December 31 of its yearling year by submitting a \$50 fee ~~which~~ *that* must accompany the application for foal registration. A two-year-old or older may be registered by submitting a \$200 fee which must accompany the application for foal registration.

11 VAC 10-130-52. Virginia-Sired Thoroughbreds.

A Virginia-sired Thoroughbred may be registered with the commission or its designee by submitting a \$25 fee that must accompany an application for registration in the Virginia Breeders Fund. The payment of the registration fee and filing of the application shall occur prior to entry in any race at a race meeting designated by the commission. Such registration shall entitle the horse to entry into races restricted to Virginia-bred Thoroughbreds and purse supplements, but shall not entitle a Virginia-sired Thoroughbred to other awards from the Virginia Breeders Fund.

11 VAC 10-130-60. Fund distribution; allocation of funds.

The funds generated by pari-mutuel wagering on Thoroughbred horse races for the Virginia Breeders Fund shall be allocated on the following schedule:

1. 35% shall be set aside for payment to the breeders of Virginia-bred Thoroughbred horses that win races at a race meeting designated by the commission;

2. 15% shall be set aside for payment to owners or lessees of registered Virginia stallions that sire Virginia-bred Thoroughbred horses that win races at race meetings designated by the commission; and

3. 50% shall be paid to supplement purses as determined by the commission under the following provisions:

- a. An award may be paid to the owner or owners of a Virginia-bred Thoroughbred horse each time the horse

~~wins~~ *wins* earns purse money in a nonrestricted race at race meetings *licensed by the commission or wins races at race meetings* designated by the commission;

b. The maximum amount payable for breeder or stallion owner awards to a Virginia-bred Thoroughbred horse for any single race shall be \$25,000;

c. The maximum amount payable for an owner award to a Virginia-bred Thoroughbred horse for any single race run in Virginia shall be \$10,000, and the maximum amount payable for an owner award for any single in any other jurisdiction shall be \$5,000; and

d. Purses shall be paid for races restricted to Virginia-bred Thoroughbred horses.

VA.R. Doc. No. R02-186; Filed May 22, 2002, 2:29 p.m.



GOVERNOR

EXECUTIVE ORDER NUMBER THIRTEEN (2002)

DECLARATION OF A STATE OF EMERGENCY DUE TO SEVERE WEATHER DAMAGE ACROSS THE COMMONWEALTH

During the period April 28, 2002, through May 3, 2002, the Commonwealth of Virginia and many of its citizens suffered the impact of a number of severe weather systems.

On April 28, 2002, a series of storms with damaging winds and tornadoes moved across the Commonwealth of Virginia injuring citizens and extensively damaging or destroying property. Surveys by the National Weather Service indicate that the tornadoes were of F 1 and F 2 strength.

On May 2, 2002, continuing severe weather impacted the state with the most serious damage occurring in southwest Virginia. Floodwaters and strong winds caused extensive damage. At least one fatality was reported and several citizens remain unaccounted for at this time. 70,000 customers were without power and extremely strong winds were experienced in communities in southern and central Virginia.

The area of direct impact from these tornadoes and severe storms includes portions of the following localities:

Bedford County, Virginia
Buchanan County, Virginia
Campbell County, Virginia
Cumberland County, Virginia
Greensville County, Virginia
Prince Edward County, Virginia
Shenandoah County, Virginia
Tazewell County, Virginia
City of Bedford, Virginia, and
City of Colonial Heights, Virginia.

The health and general welfare of the citizens of the localities that are affected require that state action be taken to help alleviate the conditions resulting from this situation. The effects of this significant storm system and subsequent flooding constitute a natural disaster wherein human life and public and private property are imperiled, as described in § 44-75.1.A.4 of the *Code of Virginia*.

Therefore, by virtue of the authority vested in me by § 44-146.17 of the *Code of Virginia*, as Governor and as Director of Emergency Management, and by virtue of the authority vested in me by Article V, Section 7 of the Constitution of Virginia and by § 44-75.1 of the *Code of Virginia*, as Governor and Commander-in-Chief of the armed forces of the Commonwealth, and subject always to my continuing and ultimate authority and responsibility to act in such matters, I hereby proclaim that a state of emergency exists and direct that appropriate assistance be rendered by agencies of both state and local governments to alleviate any conditions resulting from storm impact damage and flooding, and to implement recovery and mitigation operations and activities so as to return impacted areas to pre-event conditions insofar as possible. Pursuant to § 44-75.1.A.3 and A.4 of the *Code of Virginia*, I also direct that the Virginia National Guard and the

Virginia Defense Force be called forth to state duty to assist in providing such aid. This shall include Virginia National Guard assistance to the Virginia State Police to direct traffic, prevent looting, and perform such other law enforcement functions as the Superintendent of State Police, in consultation with the State Coordinator of Emergency Management, the Adjutant General, and the Secretary of Public Safety, may find necessary.

In order to marshal all public resources and appropriate preparedness, response and recovery measures to meet this potential threat and recover from its effects, and in accordance with my authority contained in § 44-146.17 of the Emergency Services and Disaster Laws, I hereby order the following protective and restoration measures:

A. The implementation by agencies of the state and local governments of Volume 1 (Basic Plan) and Volume 2 (Disaster Recovery Plan) of the Virginia Emergency Operations Plan, as amended, along with other appropriate state agency plans.

B. Activation of the Virginia Emergency Operations Center (VEOC) and State Emergency Response Team (SERT). Furthermore, I am directing that the VEOC and SERT coordinate state operations in support of affected localities and the Commonwealth, to include issuing mission assignments to agencies designated in the Commonwealth of Virginia Emergency Operations Plan (COVEOP) and others that may be identified by the State Coordinator of Emergency Management, in consultation with the Secretary of Public Safety, which are needed to provide for the preservation of life, protection of property, and implementation of recovery activities.

C. The authorization to assume control over the Commonwealth's state-operated telecommunications systems, as required by the State Coordinator of Emergency Management, in coordination with the Department of Information Technology, and with the prior consent of the Secretary of Public Safety, making all systems assets available for use in providing adequate communications, intelligence and warning capabilities for the event, pursuant to § 44-146.18 of the *Code of Virginia*.

D. The evacuation of areas threatened or stricken by this event. Following a declaration of a local emergency pursuant to § 44-146.21 of the *Code of Virginia*, if a local governing body determines that evacuation is deemed necessary for the preservation of life or other emergency mitigation, response or recovery, pursuant to § 44-146.17 (1) of the *Code of Virginia*, I direct the evacuation of all or part of the populace therein from such areas and upon such timetable as the local governing body, in coordination with the Virginia Emergency Operations Center (VEOC), acting on behalf of the State Coordinator of Emergency Management, shall determine. Notwithstanding the foregoing, I reserve the right to direct and compel evacuation from the same and different areas and determine a different timetable both where local governing bodies have made such a determination and where local governing bodies have not made such a determination. Violations of any order to citizens to evacuate shall constitute a violation of this

Executive Order and are punishable as a Class 1 misdemeanor.

E. The activation, implementation and coordination of appropriate mutual aid agreements and compacts, including the Emergency Management Assistance Compact, and the authorization of the State Coordinator of Emergency Management to enter into any other supplemental agreements, pursuant to §§ 44-146.17(5) and 44-146.28:1 of the *Code of Virginia*, to provide for the evacuation and reception of injured and other persons and the exchange of medical, fire, police, National Guard personnel and equipment, public utility, reconnaissance, welfare, transportation and communications personnel, and equipment and supplies. The State Coordinator of Emergency Management is hereby designated as Virginia's authorized representative within the meaning of the Emergency Management Assistance Compact, § 44-146.28:1 of the *Code of Virginia*.

F. The authorization of the Departments of State Police, Transportation, and Motor Vehicles to grant temporary overweight, over width, registration, or license exemptions to carriers transporting essential emergency relief supplies into and through the Commonwealth in order to support the disaster response and recovery.

The axle and gross weights shown below are the maximum allowed, unless otherwise posted.

Any One Axle	24,000 Pounds
Tandem Axles (more than 40 inches but not more than 96 inches spacing between axle centers)	44,000 Pounds
Single Unit (2 axles)	44,000 Pounds
Single Unit (3 axles)	54,500 Pounds
Tractor-Semitrailer (4 axles)	64,500 Pounds
Tractor-Semitrailer (5 or more Axles)	90,000 Pounds
Tractor-Twin Trailers (5 or more Axles)	90,000 Pounds
Other Combinations (5 or more Axles)	90,000 Pounds
Per Inch of Tire Width in Contact with Road Surface	850 Pounds

All over width loads, up to a maximum of 16 feet, must follow Virginia Department of Transportation (VDOT) hauling permit and safety guidelines.

In addition to described overweight/over width transportation privileges, carriers are also exempt from registration with the Department of Motor Vehicles. This includes the vehicles enroute and returning to their home base. The above-cited agencies shall communicate this information to all staff responsible for permit issuance and truck legalization enforcement.

This authorization shall apply to hours worked by any carrier when transporting passengers, property, equipment, food, fuel, construction materials and other critical supplies to or from any portion of the Commonwealth for the purpose of providing relief or assistance as a result of this disaster, pursuant to § 52-8.4 of the *Code of Virginia*.

The foregoing overweight/over width transportation privileges as well as the regulatory exemption provided by § 52-8.4.A of the *Code of Virginia*, and implemented in 19 VAC 30-20-40 B

of the "Motor Carrier Safety Regulations," shall remain in effect for 30 days from the onset of the disaster, or until emergency relief is no longer necessary, as determined by the Secretary of Public Safety in consultation with the Secretary of Transportation, whichever is earlier.

G. The discontinuance of provisions authorized in paragraph F above may be implemented and disseminated by publication of administrative notice to all affected and interested parties by the authority I hereby delegate to the Secretary of Public Safety, after consultation with other affected Cabinet-level Secretaries.

H. The authorization of appropriate oversight boards, commissions and agencies to ease building code restrictions, and to permit emergency demolition, hazardous waste disposal, debris removal, emergency landfill siting and operations and other activities necessary to address immediate health and safety needs without regard to time-consuming procedures or formalities and without regard to application or permit fees or royalties. This state of emergency constitutes a major medical emergency under the Rules and Regulations of the Board of Health Governing Emergency Medical Services, pursuant to Article 3.01 (§ 32.1-111.1 et seq.) of Chapter 4 of Title 32.1, of the *Code of Virginia*, Statewide Emergency Medical Services System and Services, and exemptions specified in the Rules and Regulations regarding patient transport and provider certification in disasters apply.

I. The implementation by public agencies under my supervision and control of their emergency assignments as directed in the COVEOP without regard to normal procedures pertaining to performance of public work, entering into contracts, incurring of obligations, or other logistical and support measures of the Emergency Services and Disaster Laws, as provided in § 44-146.28 (b) of the *Code of Virginia*. Section 44-146.24 of the *Code of Virginia* also applies to the disaster activities of state agencies.

J. Designation of members and personnel of volunteer, auxiliary and reserve groups including search and rescue (SAR), Virginia Associations of Volunteer Rescue Squads (VAVRS), Civil Air Patrol (CAP), member organizations of the Voluntary Organizations Active in Disaster (VOAD), Radio Amateur Civil Emergency Services (RACES), volunteer fire fighters, and others identified and tasked by the State Coordinator of Emergency Management for specific disaster-related mission assignments as representatives of the Commonwealth engaged in emergency services activities within the meaning of the immunity provisions of §44-146.23 (a) of the *Code of Virginia*, in the performance of their specific disaster-related mission assignments.

The following conditions apply to the deployment of the Virginia National Guard and the Virginia Defense Force:

1. The Adjutant General of Virginia, after consultation with the State Coordinator of Emergency Management, shall make available on state active duty such units and members of the Virginia National Guard and Virginia Defense Force and such equipment as may be necessary or desirable to assist in preparations and in alleviating the human suffering and damage to property.

2. Pursuant to § 52-6 of the *Code of Virginia*, I authorize and direct the Superintendent of State Police to appoint any and all such Virginia Army and Air National Guard personnel called to state active duty as additional police officers. These police officers shall have the same powers and perform the same duties as the regular State Police officers appointed by the Superintendent. However, they shall nevertheless remain members of the Virginia National Guard, subject to military command as members of the State Militia. Any bonds and/or insurance required by § 52-7 of the *Code of Virginia* shall be provided for them at the expense of the Commonwealth.

3. In all instances, members of the Virginia National Guard and Virginia Defense Force shall remain subject to military command as prescribed by § 44-78.1 of the *Code of Virginia* and not subject to the civilian authorities of county or municipal governments. This shall not be deemed to prohibit working in close cooperation with members of the Virginia Departments of State Police or Emergency Management or local law enforcement or emergency management authorities or receiving guidance from them in the performance of their duties.

4. Should service under this Executive Order result in the injury or death of any member of the Virginia National Guard, the following will be provided to the member and the member's dependents or survivors:

(a) Workers Compensation benefits provided to members of the National Guard by the Virginia Workers Compensation Act, subject to the requirements and limitations thereof; and, in addition,

(b) The same benefits, or their equivalent, for injury, disability and/or death, as would be provided by the federal government if the member were serving on federal active duty at the time of the injury or death. Any such federal-type benefits due to a member and his or her dependents or survivors during any calendar month shall be reduced by any payments due under the Virginia Workers Compensation Act during the same month. If and when the time period for payment of Workers Compensation benefits has elapsed, the member and his or her dependents or survivors shall thereafter receive full federal-type benefits for as long as they would have received such benefits if the member had been serving on federal active duty at the time of injury or death. Any federal-type benefits due shall be computed on the basis of military pay grade E-5 or the member's military grade at the time of injury or death; whichever produces the greater benefit amount. Pursuant to § 44-14 of the *Code of Virginia*, and subject to the availability of future appropriations, which may be lawfully applied to this purpose, I now approve of future expenditures out of appropriations to the Department of Military Affairs for such federal-type benefits as being manifestly for the benefit of the military service.

5. The costs incurred by the Department of Military Affairs and the Virginia Defense Force in performing these missions shall be paid out of the sum sufficient appropriation for Disaster Planning and Operations

contained in Item 488 of Chapter 1073, 2000 Virginia Acts of Assembly.

The following conditions apply to service by the Virginia Defense Force:

1. Compensation shall be at a daily rate that is equivalent of base pay only for a National Guard Unit Training Assembly, commensurate with the grade and years of service of the member, not to exceed 20 years of service;

2. Lodging and meals shall be provided by the Adjutant General or reimbursed at standard state per diem rates;

3. All privately owned equipment, including, but not limited to, vehicles, boats, and aircraft, will be reimbursed for expense of fuel. Damage or loss of said equipment will be reimbursed, minus reimbursement from personal insurance, if said equipment was authorized for use by the Adjutant General in accordance with § 44-54.12 of the *Code of Virginia*; and

4. In the event of death or injury, benefits shall be provided in accordance with the Virginia Workers Compensation Act, subject to the requirements and limitations thereof.

Upon my approval, the costs incurred by state agencies and other agents in performing mission assignments through the VEOC as defined herein and in § 44-146.28 of the *Code of Virginia*, other than costs defined in Item 5 of the paragraphs above pertaining to the Virginia National Guard and the Virginia Defense Force shall be paid out of the sum sufficient appropriation for Disaster Planning and Operations contained in Item 45 of Chapter 1073, 2000 Virginia Acts of Assembly.

This Executive Order shall be effective retroactive to April 28, 2002, and shall remain in full force and effect until June 30, 2003, unless sooner amended or rescinded by further executive order. Termination of the Executive Order is not intended to terminate any Federal-type benefits granted or to be granted due to injury or death as a result of service under this Executive Order.

Given under my hand and under the Seal of the Commonwealth of Virginia, this 13th day of May 2002.

/s/ Mark Warner
Governor

VA.R. Doc. No. R02-185; Filed May 21, 2002, 11:36 a.m.

GENERAL NOTICES/ERRATA

DEPARTMENT OF ENVIRONMENTAL QUALITY

Total Maximum Daily Load (TMDL) for Fecal Coliform Bacteria on Certain Segments of Dodd Creek and West Fork Dodd Creek

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 15.4 mile segment of Dodd Creek and an approximate 6.4 mile segment of West Fork Dodd Creek. The Dodd Creek and West Fork Dodd Creek impaired segments are located in Floyd County. The Dodd Creek impairment begins at the junction of Route 710 and Route 714 and ends at the confluence with West Fork Little River. The West Fork Dodd Creek impairment begins in the headwaters near the Blue Ridge Parkway and ends at the confluence with Dodd Creek. Dodd Creek 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. West Fork Dodd Creek and additional portions of Dodd Creek will be listed as impaired in Virginia's 2002 § 303(d) Impaired Water List.

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 fourth public meeting on the development of the Dodd Creek fecal coliform TMDL will be held on Tuesday, June 25, 2002, at 7 p.m. in the auditorium of Floyd County High School located at 721 Baker Street, Floyd, Virginia. Final water quality modeling results, fecal coliform bacteria source identification, and load allocations will be presented.

The public comment period will begin on June 17, 2002, and end on July 18, 2002. A fact sheet on the development of the TMDL for fecal coliform bacteria on Dodd Creek is available upon request. Questions or information requests should be addressed to Jay Roberts. Written comments should include the name, address, and telephone number of the person submitting the comments and should be sent to Jay Roberts, Department of Environmental Quality, 3019 Peters Creek Road, Roanoke, VA 24019, telephone (540) 562-6785, FAX (540) 562-6860 or e-mail jaroberts@deq.state.va.us.

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Notice of Intent to Reimburse Outpatient Hospital Services and Graduate Medical Education Costs

Notice is hereby given that the Department of Medical Assistance Services (DMAS) intends to modify its reimbursement plan for enrolled hospital outpatient services and certain hospitals' Graduate Medical Education costs pursuant to the department's authority under Title XIX of the Social Security Act. This notice is intended to satisfy the

requirements of 42 CFR 447.205 and § 1902(a)(13) of the Social Security Act, 42 USC § 1396a(a)(13). All of the changes are due to become effective July 17, 2002, are contained in this public notice, and are occurring in response to mandates of the 2002 General Assembly as contained in 2002 House Bill 30, Items 325 T and U. The outpatient hospital reimbursement methodology change will allow the Commonwealth to continue to reimburse outpatient hospital services at 100% of reasonable cost less 10% reduction for capital and a 5.8% reduction for operating costs. The Graduate Medical Education change will help the affected teaching hospitals retain their present level of Medicaid reimbursement of approximately \$15.5 million. There is no expected increase or decrease in annual expenditures resulting from the above-referenced changes.

Outpatient Hospital Reimbursement

This change is necessary to respond to a payment methodology change being made by the Title XVIII Medicare program. This action amends the Title XIX State Plan for Medical Assistance to continue to reimburse outpatient hospital services at 100% of reasonable cost less 10% reduction for capital and a 5.8% reduction for operating costs. This action is necessary because the Medicare program changed its hospital outpatient reimbursement methodology to Ambulatory Payment Classifications (APCs) effective August 1, 2000.

Presently, DMAS' regulations incorporate by reference these Medicare regulations. Failure to remove this direct link from the regulations would require DMAS to automatically follow Medicare's lead with the use of the APC payment methodology. The State Plan change proposed by this action removes the automatic link to Medicare's reimbursement methodology in order to continue reimbursing outpatient hospital services at 100% of reasonable cost less 10% reduction for capital cost and 5.8% for operating costs.

Graduate Medical Education

This action also amends the Title XIX State Plan for Medical Assistance to revise the means of payment to certain teaching hospital providers for direct Graduate Medical Education (GME) costs. This change is needed in order to provide appropriate Medicaid reimbursement of GME costs at several teaching hospitals.

As proposed, the reimbursement of GME-related costs will be made on a prospective basis, based on the affected hospitals' GME costs incurred in the base year. This amount will be converted to a per-resident amount for the base period. This per-resident amount will be updated annually by the DRI-Virginia moving average values published by DRI•WEFA, Inc. The updated per-resident amount for each hospital will be multiplied by the full-time resident equivalents reported on the most recent cost report to determine the amount of Medicaid allowable GME costs for that cost reporting period.

Recent revisions to Medicare cost reporting standards require certain teaching hospitals to accumulate and report costs and charges in such a manner that dilutes the ratio of Medicaid charges and costs to total charges and costs thereby resulting in an inappropriate reduction in the apportionment of Graduate

General Notices/Errata

Medical Education (GME) to be reimbursed by Medicaid. Converting the direct Graduate Medical Education reimbursement to the proposed prospective method will allow the affected teaching hospitals to retain their present level of Medicaid reimbursement of GME costs, or approximately \$15.5 million for all affected providers and especially \$2.0 million for the University of Virginia Hospital System.

A copy of this notice is available for public review from N. Stanley Fields, Director, Division of Cost Settlement and Audit, DMAS, 600 Broad Street, Suite 1300, Richmond, VA 23219, and this notice is available for public review at any local social service office. Addresses for local social service offices may be obtained by contacting Mr. Fields or the local city or county government. Comments or inquiries may be submitted, in writing, within 30 days of this notice publication to Mr. Fields and such comments are available for review at the same address.

VIRGINIA WASTE MANAGEMENT BOARD

Request for Comments on Necessary Changes to 9 VAC 20-150 - Waste Tire End User Reimbursement Regulation

The Virginia Department of Environmental Quality (DEQ) would like to receive comment from interested parties about the need for any changes in the Waste Tire End User Regulation (9 VAC 20-150). Though, as a grant program, this regulation is exempt from the Administrative Process Act, DEQ will follow a full public input process, complete with a Technical Advisory Committee (TAC). The regulation was promulgated by the Virginia Waste Management Board, which will have to amend the regulation if the public process so indicates. This regulation sets the administrative, technical and financial aspects of the Virginia Waste Tire Management Program's End User Reimbursement Program. Direct payments of \$22.50 per ton (or 22.5 cents per tire) for "current flow" tires and \$50 per ton (50 cents per tire) for tires from piles are made to the "end user" of documented Virginia generated waste tire material used in a number of specified applications. The "end user" must demonstrate a purchase price or "cost of use" of at least \$22.50 per ton (or \$50 as applicable) and document Virginia origin, which can be accomplished by DEQ Form No. DEQ-WTC, the Waste Tire Certificate (WTC) or other reliable documentation method.

DEQ seeks input on several items:

1. The current reimbursement rates of \$22.50 and \$50 per ton (9 VAC 20-150-80)
2. The eligible and ineligible end uses (9 VAC 20-150-40)
3. Application procedures (9 VAC 20-150-120 and 9 VAC 20-150-130)
4. Procedure used if applications total more than the "available funding" during a fiscal year (9 VAC 20-150-90 and 9 VAC 20-150-130)

5. The definition and documentation of Virginia-generated tires (9 VAC 20-150-50, 9 VAC 20-150-100, 9 VAC 20-150-110 and 9 VAC 20-150-130)

DEQ seeks to reestablish a Technical Advisory Committee (TAC). If anyone is interested in serving on the TAC, please contact Allan Lassiter, telephone (804) 698-4215, FAX (804) 698-4224 or e-mail arlassiter@deq.state.va.us by July 17, 2002. If you would only like to provide comments, you will be notified of submission methods and deadlines. Any respondents will be notified of TAC meetings. Also, to review the regulation, log on to the DEQ Website: www.deq.state.va.us, go to "Laws and Regulations," then "Waste Regulations" and click on "Chapter 150," then the PDF marker of the full text.

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

CRIMINAL JUSTICE SERVICES BOARD

Title of Regulation: 6 VAC 20-171. Regulations Relating to Private Security Services.

Publication: 18:15 VA.R. 1955-1969 April 8, 2002

Correction to Final Regulation:

Page 1966, 6 VAC 20-171-350 A, on lines 10-11 and 12, change "§ 9.1-138" to "§ 9.1-139"

**DEPARTMENT OF MEDICAL ASSISTANCE
SERVICES**

Title of Regulation: **Nursing Home Payment System
Resource Utilization Groups (RUGs).**

**12 VAC 30-90. Methods and Standards for Establishing
Payment Rates for Long-Term Care.**

Publication: 18:18 VA.R. 2319-2330 May 20, 2002

Corrections to Final Regulation:

Page 2327, In Table III, line 3, second column, change "ADL
9-13" to "ADL 10-13"

Page 2327, In Table III, line 4, second column, change "ADL
4-8" to "ADL 4-9"

Page 2327, In Table III, line 20, first column, insert "IA1" for
RUG Description labeled "Cognitive Impairment / ADL 4-5"

VIRGINIA RACING COMMISSION

Title of Regulation: **11 VAC 10-180. Regulations Pertaining
to Horse Racing with Pari-Mutuel Wagering: Medication.**



Publication: 18:19 VA.R. 2453-2462 June 3, 2002

Correction to Final Regulation:

Page 2458, 11 VAC 10-180-60 A 1, line 2, change "\$5,000" to
"\$1,500"


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

BOARD OF ACCOUNTANCY


† **June 26, 2002 - 10 a.m.** -- Open Meeting
Embassy Suites Hotel, 2925 Emerywood Parkway, Suite 600, Richmond, Virginia.  (Interpreter for the deaf provided upon request)

A meeting to discuss regulatory review and other matters requiring board action. A public comment period will be held at the beginning of the meeting.

Contact: Nancy Taylor Feldman, Executive Director, Board of Accountancy, 3600 W. Broad St., Suite 696, Richmond, VA 23230-4916, telephone (804) 367-8505, FAX (804) 367-2174, (804) 367-9753/TTY , e-mail boa@boa.state.va.us.

DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES


Virginia State Apple Board

June 19, 2002 - 1 p.m. -- Open Meeting
Rowe's Restaurant, 74 Rowe Road (intersection of I-81/Route 250), Staunton, Virginia. 

The board will meet to approve the minutes of the last meeting. In addition, the board will review its financial statement. The board is expected to discuss old business arising from the last board meeting and any new business to come before the board. The board will entertain public comment at the conclusion of all other business for a period not to exceed 30 minutes. Any person who needs any accommodation in order to participate at the meeting should contact Dave Robishaw at least five days before the meeting date so that suitable arrangements can be made.

Contact: Dave Robishaw, Secretary, Virginia State Apple Board, 900 Natural Resources Dr., Suite 300, Charlottesville, VA 22903, telephone (434) 984-0573, FAX (434) 984-4156.

Virginia Egg Board

August 21, 2002 - 7 p.m. -- Open Meeting
Hotel Roanoke and Conference Center, Roanoke, Virginia. 
(Interpreter for the deaf provided upon request)

A meeting to review financial statements, educational, promotional and research programs. Proposals for future programs will be discussed.

Contact: Cecilia Glembocki, Secretary, Virginia Egg Board, 911 Saddleback Court, McLean, VA 22102, telephone (703) 790-1984, FAX (703) 821-6748, toll-free (800) 779-7759, e-mail virginiaeggcouncil@erols.com.


Virginia Peanut Board

June 25, 2002 - 11 a.m. -- Open Meeting
Virginia Peanut Growers Association, 23020 Main Street, Capron, Virginia. 

The board will meet to hear the chairman's report, elect officers for 2002-2003, and approve the 2002 - 2003 budget. The minutes of the last meeting will be heard and approved. The board's financial statement will be reviewed. 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 Russell C. Schools at least five days before the meeting date so that suitable arrangements can be made.

Contact: Russell C. Schools, Program Director, Virginia Peanut Board, P.O. Box 356, Capron, VA. 23829, telephone (434) 658-4573, FAX (434) 658-4531.

Virginia Small Grains Board


† **July 23, 2002 - 8 a.m.** -- Open Meeting
Wyndham Hotel and Conference Center, 4700 South Laburnum Avenue, Richmond, Virginia. 

A meeting to review FY 2001-02 project reports and receive 2002-03 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 Philip T. Hickman 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, telephone (804) 371-6157, FAX (804) 371-7786.

STATE AIR POLLUTION CONTROL BOARD


† **June 26, 2002 - 10 a.m.** -- Public Hearing
Department of Environmental Quality, 5636 Southern Boulevard, Virginia Beach, Virginia. 


A public hearing to receive comments on an application from Metro Machine Corporation to construct and operate a dry dock in Norfolk. An information briefing will occur 30 minutes prior to the public hearing.

Contact: Linda K. Lightfoot, Department of Environmental Quality, 5636 Southern Blvd., Virginia Beach, VA 23462, telephone (757) 518-2005, e-mail llightfoot@deq.state.va.us.

June 27, 2002 - 7 p.m. -- Public Hearing
Pittsylvania County Vocational-Technical Education Center, Route 29, 4 miles south of Chatham, Virginia. 

A public hearing to receive comments on the proposed draft permit for White Oak Power Company, LLC's proposed 680-megawatt simple cycle power plant to be located in Pittsylvania County.


Contact: William S. Shenk, Department of Environmental Quality, 7705 Timberlake Rd., Lynchburg, VA 24502, telephone (434) 582-5120, (804) 698-4021/TTY , e-mail wsshenk@deq.state.va.us.

July 2, 2002 - 7 p.m. -- Public Hearing
Radford City Council Chambers, 619 Second Street, Radford, Virginia. 

A public hearing to receive comments on an amendment to a state air operating permit for Internet Corporation located in Radford, Virginia. The amendment would extend the schedule of compliance until December 31, 2004.

Contact: Steven Dietrich, Department of Environmental Quality, 3019 Peters Creek Rd. Roanoke, VA 24019, telephone (540) 562-6762, e-mail sadietrich@deq.state.va.us.

ALCOHOLIC BEVERAGE CONTROL BOARD

June 18, 2002 - 9:30 a.m. -- Open Meeting
Alcoholic Beverage Control Board, 2901 Hermitage Road, Richmond, Virginia. 

Receipt and discussion of reports and activities from staff members. Other matters not yet determined.

Contact: W. Curtis Coleburn, Secretary to the Board, Alcoholic Beverage Control Board, 2901 Hermitage Rd., P.O. Box 27491, Richmond, VA 23261, telephone (804) 213-4409, FAX (804) 213-4411.


ART AND ARCHITECTURAL REVIEW BOARD

NOTE: CHANGE IN MEETING LOCATION


July 12, 2002 - 10 a.m. -- Open Meeting

August 2, 2002 - 10 a.m. -- Open Meeting

† **September 6, 2002 - 10 a.m.** -- Open Meeting


Virginia War Memorial, 601 South Belvidere Street, Richmond, Virginia.  (Interpreter for the deaf provided upon request)

A monthly meeting to review projects submitted by state agencies. AARB submittal forms and submittal instructions can be downloaded by visiting the DGS forms center at www.dgs.state.va.us. Request submittal form DGS-30-905 or submittal instructions form DGS-30-906.

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, LEAD, AND HOME INSPECTORS

† **June 25, 2002 - 10 a.m.** -- Open Meeting

Department of Professional and Occupational Regulation, 3600 West Broad Street, Conference Room 5E, Richmond, Virginia. 

A meeting to discuss and select a certification examination for home inspectors.

Contact: David 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.


July 16, 2002 - 10 a.m. -- Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, Conference Room 5W, Richmond, Virginia. 

A meeting to conduct routine business. A public comment period will be held at the beginning of the meeting.

Contact: David 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.

ASSISTIVE TECHNOLOGY LOAN FUND AUTHORITY

June 20, 2002 - 10 a.m. -- Open Meeting

Department of Rehabilitative Services, Ratcliffe Building, 8004 Franklin Farms Drive, Richmond, Virginia.  (Interpreter for the deaf provided upon request)

Calendar of Events

A meeting of the Board of Directors. The public is welcome and will have an opportunity to address the board. Following the business meeting, the board will meet in executive session to review loan applications for assistive technology.

Contact: Shilpa Joshi, Assistive Technology Loan Fund Authority, P.O. Box K091, Richmond, VA 23288, telephone (804) 662-9000, FAX (804) 662-9533, toll-free (800) 552-5019, (804) 662-9000/TTY ☎, e-mail loanfund@erols.com.

CEMETERY BOARD

† **June 19, 2002 - 10 a.m.** -- Open Meeting
Department of Professional and Occupational Regulation,
3600 West Broad Street, Richmond, Virginia. ♿

A meeting of the Regulatory Review Committee to review regulations and to conduct other board business as necessary. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact the department at least 10 days prior to the meeting so that suitable arrangements can be made. The department fully complies with the Americans with Disabilities Act.

Contact: Karen W. O'Neal, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8552, FAX (804) 367-2475, (804) 367-9753/TTY ☎, e-mail cemetery@dpor.state.va.us.

CHESAPEAKE BAY LOCAL ASSISTANCE BOARD

June 17, 2002 - 10 a.m. -- Open Meeting
Anchor Inn at Marina Shores, 2100 Marina Shores Drive,
Virginia Beach, Virginia. ♿ (Interpreter for the deaf provided
upon request)

A general business meeting including review of local Chesapeake Bay Preservation Area programs. Staff will give the board an update on the proposed compliance evaluation procedure. There will be consideration of proposed regulatory guidance. Public comment will be received. A tentative agenda is available.

Contact: Carolyn J. Elliott, Administrative Assistant, Chesapeake Bay Local Assistance Department, James Monroe Bldg., 101 N. 14th St., 17th Floor, Richmond, VA, telephone (804) 371-7505, FAX (804) 225-3447, toll-free (800) 243-7229, (800) 243-7229/TTY ☎, e-mail celliott@cblad.state.va.us.

STATE CHILD FATALITY REVIEW TEAM

July 9, 2002 - 10 a.m. -- Open Meeting
Office of the Chief Medical Examiner, 400 East Jackson
Street, Richmond Virginia. ♿

The business portion of the meeting will be open to the public until 10:30 a.m. At the conclusion of the open meeting, the team will go into closed session for confidential case review.

Contact: Virginia Powell, Ph.D., Coordinator, State Child Fatality Review Team, 400 E. Jackson St., Richmond, VA 23219, telephone (804) 786-6047, FAX (804) 371-8595, toll-free (800) 447-1708, e-mail vpowell@vdh.state.va.us.

COMPENSATION BOARD

June 25, 2002 - 11 a.m. -- Open Meeting
Compensation Board, 202 North 9th Street, 10th Floor,
Richmond, Virginia. ♿

A monthly board meeting.

Contact: Cindy P. 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 OF CONSERVATION AND RECREATION

June 26, 2002 - 2 p.m. -- Open Meeting
State Capitol, Capitol Square, Richmond, Virginia. ♿
(Interpreter for the deaf provided upon request)

A regular business meeting.

Contact: Leon E. App, Acting Deputy Director, Department of Conservation and Recreation, 203 Governor St., Suite 302, Richmond, VA 23219, telephone (804) 786-6124, FAX (804) 786-6141, e-mail leonapp@dcr.state.va.us.

DEPARTMENT OF CONSERVATION AND RECREATION

June 18, 2002 - 7 p.m. -- Open Meeting
Mary Bethune Complex, 1030 Crawford Road, 2nd Floor
Meeting Room, Halifax, Virginia. ♿ (Interpreter for the deaf
provided upon request)

The Staunton River State Park Master Plan Committee will receive public comment concerning future development and plans for Staunton River State Park.


Contact: Robert S. Munson, Environmental Program Manager, Department of Conservation and Recreation, 203 Governor St., Suite 326, Richmond, VA 23219, telephone (804) 786-6140, FAX (804) 371-7899, e-mail rmunson@dcr.state.va.us.

† **June 25, 2002 - 9 a.m.** -- Open Meeting
Visitor Center, Mason Neck State Park, 7301 High Point
Road, Lorton, Virginia. ♿ (Interpreter for the deaf provided
upon request)

This will be the third meeting of the park's Technical Advisory Committee on preparation of a new Mason Neck State Park master plan.

Contact: John R. Davy, Director, Division of Planning and Recreation Resources, Department of Conservation and Recreation, 203 Governor St., Suite 326, Richmond, VA 23219, telephone (804) 786-1119, FAX (804) 371-7899, e-mail jdavy@dcr.state.va.us.


June 25, 2002 - 7 p.m. -- Open Meeting

Southwest Virginia Museum Historical State Park, 10 West First Street, North Big Stone Gap, Virginia.  (Interpreter for the deaf provided upon request)

A meeting of the Southwest Virginia Museum Historical State Park Master Plan Advisory Committee to discuss potential park developments to be included in the park master plan.

Contact: Janet H. Blevins, Park Manager, Department of Conservation and Recreation, 203 Governor St., Suite 302, Richmond, VA 23219, telephone (276) 523-1322, FAX (276) 523-6616, e-mail jblevins@dcr.state.va.us.

† June 26, 2002 - 7 p.m. -- Open Meeting


Amelia County Courthouse, 16441 Court Street, Amelia, Virginia.  (Interpreter for the deaf provided upon request)

The state park master planning process will be explained and public input will be received on the draft park mission statement and draft goals and objectives.

Contact: Richard G. Gibbons, Environmental Program Manager, Department of Conservation and Recreation, 203 Governor St., Suite 326, Richmond, VA 23219, telephone (804) 786-4132, FAX (804) 371-7899, e-mail rgibbons@dcr.state.va.us.

Falls of the James Scenic River Advisory Board

July 11, 2002 - Noon -- Open Meeting


Richmond City Hall, 900 East Broad Street, Planning Commission Conference Room, 5th Floor, Richmond, Virginia.  (Interpreter for the deaf provided upon request)

A meeting to discuss river issues.

Contact: Richard G. Gibbons, Environmental Program Manager, Department of Conservation and Recreation, 203 Governor St., Suite 326, Richmond, VA 23219, telephone (804) 786-4132, FAX (804) 371-7899, e-mail rgibbons@dcr.state.va.us.

Virginia State Parks Foundation

June 26, 2002 - 10 a.m. -- Open Meeting


Department of Conservation and Recreation, 203 Governor Street, Suite 302, Richmond, Virginia.  (Interpreter for the deaf provided upon request)

A regular business meeting of the Board of Trustees.


Contact: Leon E. App, Acting Deputy Director, Department of Conservation and Recreation, 203 Governor St., Suite 302, Richmond, VA 23219, telephone (804) 786-6124, FAX (804) 786-6141, e-mail leonapp@dcr.state.va.us.

BOARD OF CORRECTIONAL EDUCATION

June 21, 2002 - 10 a.m. -- Open Meeting

Virginia Museum of Fine Arts, Boulevard and Grove Avenues, Richmond, Virginia.  (Interpreter for the deaf provided upon request)

A meeting to discuss general business.

Contact: Patty Ennis, Board Clerk, Board of Correctional Education, 101 N. 14th St., Richmond, VA 23219, telephone (804) 225-3314, FAX (804) 786-7642, (804) 371-8647/TTY , e-mail paennis@dce.state.va.us.

BOARD OF COUNSELING

July 19, 2002 - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board of Counseling is amending regulations entitled: **18 VAC 115-60. Regulations Governing the Practice of Licensed Substance Abuse Treatment Practitioners.** The purpose of the proposed action is to adopt a one-year waiver of the licensure requirements in the current regulations for individuals who hold certain combinations of education and work experience in substance abuse.


Statutory Authority: §§ 54.1-2400 and 54.1-3508 of the Code of Virginia.

Public comments may be submitted until July 19, 2002, to Evelyn B. Brown, Executive Director, Board of Counseling, 6606 W. Broad St., Richmond, VA 23230.


Contact: Elaine J. Yeatts, Regulatory Coordinator, Department of Health Professions, 6606 W. Broad St., Richmond, VA 23230, telephone (804) 662-9918, FAX (804) 662-9114 or e-mail elaine.yeatts@dhp.state.va.us.

DEPARTMENT FOR THE DEAF AND HARD-OF-HEARING

June 18, 2002 - 10 a.m. -- Open Meeting


Northern Virginia Resource Center for Deaf and Hard of Hearing Persons, 10359 Democracy Lane, Fairfax, Virginia.  (Interpreter for the deaf provided upon request)

A regular meeting of the Virginia Relay Advisory Council. The council will review and discuss the draft Request for Proposals for marketing services. Council will recommend final changes for the RFP.

Contact: Sandra Bocclair, Council Liaison, Department for the Deaf and Hard-of-Hearing, 1602 Rolling Hills Dr., Suite 203, telephone (804) 662-9789, FAX (804) 662-9718, toll-free (800) 552-7917, (804) 662-9502/TTY , e-mail boclaiss@ddhh.state.va.us.

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July 22, 2002 - 4 p.m. -- Public Hearing

Department for the Deaf and Hard-of-Hearing, 1602 Rolling Hills Drive, 2nd Floor, Conference Room, Richmond, Virginia.  (Interpreter for the deaf provided upon request)

August 2, 2002 - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Department for the Deaf and Hard-of-Hearing is amending regulations entitled: **22 VAC 20-20.**

Calendar of Events

Regulations Governing Eligibility Standards and Application Procedures of the Distribution of Technological Assistive Devices. The purpose of the proposed act is to add a requirement for program participants to provide proof of income and proof of residency. In addition, definitions and language will be updated for accuracy and clarify.

Statutory Authority: § 63.1-85.4 of the Code of Virginia.

Contact: Leslie G. Hutcheson, Regulatory Coordinator, Department for the Deaf and Hard-of-Hearing, 1602 Rolling Hills Dr., Suite 203, Richmond, VA 23229-5012, telephone (804) 662-9703, FAX (804) 662-9718 or e-mail hutchelg@ddhh.state.va.us.

DESIGN-BUILD/CONSTRUCTION MANAGEMENT REVIEW BOARD

June 20, 2002 - 11 a.m. -- Open Meeting

July 18, 2002 - 11 a.m. -- Open Meeting

August 15, 2002 - 11 a.m. -- Open Meeting


Virginia War Memorial, 601 South Belvidere Street, Auditorium, Richmond, Virginia.  (Interpreter for the deaf provided upon request)

A meeting to review requests submitted by localities to use design-build or construction management-type contracts. Contact the Division of Engineering and Buildings to confirm the meeting. Board rules and regulations can be obtained online at www.dgs.state.va.us under the DGS Forms, Form DGS-30-904.

Contact: Freddie M. Adcock, Administrative Assistant, Department of General Services, 805 E. Broad St., Room 101, Richmond, VA 23219, telephone (804) 786-3263, FAX (804) 371-7934, (804) 786-6152/TTY , e-mail fadcock@dgs.state.va.us.

BOARD OF EDUCATION

June 25, 2002 - 10:30 a.m. -- Open Meeting


James Monroe Building, 101 North 14th Street, Conference Room E, Richmond, Virginia.  (Interpreter for the deaf provided upon request)

A work session of the Advisory Committee on Adult Education and Literacy. Public comment will not be received at this meeting. Persons requesting the services of an interpreter for the deaf are asked to do so in advance.

Contact: Dr. Margaret N. Roberts, Office of Policy and Public Affairs, 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.

June 26, 2002 - 9 a.m. -- Open Meeting

July 25, 2002 - 9 a.m. -- Open Meeting


General Assembly Building, 910 Capitol Square, Senate Room B, Richmond, Virginia.  (Interpreter for the deaf provided upon request)

A regular business meeting of the board. Persons who wish to speak or who require the services of an interpreter for the deaf should contact the agency in advance. Public comment will be received.

Contact: Dr. Margaret N. Roberts, Office of Policy, Department 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


† **June 17, 2002 - 10 a.m.** -- Open Meeting

Department of Environmental Quality, 629 East Main Street, 1st Floor Conference Room, Richmond, Virginia. 

A meeting of the air and waste resource impact study groups. The DEQ contact for the air study is Jim Sydnor at jesydnor@deq.state.va.us and the contact for the water study is Alan Brockenbrough at abrockenb@deq.state.va.us.

Contact: Kathy Frahm, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4376, e-mail krfracm@deq.state.va.us.


† **June 17, 2002 - 1:30 p.m.** -- Open Meeting

Department of Environmental Quality, 629 East Main Street, 1st Floor Conference Room, Richmond, Virginia. 

In accordance with Item 376 of the 2002 Appropriations Act, the Secretary of Natural Resources and DEQ are preparing a long-term plan to fund the water and waste regulatory programs at the Department of Environmental Quality. Interested persons are asked to attend the planning meeting.

Contact: Kathy Frahm, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4376, e-mail krfracm@deq.state.va.us.


June 19, 2002 - 10 a.m. -- Open Meeting

Department of Environmental Quality, Northern Regional Office, 13901 Crown Court, Woodbridge, Virginia. 

A quarterly meeting of the Small Business Environmental Compliance Advisory Board.

Contact: Richard G. Rasmussen, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4394, e-mail rgrasmusse@deq.state.va.us.


June 20, 2002 - 6 p.m. -- Open Meeting

New River Valley Competitiveness Center, 6580 Valley Center Drive, Radford, Virginia. 

A meeting of the New River PCB Source Study Citizens' Committee to discuss efforts to locate current or historical sources of PCBs and the status of PCBs in the New River.

Contact: Jay Roberts, Department of Environmental Quality, 3019 Peters Creek Rd., Roanoke, VA 24019, telephone (540) 562-6785, e-mail jaroberts@deq.state.va.us.


June 25, 2002 - 7 p.m. -- Open Meeting

Floyd County High School, 721 Baker Street, Auditorium, Floyd, Virginia. 

A meeting on the development of a fecal coliform TMDL for an approximate 15.4 mile segment of Dodd Creek and an approximate 6.4 mile segment of West Fork Dodd Creek. Public comment will be received from June 17, 2002, through July 18, 2002.

Contact: Jay Roberts, Department of Environmental Quality, 3019 Peters Creek Road, Roanoke, VA 24019, telephone (540) 562-6785 or e-mail jaroberts@deq.state.va.us.


† June 27, 2002 - 7 p.m. -- Public Hearing

Page County Board of Supervisors Meeting Room, Luray, Virginia. 

A public hearing to receive comments on the technical aspects of a permit amendment regarding the groundwater monitoring program designed for the site. The public comment period closes on July 12, 2002.

Contact: Geoff Christe, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4283, e-mail gxchriste@deq.state.va.us.

† July 16, 2002 - 9 a.m. -- Open Meeting

Department of Environmental Quality, 629 East Main Street, Richmond, Virginia. 

A regular meeting of the Ground Water Protection Steering Committee. Anyone interested in ground water issues is welcome to attend. Meeting minutes and agenda are available from the contact person.

Contact: Mary Ann Massie, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4042, e-mail mamassie@deq.state.va.us.

BOARD OF GAME AND INLAND FISHERIES

June 26, 2002 - 7 p.m. -- Open Meeting

Department of Game and Inland Fisheries, 4000 West Broad Street, Richmond, Virginia.  (Interpreter for the deaf provided upon request)

A public input meeting to discuss and receive public comments regarding season lengths and bag limits for the 2002-2003 dove, woodcock, snipe, rail, September Canada goose, and teal hunting seasons. 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 meeting portion of the meeting. A summary of the results of this meeting will be provided to the Virginia Board of Game and Inland Fisheries prior to its scheduled July 18,

2002, meeting. The board will hold another meeting on July 18, after which it intends to set 2002-2003 hunting seasons and bag limits for the above species.

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 regcomments@dgif.state.va.us.

† July 18, 2002 - 9 a.m. -- Open Meeting

Department of Game and Inland Fisheries, 4000 West Broad Street, Richmond, Virginia. 

A meeting to review and approve the Department of Game and Inland Fisheries' operating and capital budgets for Fiscal Year 2002-2003; elect the board's chairman for 2002-2003; receive a briefing on the department's adoption of emergency regulation amendments to 4 VAC 15-380, Watercraft: Motorboat Numbering, for the purpose of establishing increased fees for certificates of motorboat registration and duplicate registrations, as provided for and authorized in the 2002 Appropriations Act, Item 392; propose regulatory action to remove mute swan from the nuisance species list, as a result of federal action, for adoption as a final regulation amendment at the August 22, 2002, board meeting; 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; solicit the public's comments in public hearings offered during the regulatory and federal framework portions of the meeting, at which time any interested citizen present shall be heard. The board may also discuss general and administrative issues. The board may elect to hold a dinner Wednesday evening, July 17, at a location and time to be determined, and it may hold a closed session at some time during the July 18 meeting.

Contact: Phil Smith, Policy Analyst, Department of Game and Inland Fisheries, 4010 W. Broad St., Richmond, Virginia 23230, telephone (804) 367-1000, FAX (804) 367-0488, e-mail DGIFWeb@dgif.state.va.us.

August 7, 2002 - 7 p.m. -- Open Meeting

Department of Game and Inland Fisheries, 4000 West Broad Street, Richmond, Virginia.  (Interpreter for the deaf provided upon request)

A public input meeting to discuss and receive public comments regarding season lengths and bag limits for the 2002-2003 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 meeting portion of the meeting. A summary of the results of this meeting will be presented to the Virginia Board of Game and Inland Fisheries prior to its scheduled August 22, 2002 meeting. The board will hold another meeting on August 22, after which it intends to set 2002-2003 hunting seasons and bag limits for the above species.

Contact: Phil Smith, Policy Analyst, Department of Game and Inland Fisheries, 4010 W. Broad St., Richmond, VA

Calendar of Events

23230, telephone (804) 367-1000, FAX (804) 367-0488, e-mail regcomments@dgif.state.va.us.

STATE BOARD OF HEALTH

June 21, 2002 - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the State Board of Health intends to repeal regulations entitled: **12 VAC 5-30. Rules and Regulations Governing Emergency Medical Services** and adopt regulations entitled: **12 VAC 5-31. Virginia Emergency Medical Services Regulations**. The purpose of the proposed action is to consolidate diverse provisions and place them in a logical order, remove outdated provision, and reflect current technological standards.

Statutory Authority: §§ 32.1-12 and 32.1-111.4 of the Code of Virginia.

Contact: Dave Cullen, Compliance Manager, Office of EMS, Department of Health, 1538 E. Parham Rd., Richmond, VA, telephone (804) 371-3500, FAX (804) 371-3543, toll-free 1-800-523-6019, or e-mail dcullen@vdh.state.va.us.

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July 8, 2002 - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the State Board of Health intends to amend regulations entitled: **12 VAC 5-90. Regulations for Disease Reporting and Control**. The purpose of the proposed action is to adopt a provision required by law regarding notification of patients reported to the state cancer registry.

Statutory Authority: §§ 32.1-12 and 32.1-70.2 of the Code of Virginia.

Contact: Diane Wollard, Ph.D., Director, Division of Surveillance and Investigation, Office of Epidemiology, Department of Health, 1500 E. Main St., Suite 123, Richmond, VA 23219, telephone (804) 786-6261, FAX (804) 786-1076, e-mail dwollard@vdh.state.va.us.

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July 22, 2002 - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the State Board of Health intends to amend regulations entitled: **12 VAC 5-220. Virginia Medical Care Facilities Certificate of Public Need Rules and Regulations**.

- 12 VAC 5-230. State Medical Facilities Plan.**
- 12 VAC 5-240. General Acute Care Services.**
- 12 VAC 5-250. Perinatal Services.**
- 12 VAC 5-260. Cardiac Services.**
- 12 VAC 5-270. General Surgical Services.**
- 12 VAC 5-280. Organ Transplantation Services.**

- 12 VAC 5-290. Psychiatric and Substance Abuse Treatment Services.**
- 12 VAC 5-300. Mental Retardation Services.**
- 12 VAC 5-310. Medical Rehabilitation Services.**
- 12 VAC 5-320. Diagnostic Imaging Services.**
- 12 VAC 5-340. Radiation Therapy Services.**
- 12 VAC 5-360. Nursing Home Services.**

The purpose of the proposed action is to respond to legislative changes in the law as a result of the 1999 and 2000 sessions of the General Assembly. The overall impact of the changes is a reduction in the scope of the Certificate of Public Need program. In addition, a provision of the State Medical Facilities Plan regarding liver transplantation services was found to be outdated, inadequate and otherwise inapplicable and in need of revision. The current volume standard (12) for liver transplantation procedures to ensure a successful liver transplantation program is far below the nationally recommended number of procedures (20).

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

Contact: Carrie Eddy, Policy Analyst, Department of Health, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-2157, FAX (804) 368-2149 or e-mail cedly@vdh.state.va.us.

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† **July 30, 2002 - 10 a.m.** -- Public Hearing
Department of Health, 1500 East Main Street, Room 223, Richmond, Virginia.


August 19, 2002 - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the State Board of Health intends to adopt regulations entitled: **12 VAC 5-407. Procedures for the Submission of Health Maintenance Organization Quality of Care Data**. The purpose of the proposed action is to adopt regulations to carry out Virginia law, specifically Senate Bill 533 (2000).

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

Contact: Margot Fritts, Office of Health Planning, Department of Health, 1500 E. Main St., Suite 227, Richmond, VA 23219, telephone (804) 692-0808, FAX (804) 371-0116 or e-mail mfritts@vdh.state.va.us.

BOARD FOR HEARING AID SPECIALISTS

† **June 24, 2002 - 8:30 a.m.** -- Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, 4th Floor, Richmond, Virginia. 

A general business meeting.


Contact: William H. Ferguson, II, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8590, FAX (804) 367-6295, e-mail hearingaidspec@dpor.state.va.us.

HOPEWELL INDUSTRIAL SAFETY COUNCIL

July 2, 2002 - 9 a.m. -- Open Meeting

August 6, 2002 - 9 a.m. -- Open Meeting

September 3, 2002 - 9 a.m. -- Open Meeting


Hopewell Community Center, 100 West City Point Road, Hopewell, Virginia.  (Interpreter for the deaf provided upon request)

The Local Emergency Preparedness Committee will meet as required by SARA Title III.


Contact: Robert Brown, Emergency Services Coordinator, Hopewell Industrial Safety Council, 300 N. Main St., Hopewell, VA 23860, telephone (804) 541-2298.

BOARD OF HOUSING AND COMMUNITY DEVELOPMENT

June 17, 2002 - 10 a.m. -- Open Meeting


Department of Housing and Community Development, 501 North Second St., Richmond, Virginia. 

A regular business meeting.

Contact: Steve Calhoun, Department of Housing and Community Development, The Jackson Center, 501 N. 2nd St., Richmond, VA 23219, telephone (804) 371-7015 or (804) 371-7089/TTY 

State Building Code Technical Review Board

June 21, 2002 - 10 a.m. -- Open Meeting


The Jackson Center, 501 North 2nd Street, Richmond, Virginia.  (Interpreter for the deaf provided upon request)

The Review Board hears administrative appeals concerning building and fire codes and other regulations of the department. The board also issues interpretations and formalizes recommendations to the Board of Housing and Community Development concerning future changes to the regulations.

Contact: Vernon W. Hodge, Department of Housing and Community Development, 501 N. 2nd St., Richmond, VA, telephone (804) 371-7150.


VIRGINIA HOUSING DEVELOPMENT AUTHORITY

June 18, 2002 - 9 a.m. -- Open Meeting

Virginia Housing Development Authority, 601 South Belvidere Street, Richmond, Virginia. 


A regular meeting of the Board of Commissioners to review and, if appropriate, approve the minutes from the prior monthly meeting; 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 it may deem appropriate. Various committees of the Board of Commissioners, including the Programs Committee, the Operations Committee, the Policy Committee, and the Committee of the Whole, may also meet during the day preceding the regular meeting and before and after the regular meeting and may consider matters within their

purview. The planned agenda of the meeting will be available at the offices of the authority one week prior to the date of the meeting.

Contact: J. Judson McKellar, Jr., General Counsel, Virginia Housing Development Authority, 601 S. Belvidere St., Richmond, VA 23220, telephone (804) 343-5540, FAX (804) 783-6701, toll-free (800) 968-7837, (804) 783-6705/TTY 

INNOVATIVE TECHNOLOGY AUTHORITY

† **July 24, 2002 - 10 a.m.** -- Open Meeting

Council of Information Technology, 2214 Rock Hill Road, Herndon, Virginia. 


The annual meeting of the Board of Directors to elect officers.

Contact: Linda Gentry, Secretary/Treasurer, Innovative Technology Authority, 2214 Rock Hill Rd., Herndon, VA 20170, telephone (703) 689-3035, FAX (703) 464-1706, e-mail Linda@cit.org.


DEPARTMENT OF LABOR AND INDUSTRY

Virginia Migrant and Seasonal Farmworkers Board

† **July 10, 2002 - 10 a.m.** -- Open Meeting


State Capitol, House Room 1, Richmond, Virginia.  (Interpreter for the deaf provided upon request)

A regular quarterly meeting of the board.

Contact: Betty B. Jenkins, Board Administrator, Department of Labor and Industry, 13 S. 13th St., Richmond, VA 23219, telephone (804) 786-2391, FAX (804) 371-6524, (804) 786-2376/TTY , e-mail bbj@doli.state.va.us.

STATE LAND EVALUATION ADVISORY COUNCIL

† **August 8, 2002 - 10 a.m.** -- Open Meeting


Department of Taxation, Richmond District Office, 1708 Commonwealth Avenue, Richmond, Virginia. 

A meeting to adopt suggested ranges of values for agricultural, horticultural, forest and open-space land use and the use-value assessment program.

Contact: Keith Mawyer, Property Tax Manager, Virginia Department of Taxation, 2220 W. Broad St., Richmond, VA 23220, telephone (804) 367-8020.

VIRGINIA MANUFACTURED HOUSING BOARD

June 20, 2002 - 10 a.m. -- Open Meeting

The Jackson Center, 501 North 2nd Street, 1st Floor, Board Room, Richmond, Virginia.  (Interpreter for the deaf provided upon request)

A regular meeting to address claims and complaints against manufactured housing licensees and carry out other board functions and duties under the Manufactured Housing Licensing and Transaction Recovery Fund Regulations.

Calendar of Events

Contact: Curtis L. McIver, State Building Code Administrator, Virginia Manufactured Housing Board, State Building Code Administrative Office, 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

June 25, 2002 - 9:30 a.m. -- Open Meeting
Marine Resources Commission, 2600 Washington Avenue, 4th Floor, Newport News, Virginia. ☎

A monthly meeting.

Contact: Stephanie Montgomery, Commission Secretary, Marine Resources Commission, 2600 Washington Ave., Newport News, VA 23607, telephone (757) 247-8088, FAX (757) 247-2020, toll-free (800) 541-4646, (757) 247-2292/TTY ☎, e-mail smont@mrc.state.va.us.

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

July 5, 2002 - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Department of Medical Assistance Services intends to amend regulations entitled: **12 VAC 30-120. Waivered Services (Mental Retardation)**. The purpose of the proposed action is to significantly amend the mental retardation waiver program in response to issues raised by the Health Care Financing Administration and affected constituent groups.

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

Public comments may be submitted until July 5, 2002, to Sherry Confer, Analyst, LTC Division, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219.

Contact: Victoria 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.

August 16, 2002 - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Department of Medical Assistance Services intends to amend regulations entitled: **12 VAC 30-120. Waivered Services Medallion II**. The purpose of the proposed action is to promulgate changes to Medallion II regulations to provide for three issues: one managed care organization in a region; preassignment process; and limit time enrollees have to select a primary care physician.

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

Public comments may be submitted until August 16, 2002, to Adrienne Fegans, Manager, Division of Managed Care,

Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219.

Contact: Victoria 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.

BOARD OF MEDICINE

June 21, 2002 - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board of Medicine intends to amend regulations entitled: **18 VAC 85-80. Regulations Governing the Practice of Occupational Therapy**. The purpose of the proposed action is to address concerns about the adequacy of supervision for unlicensed assistants and to provide greater clarity about practice by graduates waiting for examination results. Minor changes are proposed for greater accuracy and consistency.

Statutory Authority: §§ 54.1-2400, 54.1-2956.1, and 54.1-2956.2 of the Code of Virginia.

Public comments may be submitted until June 21, 2002, to William L. Harp, M.D., Executive Director, Board of Medicine, 6606 W. Broad St. Richmond, VA 23230.

Contact: Elaine J. Yeatts, Agency Regulatory Coordinator, Department of Health Professions, 6606 W. Broad St., 4th Floor, Richmond, VA 23230, telephone (804) 662-9918, FAX (804) 662-9114 or e-mail elaine.yeatts@dhp.state.va.us.

June 21, 2002 - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board of Medicine intends to amend regulations entitled: **18 VAC 85-101. Regulations Governing the Licensure of Radiologic Technologists and Radiologic Technologists-Limited**. The purpose of the proposed action is to provide an additional credential qualifying an applicant to be licensed as a radiologic technologist-limited in bone densitometry and to recognize the training course, examination and certification by the International Society for Clinical Densitometry for a limited license in that anatomical area. The proposed regulations would also clarify that a licensee who performs bone densitometry would have to get additional training and pass ARRT examinations in order to add other anatomical areas. Finally, an amendment would allow the board to accept other approved entities offering continuing education courses for bone densitometry.

Statutory Authority: §§ 54.1-2400 and 54.1-2956.8:1 of the Code of Virginia.

Public comments may be submitted until June 21, 2002, to William L. Harp, M.D., Executive Director, Board of Medicine, 6606 W. Broad St., Richmond, VA 23230.

Contact: Elaine J. Yeatts, Agency Regulatory Coordinator, Department of Health Professions, 6606 W. Broad St., 4th Floor, Richmond, VA 23230, telephone (804) 662-9918, FAX (804) 662-9114 or e-mail elaine.yeatts@dhp.state.va.us.

Informal Conference Committee

June 19, 2002 - 8:45 a.m. -- Open Meeting

July 24, 2002 - 9:15 a.m. -- Open Meeting

† **August 21, 2002 - 9:30 a.m.** -- Open Meeting

Williamsburg Marriott Hotel, 50 Kingsmill Road, Williamsburg, Virginia.

July 18, 2002 - 9:15 a.m. -- Open Meeting

† **August 15, 2002 - 9 a.m.** -- Open Meeting

Holiday Inn Select, 2801 Plank Road, Fredericksburg, Virginia. ♿

July 10, 2002 - 8:45 a.m. -- Open Meeting

Department of Health Professions, 6606 West Broad Street, Richmond, Virginia.

A meeting to 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 or Renee Dixson, Staff, Department of Health Professions, 6606 W. Broad St., Richmond, VA 23230, telephone (804) 662-7332, FAX (804) 662-9517, (804) 662-7197/TTY ♿, e-mail Peggy.Sadler@dhp.state.va.us.

STATE MENTAL HEALTH, MENTAL RETARDATION AND SUBSTANCE ABUSE SERVICES BOARD

June 21, 2002 - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the State Mental Health, Mental Retardation and Substance Abuse Services Board intends to amend regulations entitled: **12 VAC 35-190. Regulations Establishing Procedures for Voluntarily Admitting Persons who are Mentally Retarded to State Mental Retardation Facilities.** The purpose of the proposed action is to amend the regulations to update current provisions in order to reflect current practice and promote appropriate admissions to state training centers.

Statutory Authority: §§ 37.1-10 and 37.1-65.1 of the Code of Virginia.

Contact: Wendy V. Brown, Policy Analyst, Department of Mental Health, Mental Retardation and Substance Abuse Services, P.O. Box 1797, Richmond, VA 23218-1797, telephone (804) 225-2252, FAX (804) 371-0092 or e-mail wbrown@dmhmrsas.state.va.us.

DEPARTMENT OF MOTOR VEHICLES

August 8, 2002 - 9 a.m. -- Open Meeting

Department of Motor Vehicles, 2300 West Broad Street, Room 702, Richmond, Virginia. ♿

A meeting of the Digital Signature Implementation Workgroup. Meetings will be held on the second Thursday of every other month from 9 a.m. until noon at the location noted above unless otherwise noted. The room will be open for coffee and pre-session business at 8:30 a.m.; the business session will begin at 9.

Contact: Vivian Cheatham, Executive Staff Assistant, Department of Motor Vehicles, 2300 W. Broad St., Richmond, VA 23220, telephone (804) 367-6870, FAX (804) 367-6631, toll-free (866) 68-5463, e-mail dmvrc@dmv.state.va.us.

VIRGINIA MUSEUM OF FINE ARTS

† **June 20, 2002 - 10:30 a.m.** -- Open Meeting

Virginia Museum of Fine Arts, 2800 Grove Avenue, Main Lobby Conference Room, Richmond, Virginia. ♿

A meeting of the Nominating Committee to review trustee nominees. Most of the meeting will be held in closed session. Public comment will not be received.

Contact: Suzanne Broyles, Secretary of the Museum, Virginia Museum of Fine Arts, 2800 Grove Ave., Richmond, VA 23221, telephone (804) 340-1503, FAX (804) 340-1502, (804) 340-1401/TTY ♿, e-mail sbroyles@vmfa.state.va.us.

June 20, 2002 - Noon -- Open Meeting

Virginia Museum of Fine Arts, CEO 2nd Floor Meeting Room, 2800 Grove Avenue, Richmond, Virginia. ♿

A meeting of the Executive/Finance/Museum Expansion Committee to approve the annual budget. Public comment will not be received.

Contact: Suzanne Broyles, Secretary of the Museum, Virginia Museum of Fine Arts, 2800 Grove Avenue, Richmond, VA 23221, telephone (804) 340-1503, FAX (804) 340-1502, (804) 340-1401/TTY ♿, e-mail sbroyles@vmfa.state.va.us

BOARD OF NURSING

June 24, 2002 - 9:30 a.m. -- Open Meeting

Department of Social Services, 210 Church Street, S.W., Suite 100, Roanoke, Virginia. ♿

July 15, 2002 - 9 a.m. -- Open Meeting

July 17, 2002 - 9 a.m. -- Open Meeting


July 18, 2002 - 9 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 or certificate holders. Public comment will not be received.

Contact: Nancy K. Durrett, R.N., Executive Director, Board of Nursing, 6606 W. Broad St., 4th Floor, Richmond, VA 23230, telephone (804) 662-9909, FAX (804) 662-9512, (804) 662-7197/TTY ♿, e-mail nursebd@dhp.state.va.us.


Calendar of Events


July 16, 2002 - 1:30 p.m. -- Public Hearing
Department of Health Professions, 6606 West Broad Street,
5th Floor, Conference Room 2, Richmond, Virginia. 

The Board of Nursing will receive public comment on proposed 18 VAC 90-40, Regulations for Prescriptive Authority for Nurse Practitioners.


Contact: Nancy K. Durrett, R.N., Executive Director, Board of Nursing, Southern States Bldg., 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

June 18, 2002 - 8:30 a.m. -- Open Meeting
June 20, 2002 - 8:30 a.m. -- Open Meeting
June 25, 2002 - 8:30 a.m. -- Open Meeting
Department of Health Professions, 6606 West Broad Street,
5th Floor, Conference Room 3, Richmond, Virginia. 

June 26, 2002 - 8:30 a.m. -- Open Meeting
July 30, 2002 - 9 a.m. -- Open Meeting
August 1, 2002 - 9 a.m. -- Open Meeting
August 5, 2002 - 9 a.m. -- Open Meeting
August 6, 2002 - 9 a.m. -- Open Meeting
August 12, 2002 9 a.m. -- Open Meeting
August 13, 2002 - 9 a.m. -- Open Meeting
August 29, 2002 - 9 a.m. -- Open Meeting
Department of Health Professions, 6606 West Broad Street,
5th Floor, Conference Room 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 St., 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 10, 2002 - 1 p.m.** -- Open Meeting
Department of Health Professions, 6606 West Broad Street,
5th Floor, Conference Room 1, Richmond, Virginia.

A panel of the board will convene an informal hearing to inquire into allegations that a certain practitioner may have violated laws governing the practice of nursing home administration. The panel will meet in open and closed sessions pursuant to the Code of Virginia. Public comment will not be received.

Contact: Cheri Emma-Leigh/Senita Booker, Department of Health Professions, 6606 W. Broad St., 4th Floor, Richmond, VA 23230, telephone (804) 662-7457, FAX (804) 662-7246, (804) 662-7197/TTY , e-mail denbd@dhp.state.va.us.

BOARDS OF NURSING AND MEDICINE

July 16, 2002 - 1:30 p.m. -- Public Hearing

Department of Health Professions, 6606 West Broad Street,
5th Floor, Conference Room 2, Richmond, Virginia. 

August 2, 2002 - Public comments may be submitted until this date.


Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Boards of Nursing and Medicine are amending regulations entitled: **18 VAC 90-40. Regulations for Prescriptive Authority for Nurse Practitioners.** The purpose of the proposed action is to provide less burdensome requirements for site visits and chart reviews by supervising physicians, to make certain changes related to expanded prescriptive authority, and to clarify requirements or terminology that are not easily understood.

Statutory Authority: §§ 54.1-2400 and 54.1-2957.01 of the Code of Virginia.

Public comments may be submitted until August 2, 2002, to Nancy K. Durrett, R.N., Executive Director, Board of Nursing, 6606 West Broad Street, Richmond, VA 23230.

Contact: Elaine J. Yeatts, Agency Regulatory Coordinator, Department of Health Professions, 6606 W. Broad St., Richmond, VA 23230, telephone (804) 662-9918, FAX (804) 662-9914 or e-mail elaine.yeatts@dhp.state.va.us.

BOARD OF OPTOMETRY

† **July 12, 2002 - 9 a.m.** -- Public Hearing
Department of Health Professions, 6606 West Broad Street,
5th Floor, Conference Room 1, Richmond, Virginia. 

August 16, 2002 - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board of Optometry intends to amend regulations entitled: **18 VAC 105-20. Regulations of the Virginia Board of Optometry.** The purpose of the proposed action is to revise certain requirements of licensure by endorsement, to reduce the burden of reinstatement, to add some miscellaneous fees consistent with other boards, and to clarify certain provisions related to the provision of patient records if a practice is to be terminated, and the use of professional designations. The board is recommending several changes in requirements for continuing education including an increase in the number of continuing education hours to the statutory limit of 16 but allowing two of those hours to be in recordkeeping and two in CPR.


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

Public comments may be submitted until August 16, 2002, to Elizabeth A. Carter, Ph.D., Executive Director, Board of Optometry, 6606 West Broad Street, Richmond, VA 23230.

Contact: Elaine J. Yeatts, Agency Regulatory Coordinator, Department of Health Professions, 6606 W. Broad St., Richmond, VA 23230, telephone (804) 662-9918, FAX (804) 662-9914 or e-mail elaine.yeatts@dhp.state.va.us.

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BOARD OF PHYSICAL THERAPY

† **July 12, 2002 - 9 a.m.** -- Public Hearing
Department of Health Professions, 6606 West Broad Street,
5th Floor, Conference Room 1, Richmond, Virginia. 

August 16, 2002 - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board of Optometry intends to amend regulations entitled: **18 VAC 105-30. Regulations on Certification of Optometrists to Use Therapeutic Pharmaceutical Agents.** The purpose of the proposed action is to reduce the burden of reinstating an expired certification, reduce the late renewal fee and add some miscellaneous fees consistent with other boards, and specify that two of the continuing education hours required for renewal of licensure must be directly related to prescribing and administration of prescription drugs.

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

Public comments may be submitted until August 16, 2002, to Elizabeth A. Carter, Ph.D., Executive Director, Board of Optometry, 6606 West Broad Street, Richmond, VA 23230.

Contact: Elaine J. Yeatts, Agency Regulatory Coordinator, Department of Health Professions, 6606 W. Broad St., Richmond, VA 23230, telephone (804) 662-9918, FAX (804) 662-9914 or e-mail elaine.yeatts@dhp.state.va.us.


VIRGINIA OUTDOORS FOUNDATION

† **June 27, 2002 - 10 a.m.** -- Open Meeting
Rowe's Family Restaurant, I-81 (Exit 222) and the junction of US Route 250, Staunton, Virginia.

A regularly scheduled meeting of the Board of Trustees to discuss business of the foundation and accept conservation easements. Public comment and input will be accepted at 1 p.m.


Contact: Tamara Vance, Executive Director, Virginia Outdoors Foundation, 203 Governor St., Richmond, VA 23219, telephone (804) 225-2147.

BOARD OF PHARMACY

† **July 9, 2002 - 9 a.m.** -- Open Meeting
† **July 12, 2002 - 9 a.m.** -- Open Meeting
Department of Health Professions, 6606 West Broad Street,
5th Floor, Conference Room 4, Richmond, Virginia. 

The Special Conference Committee will discuss disciplinary matters. 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, e-mail pharmbd@dhp.state.va.us.

July 12, 2002 - 9 a.m. -- Open Meeting
Department of Health Professions, 6606 West Broad Street,
5th Floor, Conference Room 3, Richmond, Virginia. 

July 19, 2002 - Public comments may be submitted until this date.


Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board of Physical Therapy intends to amend regulations entitled: **18 VAC 112-20. Regulations Governing the Practice of Physical.** The purpose of the proposed action is to establish requirements to ensure continuing competency in accordance with a statutory mandate. Proposed regulations will replace emergency regulations currently in effect.

Statutory Authority: §§ 54.1-2400, 54.1-3474 and 54.1-3480.1 of the Code of Virginia.


Public comments may be submitted until July 19, 2002, to Elizabeth Young, Executive Director, Board of Physical Therapy, 6606 W. Broad St., Richmond, VA 23230.

Contact: Elaine J. Yeatts, Regulatory Coordinator, Department of Health Professions, 6606 W. Broad St., Richmond, VA 23230, telephone (804) 662-9918, FAX (804) 662-9114 or e-mail elaine.yeatts@dhp.state.va.us.


POLYGRAPH EXAMINERS ADVISORY BOARD

June 19, 2002 - 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 meeting to conduct board business. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact the department at least 10 days prior to the meeting 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.

VIRGINIA RACING COMMISSION

June 19, 2002 - 9:30 a.m. -- Open Meeting
State Corporation Commission, Tyler Building, Courtroom B,
1300 East Main Street, Richmond, Virginia. 

A monthly meeting including a segment for public participation. The commission will hear a report from Colonial Downs on the live Thoroughbred race meeting that opens June 21 at the New Kent racetrack.

Contact: William H. Anderson, Director of Policy and Planning, Virginia Racing Commission, 10700 Horsemen's Rd., New Kent, VA 23124, telephone (804) 966-7404, FAX (804) 966-7418, e-mail Anderson@vrc.state.va.us.

Calendar of Events

VIRGINIA RECYCLING MARKETS DEVELOPMENT COUNCIL

June 18, 2002 - 10 a.m. -- Open Meeting
Virginia Department of Transportation, Materials Division,
Central Office, 6200 Elko Tract Road, Sandston, Virginia.

A regular meeting. The Waste Disposal Surcharge Subcommittee will meet at 1 p.m. Other subcommittee meetings may be held prior to or after the general council meeting; call Bill Bailey at (804) 328-3106 for details.

Contact: William K. Norris, Division of Environmental Enhancement, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240-0009, telephone (804) 698-4022, FAX (804) 698-4224, toll-free (800) 592-5482, (804) 698-4021/TTY ☎

BOARD OF REHABILITATIVE SERVICES

† **July 25, 2002 - 10 a.m.** -- Open Meeting
Department of Rehabilitative Services, 8004 Franklin Farms Drive, Richmond, Virginia. ☎

A meeting to conduct board business. Public comments will be received at approximately 10:15 a.m.

Contact: Barbara Tyson, Administrative Assistant, Department of Rehabilitative Services, 8004 Franklin Farms Dr., P.O. Box K-300, Richmond, VA 23288-0300, telephone (804) 662-7010, FAX (804) 662-7696, toll-free (800) 552-5019, (804) 662-9040/TTY ☎, e-mail tysonbg@drrs.state.va.us.

VIRGINIA RESOURCES AUTHORITY

July 9, 2002 - 9 a.m. -- Open Meeting
August 13, 2002 - 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: Bonnie R.C. McRae, Executive Assistant, Virginia Resources Authority, 707 E. Main St., Suite 1350, Richmond, VA 23219, telephone (804) 644-3100, FAX (804) 644-3109, e-mail bmcrac@vra.state.va.us.

DEPARTMENT FOR RIGHTS OF VIRGINIANS WITH DISABILITIES

June 18, 2002 - 4 p.m. -- Public Hearing
General Assembly Building, 9th and Broad Streets, House Room D, Richmond, Virginia. ☎ (Interpreter for the deaf provided upon request)

This public hearing relates to the Governor's intent to redesignate Virginia's Protection and Advocacy System. Individuals wishing to make public comment on the redesignation can do so at the public hearing between 4 p.m. and 6 p.m. Individuals requiring special accommodations or assistance should contact DRVD at least five business days prior to the hearing date. For more information on the intent to redesignate contact DRVD at 1-800-552-3962 or 804-225-2061, or e-mail wareka@drvd.state.va.us.

Contact: Kimberly Ware, Program Operations Coordinator, Department for Rights of Virginians with Disabilities, 202 N. 9th 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.

VIRGINIA SMALL BUSINESS FINANCING AUTHORITY

June 25, 2002 - 10 a.m. -- Open Meeting
Department of Business Assistance, 707 East Main Street, 3rd Floor, Richmond, Virginia. ☎

A meeting to review applications for loans submitted to the authority for approval and to conduct general business of the board. 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

June 19, 2002 - 9 a.m. -- Open Meeting
June 20, 2002 - 9 a.m. -- Open Meeting
Lampighter Restaurant, 201 Virginia Avenue, Clarksville, Virginia.

A formal business meeting.

Contact: Pat Rengnerth, State Board Liaison, State Board of Social Services, 730 E. Broad St., Suite 812, Richmond, VA 23219-1849, telephone (804) 692-1826, FAX (804) 692-1962.

June 21, 2002 - 10 a.m. -- Open Meeting
Department of Social Services, 730 East Broad Street, 8th Floor, Conference Room, Richmond, Virginia. ☎

A regular business meeting of the Board of Trustees of the Family and Children's Trust Fund.

Contact: Nan McKenney, Executive Director, State Board of Social Services, 730 E. Broad St., 8th Floor, Richmond, VA 23219-1849, telephone (804) 692-1823, FAX (804) 692-1869.

July 19, 2002 - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the State Board of Social Services intends to amend regulations entitled: **22 VAC 40-705. Child Protective Services.** The purpose of the proposed action is to establish in the permanent regulations the provisions of the current emergency regulations, which allow for statewide implementation of a CPS differential response system. Other changes strengthen the regulations or reflect recent legislation.

Statutory Authority: §§ 63.1-25 and 63.1-248.6 of the Code of Virginia.

Contact: Betty Jo Zarris, CPS Policy Specialist, Department of Social Services, 730 E. Broad St., 2nd Floor, Richmond, VA 23219, telephone (804) 692-1220, FAX (804) 692-2215 or e-mail bjz900@dss.state.va.us.

August 2, 2002 - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the State Board of Social Services intends to amend regulations entitled: **22 VAC 40-71. Standards and Regulations for Licensed Assisted Living Facilities.** The purpose of the proposed action is to rename "adult care residence" to "assisted living facility," allow for a shared administrator for an assisted living facility and a nursing home, and establish requirements for special care units for residents with serious cognitive impairments due to dementia.

Statutory Authority: §§ 63.1-25 and 63.1-174 of the Code of Virginia.

Contact: Judy McGreal, Program Development Consultant, Department of Social Services, Division of Licensing Programs, 730 E. Broad St., Richmond, VA 23219, telephone (804) 692-1792, FAX (804) 692-2370 or e-mail jzm7@dss.state.va.us.

COMMONWEALTH TRANSPORTATION BOARD

June 19, 2002 - 2 p.m. -- Open Meeting
Department of Transportation, 1221 East Broad Street, Auditorium, Richmond, Virginia. 

A work session of the Commonwealth Transportation Board and the Department of Transportation staff.


Contact: Carol Mathis, Administrative Assistant, Department of Transportation, 1401 E. Broad St., Richmond, VA 23219, telephone (804) 786-2713, FAX (804) 786-6683, e-mail Mathis_ca@vdot.state.va.us.

June 20, 2002 - 10 a.m. -- Open Meeting
Department of Transportation, 1221 East Broad Street, Auditorium, Richmond, Virginia. 

A 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: Carol A. Mathis, Administrative Assistant, Department of Transportation, 1401 E. Broad St., Richmond, VA 23219, telephone (804) 786-2713, FAX (804) 786-6683, e-mail Mathis_ca@vdot.state.va.us.

VIRGINIA INFORMATION PROVIDERS NETWORK AUTHORITY

† July 10, 2002 - Noon -- Open Meeting
Richmond Plaza Building, 110 South 7th Street, Richmond, Virginia. 

A meeting of the full Board of Directors.

Contact: Nicholas DeVincenzo, Assistant to the Director, Virginia Information Providers Network Authority, 110 S. 7th St., Richmond, VA 23219, telephone (804) 786-4583, FAX (804) 371-2795, e-mail ndevincenzo@vipnetboard.state.va.us.

VIRGINIA VOLUNTARY FORMULARY BOARD

July 8, 2002 - 10 a.m. -- Public Hearing
Washington Building, 1100 Bank Street, 2nd Floor Conference Room, Richmond, Virginia. 

A public hearing to consider the adoption and issuance of revisions to the Virginia Voluntary Formulary. The proposed revisions to the Virginia Voluntary Formulary add drugs to the Formulary that became effective April 9, 2001, and the most recent supplement to that revision. Copies of the proposed revisions to the Formulary are available for inspection at the Virginia Department of Health, Bureau of Pharmacy Services, 101 North 14th Street, Room S-45, P.O. Box 2448, Richmond, Virginia 23218. Written comments sent to the above address and received prior to 5 p.m. on July 8, 2002, will be made a part of the hearing record and considered by the Formulary Board.

Contact: James K. Thomson, Director, Bureau of Pharmacy Services, Department of Health, 101 N. 14th St., Room S-45, P.O. Box 2448, Richmond, VA 23218, telephone (804) 786-4326.

August 8, 2002 - 10:30 a.m. -- Open Meeting
Washington Building, 1100 Bank Street, 2nd Floor Conference Room, Richmond, Virginia. 

A meeting to consider public hearing comments and evaluate data submitted by pharmaceutical manufacturers

Calendar of Events

and distributors for products being considered for inclusion in the Virginia Voluntary Formulary.

Contact: James K. Thomson, Director, Bureau of Pharmacy Services, Department of Health, 101 N. 14th St., Room S-45, P.O. Box 2448, Richmond, VA 23218, telephone (804) 786-4326.

STATE WATER CONTROL BOARD

† **July 8, 2002 - Noon** -- Open Meeting

† **July 9, 2002 - Noon** -- Open Meeting

Roanoke, Virginia. ☎

A special meeting of the board will be held on July 8. This is primarily a planning session with a limited action agenda. There will be a public forum on this day for anyone who wishes to address the board in accordance with the board's policy for public comments. On July 9 the board will tour a local reservoir and an outstanding state resource water. An agenda will be available in the near future.

Contact: Cindy Berndt, Regulatory Coordinator, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4378, FAX (804) 698-4346, e-mail cmberndt@deq.state.va.us.

July 8, 2002 - Public comments will be received until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the State Water Control Board intends to amend regulations entitled: **9 VAC 25-180. Virginia Pollutant Discharge Elimination System (VPDES) General Permit Regulation for Discharges of Storm Water from Construction Activities.** The purpose of the proposed action is to amend the existing construction general permit regulation to add coverage for storm water discharges from small construction activities. A question and answer period will be held one half hour prior to the public hearing at each location.

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

Contact: Burton Tuxford, Storm Water Coordinator, Department of Environmental Quality, 629 E. Main St., Richmond, VA 23219, telephone (804) 698-4086, FAX (804) 698-4032, e-mail brtuxford@deq.state.va.us.

July 8, 2002 - Public comments will be received until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the State Water Control Board intends to adopt regulations entitled: **9 VAC 25-750. Virginia Pollutant Discharge Elimination System (VPDES) General Permit Regulation for Discharges of Storm Water from Small Municipal Separate Storm Sewer Systems.** The purpose of the proposed action is to adopt a general permit regulation to authorize storm water discharges from small regulated municipal separate storm

sewer systems. A question and answer period will be held one half hour prior to the public hearing at each location.

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

Contact: Burton Tuxford, Storm Water Coordinator, Department of Environmental Quality, 629 E. Main St., Richmond, VA 23219, telephone (804) 698-4086, FAX (804) 698-4032, e-mail brtuxford@deq.state.va.us.

BOARD FOR WATERWORKS AND WASTEWATER WORKS OPERATORS

June 20, 2002 - 8:30 a.m. -- Open Meeting

Department of Professional and Occupational Regulation, 3600 West Broad Street, Conference Room 5W, Richmond, Virginia. ☎

A meeting to conduct routine business. A public comment period will be held at the beginning of the meeting.

Contact: David 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 waterwasteoper@dpor.state.va.us.

INDEPENDENT

STATE LOTTERY BOARD

June 19, 2002 - 9:30 a.m. -- Open Meeting

Pocahontas Building, 900 East Main Street, Richmond, Virginia. ☎

A regular meeting. Public comment will be received at the beginning of the meeting.

Contact: Barbara L. Robertson, Board, Legislative and Regulatory Coordinator, State Lottery Department, 900 E. Main St., Richmond, VA 23219, telephone (804) 692-7105, FAX (804) 692-7775, e-mail brobertson@valottery.state.va.us.

VIRGINIA RETIREMENT SYSTEM

August 13, 2002 - Noon -- Open Meeting

VRS Headquarters, 1200 East Main Street, Richmond, Virginia. ☎

A regular meeting of the Optional Retirement Plan Advisory Committee.

Contact: Darla K. Glazier, Office Manager, Virginia Retirement System, 1200 E. Main St., Richmond, VA 23219, telephone (804) 649-8059, FAX (804) 786-1541, toll-free (888) 827-3847, (804) 344-3190/TTY ☎, e-mail dglazier@vrs.state.va.us.

August 14, 2002 - Noon -- Open Meeting

VRS Headquarters, 1200 East Main Street, Richmond, Virginia. ☎

Meetings of the following committees:

Audit and Compliance Committee - Noon
Benefits and Actuarial Committee - 1 p.m.
Administration and Personnel Committee - 2:30 p.m.
Investment Advisory Committee - 3 p.m.

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 15, 2002 - 9 a.m. -- Open Meeting
VRS 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 dkestner@vrs.state.va.us.

LEGISLATIVE

STANDING JOINT COMMITTEE ON BLOCK GRANTS

July 10, 2002 - 10 a.m. -- Open Meeting
General Assembly Building, 9th and Broad Streets, Senate Room A, Richmond, Virginia. ♿

A regular meeting. Individuals requiring interpreter services or other assistance should contact Tommy Gilman.

Contact: Tommy Gilman, Senate Committee Operations, P.O. Box 396, Richmond, VA 23218, telephone (804) 698-7450 or (804) 698-7419/TTY ☎

VIRGINIA CODE COMMISSION

June 19, 2002 - 10 a.m. -- Open Meeting
General Assembly Building, 9th and Broad Streets, 6th Floor, Speaker's Conference Room, Richmond, Virginia. ♿

A regular meeting.

Contact: Jane Chaffin, Registrar of Regulations, Virginia Code Commission, General Assembly Bldg., 910 Capitol Street, Richmond, VA 23219, telephone (804) 786-3591, FAX (804) 692-0625, e-mail jchaffin@leg.state.va.us.

JOINT SUBCOMMITTEE TO STUDY THE STATE AND LOCAL GOVERNMENT CONFLICT OF INTERESTS ACT (HJR 31)

† **June 18, 2002 - 1 p.m.** -- Open Meeting
General Assembly Building, 9th and Broad Streets, House Room C, Richmond, Virginia. ♿

A regular meeting. Questions about the agenda should be addressed to Amigo Wade, 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 ☎

CONSUMER ADVISORY BOARD OF THE VIRGINIA ELECTRIC UTILITY RESTRUCTURING ACT

June 18, 2002 - 10 a.m. -- Open Meeting
General Assembly Building, 9th and Broad Streets, Senate Room B, Richmond, Virginia. ♿

A regular meeting. Individuals requiring interpreter services or other assistance should contact Tommy Gilman.

Contact: Tommy Gilman, Senate Committee Operations, P.O. Box 396, Richmond, VA 23218, telephone (804) 698-7450 or (804) 698-7419/TTY ☎

LEGISLATIVE TRANSITION TASK FORCE OF THE VIRGINIA ELECTRICAL UTILITIES RESTRUCTURING ACT

June 21, 2002 - 10 a.m. -- Open Meeting
General Assembly Building, 9th and Broad Streets, Senate Room B, Richmond, Virginia. ♿

A regular meeting. Individuals requiring interpreter services or other assistance should contact Tommy Gilman.

Contact: Tommy Gilman, Senate Committee Operations, P.O. Box 396, Richmond, VA 23218, telephone (804) 698-7450 or (804) 698-7419/TTY ☎

JOINT COMMISSION ON TECHNOLOGY AND SCIENCE

June 18, 2002 - 10 a.m. -- Open Meeting
General Assembly Building, 9th and Broad Streets, House Room D, Richmond, Virginia. ♿

An organizational meeting to adopt a workplan for 2002-2003.

Contact: Eric Link, Staff Attorney, Joint Commission on Technology and Science, 910 Capitol St., 2nd Floor, Richmond, VA 23219, telephone (804) 786-3591 or e-mail jcots@leg.state.va.us.

CHRONOLOGICAL LIST

OPEN MEETINGS

June 17
Chesapeake Bay Local Assistance Board
† Environmental Quality, Department of Housing and Community Development, Board of

June 18
Alcoholic Beverage Control Board
† Conflicts of Interest Act, Joint Subcommittee to Study the State and Local Government
Conservation and Recreation, Department of

Calendar of Events

Deaf and Hard-of-Hearing, Department for the
- Virginia Relay Advisory Council
Electrical Utility Restructuring Act, Consumer Advisory
Board of the Virginia
Housing Development Authority, Virginia
- Board of Commissioners
Nursing, Board of
- Special Conference Committee
Recycling Markets Development Council, Virginia
Rights of Virginian's with Disabilities, Department for
Technology and Science, Joint Commission on

June 19
Agriculture and Consumer Services, Department of
- Virginia State Apple Board
† Cemetery Board
- Regulatory Review Committee
Code Commission, Virginia
Environmental Quality, Department of
- Small Business Environmental Compliance Advisory
Board
Lottery Board, State
Medicine, Board of
- Informal Conference Committee
Polygraph Examiners Advisory Board
Racing Commission, Virginia
Social Services, State Board of
Transportation Board, Commonwealth

June 20
Assistive Technology Loan Fund Authority
Design-Build/Construction Management Review Board
Environmental Quality, Department of
- New River PCB Source Study Citizens' Committee
Manufactured Housing Board, Virginia
Museum of Fine Arts, Virginia
- Executive/Finance/Museum Expansion Committee
- Nominating Committee
Nursing, Board of
- Special Conference Committee
Social Services, State Board of
Transportation Board, Commonwealth
Waterworks and Wastewater Works Operators, Virginia
Board for

June 21
Correctional Education, Board of
Electrical Utilities Restructuring Act, Legislative Transition
Task Force of the Virginia
Housing and Community Development, Department of
- State Building Code Technical Review Board
Social Services, State Board of
- Family and Children's Trust Fund Board of Trustees

June 24
† Hearing Aid Specialists, Board for
Nursing, Board of

June 25
Agriculture and Consumer Services, Department of
- Virginia Peanut Board
† Asbestos, Lead, and Home Inspectors, Virginia Board for
Compensation Board
Conservation and Recreation, Department of
- Mason Neck State Park Master Plan Technical Advisory
Committee

- Southwest Virginia Museum Historical State Park Master
Plan Advisory Committee
Education, Board of
- Advisory Committee on Adult Education and Literacy
† Environmental Quality, Department of
Marine Resources Committee
Nursing, Board of
- Special Conference Committee
Small Business Financing Authority, Virginia

June 26
† Accountancy, Board of
† Conservation and Recreation, Board of
- Virginia State Parks Foundation Board of Trustees
Education, Board of
Game and Inland Fisheries, Board of
Nursing, Board of
- Special Conference Committee

June 27
† Outdoors Foundation, Virginia
- Board of Trustees

July 2
Hopewell Industrial Safety Council

July 8
† Water Control Board, State

July 9
Child Fatality Review Team, State
† Pharmacy, Board of
- Special Conference Committee
Resources Authority, Virginia
- Board of Directors
† Water Control Board, State

July 10
Block Grants, Standing Joint Subcommittee on
† Labor and Industry, Department of
- Virginia Migrant and Seasonal Farmworkers Board
Medicine, Board of
- Informal Conference Committee
† Nursing Home Administrators, Board of
† Virginia Information Providers Network Authority
- Board of Directors

July 11
Conservation and Recreation, Department of
- Falls of the James Scenic River Advisory Board

July 12
Art and Architectural Review Board
† Pharmacy, Board of
- Special Conference Committee
Physical Therapy, Board of

July 15
Nursing, Board of

July 16
Asbestos, Lead, and Home Inspectors, Virginia Board for
† Environmental Quality, Department of
- Ground Water Protection Steering Committee

July 17
Nursing, Board of

July 18
Design-Build/Construction Management Review Board
† Game and Inland Fisheries, Board of
Medicine, Board of
- Informal Conference Committee
Nursing, Board of

July 23

† Agriculture and Consumer Services, Department of
- Virginia Small Grains Board

July 24

† Innovative Technology Authority
- Board of Directors
Medicine, Board of
- Informal Conference Committee

July 25

Education, Board of
† Rehabilitative Services, Board of

July 30

Nursing, Board of
- Special Conference Committee

August 1

Nursing, Board of
- Special Conference Committee

August 2

Art and Architectural Review Board
Nursing, Board of
- Special Conference Committee

August 5

Nursing, Board of
- Special Conference Committee

August 6

Hopewell Industrial Safety Council
Nursing, Board of
- Special Conference Committee

August 7

Game and Inland Fisheries, Board of

August 8

† Land Evaluation Advisory Council, State
Motor Vehicles, Department of
- Digital Signature Implementation Workgroup
Voluntary Formulary Board, Virginia

August 12

Nursing, Board of
- Special Conference Committee

August 13

Nursing, Board of
- Special Conference Committee
Resources Authority, Virginia
- Board of Directors
Retirement System, Virginia
- Optional Retirement Plan Advisory Committee

August 14

Retirement System, Virginia
- Administration and Personnel Committee
- Audit and Compliance Committee
- Benefits and Actuarial Committee
- Investment Advisory Committee

August 15

Design-Build/Construction Management Review Board
† Medicine, Board of
- Informal Conference Committee
Retirement System, Virginia

August 21

Agriculture and Consumer Services, Department of
- Virginia Egg Board
† Medicine, Board of
- Informal Conference Committee

August 29

Nursing, Board of
- Special Conference Committee

September 3

Hopewell Industrial Safety Council

September 6

† Art and Architectural Review Board

PUBLIC HEARINGS**June 26**

† Air Pollution Control, State

June 27

Air Pollution Control Board, State
† Environmental Quality, Department of

July 2

Air Pollution Control Board, State

July 8

Voluntary Formulary Board, Virginia

July 12

† Optometry, Board of

July 16

Medicine Board, of
Nursing, Board of

July 22

Deaf and Hard-of-Hearing, Department for the

July 30

† Health, State Board of